THE LONDON ADVOCATE

THE NEWSLETTER OF THE LONDON CRIMINAL COURTS SOLICITORS' ASSOCIATION

NUMBER 88 APRIL 2019

Welcome to the April 2019 edition of The London Advocate. It has been some time since the last issue, though it is hoped that The London Advocate will now be appearing at regular, quarterly, intervals.

This year marks the 70th anniversary of the Legal Aid and Advice Act 1949, and finds the system intended to ensure equality of arms and access to high quality advice as imperilled as at any time in its history. Below we are asking for members to provide data that can be submitted to the MOJ in support of our efforts to achieve meaningful change to the legal aid regime.

Elsewhere in this edition, we take a look at a number of issues which should be of interest to practitioners: disclosure, knife crime prevention orders, sentences for drug driving and a significant recent Supreme Court case on the disclosure of previous convictions.

If you would like to suggest content or contribute an article, or be added to the distribution list, please contact the editor, Ed Smyth at **esmyth@kingsleynapley.co.uk**

♦ ♦ ♦ ♦

LCCSA NEWS

CALL FOR CASE DATA

David Gauke recently told the Justice Select Committee that the MOJ's legal aid review, due to report in 2020, will "consider very carefully market sustainability" and that he is working closely with The Criminal Bar to ensure that he has a sustainable system. The Association is contributing to the review; however we also believe that it is not sustainable to wait until 2020 for any change to be enacted: we need to insist that the crisis in publicly funded provision is addressed now.

Whilst there is a need to obtain scientific data, this will take time and we need to demonstrate as a matter of urgency just how difficult it is to run certain cases on the current fee structures. It would therefore be of great benefit and assistance to be able to provide as many examples of cases where the hours works are wholly disproportionate to the meagre fee payable. Whilst the MOJ should have the data, it is not clear whether it is readily available.

Please could you take a few minutes to complete a table with the following columns, with at least one example of such cases (but add more if you are inclined to do so) and return it to sarsboxer@gmail.com

- Offence
- Plea/trial/cracked
- Sentence imposed or advised at risk of
- Totals number of hours spent on case (approx. if not recorded)
- Final Fee
- Pages of Evidence
- Expert instruction (yes/no and number of experts)
- Interpreter required?
- Custody (part or throughout) / bail
- Number of legal visits / appointments
- Number of defence witnesses
- Approx. value of non-travel disbursements

SENTENCING COUNCIL CONSULTATION

The Sentencing Council has announced a new draft sentencing guideline and accompanying consultation document on sentencing defendants with mental health conditions or disorders. For further details see here:

https://www.sentencingcouncil.org.uk/consultations/sentencing-offenders-with-mental-health-conditions-or-disorders-consultation/

The LCCSA will be preparing a response to the consultation to be submitted by **9th July 2019**. Due to the importance of the subject to the work that we do we would greatly appreciate as much input as possible from the membership to enable us to formulate as comprehensive a response as possible. Please e-mail our law reform officer Edward Jones on **ejones@hja.net** with any views that you wish to share.

RELEASE UNDER INVESTIGATION

This issue is affecting the whole profession and even more so our clients, who are left in limbo. The association will be launching a campaign on the back of a survey into the impact of these cases later this month

with a view to ensuring that the scandal of delay for suspects and witnesses is brought to public attention.

Please keep a look out for the survey when it eventually hits your inboxes

SUMMER PARTY, 5TH JULY 2019

On the back of previous successful years, we are hosting the summer party for the fourth year running at Rotunda in King's Cross. Tickets are available from Sara Boxer (sarsboxer@gmail.com) priced at £50 for members and £75 for non-members, which includes food and drink.

EUROPEAN CONFERENCE, BARCELONA, FRIDAY 4TH – SUNDAY 6TH OCTOBER 2019

Booking is now open for the Association's annual conference. Follow this link to access the form:

https://www.lccsa.org.uk/wp-content/uploads/2019/03/BarcelonaBookingForm19-1.pdf

The cost includes two night's bed and breakfast at the Hotel Atenea Mar, a three-course dinner on Friday evening at Cangrejo Loco (kindly sponsored by Forensic Equity), a drinks party on Saturday evening and, of course, the conference itself (kindly been sponsored by Garden Court Chambers).

The prices per person are £175 members/£225 non-members for a double room, £250/£300 for a single. Flights are not included. An optional walking tour of Barcelona is available for £30pp.

LAWCARE – PROMOTING WELLBEING FOR LAWYERS

LawCare
Supporting the Legal Community

How are you, really? Life in the law can be challenging and sometimes things can get on top of you. Can we help?

LawCare is the charity that promotes and supports good mental health and wellbeing across the legal community in the UK and Ireland. We've been supporting lawyers for 20 years. No-one knows lawyers like we do.

Our confidential helpline is a safe place to talk without judgement. We're here to help 365 days a year, with calls answered by trained staff and volunteers who have first-hand experience of working in the law.

Whether you're a junior solicitor feeling burnt out, a young trainee experiencing sexual harassment, a student struggling with the workload, an experienced partner worrying about a mistake you've made, a senior lawyer feeling like you're being pushed out - we're here to listen.

We are here to help all branches of the legal profession, and our support spans the legal life from student to training to practice and retirement.

As well as our helpline on 0800 279 6888, we offer one-to-one peer support. Information, resources and factsheets at www.lawcare.org.uk

COMMITTEE MEETINGS

The LCCSA committee meets monthly (second Monday of the month at 6:30pm) and all members are welcome. Meetings take place at Kingsley Napley, 14 St John's Lane, EC1M 4AJ.

♦ ♦ ♦ ♦

ARTICLES

DISCLOSURE: MORE AMMUNITION FOR THE DEFENCE

Geoff Payne, barrister from 25 Bedford Row, describes the various reviews of the disclosure regime and how practitioners might exploit some of their findings.

Disclosure is highly topical at present with review after review seemingly identifying problems with it. But what do those reviews actually amount to? Reasonable lines of enquiry are not always followed. Disclosure is not always considered with sufficient attention from the outset but treated as an administrative add-on. Disclosure is not always given the priority it requires. Investigators do not always identify relevant Unused Material for listing on the schedules. Prosecutors sign off on inadequate schedules. Disclosure can occur too late and the test is not always applied correctly. There is a lack of effective sanction when disclosure goes wrong. That is a pretty damning indictment and one with which fraud practitioners will be only too familiar. But those are not the words of the defence community; they are taken directly from the Attorney-General's Review of Disclosure published in November 2018. It is troubling that what is being spoken of is a feature of the system acknowledged, even by those responsible for administering it, as "fundamentally important to ensuring a fair trial".

Stronger words were used by the House of Commons Justice Committee, which concluded, in its own report, that, "disclosure failings have been widely acknowledged for many years but have gone unresolved". The most obvious catalyst for these reviews was disquiet surrounding disclosure in cases of sexual allegations.

So, what is the answer? On one view, the reviews have successfully identified problems, but are somewhat light on concrete solutions. Notably, there are no recommendations to change the disclosure regime. No keys to the warehouse anytime soon. Rather, the suggestions involve future updates to the Attorney-General's Guidelines and Code of Practice, the provision of practical advice for investigators, a rebuttable presumption of disclosure of certain documents (pre-statement notes and similar), better pre-charge engagement, the wider use of Disclosure Management Documents and setting out in revised guidelines how Artificial Intelligence can "deal with the realities of digital material".

Whether any of that will change the world remains to be seen. In particular, the reviews acknowledge that the fees regime is not fit for purpose insofar as unused material is concerned. That is apparently to be addressed by the Ministry of Justice as part of a future review. We will see what that brings.

The reviews provide a good basis upon which to challenge poor disclosure practices. The first area is in challenging inadequate Schedules of Unused Material. The Code of Practice provides that descriptions on schedules must "make clear the nature of the item and contain sufficient detail to enable the prosecutor" to decide whether inspection is required. Too often, the descriptions are vague. In one recent very lengthy fraud case, the main schedule contained an entry marked "Documents re." and then the name of a person of significance in the case; that was all. That sort of schedule was never acceptable but the defence now has more ammunition when it comes to challenging it.

The second area concerns the use of Disclosure Management Documents. Some prosecuting agencies are still not supplying them but there is now no excuse at all for them not to be provided. They can be useful in setting out, for example, the nature of the linked cases to be considered, keywords used to search digital devices and the approach adopted towards third party material. Sometimes, the approach described will be manifestly inadequate and a proactive approach by the defence can achieve success.

The defence can also be proactive in setting out keywords for the searching of electronic devices. That is particularly helpful in relation to devices seized from other defendants where there is a conflict. Sometimes though, it may be better for the defence to undertake its own work. Section 21 of PACE, sometimes overlooked, offers a mechanism through which a defendant can obtain a copy of his or her own devices. In other cases, a deficient or late approach to keyword searching can cause cases to collapse – providing the defence has been proactive in setting out what it requires.

Perhaps the most important thing to come out of the Attorney-General's review is the endorsement of Richard Horwell QC's disapproval of the phrase, "strict interpretation of the disclosure test". Too often was that form of words used almost as a badge of honour in prosecutions. Fortunately, no more. As the review states, "disclosure must be carried out according to law but [the]… recommendation that 'if in doubt, disclose', is an important steer". Again, valuable defence ammunition. So, the various disclosure reviews do repay consideration; but more because they identify problems as opposed to providing solutions yet.

https://www.25bedfordrow.com/site/news/fraud-bulletin/

♦ ♦ ♦ ♦

KNIFE CRIME PREVENTION ORDERS AND YOUTHS

Caroline Liggins, associate at Hodge Jones and Allen critically assesses this recently-proposed tool and doubts whether it achieve its aim.

Amendments to the proposed Offensive Weapons Bill include the introduction of Knife Crime Prevention Orders (KCPOs) for those as young as 12. The introduction of "knife ASBOs" is part of the government's response to the increase of violent knife crime, which is being termed by many as a national crisis.

Despite heavy criticism from professionals involved in the criminal justice system, the government is determined to proceed with the introduction of these orders and have refused to consider redrafting the bill with amendments suggested by the Magistrates' Association, Prison Reform Trust, Standing committee on Youth Justice and the Association of Youth offending Team Managers.

Government's proposal for Knife Crime Prevention Orders

Under the new proposals police can apply to a magistrates' court for a KCPO. One could lawfully be imposed on anyone aged 12 and over, if the court is satisfied on the balance of probabilities that on at least two occasions they had a bladed article in a public place or on school premises (including further education premises), without a good reason or lawful authority.

The court would only impose such an order if they think it is necessary in order to protect the public, or a particular member of the public from the risk of harm involving a blade. The order could also be made if it was

necessary to prevent a person from committing an offence involving a bladed article.

The purpose of making such the order would be to add restrictions to that person to achieve the aims of the order and could include curfews, geographical restrictions, engagement with invention, restrictions on who they associate with and also restrictions on their use of social media.

The government also intend to introduce KCPOs for those who have been convicted of criminal offences if the offence for which they have been convicted was a "relevant offence" and again if the court thinks it is necessary to impose one. Again, these conviction KCPOs could be for anyone aged 12 and over but wouldn't be limited to those convicted of possession of a bladed article. They could also be imposed when a defendant has been convicted of an offence involving violence, or a bladed article was used by the defendant or any other person in the commission of the offence or the defendant or another person who committed the offence had a bladed article with them when the offence was committed.

Concerns raised

It's very clear that should these knife ASBOs come into force they could be used quite widely and given the deep public concerns about knife crime they might be applied quite liberally as a preventative measure. The court would only have to be satisfied there was evidence that showed that it was more likely than not that a person had carried a blade on two occasions. The court would not have to be sure there was a history of carrying a knife before imposing the order and restrictions. Even for those who have been convicted of a criminal offence a KCPO as part of sentencing could be used for a large number of offences. Many might ask, are these restrictions so terrible if it helps to reduce the number of weapons on the street?

Firstly, there is no evidence that these proposed KCPOs would have any significant impact on knife crime. But any breach of the restrictions imposed as part of the order is an offence which carries a maximum sentence of 2 years imprisonment. Given how similar they are to ASBOs that can already be imposed people wonder why the need for a new initiative which is so similar?

Knife crime is a huge concern. The weapons that are being carried are terrifying and so to the number of senseless deaths on what seem to be a weekly basis from knife attacks. There has been a significant focus on youths carrying knives, the thought of children who lack maturity to understand the consequences of their actions and are in fact armed, is distressing. Although it's important to note that the Youth Justice Board statistics of 2017/18 show that of the knife and offensive weapons offences committed that year, 79 percent were committed by adults. But those who work with young people fear these KCPOs which can be imposed on those as young as 12, will predominately be aimed at children and young people given the current mood.

The reasons knifes are being carried are varied. If a child carried a knife because of fear for their own safety in their own communities it's likely they will continue to do so even if a KCPO is imposed. If they carry a knife because they've been encouraged by others or need to do so in order to be part of a group/ gang or be accepted by their friends, they will probably continue to do so and won't be deterred because of restrictions on them. They won't want to stop or be able to stop because of peer pressure. There will also be those who have in fact been merely suspected of carrying knives and made subject to restrictions they are unlikely to keep, especially if it's to stop them using social media sites or where they are allowed to go. Given that KCPO's seem to be a reinvention of the ASBO it's important to note that the Youth Justice Board's evaluation of ASBOS back in 2006 suggested young people didn't under the detail of the orders and stringent conditions were openly broken.

A 2015 study has shown that 60 percent of young people in the youth justice system have speech, language and communication needs. In 2017 the Youth justice Board reported that of all admissions to youth custody, 61 percent of young people were not engaged in education, there were substances misuse concerns for the 45 percent of those admitted, 33 percent were looked after children, 33 percent were rated as having mental health concerns, 32 percent as having learning disability or difficulty concerns. These figures are in fact set out in the resources for Judges in England and Wales. These all suggest that many young people would be poorly equipped to simply break the cycle of knife carrying without support.

There is no easy or quick solution to knife crime but when we try and address the issue it should be in a balanced and proportionate way. As things stand, there is no evidence the orders will help. Instead, experience tells us that their implementation risks damaging trust between communities and the police and the justice system overall. The cost of policing the orders have to be factored in, and some would argue that the funds for this new initiative could simply be used to fund more policing given that we have laws which make it a criminal offence to carry a bladed article in a public place and other methods of monitoring suspected criminal behaviour. When the Home Office first proposed KCPOs they

stated they were to be used to target the prevention of crimes but again, there are other more effective methods of prevention that are desperate for better funding or other initiatives to consider. Instead of perhaps trying to restrict social media there could be projects with internet companies whereby those looking for violent material can instead be directed to material steering youths away from knife crime? After all the internet is one of the most powerful tools we have.

If, as suspected, these orders would be used on many young people if they use social media when they are not allowed, or break a curfew or go to a street they shouldn't, they commit a crime. Those children who had not even been convicted of a crime when the order was imposed are now in the justice system, they face sentencing and they will have a criminal record. For those who have already been convicted, they face more convictions and being further marginalised and their future opportunities damaged because of their criminal record. Suddenly this well-meaning but poorly thought out initiative has made more children criminals. Instead of preventing crime it has created it.

https://www.hja.net/knife-crime-prevention-orders-and-youths/

♦ ♦ ♦ ♦

DEATH, DRIVING AND DRUGS: ANOMALIES IN SENTENCING

Paul Jarvis, barrister of 6KBW College Hill, identifies a serious inconsistency in the application of sentencing guidelines for fatal drink and drug driving offences.

A handful of recent cases have thrown into sharp relief the shortcomings of the Definitive Guideline *Causing Death by Driving* that was issued by the Sentencing Guidelines Council, as it then was, as far back as August 2008. In the intervening 11 years, the Guideline has not been amended but at least one of those offences has, and in a way that means the strict application of the Guideline *could* lead to those convicted of less serious vehicular homicide offences receiving longer sentences than those convicted of more serious offences.

If there is a hierarchy of causing death by driving offences then at the very top will be causing death by dangerous driving, contrary to section 1 of the Road Traffic Act 1988. The maximum sentence is 14 years' imprisonment. In order for the standard of a person's driving to be dangerous it is necessary for the prosecution to prove that the way he drove fell *far* below what would be expected of a competent and careful driver, and that it would be obvious to a competent and careful driver that driving in that way would be dangerous. For sentencing purposes the Definitive Guideline recognises three levels of seriousness for this offence. Where there was a brief but obvious danger arising from a seriously dangerous manoeuvre then the facts of the case will typically fall into Level 3 with a starting point of 3 years' imprisonment and a range of 2 – 5 years. Where the defendant had consumed excessive quantities of alcohol of drugs before driving, that is a recognised aggravating factor. Where, however, the quality of the defendant's driving was *impaired* by his consumption of alcohol or drugs (whether or not that consumption was excessive, in the sense that it placed him above the legal limit) then the facts of the case are likely to fall into Level 2, with a starting point of 5 years' imprisonment and a range of 4 – 7 years.

In this sense, then, the Definitive Guideline for causing death by dangerous driving draws a distinction between (i) the consumption of alcohol and drugs that was not excessive and did not impair the quality of the defendant's driving, (ii) the consumption of alcohol and drugs that was excessive but which did not impair the quality of the defendant's driving, (iii) the consumption of alcohol and drugs that was not excessive but which did impair the quality of the defendant's driving, and (iv) the consumption of alcohol and drugs that was excessive and which also impaired the quality of the defendant's driving. In scenario (i), the consumption is irrelevant for sentencing purposes. In scenario (ii), the consumption will not affect the categorisation of the offence but will be an aggravating feature of it. In scenario (iii), consumption will affect the categorisation but will not aggravate the seriousness of the offence thereafter, and in scenario (iv) consumption will both affect the categorisation and could lead to a further increase in the sentence beyond that.

The next most serious offence is causing death by careless driving when under the influence of drink or drugs, contrary to section 3A of the 1988 Act. Like the offence of causing death by dangerous driving, the maximum sentence is 14 years' imprisonment. The test for careless driving is whether the way the defendant drove fell below what would be expected of a careful and competent driver. Unlike in the case of dangerous driving there is no need for the quality of the defendant's driving to have fallen *far* below that standard. At the time the Definitive Guideline came into force, in addition to proving the defendant drove carelessly and that his driving caused the death of the victim, the prosecution also had to prove, *inter alia*, that

either the defendant was unfit to drive on account of his consumption of alcohol or drugs or that he had consumed so much alcohol that the proportion of it in his system exceeded the proscribed limit. If the defendant had consumed so many drugs that the proportion of them in system exceeded the prescribed limit *but* that consumption had not rendered him unfit to drive then this element of the offence could not be made out. That was something of a lacuna.

The Definitive Guideline for the section 3A offence is based on two principal considerations: the degree of carelessness inherent in the defendant's driving and the quantity of alcohol and drugs in his system at the time above the prescribed limit. The starting point is not determined by any consideration of the extent to which the defendant's consumption of alcohol or drugs actually impaired his driving, so a defendant who was significantly above the prescribed limit but who was not unfit can expect to receive a significantly longer sentence than the defendant who was only just above the prescribed limit but who was clearly unfit to drive, even if in the event the standard of his driving was same in both scenarios.

What this meant in practice is that a defendant who carried out a careless driving manoeuvre that caused death at a time when the quantity of drugs in his system was above the prescribed limit but he was not thereby unfit to drive, could not be prosecuted under s.3A, although he could certainly be prosecuted under section 2B, the offence of causing death by careless driving, where the maximum sentence is only 5 years' imprisonment. If the standard of his driving was dangerous he could be prosecuted under s.2, but in that case the lack of impairment would not propel the case into Level 2 for sentencing purposes, although the fact that he had consumed drugs above the legal limit would be an aggravating feature of the offence.

That position changed on 2 March 2015 when section 3A was amended by the Crime and Courts Act 2013 so that the offence can now be committed where the proportion of controlled drugs in the defendant's body exceeded the prescribed limit regardless of impairment, thus placing drug consumption on a par with alcohol consumption so far as that offence is concerned. In *R v Mohamed* [2018] EWCA Crim 596, the appellant argued that the Definitive Guideline for the section 3A offence did *not* apply where the proportion of drugs in the driver's system was above the prescribed limit but he was not otherwise unfit to drive because it had not been within the contemplation of the Sentencing Guidelines Council in 2008 that such an amendment to the legislation would be made seven years later to widen the offence in that way. The Court of Appeal dismissed that argument. In its view, Parliament had done no more than provide that "as an alternative to proof of actual impairment as a result of drug consumption, the offences will be equally commitment by driving with alcohol or drugs in excess of the prescribed limit. Actual impairment is not a pre-requisite for the commission of the offence" (at [24]).

The current position is that where a defendant causes death in circumstances where the proportion of drugs in his system exceeds the prescribed limit but the standard of his driving was not impaired, then (i) if the standard of his driving was careless (and close to dangerous) and the quantity of drugs in his system was high, then according to the Definitive Guidelines for the section 3A offence the starting point will be 8 years' imprisonment with a range of 7 – 14 years, but (ii) if the standard of his driving was dangerous and the quantity of the drugs in his system was high, then for the section 2 offence the starting point will be 3 years' imprisonment with a range of 2 – 5 years because he was not impaired by his consumption of drugs, although the fact that he was significantly above the legal limit will be an aggravating feature of the offence. It is difficult to see why a defendant who commits the more serious section 2 offence should find himself in these circumstances receiving a lesser sentence than the defendant who was convicted of the less serious offence in section 3A.

This point was raised with the Court of Appeal in *R v Bills (Joseph)* [2018] EWCA Crim 186, where on a prosecution for the section 2 offence the prosecution had sought to rely on the Definitive Guideline for the section 3A offence to show to the court that where a person causes death by their dangerous driving when over the prescribed limit the sentence should be at least on a par with, and arguably more than, the sentence for the equivalent conduct had it been prosecuted under section 3A. The President of the Queen's Bench Division recognised this "anomaly in the guideline" (at [24]) and went on to increase the sentence on account of the presence of excessive quantities of alcohol in the offender's system at the time of the driving which he considered to be a significant aggravating feature.

Certainly one way of overcoming the anomaly would be to treat the excessive consumption of alcohol and drugs as an aggravating feature of such seriousness that even on its own it requires the court to move up to the next category in the section 2 Definitive Guideline, but there is no authority in which the Court of Appeal has been

prepared to go that far. Another alternative would be to interpret the Definitive Guideline in such a way that excessive consumption of alcohol or drugs, even in the absence of impairment, should drive a case into Level 2, with a starting point of 5 years' imprisonment. The problem with that approach is that the Guideline expressly states that only driving whilst *impaired* as a result of drug of alcohol consumption will have that affect, the clear inference being that an unimpaired driver who is over the limit will not fall into Level 2.

Ultimately, the anomaly exposes the problem of a sentencing guideline that has stood still while the offences to which it applies have moved on. The neatest solution would be for the Sentencing Council, as it now is, to amend and reissue the Definitive Guideline for causing death by driving offences in a way that could both address this anomaly (and any others) and also conform to the more modern guidelines which differ in a number of important respects from the older ones. Perhaps the most obvious difference is that the older guidelines, like the one for causing death by driving, are premised upon the defendant being a person with no previous convictions, and hence a lack of previous convictions is not a matter of mitigation upon which he can rely at sentence because it has already been taken into account in the determination of the starting point. This is a point that is often overlooked at the sentencing stage because lawyers and judges are far more attuned to the newer guidelines where a lack of previous convictions is a matter of mitigation.

https://blog.6kbw.com/posts/death-driving-and-drugs-anomalies-in-sentencing

♦ ♦ ♦ ♦

SUPREME COURT RULES ON CRIMINAL RECORDS AND DISCLOSURE AND BARRING

Chris Stevens, solicitor at Sonn Macmillan Walker, summarises the Supreme Court's recent significant decision in three joined cases: In the matter of an application by Lorraine Gallagher for Judicial Review (Northern Ireland); R (on the application of P, G and W) v Secretary of State for the Home Department and another

A landmark ruling at the Supreme Court on 30th January 2019 rejected an appeal by the government in respect of its criminal records scheme. The judgment confirmed that the current disclosure system for those with minor criminal convictions and cautions infringed human rights.

The impact of the judgment will affect many people who have criminal records from their distant past which have created a harsh barrier to their career progression and life chances. The ruling, which focused on four separate cases, rejected three of the appeals by the Home Office over whether those convicted of lesser offences or who received cautions need to disclose them when seeking employment involving contact with children and vulnerable adults. In 2013 the government revised the disclosure scheme and a 'filtering process' was introduced.

The revised scheme no longer required disclosure of every spent conviction or caution but required such disclosure in a limited set of circumstances. These were where the conviction or caution was "current", was in respect of certain specified offences, had resulted in a custodial sentence or where the person had more than one conviction. The Disclosure and Barring Service (DBS), requires past offences to be revealed in a number of circumstances. These include where the conviction or caution is serious, where it is current and not deemed to have been spent under the 1974 Rehabilitation of Offenders Act, where it resulted in a custodial sentence, and where someone has more than one conviction. Despite the changes in 2013 many campaigners felt that they did not go far enough in allowing people to move on from their past.

The Supreme Court judgment recognised that there were two competing factors to resolve, namely protecting the public and the rehabilitation of offenders. They felt that the current regime was too harsh and disproportionate by requiring the disclosure of;

1. The disclosure of all previous convictions, however minor, where a person has more than one conviction.
2. Warnings and reprimands issued to young offenders.

The decision follows a government challenge in respect of a Court of Appeal judgment in 2017 over the legality of the scheme. The ruling confirmed the 2016 decision at the High Court that the scheme breached Article 8 of the ECHR which protects the right to private life.

The full judgment can be found **here**.

This move marks a positive step in allowing people to move on from mistakes from their past, particularly in the case where a reprimand or warning issued to someone as a child limits their opportunities many years later. The government will be watched closely in respect of how they act to implement a more proportionate system for disclosure.

https://www.criminalsolicitor.co.uk/blog/supreme-court-rules-on-criminal-records-and-disclosure-and-barring/

N.B. Edward Jones, the Law Reform Officer of the LCCSA, has produced a **briefing note** on this case and the disclosure regime more generally.

♦ ♦ ♦ ♦

BOOK REVIEW

Marc Troman, Junior Vice-President of the LCCSA, reviews "HUMAN TRAFFICKING AND MODERN SLAVERY LAW AND PRACTICE" (Philippa Southwell, Michelle Brewer and Ben Douglas-Jones QC. Bloomsbury Professional, £77.76)

In the foreword we are reminded that, while there has been an increasing awareness of human trafficking in the modern era, the Modern Slavery Act has only been in force for 3 years. Many of the legal provisions aimed at protecting victims and prosecuting perpetrators will be new to practitioners and this text aims to act as a comprehensive guide. The principle value of this book to the London criminal practitioner is its focus on identifying the victims of trafficking when under arrest. Duty solicitors are used to handling a broad range of issues at a police station or magistrates' court but in this instance, there is much to consider.

Those who are trafficked to the UK and used to commit offences are unlikely to identify themselves as victims at the point of arrest. This book makes clear that the legal adviser has a crucial role in the discovery process. Those who feel they might be interested in this book but are unsure of its relevance may wish to start at the penultimate chapter describing the *M.O.* of a typical trafficking operation. Experienced practitioners will quickly realise that over the years they have met suspects and defendants caught up in these activities and would have suspected this kind of exploitation. We have all mitigated for the 'courier', 'foot-soldier' and 'lookout' but should we have delved deeper?

As would be expected, a significant part of the book is given over to the legal framework of the Modern Slavery Act and the multiple agency approach known as the National Referral Mechanism. This detail is important and would be of use to anyone who thinks they have a client who has been trafficked or is defending someone accused of slavery or trafficking offences.

The book then serves to address every issue that a criminal practitioner could encounter during the life of the case. A chapter is dedicated to advice at the police station, providing practical steps for identification and the strategies to deploy in interview and thereafter.

If a suspect is not diverted from prosecution through the National Referral Mechanism the book provides useful information for those challenging the CPS decision to prosecute or raising the defence created by s.45 of the Modern Slavery Act (when a criminal act was brought about through compulsion and that compulsion was attributable to slavery or trafficking). The disclosure request checklist is particularly useful as is the discussion around severance for cases involving multiple defendants.

With chapters advising on trial issues, appellant work, funding and extradition, the authors have carefully considered all legal issues affecting the victims of slavery and trafficking. Anyone investing in this book can feel confident they will not only be able to handle their problems but will have the skills and knowledge to ensure a just outcome.

♦ ♦ ♦ ♦

BRUCE REID

MINISTRY OF JUSTICE CONFRONTS CLIMATE CHANGE

To close this edition, Bruce Reid brings us a tale of what we might be looking forward to in the event of a repeat of last summer's heatwave. We join our protagonists at Camberwell Magistrates Court…

DJ Honeybun (addressing the Defence) – "Felix, when global warming is a reality, when the air conditioning doesn't work but the central heating does and the glass frontage promises Marty Mole a fine crop of mangos in the lobby; I am prepared to allow a degree of laxity in court dress, but those Speedos are a bridge too far, and if you must wear a medallion do you think you could do something about the chest hair?"

Felix Mansfield (For Carlos Chinchilla) – "But Sir, I am a cat; we are supposed to be furry! I thought it would go better with the Speedos than a Regimental tie."

DJH – "The only Regimental tie you are entitled to is the Legion Of The Lost. Anyway, what's the medal for?"

Felix looks bashfully at the ground and falls silent.

Squirrel Nutkin (Defence - for Walfredo Wombat) – "Felix is too shy to say so, Sir, but it's an award from the Police Federation."

DJB – "What? I thought they had a voodoo doll of him in the office they stuck pins into!"

SN – "No, Sir, it was for an arrest in Brixton Market. Constable Rover, a German Shepherd was facing down a

drug dealing Rotteweiller 3 times his size. It was going to be a massacre. Felix was passing, doing his shopping....."

DJH – "And..."

SN – "Well, the Rottweiller sprang, teeth bared going for Constable Rover's throat when suddenly, Felix, drops his shopping bag of red snapper and ackees and a blazing ball of claws hurled itself at the Rottweiller's undercarriage. It was over in seconds. The dog survived but now barks two octaves higher....."

DJB – "Impressive! Anyway, on with the day's work. Mr Badger?"

Barry Badger (CPS) rises to his feet and opens his case. After ten minutes, he realises that he does not have the Court's full attention. Felix is spread out on the Defence desk, all four paws skywards purring rhythmically. Squirrel's fluffy tail has given up fanning him and now flops over his face as a convenient eye mask, Wanda Rabbit, the Legal Advisor, crouches Sphinx-like, eyes closed, ears flattened, underneath her desk. Above the roar of 3 feeble fans, comes the snoring of DJ Honeybun; chin propped up on 3 artfully piled volumes of 'Stones'.

BB – "Marty!!! The bucket please!!!"

Marty Mole (List Caller) grabs the fire bucket and hurls the contents at the Bench.

DJH (Soggily) – "What the ***! - 5 months and 1 week consecutive for the Fail to Attend!"

Wanda Rabbit –"You can't do that, Sir, it's just a Case Management hearing. Remember? Carlos Chinchilla and Walfredo Wombat? Affray in a chip shop? - "Where's my f**king vinegar?" Two days set aside? We are dealing with Bad Character. **You** deemed it suitable for summary trial....." she tails off.

DJH – "Did I? Two days with Carlos Chinchilla? With the 'Misery Line' suffering from the wrong kind of sunshine? I'll never get home. Don't fancy that, I will have to recuse myself, I have obviously demonstrated bias; prejudged the issue... Send it next door to DJ Cuddles."

Wanda Rabbit - (Sotto voce) "She'll love you..."

An elegant sari-clad figure enters.

DJH (Glad of any further distraction) – "Good Morning, Madam, what can we do for you?"

Mangit Mongoose – "May it please the Court, I am the Indian District Court's Liaison Officer assigned to Camberwell."

DJH – "Er, yes.... Delighted, but I didn't know we had one?"

MM – "Gary Goblin of MOJ is not sending you the email? You were consulting?" She holds up a laptop.

DJH - "Gary wouldn't consult me about wanting sugar in my tea. Let me see that please."

'All stakeholders will appreciate that the current heating costs at Camberwell, combined with the need for cost savings throughout the Court Estate mean that tough decisions have to be made.....With immediate effect all Court business at Camberwell Green will be outsourced to India. Court staff will receive their tickets on Friday. Defendants will appear by video link and the Court will deal with them from its new premises at Mahabalipuram.....'

A week later, the new Khadi deals Justice under the palm tree. Soft breezes blow, crickets chirp and cows murmur. It is noticeably cooler than Camberwell.

DJH - (Chomping *chole bhatura* from "Chaat A Manger" and watching a flickering, but blank screen) "I could get used to this, better for lunch than a cheese sandwich; I suppose the Virtual is still down at Camberwell, Marty?"

MM – "Yes sir, nothing wrong with the Indian technology, no 'load shedding' this end....."

FM - (Now dressed in a lunghi, but at Khadi Honeybun's insistence they should keep up appearances; back wearing a tie) "Sluuuurrrp! Pass me another coconut will you, Squirrel? This one's empty....."

lccsa

London Criminal Courts Solicitors' Association