the barrister

#96 ESSENTIAL READING FOR BARRISTERS
18TH APRIL - 26TH MAY 2023

EST. 1999 PRICE £2.80

EASTER TERM ISSUE www.barristermagazine.com ISSN 1468-926X

Complaint handling – the Legal Ombudsman's perspective

What is the Legal Ombudsman?

For those who don't know who we are or what we do, we are the Ombudsman, the independent and impartial complaints handling body, for all legal services in England and Wales. We are established under the Legal Services Act 2007 (the Act) – and governed by the Act and a set of Scheme Rules. We consider complaints about the service provided by an authorised person, including solicitors and barristers, to a complainant.

We're not a regulator, so we won't consider whether a practitioner has breached their regulatory rules. As an Ombudsman, our role is to look at the service they provided and, if appropriate, direct them to put things right. We aim to resolve complaints as informally as possible. However, if necessary, an Ombudsman can make a final decision, which is legally binding if the consumer accepts it. We also can and do report matters to the regulator when required to do so under the Act.

Our Scheme Rules are set to change on 1 April 2023. I'll explain more about that later, but will first give an overview of our process and approach to resolving complaints that are referred to us.

Laura Stockin, Legal Manager, Legal Ombudsman

How does the Legal Ombudsman work?

On receiving a complaint, we first establish whether it was made within our time limits, if it is within our jurisdiction, and how it should be resolved. Those with previous experience of the Legal Ombudsman may be aware that waiting times over previous years have been

p.6

The Public Order Bill: a lesson in legislative irony

The right to peaceful protest is one that we, members of an elective and representative democracy, often take for granted. Its existence constitutes one fragile strand of our otherwise complex and infinitely nuanced social fibre. Its significance is reflected through its enshrinement in the European Convention on Human Rights, under Articles 10 and 11, which expressly protect an individual's freedom of expression and freedom of assembly and association. The introduction of the proposed Public Order Bill, which currently lays at the feet of the defanged House of Lords, infringes on these rights and threatens to destabilise one of the greatest catalysts for societal and political change in domestic history, the protest.

What is being proposed?

There are three main facets to the new proposed legislation:

Firstly, the bill introduces new offences for locking on (s.1), *tunnelling* (s.3 & s.4), *obstruction of major transport works and key national infrastructure* (s.6, s.7 & s.8) *and interference with access to or provision of abortion services* (s.9). The bill also introduces offences for being "equipped to lock on" (s.2) and being "equipped for tunnelling" (s.5).

Secondly, section 11 empowers officers to stop and search individuals whom they "reasonably believe" may commit of offence prescribed under s.137 of the Highways Act 1980, s.78 Police, Crime, Sentencing and Courts Act 2022 or under the bill itself. The officer may also conduct a search "*whether or not the constable has any grounds for suspecting*" that the individual is carrying a prohibited object.

Finally, we see the conception of a new preventative court order, known

p.8

Features

News

Publishing Director: **Derek Payne**
0203 5070 249
email: **admin@barristermagazine.com**
Publishers: **media management corporation ltd**
Design and Production: **Jeremy Salmon**

Anthony Wakefield & Company
Fine Art & General Insurance Brokers

Fine Art & General Insurance

An insurance broker that really listens

We take time to listen to our clients' requirements and advise them on the best policy to suit their needs.

With over 30 years experience, you are in safe hands.

Talk to us today and see what type of insurance we can provide for you.

Call us 01306 740 555

anthonywakefield.com

Donate your #ProBono35 to Advocate

What is ProBono35?

The #ProBono35 campaign encourages barristers to donate £35 to Advocate when renewing their practising certificates through the Bar Council's MyBar portal.

The donations we receive through this process make up **almost 50% of our funding**. Which is fundamental to our sustained success as a charity.

How do I donate?

The donation page is just before the checkout on the MyBar portal and it includes the option to give more than £35 if you would like to. Please also complete your address, which means we can claim gift aid from HMRC, making your donation worth an additional 25% to us, at no cost to you.

Why do barristers contribute to us annually?

We were set up in 1996 by barristers, for barristers. Lord Goldsmith KC said he founded us to "*build on the existing strong and proud tradition of the Bar providing its services free to those who need help and advice*". Barristers believe in the ethos of Advocate and its importance in providing access to justice for the most vulnerable.

As the 2023 Chair of the Bar, Nick Vineall KC said in his inaugural address "*pro bono is a badge of the Bar's integrity and the Bar's commitment to the public interest.*" We cannot be a replacement for a properly funded legally aided system and we do not attempt to try, but often those that turn to us for help have exhausted all other means and are desperate, vulnerable and in need of support. If you are still unsure, hear from those we have helped on how pro bono assistance has changed their lives for the better, and hear from our volunteer barristers about why it is so important to help those in need.

Why your donation means so much

We are grateful to the countless barristers who donate their time to pro bono.

We are also thankful to those who may not have the time to do pro bono work but can donate to Advocate and support our service through this generous pathway. Many of you do both and we are so incredibly grateful for this kind offering. We would not exist without you.

The financial help you provide will keep us going and sustain our team for another year and allow us to expand our reach to even more people in need.

The demand for our service has reached the highest in Advocate's history. We received 21 requests for help every day in 2022. We expect the need for our assistance to only grow further in 2023, with the economic conditions taking their toll and more people struggling to navigate our complicated justice system alone. **Your support has real impact**. One of our pro bono clients recently told us: *I would again like to thank you for your personal generosity in assisting me in this very difficult matter which is so important to me. Advocate have given me a significant ray of hope in what has been otherwise a very tough period for me. Thank you all so much for making representation for me possible in this case.*

We understand that it has been a tough year for many at the Bar, which has only been exacerbated by the rising cost of living, but we encourage those who can, to donate what they can, so we can continue offering a vital lifeline to many.

Join this year's campaign

When you join, together with your peers, to donate £35 or more each, you contribute to almost **50% of our running costs**. Many people do not realise that a £35 donation can amount to so much. This simple donation from the Bar allows us to support many more people who are in dire need of legal assistance.

As the number of individuals applying to Advocate for legal assistance continues to increase, we ask you to remember this chance you have to help people in need get access to justice, and to donate your #ProBono35 when you renew your practising certificate.

If you're on Twitter help us remind everyone else, and show your support with a tweet. Make it your own by starting "**I donate my #ProBono35 to @WeAreAdvocate because....**" and inspire others to donate to the Bar's

Bar Council welcomes parity for prosecution and defence fees

Following last year's announcement from the Ministry of Justice that defence fees would be increased, the disparity between defence and prosecution fees had led to a shortage of barristers to undertake prosecution work, further exacerbating backlogs.

The Treasury has approved funding to the CPS to permit parity to be maintained between prosecution and defence fees.

Welcoming the news, Chair of the Bar Nick Vineall KC said:

"This is very welcome news. The disparity between defence and prosecution fees has caused a shortage in the availability of prosecutors and this has been a particular concern in relation to RASSO (rape and serious sexual offence) cases. We heard examples from all circuits in England and Wales of cases being adjourned, sometimes multiple times, due to the lack of available prosecutors.

"Alongside the Criminal Bar Association and CPS, we made representations to the Government, and we are pleased that the Treasury has agreed to enable the CPS to achieve parity with defence fees."

Bar Standards Board sets out its plans to assure competence of barristers

The Bar Standards Board (BSB) has published its response to the Legal Service Board's policy statement on ongoing competence. The response includes an action plan which sets out the BSB's approach to assuring the professional competence of barristers and, in doing so, how it meets the expectations of the LSB's policy statement.

It is a primary responsibility of the BSB, as the front-line regulator, to set standards of practice and ensure that they are met and maintained by barristers. The BSB has in place a broad range of measures which support this objective, including:

- The Professional Statement, which describes the knowledge, skills and aptitude that barristers should have as they enter the profession.
- Targeted regulation where there is evidence of concerns in standards of practice – our work on Youth Courts and Coroners Courts are examples of these.
- The BSB Handbook, which defines the core duties and rules relating to practice at the Bar.
- The action plan sets out plans to strengthen these arrangements over the coming 12-18 months. This includes:
- The ongoing review of the approach to Continuing Professional Development and in particular the use of feedback and reflective practice to support learning and development.
- Looking at the role of chambers and employers in supporting high standards of practice.
- Improving our intelligence and data analysis capability to ensure that regulatory interventions are targeted and based on a broad range of evidence.
- A review of the regulation of the early years of practice at the Bar to build on the expectations outlined in the Professional Statement.
- Enhancing our intelligence gathering and analysis and strengthening our intelligence sharing arrangements with other regulators and organisations such as the Legal Ombudsman.

The BSB's Director of Regulatory Operations, Oliver Hanmer said "It is our job to ensure that members of the public have access to competent barristers. Our programme of work aims to deliver that objective through proportionate, evidenced based regulation which focusses on areas of greatest risk and which supports the profession to maintain standards of practice".

BAR STANDARDS BOARD

CJA comments on the government's response to the Justice Select Committee's pre-legislative scrutiny of the Victim's Bill

On the 20th January 2023 the government responded to the Justice Select Committee's pre-legislative scrutiny of the Victim's Bill. The government have agreed to take forward several recommendations, which we welcome:

- Including bereaved families, children who have witnessed domestic abuse, and individuals born of rape in the definition of victim.
- Putting an obligation on criminal justice agencies to make victims aware of the Code.
- Requiring data to be standardised to allow comparison across police areas.
- Requiring statutory guidance issued on the roles of ISVAs and IDVAs to include information on their role, function, and relevant training.
- Strengthening the remit of the Victims Commissioner.

However not all of the Committee's recommendations were accepted by the government. Nina Champion, Director of the CJA has said:

We are very disappointed that the Ministry of Justice has rejected the Justice Committee's recommendation to include a 'right to access restorative justice services', which was a key recommendation of the CJA and many of our members. They state that as RJ is always voluntary for all parties, they do not consider that a right to access restorative justice is practical or appropriate. The intention of the recommendation was not a right to have a restorative justice conference, but a right for victims to be referred to a restorative justice service so they can receive information to make an informed decision about RJ and be supported to cope and recover. The CJA will continue to work with officials to clarify this and seek to put down amendments to the Bill in due course.

Criminal Justice Alliance

Spiralling 50,000 Employment Tribunal backlog

Spiralling tribunal backlogs are leaving employees and businesses in limbo for far too long, the Law Society of England and Wales has warned.

The latest data for December 2022 shows 50,518 outstanding cases compared to 47,041 in December 2021, with the backlog rising steadily month after month.*

"The Employment Tribunal backlog means employees and employers aren't getting the swift resolution they should," said Law Society president Lubna Shuja.

"This means people and businesses are facing prolonged periods of uncertainty, which is likely to take a high toll both personally and financially, with the cost-of-living crisis hitting individuals and businesses hard.

"Since Employment Tribunal fees were abolished in 2017, the number of claims has increased, but this has not been matched by the resources needed to deliver justice promptly for those turning to the tribunal.

"The government must address this shortfall if the growing backlog is going to be curtailed.

"We know one of the key issues is a lack of judges. Efforts should redouble to ensure the tribunal has the experts it needs to function at maximum capacity."

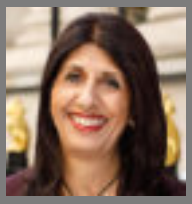
Cases are often listed for hearing more than 12 months from when the request was first made, while more complex claims can take more than two years to get a judgment.

"Being involved in an employment claim is extremely stressful for employees and employers," said Lubna Shuja.

"These types of cases deal with serious matters from unfair dismissal, unpaid wages and redundancy claims to whistleblowing and unlawful discrimination.

"Long delays only add to the stress for people already worried about their job, their finances or their reputation. "The government needs to ensure Employment Tribunal claims can be heard in a reasonable timeframe to enable individuals and businesses to resolve their issues and move on.

The Law Society
of England and Wales



UK-South Korea trade talks could liberalise legal market

An enhanced UK-South Korea free trade agreement (FTA) could liberalise the Korean legal market for UK solicitors and usher in a new era of joint practice between lawyers from the two countries, the Law Society of England and Wales said in response to a consultation on the government's trade negotiations.

"Upcoming trade negotiations with South Korea provide an opportunity to remove barriers to market access for UK lawyers and law firms," said Law Society President Lubna Shuja. "South Korea has already somewhat liberalised its legal services market through its trade agreements with the UK*, EU, US and Australia.

"However, it has implemented its commitments narrowly and has not satisfactorily addressed the issue of joint practice between Korean and foreign lawyers, meaning that the market has yet to fully open.

The Law Society
of England and Wales

"The review of the UK agreement in 2023 provides a unique opportunity to address these issues and push for further liberalisation. The UK should take full advantage of this to press for ambitious provisions on legal services."

Lubna Shuja added: "We believe the UK government should push for greater rights for UK lawyers operating in Korea to partner with, employ or be employed by Korean lawyers – in line with the rights afforded to Korean lawyers operating in the UK.

"Here, Korean lawyers can provide legal advice permanently or temporarily and they can employ, be employed and partner with solicitors – both in UK law firms and in branch offices of Korean law firms.

"They can also requalify as solicitors in England and Wales via the Solicitors Qualifying Exam. In benefiting from these provisions, Korean law firms contribute to the UK's economy and increase trade with foreign countries.

"Removing burdensome requirements for UK lawyers in Korea, providing greater fly-in fly-out rights and more rights to provide services digitally would help generate more opportunities for the Korean as well as the UK legal sector.

"We look forward to continuing to work with the British government and our Korean counterparts to advance a more ambitious agreement that will create new opportunities for our members."

p.1

much too long. But changes we've made since 2021 mean we're now far more pragmatic in our approach, and we're able to progress matters more quickly and proportionately. In particular, if a case is suitable for early resolution, we'll look to do that wherever possible – although of course the complexity of many legal services complaints means that won't always be appropriate.

Our commitment to achieving the right outcome at the earliest possible point has been at the heart of our recovery and improvement over the last two years. At the end of December 2022, three-quarters of the way through 2022/23, we'd already resolved more complaints than in the whole of 2021/22, and we've reduced the average time it takes to go through our process by 26%. Although our wait times are still too long as we continue to work through our investigation queue, they are much shorter and, once through that wait time, we are resolving complaints in significantly reduced time. These improvements will be supported by our upcoming Scheme Rule changes (see below).

If a complaint does require a full investigation, an investigator will typically talk to both parties to understand the complaint, request evidence, and share their initial findings. If the parties haven't been able to reach an agreed outcome, the investigator will make a case decision. If appropriate, an Ombudsman will make a decision which is final and binding under the Act if the complainant accepts it.

It's important practitioners are aware of their obligations under the Act and the BSB handbook to cooperate with the Legal Ombudsman. If you don't do this, s147-149 of the Act allows us to take enforcement action to obtain necessary documents and/or information. We can also make a referral to the BSB. If there is a reason why you're unable to provide something (for example, if it doesn't exist, or has been destroyed), then you should explain the position to the investigator.

As a complaint will be made against the barrister personally, an investigation of the complaint and any outcome will be against the barrister directly rather than their chambers (unless they are employed).

How can barristers avoid complaints?

A key part of our work is helping practitioners avoid complaints being made, and not just to resolve them once they've happened. To help with this, we've published a significant amount of guidance on our website, run our own workshops, and regularly attend industry events and forums to share good practice. You can sign up to future events at https://www.legalombudsman.org.uk/information-centre/learning-resources/training-and-events/.

The most common types of complaints against barristers are those about failure to advise, failure to follow instructions, poor communication, and excessive costs and/or delays. A full annual report of complaint data can be found at: https://www.legalombudsman.org.uk/information-centre/learning-resources/preventing-complaints/overview-of-annual-complaints-data/

The underlying theme in most of these complaints is communication. If a client feels they've been updated and are clear about what's happening, they're unlikely to complain. As busy practitioners, barristers will undoubtably be working on a number of matters at any given time. But bear in mind that for the individual client, their own situation will naturally be the most important to them. To avoid them feeling like they're not being given sufficient attention, it's vital to manage their expectations about how and when the work will be done. We'd expect to see a barrister set this out clearly and provide updates if things change.

How can barristers handle complaints effectively?

A good complaints handling policy is a bit like car insurance – you need to have it but you hope you don't need to use it! While handling complaints can be time consuming and costly, they're also learning opportunities – from which you can make your service better for the future.

If a complaint has arisen, here are our five top tips to help resolve them right quickly and fairly.

1. Recognise when something is a complaint. This isn't always straightforward. Our Scheme Rules define a complaint as an "expression of dissatisfaction" – and this may not necessarily be in writing. If in doubt, our advice is to ask the individual directly whether they're raising a complaint. If you leave something unaddressed, after 8 weeks they can come to us, meaning you've lost the opportunity to deal with the issue 'in house'.

2. Respond to a complaint in line with your Chamber's policy and BSB guidance. Any response sent to a complainant should be clear and avoid legal/technical jargon. It should also cover all issues raised by the complainant and provide any supporting documents (if appropriate).

3. Take every complaint seriously. This is important for a number of reasons; aside from good client care, the Legal Ombudsman will look at your complaint response as part of its investigation. Even if the complaint is not upheld, if your complaint handling wasn't reasonable, then a case fee of £400 will be payable by you.

4. If you feel that the complaint has some merit, address this promptly. This may avoid the escalation of the complaint to us. Even if the client chooses to do this, we'll look at any initial offer you made to settle the complaint. We will determine whether the offer was reasonable, and may dismiss the entire complaint if we decide you made a reasonable offer.

5. Use our free technical advice line. We can give you advice on how to approach the complaint. Just email technical.advice@legalombudsman.org.uk and an Ombudsman will assist with your query.

Changes to the Scheme Rules

The Legal Ombudsman's new Scheme Rules go live on 1 April 2023 – and will help ensure we're an even more proportionate and efficient service going forward. We're continuing to engage extensively with regulators to help ensure practitioners are ready for the changes. If you haven't yet reviewed the changes, we would encourage you to do so as soon as possible – as well as taking note of any updates from your regulator – to ensure you're aware of what they mean for you.

Some key changes include:

- A reduction in the time limit to bring a complaint to the Ombudsman. The current Scheme Rules say a complainant must refer the complaint to us no later than 6 years from the act/omission; or 3 years from when the complainant should reasonably have known there was cause for complaint. The rules will reduce this time limit to 1 year. You should ensure that any client correspondence that refers to 6/3 years is updated appropriately.
- The introduction of Rule 5.7(p), which will allow an Ombudsman to consider if a case should be dismissed due to the size and complexity of the complaint.
- The introduction of Rule 5.7(q) which will ensure that new issues cannot be added to an ongoing investigation if they were already known to the complainant at the time the investigation commenced
- An amendment to Rule 5.19, which will enable an Ombudsman to conclude that a final decision isn't needed if no substantive issues have been raised in response to the investigator's findings or remedy.

The Scheme Rules are available on our website at: https://www.legalombudsman.org.uk/information-centre/corporate-publications/scheme-rules/

Laura Stockin, Legal Manager, Legal Ombudsman

Moving to Europe? It's not as difficult as you may think.

Talk to Blevins Franks about the key steps to take before and after your move. Besides our London office, we have advisers living locally in France, Spain, Portugal, Cyprus and Malta, and can help you with:

Residence | understanding and applying for post-Brexit residence permits

Tax planning | minimising tax on income, capital gains, wealth and inheritances

Estate planning | navigating and avoiding foreign forced heirship rules

Investments | designing portfolios to suit your circumstances and goals

UK pensions | exploring your options to find the best solution for you

Talk to the people who know

+44 (0)207 389 8133

centralenquiry@blevinsfranks.com

BLEVINS FRANKS

INTERNATIONAL TAX ADVICE • INVESTMENTS • ESTATE PLANNING • PENSIONS

www.blevinsfranks.com

154-08

p.1

as the Serious Disruption Prevention Order, which targets "protestors who are determined to repeatedly inflict disruption on the public". Such orders may prohibit an individual from entering a particular area or mixing with certain other individuals, possessing 'particular articles', or using the internet to encourage anyone else to commit a protest-related offence.

What does this mean in practice?

Even when one attempts to avoid traversing the political minefield nestled within the foundations of the proposed legislation, one cannot ignore its practical difficulties.
Initially, one does not require the trained eye of a legal practitioner to identify the potential issues relating to the drafting of the legislation and its incongruence with the government's legislative aims. Let's turn our attention to the drafting of the proposed offence of "locking-on".

> Section 1 states a person commits an offence of locking-on if:
> (1)(a) they—
> (i) attach themselves to another person, to an object or to land,
> (ii) attach a person to another person, to an object or to land, or
> (iii) attach an object to another object or to land,
> (b) that act causes, or is capable of causing, serious disruption to—
> (i) two or more individuals, or
> (ii) an organisation,
> in a place other than in a dwelling, and
> (c) they intend that act to have a consequence mentioned in paragraph (b) or are reckless as to whether it will have such a consequence.

Where, in either section, has the government made any reference, implied or otherwise, to any acts committed during a protest? The government has cast its proverbial net so wide that even Joe Bloggs, devoid of political affiliation and entirely ignorant to the plight of fanatical eco-reformist, may find himself with a criminal conviction for chaining his bicycle too closely to the entrance of a Sainsburys in sub-urban Wiltshire. As flippant an example as this may seem, vague legislative drafting can lead to such obscenities, and it is often difficult to determine whether such equivocality is resultant upon genuine literary oversight or a governmental mandate to capture as many instances of "locking on" as possible. In any event, it cannot be in the public interest for Joe Bloggs to receive a custodial sentence for chaining his bicycle to a railing outside of a supermarket (s.1(1)(a)(iii)) and 'recklessly' (s.1(c)) blocking the main customer entrance (s.1(1)(b)(ii)).

Aside from the practical implementation of the new offences contained within the bill, the powers bestowed upon officers to stop search individuals, whom they believe to be in possession of a prohibited item, without suspicion (s. 11) raises more questions than it answers.

In a climate where public trust in the police force is so fragile, can the government, in good conscience, grant the police unfettered discretion to stop and search members of the public *without suspicion*? This is a question for political commentators and not one that requires answering within this article. However, as it is one that has legal ramifications, it is worthy of consideration. Although attracting criticism themselves, powers of stop and search *with suspicion* are commonplace in our jurisdiction (for example: possession of drugs (s.23 Misuse of Drugs Act 1971), firearms (s.47 Firearms Act 1968) or offensive weapons (s.1 Police and Criminal Evidence Act 1984)) and are widely accepted as a necessary vehicle through which police can effectively combat crime whilst respecting, insofar as possible, the rights of the individual. Section 11 proposes to upset this pragmatic equilibrium and usurp the very basis upon which searches conducted on suspicion are founded. One need look no further than 'Operation Swamp' and the events that led to the riots of 1981 to see the dangers relating to the legislative authorisation of arbitrary stop and search powers.
Unfortunately, in the words of Georg Hegel, "The only thing that we learn from history is that we learn nothing from history".

Preventative Court Orders are also commonplace in the criminal justice system. They act as a deterrent, armed with custodial consequences, for offenders who have been deemed as having a likelihood for recidivism. Conditions incumbent on offenders must be proportional insofar as they prevent reoffending and Serious Disruption Prevention Orders, in their proposed form, risk curtailing a protestor's liberty in a manifestly excessive way. Pursuant to section 19, the court has the power to impose stringent conditions limiting an individual's liberty to associate with others, access certain areas and use the internet. How, upon any interpretation of the legislation, do these conditions propose to prevent the commission of further protest-related offences in a proportionate and equitable way? The answer: they don't. Let us revisit the case of Joe Bloggs. This time, Joe has recently completed his PHD on the revival and recent outbreak of Anthrax in the Artic Circle. In his thesis, he concluded that animal carcasses, once entombed in glacial coffins, have started to thaw due to an increase in global temperature. As they thaw, the Anthrax virus responsible for their deaths, which has laid dormant for countless centuries, has awoken and is spreading throughout the Northern Hemisphere. He chooses to attend an eco-awareness protest, with a group of his close university friends, to express his discontent. Whilst outside of the House of Parliament, Joe is searched without suspicion and arrested for carrying a fifteen-inch length of string (capable of amounting to a prohibited item under section 2) which he had in his pocket from his recent arts and crafts evening with his niece. Joe is tried and convicted of being equipped to "lock-on" at the magistrates' court and the court imposes a Serious Disruption Prevention Order. By exercising his right to protest in a peaceful manner, Joe Bloggs now has as a criminal conviction, and:

> 1) Is unable to see his university friends with whom he attended the protest,
> 2) Is unable to go to the city of Westminster (the heart of the nation's capital),
> 3) May not use the internet to read articles relating to "global warming", "eco-awareness" or "protests", whether for academic purposes or otherwise.

Once again, although this example may seem extreme, such cases are *within the realms of real possibility* and in fact probability, subject to the way in which the courts choose to wield this abhorrent axe. The tragedy that has now befallen Joe Bloggs is one that results from the imprecise drafting of excessively punitive legislation. There is a pattern here and it is mosaic.

Conclusion:

At the time of writing, the proposed Public Order Bill is just that, proposed. It may be subject to further amendment and revision which, as Joe Bloggs will attest, is desperately needed. The bill is too loosely drafted, criminalises the exercise of a right under the ECHR and curtails the liberty of an "offender" too stringently. If the House of Lords loses their game of Parliamentary "ping-pong" with the Commons, there may be only one way to pressure the government into eradicating the bill in its entirety. Considering the nature of the proposed bill, I'll allow you to use your imagination to determine what that is. I have no interest in following in the footsteps of Joe Bloggs.

James Bull, Pupil Barrister at 15 NBS

The use of experts in private children law family disputes involving allegations of parental alienation

By Frankie Shama, barrister, 4PB, London.

Parental alienation has been defined by the Court of Appeal in Re S (*Parental Alienation: Cult*) [2020] EWCA Civ 568 as "*when a child's resistance/hostility towards one parent is not justified and is the result of psychological manipulation by the other parent.*" The manipulation can of the child by their parent "*need not be malicious or even deliberate*"; the Court of Appeal has clarified that "*[i]t is the process that matters, not the motive.*"

This express acceptance of parental alienation as a concept by the Court of Appeal has not been without controversy. The issue continues to attract live and polarising debate. On the one hand are those who argue that allegations of parental alienation goes towards silencing the voices of women and children resisting contact with abusive men, and obscures the issue of domestic abuse. On the other are those who regard parental alienation itself as an abusive and harmful act with coercive control of the alienated parent at its core.

The debate more recently however has focused in particular on the issue of experts in private children proceedings involving allegations of alienation – their necessity, their role, and their regulation. In a case which has received much press attention, Sir Andrew McFarlane, the President of the Family Division, has recently been considering a mother's application to re-open a fact-finding hearing where findings of parental alienation was made. The arguments before the President have partly considered the role of an agreed and court appointed psychologist, including her qualifications and expertise. The President, at the second day of the hearing on 6 December, dismissed the mother's substantive appeal. It is anticipated that full judgment will be handed down in early 2023, and may give further comment on the instruction of experts in these sorts of proceedings, and generally. Furthermore, the Family Justice Council (FJC), which published interim guidance on expert witnesses in cases where there are allegations of alienating behaviours in May 2022[1], is due to issue full guidance sometime in 2023 too.

This article will not anticipate the conclusions of either. Instead, it is designed to give practitioners a current summary of the procedural requirements which will need to be satisfied in the instruction of experts; some of the circumstances an expert may be necessary, and some things to be mindful of given the uncertainties which exist in the current landscape.

Procedural requirements for the instruction of an expert

When seeking to instruct an expert within family proceedings, all practitioners must of course have regard to the Family Procedure Rules 2010, and in particular Part 25. The rules are the legal foundation for expert witnesses and their compliance for both practitioners and witnesses is mandatory.

Express permission is required to put expert evidence (in any form) before the court (rule 25.4(2)), and such permission will not be given unless "*the court is of the opinion that the expert evidence is* ***necessary to resolve proceedings justly***" (rule 25.4(3)).

Practice Direction 25B sets out the duties of an expert, and make clear that "*the expert's overriding duty to the court takes precedence over any obligation to the person from whom the expert has received instructions or by whom the expert is paid*" (3.1), and sets out the expert's particular duties (4.1). This includes, but is not limited to, providing an independent opinion (4.1(d)) and confining their opinion to matters material to issues in the case and in relation only to the questions that are within their expertise (4.1(e)). Importantly, it requires experts to provide advice to the court which conforms to the best practice of their profession (4.1(b)). This latter duty requires an expert to comply with the Standards set out in the Annex to PD 25B, which includes a requirement to have been active in the area of work; to have sufficient experience of issues; to have familiarity with the breadth of current practice or opinion; are up to date with CPD; have received appropriate training on the role of an expert in the family courts, and ***if*** the professional practice is regulated by a UK statutory body that they are in possession of a current licence.

Whilst statutory regulation for psychology in the UK was introduced in 2009, this was only for psychologists with 'protected' titles. There are seven protected titles for practitioner psychologists who are regulated by the Health and Care Professions Council (HCPC).[2] It remains a criminal offence to use any protected title to which they

are not entitled. In addition, academic psychologists can be chartered by the British Psychological Society (BPS), and only they are able to use the title 'Chartered Psychologist.' The title 'psychologist' however itself is not a protected title in and of itself, and does not require regulation by the HCPC. Psychologists, as well as experts in other areas, can therefore be unregulated. There is not therefore any prohibition on the instruction of unregulated experts under the rules, insofar a they are to meet the requirements under the rules and PD 25B.

Necessity of an expert

There are a number of reasons the court may determine it needs the assistance of an expert in proceedings involving allegations of alienation.

It may be deemed necessary to instruct a psychologist for expertise on individual and/or collective psychological profiles of different family members, and their impact on key issues and decisions for the court. Some recent examples include:

1. In Re *A and B* (*Parental Alienation: No. 1*) [2020] EWHC 3366 (Fam), the court relied upon the evidence of a number of experts, including a psychologist, psychiatrist and psychotherapist. Such evidence was decisive in providing an insight into the children's presentation, mental health and emotional development and behaviours, including how these differed between the children. In addition, these experts were able to comment upon the potential consequences for the children in the long-term if the status quo were to continue, and provide an insight into the family dynamics generally and the alienating parent's motivation to change. Finally, these experts were crucial in providing recommendations to the court in respect of how to progress the children's relationship with their father.

2. In Re T (*Parental Alienation*) [2019] EWHC 3854 (Fam), the court had evidence from a chartered consultant psychologist and clinical psychologist in addition to the social worker and child's guardian. This evidence was decisive to the findings made by the judge. The clinical psychologist provided evidence in respect of how 'torn' the child was between her parents. She had observed that in play the child had talked about wanting to destroy or crush the father, and acted aggressively towards the 'doll daddy,' wanting to stamp on him and showing the child and mummy doll standing on his face. She concluded that the child's behaviour and anxieties were a result of her attachment to her mother, and her mother's difficulties supporting contact with the father. Perhaps most strikingly, the clinical psychologist discussed the long-term consequences for the child – achieving inconsistent empathy from her mother had impacted the child's attachment with the father, and could have an impact on her ability to form relationships and mental health in the long-term. The clinical psychologist concluded the mother had limited capacity to change and long-term therapy was needed to address her issues. The social worker and child's guardian supported a recommendation for a transfer to the father's care.

It should be noted that whilst the expert is not the finder of facts, and it is the court's role to determine if the child has been alienated if alleged, their evidence can prove crucial in informing the factual determinations, as well as of course the welfare outcome for the child going forwards – whether that is a transfer of living arrangements; a change in contact arrangements; further therapeutic work, etc.

Top tips

Ensure the expert has relevant expertise

The President has expressed in a speech at the Jersey International Family Law Conference 2021 that: "*Where the issue of parental alienation is raised and it is suggested that an expert should be instructed, the court must be careful only to authorise such instruction where the individual expert has relevant expertise.*"[3] This is echoed too in the President's recent general memorandum on experts in the family court, which makes clear that "*the court will refuse to authorise or admit the evidence of an expert whose methodology is not based on any established body of knowledge.*"[4]

Before agreeing to an expert therefore, in accordance with the rules and PD 25B, it is essential to request their CV and, if necessary, ask further questions about their expertise and ability to answer the proposed questions.

Dealing with unregulated experts

In this event, an unregulated expert is proposed, it is all the more essential to ensure that all parties and the court is aware of the expert's unregulated status; and that it is made clear how they meet the requirements of PD 25B. Whilst this is not to suggest there is a higher threshold for proving expertise, it is suggested that ensuring this is clearly explored between parties and with the Judge will avoid problems arising at a later stage in the event one party seeks to argue they should not have been instructed due to their unregulated status.

Letters of instruction

Any letter of instruction must be carefully worded to identify the issues and preserve the independence and integrity of the assessment. This may include, for example, clarifying that there should be no variation of the terms of the instructions between the assessor and any party without the revisions being considered by the court on notice to all.

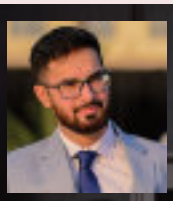
Conflicts of interest

The FJC's interim guidance has emphasised the importance of the court being alert to possible conflicts of interest, in particular where an expert recommends an intervention or therapy that they or an associate would benefit financially from delivering. The interim guidance recommends close scrutiny of such work. The court should actively consider, before further work is ordered with the appointed expert who has assessed within the proceedings, or someone with a related financial interest, whether the court should endorse this approach and whether it has scrutinised all available options.

Frankie Shama is a barrister a 4PB in London specialising in Family Law. He is the co-author of 'A Practical Guide to Parental Alienation in Private and Public Law Children Cases', Law Brief Publishing (2022).

---

[1] Family Justice Council, 'Interim Guidance in relation to expert witnesses in cases where there are allegations of alienating behaviours – conflicts of interest', May 2022
[2] There are seven protected titles in total: Clinical Psychologist, Health Psychologist, Counselling Psychologist, Educational Psychologist, Occupational Psychologist, Sport and Exercise Psychologist, and Forensic Psychologist. In addition, two generic titles – Practitioner Psychologist and Registered Psychologist – are available to registrants who already hold one of the seven 'specialist' titles.
[3] Sir Andrew McFarlane, 'Speech by the President of the Family Division: Supporting Families in Conflict – There is a better way', Jersey International Family Law Conference 2021, page 13
[4] Sir Andrew McFarlane, 'President's Memorandum: Experts in the Family Court', 4 October 2021



Three things I wish I had known before joining the Commercial Bar

By Adil Navaid, Commercial Barrister at St Johns Buildings

After a year of pupillage and some months into tenancy, there is still a lot that I do not know about the commercial and chancery bar. Every day is a new day of research and is a process of refining known skills. Despite this, when I take stock of where I was a year and some months ago, I feel as though I didn't know anything about what I was getting into when I joined the commercial bar. Whilst these certainly weren't detrimental to me in the long run and if anything has added to the excitement of developing my career at the Bar, it would have perhaps made the early days a little bit easier.

1. The breadth of the commercial bar

I remember coming into pupillage thinking I'd be doing a very select few areas such as bankruptcy, contractual disputes, and consumer rights. In hindsight, this was a very ill-informed and perhaps naïve view. I did not appreciate the breadth of the areas that are incorporated into commercial law, including Sale of Goods, Shareholder Disputes, Corporate Fraud, Sports Law, IP and Design Infringement, Data Protection and Privacy, Agency, partnership, Defamation and Breach of Confidence, Landlord and Tenant, Commercial Tenancies, Insurance claims and so forth. The list is truly extensive. One may join a set which specialises in work in a specific area, such as Landlord and Tenant work, but the chances are that you will need a working knowledge of or may be required to undertake work in other areas within commercial law. I've seen senior practitioners drop certain areas or become known for their expertise in more niche work, but especially at the junior end it seems more the norm that you practice a wider range of work.

So then, what are the real implications of this? In my view, the most profound impact is on how you view your own development as a commercial barrister. Because of how broad the nature of the work is, I am often required to know at least a bit about a lot, and ideally a lot about a lot. This means that I should be able to have a good amount of knowledge to be able to take on cases that I perhaps haven't specialised in before. At times, it feels great to be able to take stock of what you realise you've learnt and your ability to call upon a different area of law to assist with a case. Recently, in a case regarding insolvency and contractual debt I learnt how to employ the use of a Quistclose trust. This may sound very trite to anyone senior reading this, or even to myself reading this in a year's time, but this is why you have to take a view of your own development in light of the breadth of the area of law. I had learnt about Quistclose trusts, and I had learnt about dealing with contractual debts. I had never joined the two. Now I have and I won't forget it. It was the first time I made the connection between what I thought were two separate branches of laws but in reality, they were much more closely linked than I had realised.

As my pupil supervisor said to me during pupillage, you have your 'known knowns' that you can refine, your 'known unknowns' that you can research but you also need to focus on reducing the amount of 'unknown unknowns'. This will often just happen as you go through your career, where you'll come across something you didn't expect to and suddenly the 'unknown' becomes 'known' – a permanent change (unless you forget it). But it can be easy to become disheartened when you constantly realise you just don't know enough answers in light of all the areas you operate in commercial law. I've had moments where I'll start the day feeling pretty good about myself, having written (what I thought was) a great advice the day before, and then get into a case that I just do not know enough about. By the end of the process, I will inevitably know enough. But that process can be tiring and disheartening at times, and I think it would have better prepared me had I known the breadth of the area I was getting into.

2. A paper-based practice

I have not worn my wig even once. This isn't a massive issue because I

don't look great in it, but in all seriousness it's a little indicative of a wider reality and that is the amount of paper-based work you get. However, it isn't the extreme end as is sometimes portrayed, either.

I am, in reality, on my feet nearly every day of every week. However, I have seen from more senior members that this is more of the case at the junior end than the senior end. Commercial barristers do have hearings, especially interim hearings and case management, and even final hearings/trials. At the junior end, there are a lot of small claims track trials which tend to settle less due to the nature of the litigants engaged in them and the lower value, as well as possession hearings and winding-up hearings. There is a real bulk of Payment Protection Insurance work nowadays in the small claims track which can often fill diaries, too. Having said this, the reality is that more cases settle in commercial law than many others, and this is because of the very obvious element of money that plays on the minds of the litigants involved. You should never seek to litigate on principle alone in commercial law and this naturally informs not only the litigants who are involved but also the advice you give to those litigants. As such, a two-week trial may settle on the first day and suddenly you may think you have a two-week void in your diary with nothing but circuit dinners to keep you busy. But that is where the paperwork can come in.

What I did not realise was the amount of paper-based work that I would be completing. This works out for me personally because I love this aspect of my practice; I like getting into an advice and researching all the nuances and different routes available to the client and providing realistic, commercially pragmatic advice as to the next steps to take. It's not instantly rewarding at times because often you are only at the start of the litigation process with statements of case or even pre-litigation advice. But then the flip side is knowing that you may be handling this case for the next two years to come and that you can be a part of it from its inception. Having said this, it can be taxing, too.

Paperwork is sometimes difficult to manage and balance with being on your feet. It is hard to go off to court after prepping, sometimes after travelling for a few hours both ways, being somewhat drained from a difficult argument or from just being 'in-the-zone' when you're in court, only to then switch gears and get into a thick bundle and to research an area you need to know a little more about. Just as you have to get into a mindset for court, you have to do the same for paperwork. This can make the workday feel a lot longer than it is and sometimes (or even often) make your evenings go a lot slower. Written advocacy and advice requires the same skills as you would employ in your oral advocacy – a strong voice, good research and thorough analysis. But it sometimes can feel like a different process and that's why it is important to be alive to this reality of the commercial bar, where you are required to switch gears and to be meticulous in your research and to be precise with your wording when typing out your view. Paperwork is certainly not unique to the commercial bar, but it does appear to be more prevalent as a cornerstone of the average commercial barristers practice and as such it is important to take into account when embarking on a career as one.

Adil Navaid, Commercial Barrister at St Johns Buildings

The state of Protest

By Alexander McColl, Pupil Barrister at Garden Court North Chambers

Protest is as fundamental to and as inextricable from the foundational principles of liberal democracy as the vote. The freedom of the people to raise their voices in dissent against the powerful, and for those voices to be heard, is how we justify otherwise limiting political participation to elections every five years. You will not find a politician who is prepared to publicly disagree with this principle.

Yet successive Home Secretaries, police chiefs and the wider media have homed in on the legitimacy of some of the louder – and arguably more effective – protests of recent years, prompting significant developments in the law.

A string of recent protest actions by groups such as Extinction Rebellion, Just Stop Oil and Insulate Britain have caused disruption to members of the public and to business as a means of raising awareness and garnering support. There has followed several high-profile acquittals and legal challenges in protest cases, most notably the "Colston four" in the wake of the Black Lives Matter movement.

The government has responded by introducing a range of public order offences which seek to place limits on protest, effectively using the tactics of these movements as a template for what to restrict. The original legislative vehicle for this exercise was the Police, Crime, Sentencing and Courts Act 2022, but following the rejection of a number of its key provisions in the House of Lords, a further Public Order Bill has been introduced which is (at time of writing) at third reading in the House of Lords. Some of the more controversial provisions of that Bill have again been removed by the Lords[1] but it will, in its current form, still amount to a serious expansion of the powers of the government and the police to restrict the freedom of protestors.

Below, I have summarised the new legislation and provided a short analysis of the legal landscape in which it will operate.

Police, Crime, Sentencing and Courts Act 2022

This Act:

- introduced further police powers to impose conditions on public processions and assemblies: the test for imposing conditions was widened and now includes an assessment of disruptive noise and where disruption may cause significant delay to the supply of a time-sensitive product to consumers;
- amended the offence of failing to comply with conditions imposed by the police: where previously it had to be shown that a defendant had knowingly failed to comply, now the test is "knows or ought to have known" that the condition was imposed;
- intentionally or recklessly causing public nuisance: this abolishes the previous common law offence of public nuisance and expands that offence on a statutory footing to intentional or recklessly causing a risk of serious harm or preventing the exercise of rights enjoyed by the public at large;
- streamlined the process for introducing Public Spaces Protection Orders: these already allow a Local Authority to restrict protest in a specific area, but this provision accelerates the process and removes the need for consultation where the restriction relates to schools, test and trace and covid-19 vaccination centres;
- amended the offence of wilful obstruction of the highway: introduces a prison sentence for this offence;
- introduced a number of other protest-related offences: including powers to restrict one-person protests and further specific offences relating to protest around Parliament.

Public Order Bill

The proposed Bill would:

• **introduce new offences, including 'locking on' and 'being equipped for locking on':** this is defined as a person attaching themselves, another person, or an object (without reasonable excuse) to a person, object, or to land such that it causes or is capable of causing serious disruption to two or more individuals or an organisation, or having an object with the intention that it may be used in the course of or in connection with this offence;

- causing serious disruption by tunnelling, being equipped for tunnelling or being present in a tunnel: a relevant tunnel is one capable of causing serious disruption to two or more individuals or an organisation;

- obstruction of major transport works and interference with key national infrastructure: this includes, road, rail, air transport, oil, gas and electricity generating sites and newspaper printing infrastructure

• **increase police powers to stop and search:** this would empower the police to designate areas wherein stop and search powers can be used to seize articles which may be used for protest-related offences;

• **introduce Serious Disruption Prevention Orders:** this is a measure that would enable the courts to make a preventative order aimed at restricting serious disruption. Wide-ranging restrictions may be imposed on individuals, to include being in a specific place, associating with certain individuals and using the internet for certain activities. They will be open to take effect on those who are convicted of more than one protest-related offence or breach of injunction in a five-year period, even where given a conditional discharge.

Protest, Human Rights and Proportionality

The starting point for a discussion on protest rights is the European Convention on Human Rights ("ECHR"), which protects Freedom of Thought, Conscience and Religion (Article 9), Freedom of Expression (Article 10) and Freedom of Assembly (Article 11). These are qualified rights which can be restricted, subject to an assessment of the proportionality of the interference with the right.

There have been a number of recent developments in the application of proportionality to criminal prosecutions arising from protests. The Supreme Court in *DPP v Ziegler* [2021] UKSC 23 held, in a prosecution for wilful obstruction of a highway under s.137(1) of the Public Highways Act 1980 arising from a protest, that a

court needs to be satisfied that a conviction would be a proportionate interference with ECHR rights. This opened the door to arguments in subsequent cases that proportionality must be considered in *all* protest-related prosecutions.

This view was quickly dispelled by the Divisional Court in *DPP v Cuciurean* [2022] EWHC 736 (Admin), at [67], which held that it was "impossible" to read *Ziegler* as deciding that there is a general principle that proportionality assessments apply to all offences engaging Articles 10 and 11. In that case, the Court also held that proportionality did not apply to the offence of aggravated trespass under section 68 of the Criminal Justice and Public Order Act 1994.

The Court of Appeal in *AG Reference on a Point of Law No.1* [2022] EWCA Crim 1259 ("the Colston statue case") noted the decision in *Cuciurean* but held that proportionality could apply to trivial criminal damage under s.1(1) of the Criminal Damage Act 1971. However, the significant damage notably caused by protestors in that case, was held to fall without the scope of the ECHR rights.

Most recently, the Supreme Court affirmed the reasoning in *Cuciurean* and the Colston statue case in *AG for NI Reference - Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32, where it has essentially confirmed that proportionality assessments are relevant to some, but not all, criminal offences and has laid out the bones of a test that the courts can apply to criminal offences.

This is a fast-developing area of law. As things stand, it is still unclear exactly which offences require an assessment of proportionality. What is clear is that as courts begin to deal with protestors arrested and charged with the new offences under the above legislation, this issue is going to continue to arise.

Conclusion

In *AG for NI Reference*, the Supreme Court confirmed that the obligation of the courts to consider proportionality in relation to criminal prosecutions arising from protest stems from s.3(1) of the Human Rights Act 1998 ("HRA"), requiring the courts to read and give effect to primary and subordinate legislation in a way which is compatible with the rights contained in the ECHR and from s.6 HRA to act compatibly with the ECHR so far as possible under the law.

It should be noted that it has for a long time been the government's stated intention to repeal the HRA and replace it with a "Bill of Rights" which would remove the obligation to read legislation compatibly with the ECHR (see s1(2)(b) of the Bill of Rights Bill). There has not yet been the legislative will to get this beyond a first reading in the Commons.

The new public order offences that have been introduced by the government are ostensibly aimed at preventing "serious disruption". The imposition of criminal liability to acts which occur during a protest may have the effect of limiting disruption. But a commitment to the democratic principle of permitting dissent entails a recognition that protest is loud and it is disruptive. Viewed as a whole, the government's new restrictions on the freedoms of protestors, its condemnation of most individual incidences of protest, and its commitment to abrogating the human rights protections which preserve at least a minimal safeguard against excessive prosecution, represent a consistent trend geared towards less protest and less audible dissent. What do you do if you disagree with this trend? How long will that remain legal?

Alexander McColl, Pupil Barrister at Garden Court North Chambers

[1] https://www.bbc.co.uk/news/uk-politics-64561868.amp

Modern Day Slavery: Where are we now?

By Angelina Nurse, Pupil Barrister at 2BR

Modern slavery and the section 45 defence have been in the spotlight within the last year or two, with the Court of Appeal having considered the defence but most importantly, having considered the National Referral Mechanism (NRM) and the applicability of the decisions of the Single Competent Authority (SCA) being used as evidence in criminal proceedings.

The NRM referral process involves the SCA making a two-stage decision. The first stage is known as a "reasonable grounds" decision whereby the authority would investigate whether there are reasonable grounds to believe that the defendant is a victim of modern slavery. The second stage is where the authority will consider whether they can make a "conclusive grounds" decision. There are, probably unsurprisingly, significant delays in obtaining a conclusive decision but nevertheless, where these decisions were made by the SCA, up until recently, it was properly used as expert evidence to support the defendant in raising the defence. It is important at this stage to note that adults have to consent to this process, but it is in fact mandatory for youth defendants to be referred to the SCA.

The Court of Appeal in R *v Brecani* [2021] EWCA Crim 731 considered the admissibility of the SCA's decisions in criminal proceedings. The Court of Appeal stated the following: "*we do not consider that caseworkers in the Single Competent Authority are experts in human trafficking or modern slavery (whether generally or in respect of specified countries) and for that reason cannot give opinion evidence in a trial on whether an individual was trafficked or exploited*" and even went one step further to say that the SCA caseworker in the case of Brecani, Mr. Barlow, and his opinions "*were rendered valueless*".

The Court of Appeal in their comments, essentially, made the decisions of the SCA inadmissible. The principle arising out of the case of Brecani was revisited in R *v AAD, AAH, AAI* [2022] EWCA Crim 206 just last year and was unsuccessful. Therefore, using the decisions of the SCA as evidence in criminal proceedings appear to be a thing of the past.
The judgment is however explicit that the Crown still have an obligation to investigate modern slavery, and, to that end, the judgement does not frustrate the NRM process. Referrals can still be made, and investigations can be undertaken. However, the concern is that whilst these decisions can be made by the SCA and then raised with the Crown and Court, the SCA are no longer able to come to Court to give expert evidence as to the possibility that the defendant is a victim of modern slavery.

As a result, there are very limited ways in which to put the decision of the SCA into evidence, without being able to call the caseworker to give live evidence. The sensible solution may be to put the findings to the defendant in evidence. This is simple enough for an adult defendant who made the decision to engage with the process themselves and has already disclosed the nature of their defence to the police and or another professional. This is clearly, however, not as effective as if there had been evidence from the defendant AND a caseworker from the SCA confirming their opinion that they are a victim of modern slavery. Consequently, the defence is now more likely to be overcome by the Crown in the absence of the admissibility of this evidence.

However, if we consider youth defendants who are victims of modern slavery, the inadmissibility of this evidence becomes more concerning. As a reminder, youth defendants do not have to consent to the NRM process, this means that the police and prosecution will make enquiries and investigate whether a youth is a victim of modern slavery without any engagement from that youth. This can make the process more complicated, and it may mean that the process is ineffective. However, it is still possible that the SCA will make a conclusive grounds decision without their engagement.

Furthermore, youth defendants are notorious for not wanting to talk to professionals, but even more so where they are victims of modern slavery. Therefore, we may now have circumstances whereby the SCA have concluded, conclusively, that the youth defendant is a victim of modern slavery, but they are unwilling, through fear, to give evidence in open court. In these circumstances, without being able to call the caseworker to provide their opinion, it really seems that there is no effective way in which to advance the defence. The concern therefore is that for youth defendants, the inadmissibility of this evidence is bound to have a significant, detrimental impact to them in succeeding with the section 45 defence.

That is not to suggest that all is lost and that the section 45 offence is obsolete. I do not think that we are there yet, it is however becoming an increasingly hard defence to run. What then can we do to ensure that we run the defence to the best of our abilities as practitioners? First and foremost,

as practitioners it is important that the defendant has been adequately advised as to the section 45 defence. In addition, it should be raised at the earliest opportunity, ideally at the police station, and an NRM referral made as early as possible. Whilst the decisions of the SCA are no longer admissible as expert evidence, it still plays an important role in ensuring that the CPS follow the relevant guidance in investigating the possibility of the defendant being a victim modern slavery and, subsequently, a review being undertaken of the prosecution. Persuading the Crown to review the case is likely to be more persuasive with a positive decision from the SCA and so, embarking on the process remains worthwhile.

The Court of Appeal in *R v AFU* [2023] ECA Crim 23 quashed a conviction where guilty pleas were previously entered to conspiracy to produce Class B drugs, finding that proper enquiries were not made, as they should have been as per the CPS guidance, as to whether the applicant was a victim of human trafficking. Interestingly, there was also a conclusive grounds decision by the SCA in this case, a finding made after the applicant entered his guilty plea. The Court of Appeal were persuaded however, with reference to that conclusive grounds decision, of the Crown's failings in investigating the defendants status as a victim of trafficking which was held to have amounted to an abuse of process. This is a clear position from the Court of Appeal that, despite any changes in the admissibility of NRM referrals in criminal proceedings, the Crown are still under a duty to keep all cases where modern slavery is in issue under strict review. In addition, it is just as important that defence practitioners be alert to this issue and encourage reviews at every stage where appropriate.

In addition, whilst the SCA may not be deemed experts, it would be perfectly proper in these types of cases to instruct other experts to deal with psychological issues and or vulnerabilities of a defendant that may well make them more susceptible to exploitation. In these circumstances, where a defendant may not want to give evidence, as is there right, the expert can be called to explain the effects of the defendant's psychological issues and this can be properly used as evidence to support the notion that the defendant, due to their vulnerabilities, may be a victim of modern slavery. Therefore, there are ways in which practitioners can work around the limitations of the defence.

Moreover, the current position with regards to modern slavery and the section 45 defence is one in which many practitioners do not favour. Its impact makes it difficult for defendants who, in their own right, are victims, in running an important defence. It appears likely that the defence will continue to find itself in the spotlight, being considered once again by the Court of Appeal, but in the meantime, it appears of the utmost importance that reviews of cases within which modern slavery is in issue are undertaken; it is no doubt paramount to ensure justice is properly carried out in these cases concerning vulnerable defendants.

Angelina Nurse, Pupil Barrister at 2BR

Can sentencing for police officer offenders be improved?

By Ellie Watson Pupil Barrister at Crown Prosecution Service, Manchester

Introduction

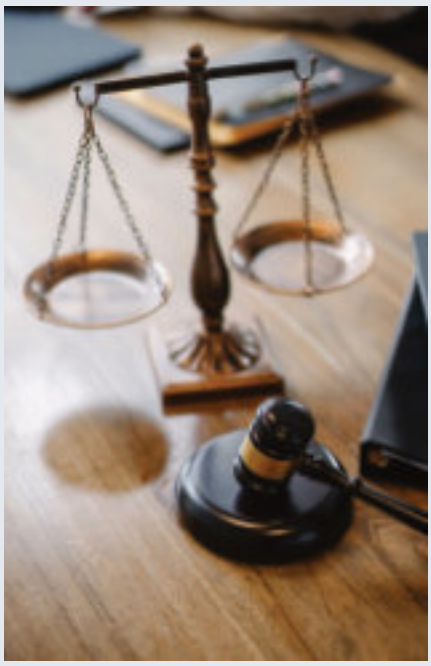
Recent case law has uncovered difficulties faced by the courts when sentencing police officers. Fulford LJ's sentencing remarks in *R v Couzens* [2022] EWCA Crim 1063 emphasised that 'the police are in a unique position… they have powers of coercion and control that are in an exceptional category.' However, there is no specific guidance for sentencing police officers who abuse their position to commit offences. Abuse of trust is applicable, but on analysis of case law it appears its application is inconsistent and ineffective for sentencing police officer offenders.

Case Law

R v Dunn (Matthew) [2003] EWCA Crim 709
A police officer who delivered 'two substantial kicks … to the body of an essentially defenceless man' was given a 3-month prison sentence for common assault. The court found that it was so great a breach of trust that custody was inevitable as 'it is critical that the public retain full confidence in our police force'.

R v Bohannan (Mark Edward) [2010] EWCA Crim 2261
A police officer who, for 5 years, provided a drug dealer with sensitive and confidential information, impacting on police operations, was sentenced to 6 years imprisonment after 3 years was held to be unduly lenient. The Court stated that 'the public must see that condign punishment will be visited on police officers who betray the trust reposed in them and do not live up to the high standards of the police service'. This case has received positive judicial consideration and demonstrates that the public expect police officers to behave at a higher standard and therefore receive appropriate punishment for not doing so.

R v O [2016] EWCA Crim 1762
A police officer convicted of 8 counts of indecent assault was sentenced to 3 years' conditional discharge. On one occasion, O was dressed in his police uniform. The case was referred by the Attorney General for being unduly lenient, but this was dismissed by the Court of Appeal. It was held that whilst it was a lenient sentence, the judge had not been bound to impose a custodial sentence. It was stressed that whilst



there may have been some element of breach of trust, including wearing his uniform, this was not a case of abuse of trust in the sense used in the sentencing guidelines.

A partial reason for this lenient sentence was the mitigation considered, including that he had no previous convictions and evidence of positive good character from witnesses who knew him as a police officer.

R v Luckett (Michael David) [2020] EWCA Crim 565
4 months imprisonment was imposed on a police officer who started a sexual relationship with a vulnerable defendant. The Court held that the original 12-month sentence was manifestly excessive due to the unusual circumstances and mitigation but that 'the public are entitled to expect that police officers will act with professionalism and integrity and those who abuse that trust must … inevitably serve a prison sentence'.

R v Lewis and another [2022] EWCA Crim 742
Lewis and Jaffer, both police officers, pleaded guilty to misconduct in public office after breaching a police cordon to take and share photographs of two deceased women who had been murdered. They each received sentences of 2 years and 9 months imprisonment. Each appealed on the ground that the sentence was manifestly excessive due to the judge double counting the abuse of trust element of the offence.

The Court held that 'the starting point will be that offences involving a high degree of abuse of trust will attract longer sentences. We reject the submission that the abuse of trust inherent in the offence debars a judge from differentiating between higher and lower degrees of abuse on grounds of double-counting.' This judicial comment supports that there are levels of abuse of trust.

Abuse of Trust and Power
Case law is clear that higher sentences should be imposed when dealing with offenders who have breached or abused their trust or power. However, the nature of the job means that police officers will most likely have no previous convictions, be of good character with character witnesses to testify, and courts often consider the potential loss of job, and that prison would be difficult owing to their role, as mitigation. Together, these can outweigh the aggravating factor of abuse of trust and police officer offenders can receive the same, or even a lower, sentence than those who have not abused a position of trust.

Issues with Current Law

There is a disparity when sentencing police officers, both in the sentences imposed and the judicial comment. Some decisions are clear that the abuse of trust warrants a higher sentence, in particular a custodial sentence, whereas other decisions fail to uplift the sentence appropriately due to the assessing that the mitigation outweighs the aggravating features. What is clear, is that most often cases involving police officer offenders are appealed either for being unduly lenient, or manifestly excessive. This is due to the lack of guidance available for courts in this area.

Proposal

Reform is required to address the issues identified to ensure the sentencing of police officers is predictable, effective, consistent, and in line with the sentencing purposes. The reform proposed here reflects the uplift imposed by the Assault on Emergency Worker Aggravated Offences whereby the judge must apply

the guidance set out in the sentencing guidelines as to the level of uplift required. The key difference being that this reform would encompass all offences, not just assault.

How officers may abuse their position is not an exhaustive list and remains at the judge's discretion. The lowest uplifts in sentence would be for off duty officers who have used their position to offend, then increasing the uplift for officers who were on duty but who did not explicitly use their position. For the most serious of abuse of trust or power the most severe uplift can be applied. This would be cases where an on-duty police officer, or police officer purporting to be on duty, has used their position to commit an offence. The guidance tables will suggest a starting point uplift and judges can, as with normal sentencing guidelines, aggravate or mitigate dependant on the level of abuse.

There will be different levels of uplift dependant on the category of offence, a general table can be adapted for each offence to give the judge guidance. Although the judge retains discretion on the uplift applied, the uplift itself will be a mandatory part of sentencing. The tables will look similar to that provided in the sentencing guidelines for Assaults on Emergency Workers, but it can be adapted for use in all offences. For example, considering a sentence for unlawful act manslaughter, the guidance table may look like the below.

Category A	An increase in the length of sentence with a starting point of 3 years.
Category B	An increase in the length of sentence with a starting point of 2 years.
Category C	An increase in the length of sentence with a starting point of 3 years.

Although this is merely indicative, it demonstrates how the guidance would be applied by courts when sentencing police officers who have abused their position.

Analysis of Proposal

Double Counting

Whilst abuse of trust or abuse of power is sometimes relevant in deciding the category in which the offence falls, discretion in deciding the uplift will enable judges to ensure the abuse is not double counted. Instead, the judge can differentiate between higher and lower degrees of abuse by applying the necessary uplift. This will enable judges to ensure that the abuse is properly considered when sentencing.

Impact of More Severe Sentences

Police officers often must make potentially lifesaving decisions under intense pressure. Sometimes these decisions can be wrong. Imposing more severe sentences may impact on those officers who marginally step over line into unreasonable and unlawful force but are not intending to commit an offence.

The judge's discretion in applying the uplift can counteract this impact. With this application, the reform should mostly impact the sentences of police officers that have used their position to commit an offence or deliberately offending.

Conclusion

A quick analysis of case law has identified issues that have impacted the effectiveness of sentencing police officers. The proposed reform may have limitations in practice but, with the above suggestions to mitigate these, this proposal would most likely be more effective than current law due to the increased predictability and consistency. Whatever shape the reform takes, it is clear is that reform is needed to ensure just and consistent sentences for police officer offenders who abuse their position.

Ellie Watson Pupil Barrister at Crown Prosecution Service
Crown Prosecution Service, Manchester

Taking the right decisions: how the Bar Standards Board builds checks and balances into its enforcement work?

By Mark Neale, Director General, Bar Standards Board

Part of the stock-in-trade of constitutional lawyers is the concept of checks and balances – those safeguards built into laws and constitutions to prevent undesirable concentrations of power.

Probably the most famous working out of this doctrine was in the Federalist Papers - a propaganda exercise mounted by Hamilton, Madison and Jay (*aka the Founding Fathers*) to promote the ratification of the US Constitution which was then undergoing approval by the States.

Checks and balances are not, however, relevant only to weighty constitutional documents like the US Constitution. They also apply in many spheres where decisions profoundly affect people's lives.

Regulators, particularly regulators of professions, do exactly that. Through our enforcement of the rules we set for entry to the Bar and for the conduct of barristers, the Bar Standards Board has a potentially decisive impact on people's careers. We can, quite literally, make and break those careers.

It is entirely right, therefore, that we build checks and balances into our processes. We have highly skilled and committed people in the executive team at the Bar Standards Board. We can be trusted to deal fairly and dispassionately with the cases referred to us.

But we are not infallible. Many cases referred to us are complex. They often involve difficult judgements about both the facts and about how those facts relate to the law and to our rules. Reasonable people could sometimes come to differing views.

So we guard against a rush to judgement or just simply a wayward judgement with checks and balances. These checks and balances are of broadly two kinds.

First, we have two Independent Reviewers who review individual cases where the person making a report about a barrister feels that the decisions we have taken are wrong. They also look regularly at a random sample of cases every quarter to assess whether they have been handled in line with our policies and procedures.

Though the Independent Reviewers do not have decision-making powers of their own, they can and do make recommendations that can include taking a decision again.

The Independent Reviewers are a vital part of our quality assurance mechanisms and make six monthly reports to the Governance, Risk and Audit Committee. They provide invaluable feedback about the quality and consistency of our processes. They also provide an annual overview of their work in our annual *Regulatory Decision-making report*[1]. We published the latest report last month.

The report confirms the generally high quality of our decision-making. It is a very important source of assurance to our Board and to external stakeholders.

The second major check and balance is of a different kind.

The Independent Decision-Making Body (IDB), as its name implies, most certainly does have the power to make decisions. It plays a crucial role in our enforcement process. The IDB makes independent decisions about whether investigations undertaken by the executive should result in enforcement action, including at a Tribunal. The IDB also has the power to make findings of professional misconduct and impose sanctions with the barrister's consent under our Determination by Consent procedure. It reviews authorisation decisions which are challenged by the applicant.

I guess that means that the IDB is more a balance than a check. It is not checking what the executive does, but does provide an independent balance in the decision-making process and inject a crucial barrister and lay perspective.

The IDB, which was established in 2019 as part of wider reforms of our regulatory decision-making, took over from the old Professional Conduct Committee and Authorisations Review Panel.

So what is the Independent Decision Making Body and how does it work?

Well, the IDB consists of 33 external people – 16 barristers and 17 lay people. Unlike the Professional Conduct Committee which used to meet with 30 plus members present at one time, IDB decisions are taken by panels of three or five members drawn from this pool. Lay members are always in the majority.

In the last full year – 2021/22 – 40 such panels were convened to take enforcement decisions and 10 panels to review authorisations decisions. The IDB is meeting more frequently this year as we accelerate our investigations and conclude long-running cases.

BAR STANDARDS BOARD

I have sat in on these panels – purely as a spectator I should emphasise – and can attest to the meticulous care, as well as to the independence, of their work. Panel members often have to absorb substantial bundles of evidence and relate that evidence to our rules. The reading in advance of a meeting can be formidable.

And the decision is far from the end of a Panel's work. Just as much care is then taken to ensure that the decision itself and, importantly, the reasons for the decision, are fully and accurately recorded. The importance of doing so was underlined by the Ryan Eve case of 2021 when, unusually, both the executive and IDB did not explain adequately a decision not to waive entry requirements to the Bar.

To enhance accountability, the IDB also publishes an annual report on its work[2], the latest last month

So our Independent Reviewers and our Independent Decision-Making Body are hugely important to the fairness of our decisions. The Independent Reviewers provide a check on our decisions and, in doing so, provide safeguards of due process to those who use our services – those seeking to make reports on barristers and the barristers who are subject to those reports. They are a source of assurance to our Board and to external stakeholders.

The Independent Decision-making Body provides the balance of an external perspective – barrister and lay – in crucial decisions bearing on our enforcement and authorisations functions.

Mark Neale, Director General, Bar Standards Board

---

[1] *https://www.barstandardsboard.org.uk/uploads/assets/66643ea0-de86-48d5-8cb9d3f777371609/Regulatory-Decision-Making-Annual-Report-2021-22.pdf*

[2] *https://www.barstandardsboard.org.uk/resources/press-releases/bsb-publishes-its-independent-decision-making-body-annual-report.html*

Being a Barrister: New Beginnings

For me, and I suspect many others, the nerves and excitement I felt on day one of Pupillage were unlike anything I had felt before. Fast forward time and I am now some way into my first year of tenancy at St Philips Chambers, having successfully completed Pupillage there in October 2022.

By Chevan Ilangaratne - Employment and PI/Clinical Negligence Barrister at St Philips Chambers

In terms of my Pupillage story, my route to the Bar was somewhat conventional. I did undergraduate and postgraduate law degrees; I worked in legal charities and a law firm to gain experience before sending off several applications to various Chambers. Eventually I struck gold.

My Pupillage, which was a specialist one in Employment and PI/Clinical Negligence law, in Birmingham was too conventional, and I say, very enjoyable at that. There are, however, tonnes of brilliant accounts online and elsewhere of what Pupillage is like day to day and the difference between first and second six.

So instead of going through my personal account month to month, below are my four top tips for Pupillage and beyond drawn from my experiences along the way.

1. Life in Practice – Anticipation Helps

The first is practice itself. Whatever your field of law, the key to success in trials no doubt comes down to a myriad of factors and variables. However, being able to anticipate things, so far as possible, has often aided me in court. For instance, when you receive a number of documents from an instructing solicitors, ask yourself not just what you have, but what you also potentially need even just as a safeguard? Bundles, especially those which are voluminous, often can look complete. But look back and question what the case is all about? What might the Judge ask about? What might your opposition challenge you on? Can you evidence it? If not, it may be that your solicitor can help and send through relevant documents.

Anticipation, of course, comes in other forms. It may involve taking the lead to remind your client their hearing is tomorrow at particular place and time, or setting off hours in advance to make sure you get to Court in time given the possibility of delays during your journey.

Anticipation is not the ultimate key to success, but good and reasonable foresight axiomatically assists you in a job where there are never ending twists and turns.

2. Networking – The More the Merrier

In a post-pandemic world, networking has inevitably changed to some extent. Covid-19 undeniably brought many events, that previously took place in person, online. Whilst increasingly there are more in-person events taking place now things have settled down, I am minded to think professional networking events have changed forever as a consequence of the last few years.

The question then is how best to network at the start of the Pupillage and beyond?

My own view, put very simply, is the more the merrier when it comes to attending events. Pupillage inevitably exposes you to a number of functions hosted by other Chambers, law firms, law schools and even charities. For those that are in person, showing your face does not in my view do any harm. Relevant contacts, for instance instructing solicitors, may well just be looking for a more junior barrister to take on some of their cases. Sometimes, as arbitrary as it sounds, you are just one impromptu conversation away from pulling in some work.

To the same end, being prepared to attended events last minute is an asset. Of course, and rightly so, important personal commitments must always come first and good Chambers will be understanding of that. There are occasions, however, that more senior members of Chambers have to – for whatever reason – pull out of attending a dinner/awards events at the eleventh hour, potentially freeing up a space for you to attend. If you go – it could be beneficial. Why? Not only will members of Chambers likely value your commitment, but there is also of course further scope for expanding your professional network.

Finally, Zoom/Teams events, particularly seminars, are here to stay. Why not attend relevant ones (by which I mean seminars on your chosen area of law), and post about it on Linkedin and/or Twitter after? Of course, caution must be exercised as to content - as with all social media posts. But virtual attendance ought to mean something, and if you identify in your posts the key takeaways from the seminar or presentation you attended, then those who deliver them will no doubt consider it to be a job well done. It may not necessarily lead to more contacts or clients, but keeping abreast of legal developments is in any event part of the job!

3. 'Extra-Curricular' Activities – Join a Committee

As mentioned above, there are number of ways to get your name out there when starting off. Another is joining relevant committees, both within and external to your Chambers/employer, to bolster your presence in the legal scene and community.

Personally, I recently become a 'Barrister Representative' for the Birmingham Solicitors' Group (BSG). The BSG's mission, in a nutshell, is to connect junior lawyers, both solicitors and Barristers, across Birmingham and the West Midlands. The role, amongst other things, gives me a chance to immerse myself in my regional legal community with the pleasure of meeting many others who are also starting out.

Sharing knowledge, experiences and, dare I say, laughs with fellow junior lawyers can prove a vital support network in and of itself. This career is immensely stimulating, but there is no hiding from the fact it can be stressful at times.

Watch out for opportunities with your regional Circuit, Inn of Court, or even charities focusing on relevant areas of practice.

4. Treating Everyone the Same

Whether its court staff, clerks, or receptionists in Chambers, being humble, down to earth, and respectful to all is, I think, vitally important in this career. Especially when reputations are hard won, but so easily lost. Word can get around much quicker than you think.

Being a Barrister no doubt bestows on you great responsibility. But none of it would be possible without those other professionals I mentioned. So, however difficult the day or week may be, ensure that your requests are always politely pitched and are reasonable in nature. And if possible, make time for small talk. It may be obvious to some, but ultimately, it's nice to be important but it's important to be nice!

Concluding Remarks

The above is by no means a comprehensive list of all that one should do as a Barrister to bring about success, or a strong likelihood of that. I have not mentioned a number of things, include manging finances, which can of course come with its issues for those who join the self-employed Bar.

But I hope the above is somewhat insightful and useful, and look forward to hearing from others, particularly those who qualified during or post-pandemic, on what they have done to establish themselves in this delightful, but at times, challenging career!

Chevan Ilangaratne - Employment and PI/Clinical Negligence Barrister at St Philips Chambers

Children in custody Envisioning a way out.

In this article, pupil barrister Kitan Ososami discusses the problems with child imprisonment and how the new London Accommodation Pathfinder, a Youth Justice Board pilot designed to support 16–17-year-old boys at risk of custody pre- and post-trial, will attempt to address these.

Analysis by Her Majesty's Prison and Probation Service (HMPPS) in October 2021 projected that youth custody rates are expected to more than double by September 2024.[1]

This, in part, is attributed to government plans for police officer recruitment, the anticipated "recovery" of the courts from the pandemic, and the impact of the Police, Crime, Sentencing, and Courts Act 2022 with the increased powers it gives to police and the courts.[2]

Despite recent, positive downward trends in the youth justice system, it is concerning that this stark increase has been identified with no commitment to implementing preventive measures that will ensure it does not become a reality.

The latest Youth Justice Statistics covering the year April 2021 to March 2022 report decreases in the following:

- The number of children being cautioned or sentenced (13% fall in comparison to the previous year and 79% fall over the past 10 years),
- The number of children entering the youth justice system for the first time (10% fall in comparison to the previous year and 78% fall over the past 10 years),
- The number of children being held in custody (450 on average representing a 19% fall in comparison to the previous year, 77% fall over the past 10 years and, notably, the lowest number on record),
- The number of children reoffending (decreased by three percentage points in the last year and another lowest number on record).[3]

Whilst it is acknowledged that some of these outcomes may be due to the pandemic restrictions reducing opportunity to commit crime, they represent what can be achieved within the youth justice system.

Last year, almost half of all children in custody were being held on remand (45%). Worryingly, 73% of these children did not go on to receive a custodial sentence.[4] This means that 73% of children lost their liberty, were separated from their support networks, had their education disrupted, and were exposed to the negative effects of imprisonment for no reason.

Statutory provisions contained in sections 98-102 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 and Schedule 1 of the Bail Act 1976 were intended to curtail the number of children remanded into custody. They impose conditions that must be considered by the court when deciding to take this course of action. These include the likelihood of receiving a custodial sentence, the seriousness of the offence, and the welfare of the child. However, the figures highlighted above indicate that, despite these stringent conditions, something is going wrong.

The Howard League for Penal Reform, in their briefing on children on remand, identified how the current system contradicts itself and heightens the vulnerability of children concerned. It illustrates how, often, the youth justice system fails to acknowledge context surrounding offending behaviour and ventures too far into paternalism without regard for the child's voice. For example, the case study of "Abdul", a 17-year-old boy who, as a recognised victim of trafficking, was remanded into custody for his welfare, felt even more at risk than in the community. He described how his exploiters were giving orders to other children imprisoned with him, increasing his fear of reprimand.[5] We do not know how many other Abduls there are in custodial settings. However, what we do know is that a careful assessment of the child, their circumstances, and the available support can prevent unnecessary and harmful imprisonment.

The Sentencing Council's overarching guide on 'Sentencing children and young people' states,

'Domestic and international laws dictate that a custodial sentence should always be a measure of last resort for children and young people.'[6]

With this in mind, it is difficult to reconcile the high rates of children remanded in custody with the law and widely accepted guidance.

The international law which applies to this area is Article 37(b) of the United Nations Convention on the Rights of the Child (UNCRC). This Convention is the most widely ratified human rights treaty in the world, demonstrating a global commitment to protecting children's rights.[7] Notwithstanding, England and Wales have been criticised by the United Nations Committee on the Rights of the Child for the high rates of children in custody and not always using custody as a last resort.[8] A significant number of children are being remanded into custody and then having their charges discontinued, being acquitted, or receiving community-based sentences.

Arguably, it is a poor indictment of our justice system where the rights of children, a group considered to be among the most vulnerable in our society, are being breached to such an extent as this.

The principal aim, as defined by statute, of the youth justice system is to prevent offending by children.[9] Additionally, the Sentencing Council's overarching guide also acknowledges that sentences should focus on rehabilitation where possible. Realistically, what does this look like and how is it achieved in custody?

Even prior to the pandemic and 23-hour lock ups, custodial settings for children have been routinely criticised for high levels of violence, lack of security, inadequate education provision, insufficient mental health care, and reduced opportunity for purposeful activity. On this basis, can it really be said that holding children in custody prevents offending and facilitates rehabilitation?

By the Ministry of Justice and HMPPS's own admission, much of the youth custodial estate does not meet children's need for tailored interventions, effective staff relationships, and access to family and local services. They recognise that many establishments are outdated, too large, far away from children's families and poorly linked to community services. HMPPS considers that its unsuitable provision, alongside a cohort of more serious offenders, has led to decline in children's safety and outcomes.[10]

By way of an aside: England and Wales have three types of custodial settings for children.

Secure children's homes (SCH) are designed for boys and girls aged 10-17. They are ran by the local authority and designed to accommodate the most vulnerable children, with the highest staff to child ratio. There are currently eight in the country.

Secure training centres (STC) are privately run and designed for boys and girls aged 12 – 17. There is one STC in the country, following the closure of Rainsbrook STC in December 2021 after Ofsted found it to be 'inadequate'.[11]

Young Offender Institutions (YOI) are for boys 15-17. Of the 5 in the country, 4 are ran by HMPPS and one by G4S. They are similar in design to the adult prison estate and accommodate larger numbers.

In considering an alternative to imprisonment, the Youth Justice Board have recently launched their 3-year pilot of the London Accommodation Pathfinder (LAP) which is designed to offer an alternative to 16 -17-year-old boys at "genuine risk of custody" either on remand or post-conviction.[12] Four properties across London, provided by St Christopher's charity[13], will accommodate 5 boys each to provide "intensive holistic support".

Its operations manual describes the LAP as playing, "a key role to stabilise a child's situation whilst keeping them in the community and to enable the start of work on rehabilitation and positive life outcomes".

One of the main focuses of the LAP will be to support the children shift from a pro-offending identity to pro-social identity. Adopting a trauma-informed approach, the LAP will provide individualised personal and structural support in the form of key worker interaction, meetings with psychologists, education, work training, and self-development sessions.
One factor about the LAP is that it is an agreement between the child, their parent(s), and the Local Authority. Similar to a Referral Order, the child must consent to its terms which include being subject to an electronically monitored curfew, participating in daily sessions and activities, and regular review meetings. This will require a willingness to engage from the child for its impact to be felt.

Interestingly, by virtue of being in the LAP, the child will become a child in care, pursuant to section 20 of the Children Act 1989. This means they will be entitled to the same care planning and review processes as other looked after children.

Academics from Middlesex University's Centre for Abuse and Trauma Studies have been commissioned to review the LAP. They will analyse the outcomes for children, costs comparisons, benefits, and governance.[14] Although the results of this will not be known for a few years, the commencement of this pilot signifies recognition of the pitfalls in our youth justice system and its overreliance on custody. The LAP offers an imaginative and welcomed way out.

Kitan Ososami, pupil barrister, Red Lion Chambers

---

[1]https://www.nao.org.uk/wp-content/uploads/2022/04/Children-in-custody-secure-training-centres-and-secure-schools.pdf
[2]ibid
[3]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1131414/Youth_Justice_Statistics_2021-22.pdf
[4]ibid
[5]https://howardleague.org/wp-content/uploads/2022/05/Children-on-remand-voices-lessons.pdf
[6]https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/#Section%20six:%20Available%20sentences
[7]https://www.unicef.org.uk/what-we-do/un-convention-child-rights/
[8]https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en
[9]Section 37, Crime and Disorder Act 1998
[10]See, i
[11]https://www.gov.uk/government/news/rainsbrook-secure-training-centre-branded-inadequate-by-inspectors
[12]https://www.youtube.com/watch?v=vdJrzNrTbn4&ab_channel=youthjusticeboard
[13]https://www.stchris.org.uk/news/st-christophers-fellowship-appointed-as-provider-for-london-accommodation-pathfinder/
[14]https://www.mdx.ac.uk/news/2022/10/London-Accommodation-Pathfinder

Enhancing Video Evidence: a Scientific Path Towards the Truth

By Martino Jerian – CEO and Founder at Amped Software

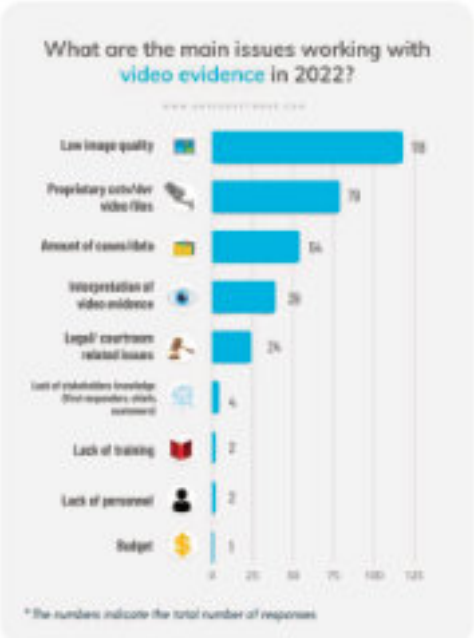
As the CEO and Founder of a company that develops forensic video enhancement software used by law enforcement agencies and private forensics experts all over the world, one of the most common questions I receive is the following: "How can I justify to the court the fact that I processed an image or video used as evidence?".

The purpose of this article is to give a definitive and clear answer to this question.

Image quality is the most critical issue with video evidence

Photos and videos are the most powerful kind of digital evidence. If we think about footage coming from video surveillance, images from social media, or extracted from mobile devices during investigations, there are very few legal cases where there's not some evidence of this type. Furthermore, video is the only form of evidence that can very often reply to all the questions of the 5WH investigation mode: who, *what*, *where*, *when*, *why*, and *how*.

Last year, we conducted the survey "The State of Video Forensics 2022" among our users and other video forensics practitioners. The vast majority of respondents mentioned "low image quality" as the main issue working with video evidence, followed by proprietary formats used in video surveillance systems, the number of cases they have to deal with, and the difficulties in properly interpreting video evidence.



It is clear that we need to tackle this issue in some way to restore and clarify images and videos during investigations: however, it's clear that we are not editing our family vacation photos to show a nice sunset on the sea. We are working with evidence that can potentially free a criminal or convict an innocent if mishandled. We must ensure the utmost scientific rigor for the sake of justice. An analyst with the right tools, technical preparation, and workflow can enhance the image in a way that can help the trier of fact and be accepted in court.

Forensic image enhancement is important to show things as they really are

A digital image is created by a sequence of physical and digital processes that ultimately produce a representation of light information in a specific moment in a specific place, as a sequence of 0s and 1s. The technical limitations of the imaging system will introduce some defects that will make the image different compared to the original scene, and often less intelligible during investigations. It's of fundamental importance to understand how these defects are introduced, and in which order to correct them to obtain a more accurate and faithful representation of the scene.

A very straightforward example is the lens distortion introduced by wide-angle lenses: straight walls appear curved in the image because of the features of the camera optics. Since the actual walls are straight, and not curved, the distortion correction allows producing an image that is a more accurate representation of the real scene.

However, normally an image or video presents multiple issues at the same time, and correcting them in the right order is necessary to get a result that provides the best quality, and it's scientifically valid.
To understand how to do so, we can use the image generation model: it represents a conceptual understanding of how the light coming from a scene in the physical world is converted into an image, and in the case of a digital image (or video) ultimately a sequence of 0s and 1s.

The picture below represents the typical image generation model for a video surveillance system. Different systems can be slightly different or, in the case of a digital camera or a mobile phone, way simpler, but the general concepts hold.

It's out of the scope of this article to go into detail about every single step, so we'll give just a quick overview of the main processes.
The light coming from the scene passes through the camera optics, then hits the sensor, which converts the light into a digital signal; this is then processed in various ways inside the camera and encoded into a usable format. In the storage phase, the signal coming from the camera is transmitted, potentially multiplexed with signals from other cameras, and encoded in some way by the DVR. While at this point, the image has been technically generated, further processing is often needed for the video to be played by the operator; depending on the system, acquisition, conversion, and playback are typical steps that need to be taken into account.

At every step, different technical limitations introduce different defects. Many of the issues are actually coming from the camera phase and its sub-phases: optics, sensor, processing, and encoding. Many of the issues are due to the combination of the camera's features and those of the captured scene. For example, if we try to understand why a moving car appears blurred in an image, it could be because of the features of the real scene (the car was speeding) or the camera (the shutter speed of the camera was too low). It's easy to understand that it's actually a combination of the two: the shutter speed was too low for the speed of the car. Similar considerations could be

made in many other cases, for **example for a scene that is too dark or too bright.**

The scientific workflow for forensic video enhancement

In practice, how can we tackle these issues?

First of all, it's very important to understand the **purpose of video analysis**. Image enhancement is just a means, not an end. Generic requests such as "*please enhance this image*", or "*tell me everything interesting you can find in this video*" are not enough. The most common requests on footage are either understanding the dynamics of an event (for example "*understand which subject started the fight*") or identifying someone (typically through face comparison, or identifying a car by its license plate).
Depending on the questions, the processing and the results will vastly differ. In general, our objective is not to have a more pleasant image, it is to show better the information which is already inside the image, but made difficult to see because of its defects.

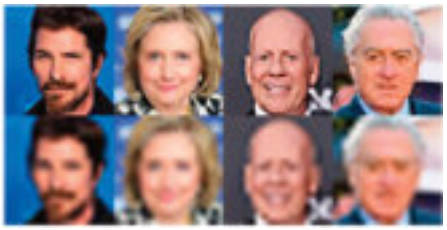
Once we know what we are looking for, we need to **understand the issues** affecting the image that - if removed or attenuated - can help reach our objective. It must be said that it's not always possible to resolve all issues. If the image has too low resolution, or it's too aggressively compressed, there is very little to do, since the information is not there in the first place. However, there are certain kinds of defects that can be modeled appropriately in a mathematical way, and inverting this model allows us to recover the underlying information pretty well. Examples of this are, for example, the correction of optical distortion, or deblurring subjects that are moving too fast or are out of focus.

It's important to remember that all the algorithms that we use, and the overall process, must follow a strict scientific workflow. The methodologies should be as **accurate** as possible, which means correct, and free as much as possible from errors and bias. The processes should be **repeatable** - the analyst should be able to repeat the analysis in another moment and get the same results - and **reproducible** - another expert with the right competency and tools should be able to replicate the outcome. If we are not able to get the same results again and again, that's not good for science.

There's a lot of hype currently about the use of Artificial Intelligence (AI) for many different applications. There are impressive results of image enhancement with AI, but with the current technologies, it's very dangerous to use them on video evidence. They could be used, with the proper safeguards in place, as investigative leads, but using AI-enhanced evidence could introduce bias depending on how we trained the system and the results won't be explainable in court.

Sam Altman, CEO of OpenAI, recently said "*ChatGPT is incredibly limited, but good enough at some things to create a misleading impression of greatness. It's a mistake to be relying on it for anything important right now. It's a preview of progress; we have lots of work to do on robustness and truthfulness.*" The same can be said about enhancing images with AI. We thoroughly tested AI face enhancement on very low-quality images: while they "seem" to get great results, the "enhanced" subjects didn't match the actual people.

In the image below you can see some images of celebrities enhanced with AI (first row) and enlarged with a standard bicubic interpolation. They seem pretty good, but if you look at them carefully, they can be pretty misleading.



Finally, the defect should be **corrected in the opposite order** in which they are introduced in the image generation model. There's a mathematical explanation to this, but we can understand it at an intuitive level with an analogy: when we dress up, we first wear socks and then shoes.
Undressing requires taking off shoes first, and then socks (reverse order).

How successful is forensic video enhancement?

Forensic video enhancement can get very good results, but only if the information is already present in the original data. If so, we can attenuate the defects and amplify the information of interest. If the information is not there, we can not (and we should not, given the forensic context) create new information, which is exactly what techniques based on AI usually do.

The success of enhancement depends on several factors. First of all, what we want to obtain: making a low-resolution face useful for identification is typically more difficult than understanding the type or the color of a vehicle. Then, we need to understand how much "good" data we have: the number of pixels in the area of interest, the kind of compression, how many frames or images, and the overall issues affecting the images.

In 2021 we ran a survey with our users, asking them about how often they can get useful results with enhancement. In 27% of the cases, they were able to get good results, and in 31% of the cases partial results, making **enhancement useful** - at least in part - in **58% of the cases**. In the remaining situations there was no useful information at all in the image (20%), or they thought there was something, but they weren't able to get it (22%); in this last case probably more training could have helped to improve the results.

Authenticity is not originality

An original image is defined as an image whose data is *complete and unaltered since the time of acquisition*. An authentic image, on the other side, is an image that is an *accurate representation of what purports to be*. Both are very important concepts to keep in mind while working with video evidence. While the two may be related, one does not necessarily imply the other.

Coming back to our initial question "*How can I justify to the court the fact that I processed an image or video used as evidence?*"

The image generation model allows us to give a very simple reply: by understanding how defects are created and correcting them, we can obtain a more accurate representation of the scene (or subjects, or objects) of interest, compared to the original image or video. Because walls are straight, and not curved, and real-world license plates are sharp, not blurred.

Perhaps, then, is the enhanced image more authentic than the original one?

Martino Jerian – CEO and Founder at Amped Software

Raising the Bar for Working Parents

When New Zealand prime minister Jacinda Ardern resigned recently, the press was full of articles asking whether women can 'have it all' (this was a BBC headline which was much maligned and swiftly removed – 'Jacinda Ardern resigns: Can women really have it all?). The story did, however, open up the conversation around whether women can juggle high pressure careers with being a parent. The BBC called Jacinda Ardern "an extreme test case of balancing work and family".

By Michael Edwards, barrister at 4PB

The challenges facing Ardern will be familiar to many in the legal profession. Research from Protectivity indicates that 63 per cent of respondents active in the legal industry are reporting experiencing stress on a daily basis. The most stressed age group was the 35-44 category and overall, women reported higher stress levels than men. According to ONS, the average age for a woman to have their first baby is now 31 years old, and two children families remain statistically the most common. Simply put, two little ones at home, plus a busy career equals stress. In addition, more and more has been written about women having less time generally. A piece in Time Magazine calls it the 'pink tax on time' and how a large proportion of household tasks and other life admin naturally falls on women - which "*does not just reduce women's objective time, but women also feel a psychological burden from it, experiencing time as more stressful than men— even free time. Research suggests that this tax on subjective time further undermines women's working lives and well-being.*" This can obviously be more pronounced for a barrister who can dictate their own working hours to a degree, but depending on their practice area may be required to work long, unsociable hours.

Further research, recently conducted by The Next 100 Years project, found 84 per cent of UK mothers working in the law still find it difficult to balance working life with the demands of being a mother, with half of those surveyed believing they are treated differently at work to men with children.

These pressures, strains and the resulting gender inequality can be even more prominent for barristers, who have the extra layer of stress which self-employment can bring. A recent report from the Bar Council revealed female barristers are paid around 34 per cent less than their male peers. This is a larger gap that in commercial law firms, where women earn about 25 per cent less than men; the average gender pay gap across British businesses overall is around 15 per cent. In slightly better news, the pay gap at the Bar has narrowed when compared to 2020, when it stood at 39 per cent. But commenting on this, Bar Council chairman, Mark Fenhalls KC acknowledged, "*there remains a long way to go to close the earnings gap, particularly in the higher-earning practice areas.*"

So how can the Bar do more to support working parents? The self-employed model has historically created difficulties in taking the responsibility away from Chambers to provide support to working parents. There remains a perception that barristers are well paid and should make provision for periods of leave – that is not the reality for many barristers, particularly at the junior end. Change is afoot, however. There are a number of ways in which Chambers can offer support to working parents.

- **Open up the conversation** An important first step is to encourage open discussions around taking parental leave and the challenges facing working parents. Barristers should be encouraged to express openly how they want to manage their home and working lives. This is particularly important in the run-up to a period of parental leave and upon the barrister's return to work. Some barristers will want to be kept in the loop, others will find it an intrusion whilst they are away - it's a balancing act and an individual's choice. The Bar Council advises barristers to nominate a 'chamber buddy' to keep them informed about what is going on during any absence and this can be a great way to ensure that barristers on leave do not feel excluded from any events and they are kept up-to-date with any important issues but, equally, that they do not feel bombarded.

- **Offer mentoring** the twin challenges of parenting and a career at the Bar can be immense. The experiences of those who have managed both are likely to be invaluable for working parents. The Bar Council offers a Maternity Mentoring Scheme which can be a useful way for new parents to speak to a more experienced working parents who have been through similar experiences. Speaking about the experience of being mentored, a new parent said: "*My mentor was a huge source of support and guidance. To have had access to such an experienced and successful practitioner, with whom I could openly and frankly discuss*

the challenges of combining a demanding practice with a young family, was a real benefit and I cannot overstate how useful it was. I would highly recommend the Bar Council Maternity Mentoring Scheme."

• **Create a policy** Chambers are in a position to initiate changes for working parents, despite the self-employed model.

Recently at 4PB we have introduced a new policy to support parents at the Bar. Our barristers are now entitled to a two-year rent-free period after having a child. This supports the barrister during their period of leave, for up to 12 months, and then a further 12 months rent-free (subject to an earnings cap, which will generally only be exceeded if the parent comes back after a short period away and works full time). We also wanted to be able to support secondary caregivers, by offering up to four months rent-free (up to three months' leave, followed by one month rent free on return). There were many reasons behind us wanting to implement this policy – we wanted to make it clear we not only support working parents but we are committed to retaining our tenants and helping them to develop their careers. From a cost benefit analysis, implementing a policy like this has long-term benefits for a relatively small cost.

The good news is the conversation is opening up more around working parents at the Bar and how Chambers and the profession as a whole can support this vital subsection of barristers. However, as the research and statistics show, there is still a way to go.

Michael Edwards, barrister at 4PB

The Human Rights Act 1998 and the IPT's attempt to strike a satisfactory balance between national security and human rights through the Liberty v GCHQ case).

By Rabiath Juliette Berphine Emmanuel , Consultant for the Culture sector of UNESCO in Congo Brazzaville, University of Kent LLM honors graduate in International Criminal Law and Human Rights Law

Table of abbreviations	
IPT	Investigatory Powers Tribunal
ECIR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HRA 1998	Human Rights Act 1998
NS	National security
MaS	Mass surveillance
HR	Human rights
RIPA	Regulation of Investigatory Powers Act 2000

Since the revelations made by former NSA and CIA contractor Edward Snowden in 2013[1], citizens across the globe have become more aware of the widespread and MaS practices of national authorities and western intelligence agencies, which in the eyes of some represents the end of our privacy and the move towards a society of surveillance[2]. With recent progresses in information and communication technology, most people nowadays interact through the web and electronic devices[3], where we access, send and receive information, which can sometimes give very precise clues about our personal lives and identity[4]. The fact that such information can now be easily accessed by law enforcement agencies[5] makes it all the more alarming. From a security perspective, while it is true that surveillance practices may serve a legitimate objective, namely with regards to crime control and prevention, they nonetheless pose a serious threat to some of our most fundamental rights, as well as to our ability to exercise them fully.[6] In light of those challenges, and drawing from recent case law of the IPT, namely the *Liberty v GCHQ*[7] case, this article will evaluate whether this court has been successful in its attempt to strike a balance between privacy rights and security interests.

PART I: BETWEEN PRIVACY AND SECURITY: THE HRA 1998 AND ARTICLE 8(2) ECHR

Privacy rights within the UK are mainly protected under the HRA 1998. Following the implementation of the ECHR into its domestic law through this act, Article 8 ECHR became the guiding provision on the protection of the right to private life. Conscious of the emergent need for more security in light of an increase of criminality, the drafters of the HRA 1998 have provided a number of conditions under which privacy rights may be derogated for legitimate purposes, such as national security. As provided by article 8(2) ECHR, in order for an interference with the right to respect of private life to be permitted, such interference must be:

1. " in accordance with the law",
2. "necessary in a democratic society" and
3. "in the interests of national security[…]for the prevention of disorder or crime,[…]or for the protection of the rights and freedoms of others."

With regards to the first principle, due to the particularly invasive nature of MaS practices, three conditions must be met. First, the interference must not only find its basis in national law, but

must also be clear, accessible and foreseeable.[9] In the case of *Kruslin v France*, the ECtHR has argued that the inference wasn't in accordance with the law, given that the conditions governing the interception of phone conversations weren't sufficiently precise[10]. In fact, there was no information about the categories of people liable to be placed under judicial surveillance, limits regarding the duration of the surveillance measures in place, nor any indication of the procedures to be taken for the destruction of the data collected[11]. With regards to the second and third principles under Article 8(2), a proportionality test must be applied by the court, assessing whether the MaS measures employed are proportionate to the legitimate aim pursued, which here is NS.

A careful analysis of the derogations to the right to private life under the HRA 1998 reveals a real attempt to find a balance between privacy rights on one side, and the security interests of the UK on the other. However, one limit of this document is that while it recognizes NS as a legitimate aim, it fails to provide a clear and precise definition of this concept, thus leaving a wide margin of discretion to the UK in determining the interests that may fall under 'national security'. This is particularly dangerous as it could indirectly allow the use of this concept for wider purposes, and affect the decisions of courts when assessing the proportionality of MaS measures.

PART II- BETWEEN NS AND HR: THE PROPORTIONALITY TEST AS APPLIED BY THE UK'S IPT THROUGH THE LIBERTY V GCHQ CASE

Procedures for the collection and retention of personal data in the UK are defined under the RIPA 2000.[12] In addition to Article 8 ECHR, which also encompasses protection to personal data, the RIPA 2000 includes certain provisions on the test of proportionality that must be applied by UK courts in the context of MaS. For instance, s 22(1), (2) and (5) require that "necessity" and "proportionality" be applied to data retention, and s 15(2) contains provisions regarding the safeguards that must be put in place by the Secretary of State when authorizing the interception of communications data. This includes details on persons who can have access to such data, or the extent to which the data collected can be disclosed.[13] The following lines will analyze how the IPT[14] has applied the proportionality test under its domestic law, looking more precisely at the case of Liberty v GCHQ.

In the case of Liberty v GCHQ, the IPT was asked to rule on complaints regarding the sharing of data between US and UK intelligence agencies (MI5, MI6 and the GCHQ) through the Prism and Upstream programmes.[15] This case was brought on by several NGOs[16], including Liberty and Privacy International who claimed that their private conversations may have been intercepted as a result of these programmes.[17] In fact, following the Snowden revelations in 2013, it was revealed that the NSA had been clandestinely collecting private communications of british nationals, residing both inside and outside the UK, through its Prism and Upstream intelligence programmes, which both operated under US courts' supervision[18]. Through Prism in particular the NSA was able to gather intelligence from electronic communication providers and through TEMPORA, it was able to obtain internet communications as "they transit[ed]" through the web.[19]

According to the plaintiffs, the activities of UK intelligence agencies in receiving data intercepted by the NSA[20] weren't in "accordance with the law", nor "prescribed by law" as required by Articles 8 and 10 ECHR[21]. In particular, they argued that there wasn't enough indication as to how the communications data intercepted by the NSA was accessed, retained nor destroyed by the British intelligence services concerned, and thus no indication that the privacy of the persons whose data was being intercepted was sufficiently protected, as required by Article 8(2) ECHR.

The approach of the IPT in assessing the legality of the transfer of information between US and British authorities has been rather unsatisfactory, as, despite recognising the importance of the ECtHR's requirement that practices likely to interfere with HR must be "in accordance with the law"[22],

and thus be sufficiently accessible, foreseeable and subject to proper oversight, its application of the latter in the case of Liberty was quite contradictory.

With regards to the requirement that surveillances practices be sourced in law, the IPT concluded that "appropriate rules or ***arrangements*** exist and are publicly known and confirmed to exist'[24]. The term "arrangement" was particularly vague and less precise than what is required under the Kennedy ruling for surveillance practices to find their basis under domestic law. Additionally, it held that such rules did not not need to be based under statutory laws.
With regards to the requirements of accessibility and foreseeability, which require that laws be sufficiently clear in order to indicate under which conditions national authorities may resort to measures that interfere with privacy rights, the IPT simply held that the rules governing the sharing of data between GCHQ and the NSA needed only to be "sufficiently signposted, such as to give an ***adequate indication***' of their content".[25]

With regards to oversight, the tribunal was satisfied that this requirement was met, simply because the intelligence services concerned stated that their surveillance operations were significantly controlled by the Parliament's Intelligence Security Committee and the Interception of Communications Commissioner.[26] In this respect, the tribunal argued that the interference with privacy rights under Article 8 was "in accordance with the law" given the presence of oversight, and transparency in terms of the ways in which such oversight was achieved. It stated that there was "***adequate indication***" of such oversight and the way in which it operated[27] and held that the IPT itself provided additional oversight due to its powers of investigation under Section 68(6) RIPA.[28] Therefore, the IPT concluded in its judgment of February 2015 that due to the presence of arrangements and the possibility for oversight, the discretion of the GCHQ had been effectively limited to prevent arbitrary interference from the intelligence agencie.

However, with regards to the requirements of foreseeability and accessibility in particular, it is worth noting that the tribunal argued that prior to the disclosure of the procedures used by the GCHQ and other British intelligence agencies in obtaining data[29], this test was not met and the MaS were consequently not "in accordance with the law" as required by Article 8(2) ECHR. While it is evident that this judgment led to more transparency[30] and prevented the GCHQ to continue acting unlawfully with regards to its collection of private communications, the fact that such disclosures were enough to render "legal" an unlawful interception regime is quite problematic, especially at a time

when several British intelligence agencies are under scrutiny for serious interferences on HR protected under the Convention.[31] This ruling of the IPT thus failed to ensure the accountability of the GCHQ and challenge the very question of the necessity of the its practices, necessary to prevent excessive surveillance measures. The danger that this poses in particular is that rather than challenging the use of MaS, it indirectly gives a green light to surveillance agencies to pursue unrestricted surveillance practices and violate the rights protected under Article 8(1) ECHR, as long as such measures meet the requirements of Article 8(2) ECHR, however low they may be applied. It seems thus that, rather than applying a strict proportionality test with regards to the surveillance practices of the GCHQ, the IPT has subjected the latter to a much watered down test of legality at the detriment of the HR at stake.

As we have seen throughout this essay, in the context of increased criminality, the HRA 1998 has provided a number of conditions under which privacy rights may be derogated for legitimate purposes and surveillance measures justified. However, due to the intrusive nature of MaS practices on privacy rights, such measures have to be proportional to the aims sought and to HR, limited to strict necessity and provide strong safeguards in order to prevent abuse and arbitrary behavior. In its attempt to strike a satisfactory balance between NS and HR through the Liberty v GCHQ case, the IPT has been unsuccessful at doing so. In fact, although this case reveals the commitment of the Tribunal to ensure more transparency in the context of MaS, the standard of probability applied in this case has been rather low, and the court has failed to hold accountable UK's intelligence agencies and pronounce itself on their use of covert mass intelligence measures.

REFERENCES

UK Statute Law

Human Rights Act 1998
Regulation of Investigatory Powers Act 2000

UK case law

Belhadj & Others v the Security Service [2014] IPT/13/132-9/H
Liberty & Ors v GCHQ [2015] UK IPT 13_77-H

Liberty & Ors v GCHQ [2014] UK IPT 13_77-H

EU case law

KENNEDY v. THE UNITED KINGDOM [2010] European Court of Human Rights
Kruslin v France [1990] European Court of Human Rights

EU LAW

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended)

BIBLIOGRAPHY

UK PUBLICATIONS

'House Of Lords - Constitution Committee - Minutes Of Evidence' (Publications.parliament.uk) <https://publications.parliament.uk/pa/ld200809/ldselect/ldconst/18/8020603.htm> accessed 9 July 2020

Websites

Ball J, 'Edward Snowden NSA Files: Secret Surveillance And Our Revelations So Far' (the Guardian) <https://www.theguardian.com/world/2013/aug/21/edward-snowden-nsa-files-revelations>

BBC News 'London Bridge Attack' (BBC News) <https://www.bbc.co.uk/news/uk-40150689>

C. Kuner, "The Data Retention Judgment, the Irish Facebook Case, and the Future of EU Data Transfer Regulation" (June 19, 2014), http://www.concurringopinions.com/archives/2014/06/the-data-retention-judgment-the-irish-facebook - case-and-the-future-of-eu-data-transfer-regulation.html
CNN, 'September 11 Terror Attacks Fast Facts' (CNN, 2020) <https://edition.cnn.com/2013/07/27/us/september-11-anniversary-fast-facts/index.html>

Dans E, 'Are We Sliding Inevitably Into A Surveillance Society?' (Medium, 2018) <https://medium.com/enrique-dans/are-we-sliding-inevitably-into-a-surveillance-society-5c847f22fe39>0

Journals

Preuss-Laussinotte S, 'Bases De Données Personnelles Et Politiques De Sécurité : Une Protection Illusoire ?' [2006] Cultures & conflits <: http://journals.openedition.org/conflits/2133>

---

[1]James Ball, 'Edward Snowden NSA Files: Secret Surveillance And Our Revelations So Far' (the Guardian) <https://www.theguardian.com/world/2013/aug/21/edward-snowden-nsa-files-revelations> accessed 2 August 2020.
[2]Enrique Dans, 'Are We Sliding Inevitably Into A Surveillance Society?' (Medium, 2018) <https://medium.com/enrique-dans/are-we-sliding-inevitably-into-a-surveillance-society-5c847f22fe39> accessed 23 August 2020.
[3]Michael H Ryan, 'Persona Non Data: How The Courts In The EU, UK And Canada Are Addressing The Issue Of Communications Data Surveillance Vs. Privacy Rights', Telecommunications Policy Research Conference (2016).
[4]Ibid
[5]Ibid
[6]UNGA Res 68/167. Resolution adopted by the General Assembly on 18 December 2013. The right to privacy in the digital age (A/RES/68/167) 2/3
[7]Liberty & Ors v GCHQ [2015] UK IPT 13_77-H (6 February 2015)
[8]ECHR, art 8(2)
[9]Ibid
[10]Kruslin v France [1990] ECTHR,para 35
[11]Ibid
[12]Regulation of Investigatory Powers Act 2000, s 22.
[13]Ibid, s 15(2)
[14]Ibid, s 65. The IPT is a statutory court which hears issues related to human rights violations by intelligence services
[15]Liberty & Ors v GCHQ [2014] UK IPT 13_77-H (5 December 2014)
[16]Including Liberty and Amnesty International
[17]Liberty & Ors v GCHQ [2014] UK IPT 13_77-H (5 December 2014) ; Liberty & Ors v GCHQ [2015] UK IPT 13_77-H (6 February 2015)
[18]Ibid (n15) para 14
[19]Ibid
[20]It is also important to note that Under UK law, the interception of communications data necessitates a warrant under RIPA s 8(1) and 8(4).
[21]ECHR, Art 8 and Art 10
[22]Ibid (n15) para 37
[23]KENNEDY v. THE UNITED KINGDOM [2010] ECTHR, para 151.
[24]Ibid (n15) para 41
[25]Ibid, Para 41
[26]Ibid, paras 42-44
[27]Ibid paras 37-38,
[28]Ibid, para 47
[29]Rendered public in October 2015, Ibid (n 15)
[30]Which can here be illustrated by the disclosures of the GCHQ, which prior to the proceedings did not provide sufficient signposts indicating the requests for information to foreign intelligence services
31Belhadj & Others v the Security Service [2014] IPT/13/132-9/H

Delays to surrogacy law reform creating risk for babies

By Andrew Powell & Lucy Logan Green, barristers at 4PB

Surrogacy is on the rise. Ministry of Justice statistics highlight a peak of 444 parental orders were made in 2019 and 435 in 2021 compared to 117 in 2011. Yet, surrogacy is still governed by legal concepts that fail to grapple with the changing faces and make-ups of modern families. As Lady Hale observed "UK law on surrogacy is fragmented and in some ways obscure."[1] Below, we examine the current state of the law and look forward to what changes to this landscape might look like.

Before starting to consider the state of surrogacy law in England & Wales, a grasp of the fundamental pillars of families, who forms them and what defines them is essential.

Who is a parent?

Anyone reading this question may assume it is a simple one to answer, but as life, society and culture changes, so does our answer to this fundamental question. English law divided 'natural' parenthood into three categories in the seminal case of **Re G**[2] which came before the House of Lords in 2006. First, 'genetic parenthood' - the provision of gametes which produce the child. Second, 'gestational parenthood', meaning the conceiving and bearing of the child. And third, 'social and psychological parenthood', namely the relationship that develops through caring for the child, both by providing for their basic needs and by loving, nurturing, comforting, educating and protecting them. Someone could fall into just one, two or all three categories. Each is no more important than the other, nor is the claim of parenthood made more powerful by belonging to more than one of the groups.

The question of who is a 'natural' parent falls to be considered separately from who is a 'legal' parent. A child can only have up to two legal parents at any one time.
Parental responsibility exists separately from legal parenthood. Parental responsibility confers the ability to make all of the day-to-day parenting decisions for a child, whether you are the legal parent or not.

What is surrogacy and what is a surrogacy arrangement?

Surrogacy is when a woman carries and gives birth to a baby for another person or couple. In England & Wales, surrogacy arrangements are not enforceable and commercial surrogacy arrangements are strictly prohibited and constitute a criminal offence.[3]

This differs from the approach taken in other jurisdictions, notably some states in the USA, where commercial arrangements are the norm. Accordingly, going abroad to enter into a commercial surrogacy arrangement is a popular option for parents seeking the security of an enforceable arrangement.

This is not the only reason why looking abroad is a popular option. Legal certainty is often a key aspect which intended parent(s) seek. Surrogacy laws in other jurisdictions differ vastly from those in England & Wales, often providing for intended parents to have legal status as 'parents' from the child's birth.

Surrogacy law in England & Wales

Under English law, the woman who gives birth to the child is always regarded as the child's mother (even if she is a gestational surrogate). Regardless of legal orders or judgments obtained in the jurisdiction of birth, the birth mother is always seen as the legal mother under English law. If the surrogate is married, her husband is the legal father.

The only way for intended parents to acquire legal status in this jurisdiction is by obtaining a parental order – a bespoke order that confers legal parenthood and parental responsibility on the intended parents and extinguishes the surrogate's legal ties to the child. Parental orders are meant to reflect the intended state of affairs.

There are a number of criteria that must be satisfied to obtain a parental order.[4] Some cases have already sought successfully to challenge these rigid criteria. In particular, English courts may make parental orders out of time[5] and may make an order where there is just one intended parent,[6] both of which scenarios were not originally legislated for. Increasingly, courts have to "read down" a statute in order to account for different situations, not least what to do if the intended parents are no longer in a relationship when they apply for the parental order or an intended parent dies.[7]

Reform – what is needed?

In 2018, the Law Commission announced that it would conduct a review of surrogacy laws with the Law Commissioner observing that the current laws "are not fit for purpose". Below, we outline the areas widely considered ripe for reform.

1. Parental orders vs pre-birth orders

Both surrogates and intended parents tend to identify the parental order

matrix as the most problematic aspect of our current law. Surrogates and intended parents would like the child born of the surrogacy arrangement to be the child of the intended parents from birth, as opposed to waiting for legal parenthood to be transferred upon the court making a parental order.

The delay in the transfer can cause real issues for intended parents, who have the full-time care of the child but not the legal status to make decisions for them. An obvious real-life example of this issue arises if the child is ill and requires medical treatment for which parental consent is required. The surrogate (who is still the legal parent for some 6-12 months after the birth until a parental order is made) may live in a different jurisdiction and/or there may not be ongoing contact between her and the intended parents.

A pre-birth order would safeguard the surrogacy arrangement for both sides and more importantly, reflect from birth the reality for the child – that the intended parents are the parents. This psycho-social element is sometimes underestimated, but the importance that the child is "born into" their family rather than "brought into" it by a parental order is a meaningful and emblematic factor for parents and children alike.

2. A surrogacy regulator

There is currently no regulator at all for surrogacy in this jurisdiction. A regulator for surrogacy and the creation of regulated surrogacy organisations should be created to oversee all surrogacy agreements and arrangements for intended parents living in this jurisdiction, whether the child is born here or not. This will not only provide a much-needed public resource for parents seeking accurate information about the process but will also provide greater security and safeguards around arrangements.

3. Clarity around international surrogacy

An often-encountered issue for international surrogacy arrangements is the lack of information available to parents around immigration issues and nationality post birth. There must be some form of unified guidance on these issues and provision for recognition of legal parenthood across borders. This would prevent a child being left for long periods in a foreign country whilst waiting for a passport/ travel documentation for entry into the UK. One possible solution, though unlikely to be proposed by the Law Commission, would be a designated list of countries approved by the Home Office which would automatically recognise intended parents as parents in this jurisdiction. This approach is used for recognition in some adoption cases where the list of countries can be reviewed.

The Law Commission Report

The Report is expected this spring with a draft bill. The summary already available reveals the proposal of a new legal pathway to introduce more rigorous safeguards before the child is conceived as well as recognising intended parents at birth as parents if certain criteria are met. There is a recognition that scrutiny of surrogacy arrangements should take place prior to conception rather than after the child is born – a much-needed and anticipated change to our current position.

Andrew Powell & Lucy Logan Green, barristers at 4PB

---

[1]Whittington Hospital NHS Trust v XX [2020] UKSC 14
[2]Re G (Children) (Residence: Same Sex Partner) [2006] UKHL 43
[3]Surrogacy Arrangements Act 1985, section 2
[4]See Human Fertilisation and Embryology Act 2008, section 54
[5]See Re X (A Child) (Surrogacy: Time Limit) [2014] EWHC 3135 (Fam) and X v Z (Parental order adult) [2022] EWFC 26
[6]Re Z (A child: No 2) [2016] EWHC 1191 (Fam) and then HFEA 2008 s.54A
[7]See Re A (Surrogacy: s54 criteria) [2020] EWHC 1426 (Fam) and Re X (Foreign surrogacy; Death of an intended parent) [2022] EWFC 34.

The Prohibition of Cross-examination of Litigants in Person

By Stuart Barlow, Solicitor, Family Law Specialist

The coming into force of section 65, Domestic Abuse Act 2021 on the 21st July 2022 saw the introduction of the prohibition on cross-examination in person by parties alleged to be either victims or perpetrators of domestic abuse, as introduced by the insertion of Part 4B, Matrimonial and Family Proceedings Act 1984 (section 31Q - 31 Z) The new provisions meet the concerns expressed by Hayden J as to the practice of litigants in person in family proceedings being able to cross examine their victim in domestic abuse cases, which he described in *PS v BP* [2018] as 'manifestly irrational and unfair'.

Summary of the changes

Under Part 4B, Matrimonial and Family Proceedings Act 1984, there can be a prohibition on cross-examination in four circumstances:

- where a party has been convicted, cautioned or charged with a specified offence;
- where a party is subject to an on-notice protective injunction;
- where there is 'specified evidence' of domestic abuse; and
- a 'catch all' category, where, in the absence of any of the above, the court has the power to prohibit a party from cross-examining a witness in person if the 'quality condition' or the 'significant distress condition' are met and it is not contrary to the interest of justice to give the direction.

Where any of the above conditions are met, the court will consider whether there are any alternative means for the witness to be cross-examined, or to obtain evidence that the witness might have given under cross-examination. In cases when the court considers there is no alternative, it must invite the party who would have undertaken cross-examination to arrange for a legal representative and require them to notify the court by the end of a specified period whether a legal representative is to act for them. If the party has notified the court that they will not have a legal representative, or has not notified the court at all, then the court will consider if it is necessary in the interests of justice for the witness to be cross-examined by a qualified legal representative appointed by the court to represent the interests of that party , the court must appoint a legal representative to cross-examine the witness.

Litigants in person

Many private family law cases involve one or both parties being unrepresented by a qualified lawyer.

According to Joint Research by Cafcass and Women's Aid domestic abuse allegations were present in 62% of private law children proceedings. At the same time, there has been a rise in applications for domestic abuse remedy orders such as non-molestation orders or occupation orders. Family courts have struggled to cope with hearings where allegations of domestic abuse have been made against parties who have conducted their own case. In order to address this issue a litigant in person is now obliged to instruct their own lawyer (at their own expense) or accept a lawyer appointed by the court.

The role of a court appointed legal representative

Section 31(W)(7), MFPA1984 makes it clear that the appointed legal representative is not responsible to the party on whose behalf they have been appointed to cross-examine.
The Ministry of Justice has issued statutory guidance about the role of qualified legal representatives appointed by the court. The guidance states (at para 3.3) that:

- the court will make clear to the prohibited party that the qualified legal representative is not their lawyer and that they are appointed by the court only to cross-examine a certain witness or certain witnesses;
- the qualified legal representative must clearly communicate the limited nature of their role and relationship with the prohibited party and that they do not have a contractual relationship with the prohibited party;
- the qualified legal representative must also make it clear that they cannot give advice or represent the prohibited party throughout the case, but are appointed by the court to carry out a very limited role;
- the qualified legal representative cannot help with preparing documentation or assist in complying with directions; and
- the court-appointed qualified legal representative will need to explain to the prohibited party that they cannot promise the confidentiality that usually attaches to lawyer-client relationships (legal professional privilege) and that there are obligations in family and civil proceedings to disclose material that may be unhelpful to the prohibited party's case.

A family case may involve a trial not only about parenting issues but also property issues, allegations of abuse, mental health issues, substance abuse and claims about any new partners of both parents, as well as contested facts in their property dispute. Cross-examination can include questions about such wide range of issues and events over the lengthy period of a relationship. It is uncertain whether the current change would prohibit direct cross-examination for all of the victim's evidence, or just in relation to issues of violence.

The statutory guidance advises (at para 1.1):

> *Whilst the qualified legal representative appointed by the court must have regard to this guidance, the guidance does not seek to restrict the exercise of the qualified legal representative's professional judgment. However, it does set out principles and limitations which are distinctive to this statutory role and which must be reflected in the qualified legal representative's actions and decisions.*

How will it work in practice ?

So far, we have no idea. The Ministry of Justice have a list of potential advocates waiting to receive a call to take on their first case. There seems to have been no formal training on how to conduct these cases other than to attend a course on vulnerable witnesses or domestic abuse. Even for the experienced advocate there are a good number of unknowns, even concerns.

The guidance issued to the qualified legal representative sets out some significant restrictions on the nature and extent of their role in acting for the prohibited party: The qualified legal representative is not their lawyer; they do not have a contractual relationship ; they cannot give advice or represent the prohibited party throughout the case; they cannot help with preparing documentation or assist in complying with directions; they cannot promise confidentiality and there are obligations in family proceedings to disclose material that may be unhelpful to the prohibited party's case. Yet, at the same time, it is said that the guidance does not seek to restrict the exercise of the qualified legal representative's professional judgment.
Many advocates will be asking: "So what is my role and how do I perform it ? "

Only time will tell.

Stuart Barlow Solicitor

Stuart Barlow is a Solicitor and has over 40 years' experience in Family Law. He conducts most of his own advocacy. He is a member of the Law Society Children Panel. He was previously Chief Assessor of the Law Society Family Law Panel and an Adjudicator for the Legal Aid Agency.

stuartanthonybarlow@gmail.com

Assistance animals, access, and ableism

Recent media outlets reported multiple incidents of disabled people being forced to leave public premises due to having an assistance animal with them.

By Christina Warner, Barrister,33 Bedford Row

In November 2022, Angharad Paget-Jones was forced to leave the Premier Inn hotel in Enfield, London because staff did not believe that her golden retriever was a guide dog.[1] Similarly, in May 2022, Stephen Anderson was told to leave a McDonald's branch by an employee after being told that dogs were not allowed in the fast-food chain.[2] Whilst, on social media platform, Tik Tok a video went viral after Caleb Cahill, an epilepsy sufferer was prevented from taking his assistance dog into a Co-Op supermarket.[3]

These incidents have highlighted the lack of understanding of both the legislation governing the rights of those with disabilities as well as the role assistance animals play in the lives of their handlers.

With guide dog users as a starting point, the RNIB issued their Open Doors campaign alongside their report, titled 'Lets Open Doors' looking into the impact of access refusals on Guide Dog owners. The Report indicated that as of 2022, 81% of guide dog owners have been refused access in the past and 73% in the 12 months prior.[4]

Legal underpinning
The Equality Act 2010 c. 15 s 173 clearly sets out the four criteria for the definition of 'assistance dog' as: -

> **a)** guide dog,
> **b)** hearing dog,
> **c)** dogs trained by prescribed charities to assist disabled persons in regard to epilepsy 'or otherwise effects the person's mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects.'
> **d)** A dog of a 'prescribed category' who has been trained to assist a disabled person who has a disability (other than in c) of a 'prescribed kind'.

Additionally, the Equality and Human Rights Commission issued guidance confirming:[5] that "Assistance Dogs are 'not pets and are treated as auxiliary aids'" and sets out three criteria:

> **1)** dogs will not wander freely around premises
> **2)** will sit or lie quietly on floor next to owner
> **3)** are unlikely to foul in public place.

The guidance goes on to state that the law does not require a dog to wear a harness or jacket to identify it as an assistance dog. There is no legal requirement for owners to have an ID book and mentions that the dogs can be 'owner trained.'

Beyond the functional tasks that assistance dogs are trained for, there is growing literature describing their benefits on the psychosocial health and wellbeing of their handlers.[6] The role of assistance is broader than just assisting the blind or visually impaired but also include medical and response alert dogs, allergy detection dogs, mobility assistance dogs, autism assistance dogs and psychiatric assistance dogs. Their roles vary from helping a person navigate or interact with the environment around them, alerting or responding to a change or symptom of a medical condition.[7] Assistance animals are also no longer limited to helping handlers in only physical ways. They can also help soothe and improve their mental wellbeing, and almost any animal can be used for this purpose. Therapy animals and emotional support animals (ESAs)[8] have been used in cases of those with autism, and more typically anxiety and/or depression. In addition to therapy animals being used by individuals, organisations such as hospitals, retirement homes, nursing homes and schools have been known to facilitate the use of therapy animals when managing both physical and mental health challenges.[9]

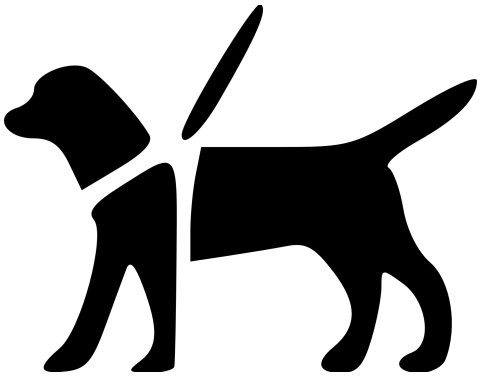
Access denied
But the legislation surrounding assistance dogs has not been without its challenges. As recently as 2019, £1000 compensation was awarded to Terri Balon for a taxi refusing to carry her and her guide dog.[10] Figures indicate that 76 percent of guide dog users have been illegally turned away by businesses and services.[11] On 25 May 2016, a large number of assistance dog owners lobbied Parliament. They called for stricter penalties for taxi and minicab drivers who refuse to take them and/or their assistance dogs in vehicles or make additional charges to do so.[12] The Mayor of London has attempted to tackle the issue by way of placing mystery shoppers to identify non-compliant taxi and private hire companies[13] as well as a Parliament briefing paper on 'assistance dog issues'[14] and the Equality and Human Rights Commission publishing guidance on assistance dogs for businesses.[15] Assistance Dogs UK issued a call for greater regulation as a result.[16]

Ableist attitude
But the issues of accessibility for disabled people to services and transport is nothing new and goes beyond the need to highlight legislation governing assistance animals. The issue of accessibility for disabled people was once again, brought into the media spotlight in the context of access to transportation. Most recently when two incidents hit the headlines, including a disabled woman having to drag herself to the toilet on a commercial flight in October 2022[17] and a disabled person's wheelchair being crushed during an Air Canada flight in September of the same year.[18]

Despite the Equality Act 2010 outlining the legal requirement for adjustments to be made to ensure access to services including education, housing and goods and services (e.g., shops, banks),[19] the issue of disabled people's ability to access everyday services is wide-reaching and the refusal of entry to guide dogs is only one of several examples. The issue is certainly not linear with disabled people who have experienced difficulty accessing products or services being more likely than non-disabled people to report other barriers, including difficulty accessing transport.[20]

But it has been argued that ableism (or the belief that a fully functional body and mind are the norm for a human being[21]) is the root cause of access challenges to disabled people.[22] A failure to consider the needs of anyone other than the able-bodied is likely to have contributed to, if not caused, issues of inaccessibility. Thinking that the model of one-size-fits-all, is a precarious way to run business or provide a service at a time when much weight is placed on customer service and client care.

It starts with understanding that needs and capacities, mental, physical and sensory vary and through that variety will come differing needs for



adjustment and adaptations in order to ensure that all services and products are fully available to all.

Christina Warner
33 Bedford Row

---

[1]https://www.itv.com/news/wales/2022-11-11/blind-woman-forced-to-leave-hotel-as-staff-thought-guide-dog-was-just-a-pet
[2]https://www.itv.com/news/london/2022-08-16/visually-impaired-man-turned-away-twice-from-mcdonalds-with-guide-dog
[3]https://www.standard.co.uk/news/uk/tiktok-video-epilepsy-sufferer-blocked-assistance-dog-coop-liverpool-b1040149.html
[4]https://www.guidedogs.org.uk/blog/guide-dogs-launches-open-doors-campaign-against-illegal-access-refusals
[5]https://www.equalityhumanrights.com/en/publication-download/assistance-dogs-guide-all-businesses
[6]https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7710121/
[7]https://www.purina.co.uk/find-a-pet/articles/dog-types/breed-guides/service-dogs
[8]"[…] animal that provides relief to individuals with "psychiatric disability through companionship."" https://jaapl.org/content/jaapl/early/2020/09/16/JAAPL.200047-20.full.pdf
[9]Bert F, Gualano MR, Camussi E, Pieve G, Voglino G, Siliquini R. Animal assisted intervention: A systematic review of benefits and risks. Eur J Integr Med. 2016 Oct;8(5):695-706
[10]https://www.rnib.org.uk/news/successful-challenge-to-guide-dog-refusal/
[11]https://www.guidedogs.org.uk/blog/shut-out-due-to-sight-loss
[12]https://tfl.gov.uk/transport-accessibility/assistance-dogs
[13]https://www.taxi-point.co.uk/post/local-authorities-urged-to-send-out-mystery-shoppers-as-part-of-proposed-taxi-and-phv-guidance
[14]https://commonslibrary.parliament.uk/research-briefings/cbp-7668/
[15]https://www.equalityhumanrights.com/en/publication-download/assistance-dogs-guide-all-businesses
[16]https://www.assistancedogs.org.uk/the-law/
[17]https://www.independent.co.uk/travel/news-and-advice/disabled-plane-passenger-told-wear-nappy-b2199282.html
[18]https://www.independent.co.uk/travel/news-and-advice/disabled-plane-passenger-told-wear-nappy-b2199282.html
[19]S 20 Duty to make adjustments
[20](22.9% for disabled people, 6.1% for non-disabled people, a 16.8 percentage point difference)
[21]Linton, Simi; Bérubé, Michael (1998). Claiming Disability: Knowledge and Identity. New York University Press. p. 9.
[22]https://www.24a11y.com/2018/how-ableism-leads-to-inaccessibility/

West Care Experts

Care, Therapy & Medical Consultants

No Matter The Circumstances - We Have An Expert Witness For You

West Care Experts is a group of accomplished Expert Witnesses supported by experienced secretarial and administrative teams.

We provide a wide range of Medico Legal and Personal Injury Reports, including, but not limited to; Quantum, Loss of Service, Care, Occupational Therapy, Liability, Physiotherapy, Pain Management and Accident & Emergency Reports.

Our Experts conduct assessments, review all medical documentation and evidence, then use their professional opinion to prepare and deliver high quality reports for Solicitors and Insurers on behalf of Claimants, Defendants and via Joint Instruction.

WCE

West Care Experts
Provident House, Burrell Row, Greater London, BR3 1AT
Expert Witness Enquiries 0203 925 7940
james@westcareexperts.co.uk, www.westcareexperts.co.uk

LAIRD

Bespoke solutions for the UK's automotive industry

0151 342 9961
Humans 8.30 - 5.30 Mon - Fri
Portal & Chatbots 24/7
www.lairdassessors.com
enquiries@laird-assessors.com

Vincent Theobald-Vega

Safety 4 HEd

FIIRSM, FRSPH, CMIOSH, MISTR,
BarOSHM, BSc, MSc, PgDip, Cert Ed
Member of the Health and Safety Lawyer's Association.

Health & Safety Expert

Expert witness in civil and criminal courts. Former HSE Inspector, with over 30 years practical experience from a wide range of industries.

Lawyer Expert Witness Awards 2022 WINNER

Draft reports in **three weeks** for most cases, or to an agreed timetable. Excellent success in **Civil & Criminal** cases (legal aid work accepted).

Areas include **asbestos** (management & removal), **construction** design & management, **laboratories, biosafety, manufacturing**, and much more.

UK Register of Expert Witnesses REGISTERED

For a **free** confidential discussion. Call 07940 564 889 or email vincent@safety4hed.co.uk
CV and more at safety4hed.co.uk.

2023

QUHCR Registered Consultant

---

barker consultants

Miss Bernadette Barker

BA(Hons) DipArch RIBA MSc(ConstrLawArb)
DipICArb FCIArb CArb MIFireE MAE

Architect, Chartered Arbitrator and Accredited Adjudicator

Miss Bernadette Barker is an architect with 35 years' experience on a range of building types and sizes and in various capacities. She is an arbitrator and adjudicator.

Miss Barker can act as an expert witness, including the preparation of expert reports and appearing in court, in cases relating to her specialist areas of expertise, including:

- Construction (Design and Management) Regulations
- Fire safety legislation and regulations
- Management of fire safety
- Regulatory Reform (Fire Safety) Order
- Contract administration
- Building contracts and subcontracts
- External wall fire reviews
- Cladding
- External wall defects
- Fire precautions in buildings
- Means of escape from fire
- Fire risk assessment
- Construction site audits
- Design coordination
- EWS1 forms
- External wall surveys
- MHCLG guidance
- Fire management plans

Miss Barker can take instructions on behalf of either claimant or defendant or as a Single Joint Expert.

0208 874 7000 bernadette@barkerconsultants.com
www.barkerconsultants.com
Barker Consultants, 20 Kendal Place, Putney, London SW15 2QZ

Integrity Accounting & Forensic Solutions Ltd

Chartered Certified Accountants

Having qualified in 1997, Claire Berrington FCCA is a member of the Expert Witness Institute with over 15 years experience as a Forensic Accountant and Expert Witness. She works with Barristers and Solicitors throughout the UK.

Claire has experience in the following areas:

- Fraud, including evasion of VAT and Excise Duty
- MTIC, advance fee and boiler room
- False accounting and money laundering
- Charity, PAYE fraud and tax cheat
- Mortgage fraud
- Drug offences
- Proceeds of Crime Act (POCA)
- Directors misfeasance & disqualifications
- Wrongful and fraudulent trading
- Preparation of detailed reports which clearly set out the issues and conclusions
- Assistance at Court including Expert to Expert consultation and giving evidence
- Partnership and directors disputes
- Business valuations
- Divorce Cases

Claire Berrington BA (Hons) FCCA MEWI
CALL for a free initial discussion on
01822-259593 or 07833-431013
claire.berrington@integrityafs.co.uk
www.integrityafs.co.uk

ACCA EXPERT WITNESS INSTITUTE 2020

CONSILIENCE

Liz Bossley, *the CEO of the Consilience Energy Advisory Group Ltd, has more than 45 years' experience in crude oil and refined products trading and in shipping operations and the freight market. She has acted as expert witness in around 50 disputes and is an accomplished public speaker and published author. Consilience has just launched a new software package, Revenue Analysis, Apportionment and Hedging (RAAH), to aid oil producers and asset traders in determining and hedging their future revenue stream.*

Phone: +44 (0) 7384 103111
Mobile: +44 (0) 7901 555556
Website: www.ceag.org

SPS Consulting (UK) Limited

Since 2002, we have built a reputation for being passionate and reliable when advising on the accommodation needs for the disabled. During 2020, we continued to build our reputation through difficult times, and this year we have seen an unprecedented growth on business.

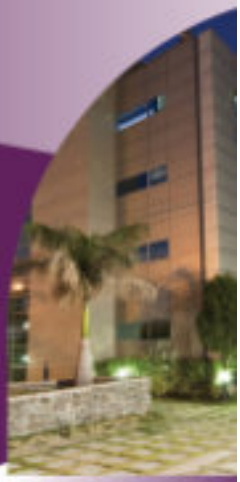
The personal approach adopted by founder, Andrew Skerratt, ensures strong ties with clients and their representatives. Our knowledge of layout design, construction technology and costs, and involvement in over 900 personal injury and medical negligence cases, enables Andrew to carefully prepare tailored reports to respond accurately to instructions in a timely manner.

We welcome the opportunity to continue to help our diverse societies achieve the best possible comfort and opportunities in their lives, and will continue to strive for higher goals with enthusiasm in the future.

EWI RICS

Andrew Skerratt
LLB MRICS MEWI CUEW
Specialist in Housing Needs for the Disabled
Tel: 01903 538196
Mobile: 0777 9398819 Website: www.spsukltd.co.uk

PROVIDING EXPERT ADVICE TO LANDLORDS AND TENANTS OF ALL COMMERCIAL AND LEISURE PROPERTIES UK WIDE



Chartered building and valuation surveyors specialising in dilapidations and diminution (section 18) valuations for both Landlords and Tenants, as accomplished expert witnesses.

Bethany Reid,
Squire Patton Boggs

The advice received is always technically excellent as well as commercially practical.

★★★★★

radius consulting
Chartered Surveyors

0845 673 3009
enquiries@radius-consulting.com
www.radius-consulting.com

World-class medical treatment. Truly personal care.

123 years of patient centred care in the heart of London.

Treatment centred around you

At King Edward VII's Hospital, modern medicine and traditional values are combined to provide the very best individualised care. From the warm welcome patients receive at reception to the reassurance we give them as they leave, we aim to make every patient feel like our only patient.

Experts in Men's Health

Our multi-disciplined teams include world-leading experts and clinicians in:

- **Urology**
- **Focal Therapy for Prostate Cancer**
- **Andrology**
- **Digestive Health**
- **Pelvic Floor Health**

Our highly skilled teams will create a uniquely tailored care plan to help you get back to feeling like yourself again.

Find out more at
kingedwardvii.co.uk
or call our friendly team on
0203 7973 938

KING EDWARD VII's HOSPITAL