

SIX PUMP COURT

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Six Pump Court Crime Team Newsletter

Issue 1, November 2013

Team News

'Legal 500' and 'Chambers and Partners' Directory Entries

Members of the Crime Team have been recognised in the latest editions of the two principal professional directories, the Legal 500 and Chambers and Partners UK Bar Directory:

Richard Barraclough QC: "*Fraud specialist...an amazing ability to cross-examine thanks to his preparation, application and intellect*" [L 500]. "*He has a very distinctive, deep voice which is almost a trade mark - it gives him a unique and effective courtroom style...*" [C&P]

Eleanor Laws QC: Ranked Silk, London Bar [C&P]. "*...exceptional cross-examination skills...*" [L 500]. "*Pre-eminent knowledge and experience in handling sexual offence cases...her enormous experience of high-profile cases is always invaluable. Her advice is to the point, practical and of the highest quality. She is excellent to work with...*" [C&P]

Oliver Saxby QC: Leading New Silk, London Bar [L 500; C&P]: "...*has the ability to get swiftly to the real point of the case...*" [L 500] "*As a junior, established a busy practice thanks to his charming and persuasive advocacy...will not struggle to develop a similar practice now that he has taken silk....extremely good courtroom manner...a proper jury advocate...*" [C&P]

John O'Higgins: "*first class...excellent at supporting solicitors who instruct him*" [L 500].

Paul Taylor: "...*technically excellent with very good client skills...*" [L 500].

Adaku Parker: "...*a strong, intelligent advocate...*" [L 500]



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Maternity News

Aside from looking after Annabel, Tanya Robinson has been conducting advisory work and is planning to return to Court next Autumn. Deborah Charles gave birth to twins, James and Finlay, last month and is planning to return to full time practice sometime next summer.

Legal Aid Reforms

Members of the Team have been playing, and are continuing to play, a significant part in the profession's opposition to the Lord Chancellor's planned reforms, both locally and nationally. A copy of the Team's response is attached herewith.

Clerks' Room

Spencer Harrison having moved on to pastures new, the clerks' room has welcomed his replacement, Alice Johnson. She joins Richard Constable, Graham Colloff and Michael Hearn (in London) and Angela Fullex and Caron Seaward (in Maidstone).

Past Members

The Criminal Team was pleased to see two of its past members gain significant judicial promotion recently: Lady Justice Hallett, as Vice President of the Court of Appeal, Criminal Division; and Judge Christopher Kinch QC, as Resident Judge at Woolwich Crown Court.

Upcoming Events

As some of you may know, there is a TV Link facility in the conference room in the Maidstone annexe. It is available for use by our solicitors. With the usual sort of notice, connections can be made with prisons locally and across the country. If there is sufficient interest, it may well be worth demonstrating its use at a Seminar in the New Year. As ever, all enquiries to Angela/Caron.



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Applications to Transfer

Judges nationwide are alive to unmeritorious applications to transfer; and Judges Carey and Williams are no exception. The case of R v Smith (Henry Lee) [2007] Crim LR 325 (at para 6-252 of Archbold 2013) is always worth bearing in mind when resisting an application to transfer, as is the ability in the appropriate case to ask for wasted costs.

Court News

Word has it that new Crown Court case management provisions are soon to be rolled out across the country, at the essence of which will be one intermediate hearing (replacing Prelims and PCMHs) and greatly increased electronic liaison between those all those involved. No doubt the pretext will be greater efficiency; but lack of resources within the court system (and greater reliance on practitioners and Judges) may well also be a factor. Members of the Team were present at the recent Maidstone Crown Court Users' Meeting and have been liaising with local litigators and HCAs with a view to formulating a unified approach to case management at Maidstone and Canterbury. Very much at the top of the 'wish list' is the making only of realistic and necessary orders.

On a separate note, Maidstone Crown Court's current List officer, James, is moving on to a different job. His replacement is Nicola, an experienced Crown Court clerk.

Each of the Crown Courts at Maidstone is to undergo refurbishment in the New Year, two by two. Practitioners have been warned to brace themselves for substantial disruption as a result.

On a happier note, it has been confirmed that the Library area at Maidstone is not going to be requisitioned for use by court administrators and so will remain available for use by practitioners.

Recent Law

Dunn [2013] SCCO Ref 165/13: Useful costs judgement relating to payment for 4,453 pages of phone material served digitally (and see Jackson [2013] SCCO Ref 36/13 on a similar point).



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Recent Law (cont'd)

Farooqi [2013] EWCA Crim 1649: Seminal case on a defence advocate's responsibilities to his lay client and the court, arising from 'flagrant misconduct' by a trial advocate.

Dyer and others [2013] Case No: 1205513 A6: The end of the 'Afonso argument'? Instead, the SGC are now the first port of call.

Fields and others [2013] EWCA Crim 2042: Leading case on confiscation (and the death of the 'May apportionment' argument?). In a case of co-conspirators adjudged to have obtained the benefit jointly, there can be no apportionment between them of that benefit; and the value of the benefit is to be assessed as the whole amount with regard to each.

Leacock and others [2013] EWCA Crim 1994: Important authority on duty of defence advocate on question of days on remand.

Six Pump Court Crime Team Response to 'Next Steps' Consultation

6 Pump Court Criminal Team

Response to 'Next Steps' Consultation

Introduction

1. 6 Pump Court is a long established common law set of some 54 self-employed barristers who practice in criminal, family, employment and civil law. It has 6 QCs, 1 Deputy High Court Judge, 2 Crown Court Recorders and 5 part time Tribunal Judges. It is a '2013 Top Tier Legal 500' set, and a '2013 ranked Chambers and Partners' set



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2. The Criminal Team is the largest practice group in Chambers and has always been an integral part of it. Its members regularly prosecute and defend in the most serious criminal cases in London and the South East (in particular in Kent and Sussex). Its members are recommended in The Legal 500 and the Chambers and Partners directories. The Team is well regarded by peers, Solicitors and Judiciary. Over the years it has produced many Judges, a number of whom sit in the areas where members ply their trade. Its members hold representative positions of professional responsibility, both locally and nationally. And they are supported by a team of clerks who have first class working relationships with the courts they serve and the Solicitors from whom they receive work.

3. Over the last few months, members of the Team have played an active part in leading the response to the MoJ's flawed proposals to restructure the criminal justice system, liaising with their Solicitors, lobbying MPs, obtaining advice from appropriate specialists, speaking to other Chambers, generally garnering information and so on. Each member of the Team has had an input in the preparation of this response.

4. In short, the Team welcomes the abandonment of PCT; but it considers that the alternative proposals are as misguided and as damaging for those working in publicly funded criminal work as the original proposals. This document considers their impact on Solicitors ('Fee Cuts: Revised Model', paras 5-11) and the Bar ('Fee Cuts: Crown Court Advocacy', paras 12-21). Finally and in the light of the foregoing, it answers the questions posed as part of this second consultation.

Fee Cuts: Revised Model

5. The Criminal Team is not directly affected by this aspect of the proposals. It is affected indirectly, however, in the sense that it receives a substantial proportion of its work from 'publicly funded' criminal Solicitors who refer their more demanding and complex cases to it.

6. The Team is well placed to judge the likely effect of the proposals on publicly funded criminal Solicitors and the way they work: Members of the Team are instructed in cases at all levels of seriousness by firms of Solicitors across the South East. Over the course of time, they have developed an excellent working relationship with many of these firms, liaising with them, supporting them and assisting them. As a result, the Team believes it has a good understanding of the issues they are facing.



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7. Most firms that conduct publicly funded criminal work are small and comprise four or five partners at most. This is not through choice but commercial reality. These firms are over-regulated, over-worked and expected to do a considerable amount of unpaid work simply ‘to keep the system working’. They have been forced to rely on the timely payment of fees to meet their outgoings. They have no alternative cash-flow and very few have business savings or capital resources to fall back on. When fees are cut, they are pushed even nearer to the brink. There is no slack left, either in terms of time or income. And yet the system depends upon them, and their goodwill and commitment.

8. It is against this background that the proposals need to be viewed. When properly analysed, the reality is that firms are likely to experience cuts of more than 20% in the short term and in the region of 30% in the long run. The stark truth is that some firms will not be able to survive cuts at these levels.

9. As to the detail, the plan that payment for most trials in the Magistrates’ Court should be fixed at the same rate as a guilty plea in the same case is particularly misguided. The obvious incentive being offered, here, is for a lawyer to persuade his client to plead guilty, regardless of any possible defence. Coupled with the significant reduction in fees, the direct consequence will be that it will become uneconomic properly and fully to develop defences which may exist.

10. As to the model itself, a ‘Duty Contract’ will be a pre-requisite for viability. The detail of what will be expected of a prospective bidder is far from clear; but it would seem likely – in Kent, at least – that to have any prospect of servicing the county, most firms are going to have to consider some sort of ‘joining of forces’. The notion of “merging to form new associations with each other” is blithely stated by the MoJ. But the reality is very different. A firm that looks to merge (in whatever form) has to countenance economising by, for instance, closing offices, paying off rental sums due, making and paying staff redundancies, dealing with Professional Indemnity Insurance and so on. 6 Pump Court has offices in Maidstone. It is in a position to assist with putting firms in touch with each other; and it has access to professional assistance on the question of contract bidding. But unless and until the details of the scheme are known, there is simply no certainty that firms will be able to join together to combat the perceived threat from larger more commercial ‘out of area’ firms, or cut-price national providers such as G4S or Serco. In short, therefore, the cuts may well lead to financial unsustainability for those firms that do, indeed, ‘keep the system going’.



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11. It is in this context that the MoJ persists in claiming that ours is the most expensive publicly funded criminal justice system in the world. Which it is not. As the National Audit Office figures prove, the numbers routinely used are calculated on a per capita of population basis: They ignore even the most basic of other considerations, namely the nature of the system itself, how many prosecutions there are and for what proportion of serious offences. Judged correctly, our system is no more expensive than any other.

Fee Cuts: Crown Court Advocacy

12. The Criminal Team at 6 Pump Court comprises a group of specialist advocates who take pride in the work they do. Members are free to develop their own practices; and they compete with each other and with those in other Chambers for work. At the heart of the way the Team works is the notion of mutual respect, co-operation and support. The Team conducts regular seminars for its solicitors. It pools information and encourages discussion and the exchange of opinions between junior and senior members – on technical, practical and ethical issues. At one end of the scale, it recruits pupils and brings them on. At the other end of the scale, it produces Queen’s Counsel, Recorders and Judges. The hours worked can be anti-social and the pressures involved considerable. Like many other such teams, it provides an efficient and effective service essential to the maintenance of criminal justice in this country.

13. In 1997, rates of remuneration were set under a Graduated Fees Scheme. These rates were intended to be fair and appropriate. These rates remained frozen until 2007 when some increases were made, on the face of it to match what had been lost to inflation. Since 2010, all those increases have been reversed; and fees are now at pre-1997 levels. During this period inflation has eroded the value of those fees by in the region of 30%.

14. In 2010/11, Criminal Legal Aid ‘spend’ was £1,175m. In 2011/12 it was £1,115m. In 2012/13, it is £975m. This is against a fall in work of about 10% - i.e. 1.5 to 1.35m ‘acts of assistance’). There is a further reduction projected for 2013/2014. In other words, in the lifetime of this Parliament alone, Criminal Legal Aid ‘spend’ has fallen by some 20%. During the same period, the rate of VAT has climbed from 15% to 20%.



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15. Taking the most recent figure, £975m, in fact the ‘Graduated Fee cost’ comprises just £242m of this; and the ‘VHCC cost’ comprises only £67m. Taking into account the £8m spent on appeals, put simply the situation is this: All of the frontline Crown Court and appellate advocacy costs amount to less than one third of the total spend. This amounts to exceptional value.

16. And yet the Government is planning yet more fee cuts. It will be the staple diet of the independent criminal advocate, the trial, which will be hit hardest. In real terms, if implemented, the cuts will see a reduction in ‘trial fees’ in real terms of 41% since 2007. For murder trials, the reduction is 50% since 2007. No other offences escape some sort of savage cut.

17. Savings are also sought in the context of the use of multiple advocates. The Team contends that it is the Judges of the Crown Court who are best placed to determine whether a case requires more than one advocate, and whether Queen’s Counsel – acting alone or with a Junior – is appropriate. Further it contends that ‘page count’ alone is not a reliable guide to the complexity or gravity of a case. Thirdly, it points to the view expressed by the Council of HM Circuit Judges and the Judges’ Council that the use of Queen’s Counsel has a positive impact on the smooth running of a case. Fourthly, there is an expectation in the minds of the public that the most serious cases in the land should be prosecuted and defended, now and in the future, by the best advocates.

18. As to the alternatives put forward, Option 1 seems designed to reward practitioners who ‘get their clients to plead guilty’, whatever the strengths or weaknesses of the case or the client’s instructions, whilst penalising financially a practitioner whose client exercises his or her right to trial by jury. It is the defendant and not the advocate who pleads guilty. It is his and not the advocate’s motivation that should be determinative in the entering of a plea.

19. As for the suggested introduction of a tapered fee, these proposals are unfair and ill-founded: They simply punish an advocate for being in a lengthy trial. The MoJ has put forward no evidence that advocates deliberately lengthen trials, or that they deliberately slow trials down. On the contrary, there are now comprehensive rules in relation to trial management which ensure that the parties cannot waste court time and resources. Added to which, the length of a trial is not



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in the hands of a defence advocate. Other factors bearing on the length of a trial might include the Judge having to hear other cases before resuming with the trial, the prison service producing defendants late, witnesses being delayed, jurors being ill and interpreters not turning up.

20. Option 2 is a slapdash attempt to give the appearance of choice. It is based on the CPS Scheme C, with depressed numbers. As with Option 1, the rates identified do not represent fair and reasonable remuneration.

21. In conclusion, these cuts will reduce the numbers of those prepared to undertake criminal advocacy, discourage those prepared to invest skill, time and resources in its provision, generate a race to the bottom in the quality of service provision and take away the incentive for quality entrants to enter this area of specialism. The inevitable outcome will be the decimation of the pool of high quality, independent advocates which the public interest demands be available both to defend and to prosecute.

Questions 1 - 5

22. These Team adopts the answers given by the Bar Council.

Question 6

23. For the reasons given, the Team prefers neither approach.

Questions 7-9

24. The notion of 'impact assessment' is entirely cosmetic. There has been no proper research and no real assessment of the impact upon clients, the small to medium firms of Solicitors or the Bar. Nor does there appear to have been any sort of assessment on the impact to vulnerable groups such as ethnic minorities, of which Kent has significant concentrations. Instead, the MoJ have left it to those affected to mount arguments. The only form of mitigation is the abandonment of the plans, a delay for the preparation of the Jeffrey Report and then proper liaison with the Bar and the Law Society.

OLIVER SAXBY QC
Criminal Team Leader, 6 Pump Court

