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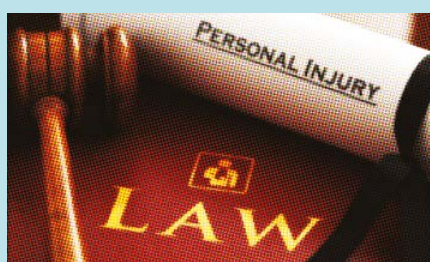
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EDITOR'S COLUMN

It has been too long since the last edition of The Circuiteer hit the legal newsstands to edify and entertain – we have not been idle, although the content of this Christmas edition may owe more to the dreaded “C” word than to yuletide joy. One silver lining amongst the unwelcome clouds of lockdown is that the Bar Messes have flourished, a new energy injected into their membership infused with a collective sense of purpose. Enjoy reading the snippets of entertainment from the Mess scribes.

Whilst a few chambers have been less fortunate than others, the flexibility and ingenuity of practitioners and Bar leaders has been remarkable. We owe a huge debt of gratitude to those who have committed themselves to negotiating at local and national levels to try to ensure that the independent Bar survives ... despite the collective Nelsonian eyes of so many politicians. Special thanks are owed to our Leader, Mark Fenhalls QC: he has worked tirelessly at every level to try to persuade those who need to hear our voice. He has hosted near weekly meetings of the Heads of Chambers across the Circuit, additional Circuit Committee Meetings and more – it has surely been exhausting and frustrating in so many ways and yet he has remained positive and cheerful throughout. His successor has a bright flame to follow and we wish Christine Agnew QC well as she takes hold of the Circuit baton.

Readers have become accustomed to dipping into articles showcasing some of the non-legal/quasi-legal palmarès of our more intrepid members – sadly the cancellation of so many collective pursuits is reflected in our pages but the news is looking better for 2021: so a feast of material should flow forth in the New Year. It would be wonderful to have contributions

for the next edition from those who have had events postponed.

A very special thanks to the many who have contributed to this edition when there are such pressing demands on their time: particularly James Hines QC and Emily Formby who both heard the call beyond the reaches of the committee table. Thanks also to HHJ Jo Cooper and HHJ Lindsay Davies for crafting the memories of the unusual but moving ‘virtual’ valedictory for HHJ Stuart Bridge in Cambridge Crown Court.

A collective sigh of relief will be heard as readers discover that this is the last edition to be completed under my imperfect and wavering supervision. Leon Kazakos QC has been volunteered to succeed where I have failed – I know that many will join me in offering him their congratulations and wishing him well. His reflections on a “Life in Plastic” bode well for his readers. Please be generous and supportive in providing articles for publication.

My final thanks to Aaron and Harriet: those who know them only vicariously through Circuit emails etc may not realise how much we rely and depend upon their energy and caring stewardship in support of the immensely varied work across the Circuit. They have been a huge help to the Leadership and to many members. I could not have done the little I have without their support.

I wish you all the very best over the festive period and good luck as we navigate our way into the next phase of lockdowns, semi-lockdowns, tiered divisions and potential vaccines ... perhaps this year, the largest turkeys will find that, for once, Christmas really is a time to offer peace and goodwill to all!

Karim Khalil QC

Drystone Chambers
Editor The Circuiteer



**YOUR CIRCUIT.
YOUR VOICE.**

If you wish to contribute any material to the next issue of The Circuiteer, please contact: LeonKazakosQC@2harecourt.com

LEADER'S REPORT



Mark Fenhalls QC

by Mark Fenhalls QC
LEADER OF THE SOUTH
EASTERN CIRCUIT

This article is a slightly modified version of the report presented to the AGM on 18th November

In writing this report, I have reflected on the difficult times we have faced together this year, and that we have begun to overcome. 2020 exemplifies just how professional and hard-working the Bar is, rapidly learning new skills to keep the justice system going despite financial hardship. We have helped construct a system that is relatively "Covid-secure". And as we begin to digest the announcement about the first effective vaccines, we can see that the current social distancing measures are likely to be with us until at least Easter even if all goes smoothly.

Before Covid ("BC")

Last November, we thought we were "in crisis" across all jurisdictions. Court centres and rooms were being closed, judicial sitting days were down, staff numbers reduced and back-logs were growing. In the county court there was little or no sign of an effective modernisation programme, and waiting lists in Tribunals were expanding. The election approached, dominated by Brexit, and I suspect we all felt a sense of frustration about a Justice System long ignored and underfunded.

In February, I clearly tempted fate by referring to the odd "early green shoot" of hope for the justice system – we had received confirmation from Susan Acland-Hood, CEO of HMCTS, that sitting days for the rest of 2020 and 2021 would be increased. The media had started to give some attention to the problems

following a decade in which about 25% had been cut from the unprotected MoJ budget. The consultations on "Accelerated Asks" and "Pre-Charge Bail Legislation" were imminent, and the Conservative Manifesto had promised a Royal Commission, albeit of uncertain scope.

I also wrote in February, *"I fear that the next two months until the end of this financial year are not going to be easy as list officers juggle impossible demands imposed upon them"* – little did we know what was coming. But that of course is the point – the Justice System had been creaking for years before Covid and the pandemic has made a bad situation worse.

The Gathering Storm

On March 4th the Circuit Leaders met the Lord Chief Justice and the President of the Queen's Bench Division. We asked about planning for the epidemic that was building in Italy at the time (and was probably already circulating widely in the UK). Later over dinner we wondered what might be about to hit, but without really anticipating what we would all face in the dark days ahead. By mid-March, Covid-19 had appeared in my messages and in our lives. On 23rd March the Prime Minister closed the country. We now know that this decision was taken late that afternoon in Downing Street and very little, if anything, had been communicated to the court service in advance.

Within another week, remote hearings were taking place. We used various systems, mostly successfully. Family courts were at the forefront of the move to use technology, but many civil courts struggled because of their reliance on paper files. I am extremely grateful to Mark Seymour, Andrew Johnson and Josh

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Normanton for producing excellent User Guides and running training sessions for the Circuit both for Skype for Business and Teams in the early days and, later, for CVP. HMCTS is to be applauded for the speed at which they rolled out this CVP especially as it had been intended originally only as a link for some remand hearings. There were of course always going to be problems with bandwidth, operator error and a lack of capacity in some places (importantly prisons). But it was easy to use and made all the difference during lockdown, allowing CMHs, PTPHs, sentences and bail hearings to go ahead and giving some a chance to keep earning a little from the limited court hearings. Many of us have probably been surprised by how much we can actually achieve through a video platform. And we all hope that we can retain the best of what "digital" offers when we emerge from this torrid year.

But in spite of the sunshine and lengthening days, April was a dark time. All those barristers who depend on court work, particularly in the Crown Court, were left exposed and uncertain, without light at the end of the tunnel. Furlough schemes and rent holidays helped Chambers to an extent but the Treasury was unmoved by the results of the Bar Council survey in April and financial help for the Bar was all but non-existent. In the end Government "help" largely came down to grants for a handful, deferral of tax liabilities and more debt – "Bounce Back Loans" – for others. One bright moment at the end of April came in an early mass Zoom call with three Resident Judges, exploring how we were all coming to terms with the changed world. We obviously had to cancel all of our current educational and social plans for the summer (including sadly Keble) and autumn and begin to reimagine how the Circuit might conduct its business and serve its members.

I would like to express all our thanks to the four Inns of Court and The Barristers' Benevolent Association. The Inns were very generous with their grants to the BBA emergency fund which was set up to help those in urgent need. The Inns also set up hardship funds, designed primarily to assist pupils and other junior barristers who were not eligible for either the Government assistance for the self-employed or for help from the BBA. We are by no means out of the woods and if you are aware of someone who needs help, please bring these funds to their attention.

The Path Back to Court

We faced a new disease, with ongoing debate over modes of transmission and impact, and all struggled to assess the risk each of us (and our friends and families) now faced. The frightening daily news reports unsettled many, perhaps long used to modern medicine coping with known challenges. We urged HMCTS to deep clean the courts, and they did. By and large the courts have been cleaner since the reopening than they have for some years. But there will always be recurring problems and things that need fixing and HMCTS wants to be told about the issues so they can act.

Family lawyers led the way in conducting emergency work remotely. The way that hybrid trials are broadly working is a tribute to all. Of course we all have reservations about digital justice, but I am in the camp of some justice being better than none at all. By and large, those involved in the better resourced "high end" civil work found ways to use modern technology swiftly and successfully. The story in the County Court was very different, largely because HMCTS had failed to move away from paper files and due to reductions in back office capability. In the Tribunal system the huge pre-existing backlog in employment has only been compounded by the events of 2020. The Bar responded to "rapid reviews" in family and civil work and the courts absorbed some important early lessons and adjusted some listing practices. But overall it was no surprise to discover that the wealthy and represented fared much better than the poor and unrepresented. Digital works very well for those with the resources and skills to use the most advanced platforms and technology. It is no good for the litigant in person who is struggling to understand what is happening. Those who speak from experience about contested hearings in county courts in the early days were very unimpressed with HMCTS' ability to cope with technology. There are real concerns about the poor quality of "remote justice" for all but the simplest of contested county court hearings. The CVP link to a prison is fantastic if it works, and the operator in "HMP Slade" knows what he is doing. It is less than useless when a lawyer is offered the next available appointment which is months away and long after the key listed hearing. It is vital that we all remember these lessons each time we hear that digital might be an answer. It may be part of the answer, but it is no substitute for face to face justice.

At the start of May, the Jury Trials Working Group was formed to look at restarting jury trials. This became known colloquially as the "Edis Group" because it was chaired by our Lead President. Mr Justice Edis has worked tirelessly and effectively to coordinate, nudge, prompt, lead, urge on, instruct the multitude of actors required to make sure the courts can operate safely. We all owe him a considerable debt of thanks for his leadership. But he would be the first to say that he has been only a small part of the work that has been done and that everyone else, including fellow Presidents, Residents, countless officials, Judges, court staff, the professions, has played a crucial role. I know you will all wish to join me in congratulating him on his imminent appointment to the Court of Appeal.

From the outset of the crisis, the Bar has written papers, made suggestions, lobbied and urged action on linking multiple courts, "Nightingale Courts", testing, use of technology, listing, s28, staffing levels, and repairing and re-engineering the court estate. Government, HMCTS, began to respond. A system that had been underfunded and undermined for a decade or more had lost resilience and was hard to turn around. I have been staggered (though unsurprised) by how hard it can be to secure new funding from government for new work that is outside conventional budgets. Even if you convince everyone at the MoJ of a course of action, then they have to start work on the Treasury and Downing Street. So we have seen Perspex, Portakabins®, some Nightingale Courts, staff recruitment, better use of technology, no limitation on sitting days. We must applaud the progress and real achievements, while maintaining the pressure to provide the resources that are needed to repair the CJS. As I have warned throughout the year, there are no easy solutions and we will continue to be rolling large rocks up steep hills for some time to come.

Nonetheless it was a big moment when the first jury trials (re)started in May. Showing people what was possible was important. Judges and court staff at the CCC and Reading worked exceptionally hard to make their courts safe in line with PHE advice. It is no exaggeration to say that Resident Judges and court managers everywhere were on their hands and knees with tape measures, mapping out different 2m and 1m+ configurations of their court buildings. The advocates and jurors who then took tentative steps back into court began to grow in confidence. Of course we rapidly learned that trials in the Covid era demanded more resources than BC: more space, more staff, better tech, more cleaning, more time... and all the while the Crown Court backlog grew.

Money and the Criminal Legal Aid Review ("CLAR")

I know all those who practise criminal law were grateful for the swift action taken by the CPS to restructure the fees scheme to allow for some advance payments. The LAA, constrained by legislation, did not have the flexibility to make similar changes, but work continued to bring home the "accelerated asks" by late summer.

It remains intensely frustrating that we await the appointment of the independent Chair for the next stage of the CLAR. We have been told repeatedly that an independent process is a vital step to persuading the Treasury that more money should be invested in the CJS. This may be so, but even in an era of global warming the progress feels glacial and painfully slow.

Remote vs In Person

The dilemma about which hearings can or should take place in person or remotely will continue to rage. Local courts retain the autonomy to make their own decisions. Many in our ageing profession hope that, through this winter, remote can be used more widely for non-contentious work. For those who may not have seen them before, the following principles to guide individual listing decisions have been agreed by Resident Judges on the North Eastern and Western Circuits. I have invited our Presiders to consider them with our Resident Judges. I cannot promise anyone that these will necessarily be adopted but they make sense to me.

1. Trial advocates must attend trials in person.
2. Where a defendant is required to attend in person any hearing at which it may be necessary to take instructions in order significantly to progress the case then the instructed advocates will also be expected to attend in person (obvious examples are PTPHs, sentencing hearings, PTRs and triage hearings).
3. Where a defendant attends a hearing by CVP then the instructed advocates may also attend by CVP unless their physical presence together at Court is likely to facilitate the effective management or resolution of the case. Please note that, if advocates are attending by CVP, they will be expected to have obtained full instructions from their client and communicated with their opponent in advance of the hearing.
4. Attendance by CVP should be the default position in any hearing that is administrative in nature, regardless of whether the defendant is required to attend (for example mentions, compliance hearings, directions hearings). However, if any instructions are likely to be necessary (for instance when re-setting dates) then advocates will be expected to have obtained such instructions and communicated with their opponent in advance of the hearing.
5. Where the attendance of the instructed advocate is essential to the progress of the case, and that advocate is unable to attend in person as a result of another Court commitment in another Court centre, that attendance by CVP may be permitted on application, to be determined on a case by case basis.
6. With the exception of trials (see 1. above), attendance by CVP will always be permitted for any advocate who is shielding or who, for other proper medical reason, cannot attend Court in person.

LEADER'S REPORT

Black and Brown Lives Matter

Many of us deal with the horror of death and violence in our work. We often watch appalling events on CCTV or mobile phone footage. We do not expect to see police officers kill a man. We in the justice system have an obligation not just to deploy fine words and demonstrate our liberal and well-meaning credentials, but to act. Of course, how you choose to do it is an intensely personal matter. In January I had the great pleasure of attending a screening of "Just Mercy" organised by Urban Lawyers. The stars were joined on stage afterwards by Bryan Stevenson, the lawyer who wrote the autobiography on which the film was based. Seldom have I listened to a more impressive and moving man. It was quite an experience to be one of a small number of white people in an overwhelmingly black audience. I understood, briefly, what it was like to be in the minority.

Against the background of a summer of dignified protest, it was more than surprising to hear rumours circulate about a threat to jury trial. Please take time to read the work of Professor Cheryl Thomas on jury trials, most recently published in the CLR. If, as she has previously written, the jury system is the only part of the Criminal Justice System that is fair to defendants from ethnic minorities, why would we be looking to restrict the right to trial by jury?

On 26 June, a letter was published in The Times from all Circuit Leaders. This is what we said:

'The solution to a backlog of criminal trials, which has built up over decades of underfunding is not to slash and burn the criminal justice system. The solution is proper funding. There is no need to replace jury trials, which are the only part of the criminal justice system which is representative of the population and is fair to BAME defendants. We only prosecute about 3% of crimes in this country, so we should at least do that properly. The decade of brutal cuts to the Police, Crown Prosecution Service, Courts, the Prison estate, Probation Service and legal aid lawyers has brought the system to its knees, but it can be fixed. That fix in the short-term requires "Nightingale" courts: we have identified empty buildings for the Court Service and now they need to open them up for trials so that victims, witnesses and defendants do not have to wait for even longer than they did before this crisis hit us.'

Progress through the Autumn?

In July, HMCTS/ MoJ floated various ideas as to how the Crown Court backlog might be tackled. We were told about modelling and working assumptions and so forth. One of the running themes of the year has been the inadequacy of data available to HMCTS. It has been galling to read of proposals and ideas that are not underpinned by reliable evidence. Analysis and proper understanding of the true position is critical before commitments are made to setting policy in any particular direction. At every opportunity we have asked for access to the data upon which any plans are based. Sometimes this has been granted. Across the Circuit there are around 200 Crown Court rooms. By late July around 25 trials a day were being listed at the start of each week. By September this had risen to the 40s. By late October and into November, courts were managing to list in excess of 100 trials (starting, part heard or as backers/ floaters). I suspect that these numbers are an improvement on the restricted days of 2019. HMCTS met its nationwide goal of 250 court rooms safe for jury trials by the end of October. They aim for 300 or so by the end of this year, out of a national estate of around 500. This is all welcome progress, if we can keep the courts staffed through the winter ahead.

HMCTS is to be congratulated on the roll-out of section 28 across the country. The last wave will be complete by the end of the year. There is much to be done, but this may enable some of the most vulnerable witnesses exposed to the CJS to be able to give their evidence and get on with their lives. I am very grateful to HHJ Lodder QC and HHJ Cahill QC for joining us as our guests at an SEC Q&A on "s28 practicalities" in September. This was one of a number of such events where Resident Judges have made themselves available to discuss everything from remote working, through to Covid Operating Hours. The response has been universally grateful, and I would like to thank HHJ Norton, HHJ Zeidman QC, HHJ Dean, HHJ Edmunds QC, HHJ Kinch QC, HHJ Karu, and HHJ Laing QC for their contributions and willingness to answer almost any question. I very much hope that such events will continue into 2021.

Of course what matters to the public now is what next for jury trials and how can the backlog be reduced. Perhaps the most controversial current debate is over Covid Operating Hours. Pilots on varying models have been tried around the country and we await data, evidence, previous reports and evaluation, and of course the MoJ proposals as to what may come next. Opinions at the Bar are divided: many are happy to be back at work and earning money again, others fear the discriminatory nature of the proposal. Preliminary indications are that the split shift scheme diverts resources, is expensive to run and that court staff are not keen to work the later shift. But nonetheless I would be surprised if the MoJ does not at least try to roll it out in a limited way in some courts and for some categories of smaller cases that might not otherwise be seen as a listing priority.

Back in the summer I started asking for backer trials to be listed in every open court room every day of the week, maybe with parties present, but witnesses not to attend, remaining on standby. We all know that many trials would crack if listing was more ambitious and the threat of a real jury concentrated minds on both sides. The blunt truth is that many smaller cases will only ever resolve after the defendant has seen whether the witnesses have shown up or not. Even the finest judicial triage in the world does not solve everything.

A new Legal Year and Lockdown 2

This year ceremonial robes were not on show in Parliament Square, shiny shoes remained in cupboards and full-bottomed wigs went unborrowed. The reimagined day ended with a socially distanced service at Temple Church. The congregation was not allowed to sing, but a small choir was permitted and the music was truly glorious. It was never going to be as good as having a packed church and everyone participating, but it was much better than nothing. The Lord Chancellor delivered the address in which he pointedly remarked on the importance of lawyers doing their jobs, in welcome contrast to the reported remarks of the Prime Minister and Home Secretary. Amongst the readers were the President of the American Bar Association, the Chairman of the Hong Kong Bar Association, the President of the Council of Bars and Law Societies of Europe and the President of the Pan African Bar Union, beamed in from the four corners of the world. It is not just the courts which have undergone a digital revolution in 2020! It was a reminder that our legal system has a worldwide role, and we are going to have to fight to maintain that. As a nation we have spent a lot of time over the last three years arguing about what we do not like, but rather less deciding what we might want in the future and how we see the UK's role in the world.

Perspex and the like everywhere have enabled the Criminal Justice System to function during this second national lockdown.

Jurors and witnesses appear willing to come to court. There will be problems with occasional outbreaks of Covid and the interruption to longer trials that will inevitably arise until at

least testing has improved and any vaccines begin to be rolled out in 2021. Until then every single one of us needs to follow the PHE guidance and hope that infections at court are kept to the bare minimum.

Valedictories

This year has been cruel in many ways. One of them has been the restriction on our ability to say goodbye to Judges who have served the public so well. I very much hope that we can make some kind of amends next spring / summer and hold a Circuit dinner at which many can attend as our guests. Please also keep in your thoughts those dear friends who have suffered ill health and worse this year.

A few words of thanks

I hope your Heads of Chambers have found it useful to meet regularly over Zoom. I have certainly found their input and support to be invaluable through the more uncertain and daunting moments of the year. I am enormously grateful to many of them for their thoughtful contributions and ideas. You are lucky that so many good men and women perform what can be a thankless role.

The SEC Wellbeing programme has continued, thanks to the hard work of Valerie Charbit and Nicola Shannon, with a number of excellent sessions. Many of you volunteer and help others – both Kalisher and Advocate have featured in SEC Updates this year and both organisations would be grateful for your support.

The 2020 December Circuiteer is a bumper edition to make up for its absence during the earlier stages of the pandemic. I am very grateful to all who have contributed, but particularly to the Editor, Karim Khalil QC, who has nobly chased up and edited articles since 2015, and to Leon Kazakos QC who assumes the mantle from next year. Please do let him know if you would like him to include your writing in his inaugural issue.

Thanks to all those Circuit members, associations and organisations who emailed me with suggestions, experiences and problems. I would also like to thank the SEC Executive Committee, especially the Recorder, Donal Lawler, and the Treasurer, Paul Cavin QC, who have both been a source of sage advice on many occasions through the year. Thank you too to the Committee members whose terms are coming to an end: Noel Casey, Anthony Eskander and Adam Morgan.

All the leaders of the SBAs deserve our thanks. They have worked tirelessly for you all seeking to minimise the harm done by this pandemic. It is always invidious to pick out anyone, but

LEADER'S REPORT

can I please pay particular tribute to Amanda Pinto QC and her staff at the Bar Council. A wise leader told me many years ago that one should always be wary of criticising – our job is one that is of course so easy to criticise and so hard to do. No one could have worked harder for you than Amanda. She has had an impossible brief. Throughout the turmoil of the year she has handled it with great elan and as much success as anyone could have had. She deserves our thanks.

Aaron and Harriet, what can I say? You have kept me organised and (relatively) sane. No organisation could wish for two more patient and dedicated and hardworking people.

Finally, I must thank my fellow Circuit Leaders. I was quite fond of them before March, but since then they have been exceptional. From that long night of 23rd March and the almost constant meetings that followed through the spring and summer, Lisa, Kate, Richard, Mike and David have been fantastic sources of advice and support as we have compared notes and ideas on almost everything.

Future-ology

What does next year have in store?
Nothing so exciting I hope. Chambers will have to continue to reinvent themselves and take a long hard look at their cost base, in particular perhaps how much space they actually want or need.

The Bar's culture is under threat like never before. The more we do remotely, the less opportunity we have to learn from each other. The less we see of each other at court or in chambers, the less we can benefit from each other's views and advice. Old-timers may be able to muddle along, but where does this leave our ability to train and mentor our pupils and junior barristers? How do we make sure we maintain our standards? It is one thing to be able to maintain existing relationships through video-platforms, quite another to build new ones. I venture to suggest that the Circuit and the Bar Messes have a valuable role to play.

Several jurisdictions suffer from a lack of Judges. Surely it must be possible for more and better use of part-timers? As unemployment rises, financial difficulties develop, people cannot pay rent and families come under increasing pressure, the skills of the Bar will be in ever-increasing demand. In crime the police used lockdown to try to eat into the scandalous backlog of "RUI" investigations and the CPS has put an enormous effort into catching up. There is likely to be as much work as anyone can cope with in 2021 and for the next few years. Our problems will flow from timing and how we can juggle it all.

It is also now extremely clear that the consequence of the pandemic will be most damaging for the most disadvantaged. The Bar has made great progress in improving diversity across the profession. But the pandemic threatens to reverse this, with hugely damaging long-term consequences. How we respond as a Circuit to these issues, seeking to build on and complement the work of others, will be critically important in the years ahead.

It has been my privilege to lead this great Circuit for the last two years, and I pass on my best wishes to the new Leader, Christine Agnew QC. I can confidently say you will be in safe hands. I wish you all much needed respite and relaxation over the holiday season.

Mark Fenhalls QC

**23ES, 1 Gray's Inn Square, London
Leader of the SEC**

A POSTSCRIPT

On 26th November, the MoJ announced the money it had secured in the Autumn spending review for the next 12 months. It is always hard to discern what is real in the early days of such claims and wise to remain sceptical until money starts to flow. But it does seem that we may have turned a corner on spending. There are promises about capital spending, continued commitment to more HMCTS staff and modernisation. This will all be most welcome if it is delivered. After a decade of neglect the justice system did not need Covid to reveal the desperate state it had reached.

As the end of lockdown 2 approaches, it is notable (and a huge relief) that this time around the courts have largely kept going. HMCTS reports no anomalies in the overall numbers of Covid cases reported. There have of course been problems, but no system was ever going to be bio-secure with so many fallible humans involved.

Whatever tier you emerge into, whether you buy your Christmas tree early or late, I hope you are able to have a proper break over the holiday – even if you are celebrating this year differently, perhaps with a long walk in the park and a barbeque outside. Above all, I hope you all find envelopes in your "stockings" with appointments for the first injection of an authorised vaccine.

VALEDICTORY



His Honour Judge Stuart Bridge

His Honour Judge Stuart Bridge

12 AUGUST 1958 – 12 SEPTEMBER 2020

On 7 October 2020 friends and colleagues of HHJ Stuart Bridge gathered in great numbers to pay tribute to a much loved and sadly missed Judge. Stuart had died very suddenly when out running on Saturday 12 September.

The court room at Cambridge Crown Court was as full as it could be with his colleagues, retired Judges, clerks, ushers, dock officers, members of the Bar and solicitors. Peterborough Crown Court was equally full as was Luton Crown Court. Online were Fellows of Queen's College, members of the Law Faculty at the University, members of the Law Commission, Upper Lands Tribunal Judges, Lord David Lloyd Jones, Lord (Charlie) Falconer (former Lord Chancellor), Sir Oliver Heald QC MP (former Solicitor General) ... many judges and members of the profession from whichever court they were attending, as well as many others on video links from home. All those present were equally shocked that someone as full of life and energy as Stuart was no longer going to be part of our communities.

HHJ David Farrell QC as Resident Judge, presided over the valedictory and summarised Stuart's career – academic land lawyer, Life Fellow of Queen's, Bencher of Middle Temple, author and editor, Law Commissioner and eventually Crown Court Judge in Luton and Cambridge/Peterborough Crown Courts – and who was persuaded to sit in the Upper Lands Tribunal on occasions. Mrs Justice Whipple spoke on behalf of the senior judiciary and commented in particular on the enormous contribution Stuart Bridge had made to the justice system not only due to his work at the Law Commission but also as a well-respected judge of the Crown Court.

HH Judge Jo Cooper, master of ceremonies for the valedictory, spoke of Stuart as a close friend and colleague at Cambridge, a man of wisdom, humanity and humour, and who was always willing to cheer up other Judges who were having a bad day. HHJ Lindsay Davies, DFJ of Cambridgeshire, had known Stuart since he came back to Cambridge about 30 years ago and spoke about the futile attempts she had made to persuade him to give up a life of crime and turn to family law – after all, his Law Commission work included the important paper on cohabitants' property rights. Tribunal Judge Liz Cooke read the opening paragraph of a judgment written by Stuart in a case involving a lease of a property in Berkeley Square – in Denning style he had begun by considering the ornithological evidence relating to nightingales appearing at this location and the links to Clive of India, before embarking on his judgment.

Karim Khalil QC had known Stuart through their links at Queen's, when Karim was an undergraduate and Stuart was his supervisor – presumably Stuart taught Karim everything he knows about property law. Then it was the turn of the practitioners. Michael Proctor and Nenad Spasojevic left us in no doubt that Stuart was a much-loved Judge. "Never grumpy, always polite ... with a gentle sense of humour. A delight to appear before. A joy to know that your case was in his list. However hopeless your case, your client knew he had a fair hearing, and you left the court feeling you had done as good a job as possible. A model for other judges to follow..."

Everyone at the valedictory had stories to tell about Stuart – the importance of his family and the menagerie, his unlikely knowledge of pop music and lack of knowledge of Cambridge night clubs, his collegiate approach and love of chatter over lunch. Everyone mentioned his beloved Leeds United. He was a very clever man – so clever that he made land law easy to understand. He continued to edit Megarry & Wade and Snell on Equity even while sitting in the Crown Court. He wore his intelligence very lightly. He had a charm, sense of humour and humanity that endeared him to us all. One day – when Covid rules permit – Queen's College will hold a memorial service for Stuart. Meanwhile his friends and colleagues ensured that the legal profession had the opportunity to ensure that Stuart will be remembered by them all.

The most moving part of the valedictory was when his widow, Professor Beverley Glover (known to all of us as "Bev"), spoke. She said she felt she knew us all from Stuart's stories. She recognised the stories we had told and the characteristics that had been described. Universally our hearts went out to Bev, Sam and Katie, to David and Rosie. We have lost a much-loved colleague and Judge. They have lost a beloved husband and father.

BAR MESS REPORTS



CAMBRIDGE & PETERBOROUGH BAR MESS

This has been a strange year like no other and it's not over yet. At the time of writing we are in lockdown #2. The beginning of 2020 started ordinarily enough with our five judges HHJs Farrell QC, Cooper and Bridge in Cambridge and Enright and Lowe in Peterborough dealing with business as usual (without the assistance of Recorders in the main). Then two things happened: Charlie Kellett announced his much deserved retirement and HMG announced everyone must stay at home. Did Charlie know something we didn't or was his timing impeccable as always?

For those of us who frequent Cambridge and Peterborough Crown Courts, that meant no more haring up and down the A14 frustrated by the omnipresent traffic delays or waiting for a connecting train in Ely, resigned to hanging out in some random outpost drinking endless cups of coffee to pass the time.

You've heard of *Love in the Time of Cholera*, well, this is *Law in the Time of Coronavirus*. Everything has changed and we have had to adapt to new ways of working. Social distancing and mask wearing have become the norm. Jury bundles, even for a two-day trial, have to be prepared and printed weeks in advance to sit in lonely purgatory for at least three days in a Crown Court cupboard, before being deemed fit to hand out; provided of course the usher is wearing plastic disposable gloves. You will be comforted to know that this column has been sanitised in accordance with PHE guidelines.

Undeterred by the challenge of coronavirus, our local courts soldiered on with the new measures, albeit hastily implemented, including the new experience of CVP ('common' as opposed to 'crap' video platform apparently). Whilst our children were happily Tik-Toking away we were fighting for a quiet space and appropriate bandwidth to continue our legal careers. Only having to dress from the waist up for court hearings meant that numerous gentlemen of the local bar admitted privately to wearing shorts, which no doubt accounted for their cameras mysteriously turning off momentarily if they had to stand up.

Being on camera at home meant we all needed not one, but two computers, and

had to re-arrange our bookshelves and remove anything we didn't want to confess to reading (Jeffrey Archer, Harry Potter, Blackstone's Criminal Practice...) being seen in the background. Remembering to turn off the noisy washing machine in full spin before we linked in became something to worry about; after which we were told interminably, in a Transatlantic accent, that the conference host knew we were waiting. We have become used to being told by judges to mute (our microphones) to avoid overtalking and feedback. Maybe those same judges think the mute option is something worth preserving after this pandemic is over. Virtual 'travel' has become the norm; although Tim Brown confesses, that he has become quite used to having an entire railway carriage to himself when he does have to attend. So for every cloud, there is a silver lining.

We are grateful for the collective common sense of our judges in Cambridge and Peterborough in dealing with the crisis; rather than having to suffer the more draconian measures implemented further east such as the dreaded one-way system up and down three flights of stairs, wide enough to ride a horse in a circular route, sufficient to qualify for a Duke of Edinburgh's award. Locally, we have been able to appear via CVP when appropriate and been spared what must be our collective misunderstanding of the common word (printed on the court list) 'encouraged' that has come to mean 'ordered' in those eastern parts.

Missing the camaraderie of the robing room we were fortunate to have Zoom at our disposal. Caroline Allison organised an online quiz, attended by numerous members of the Bar, local solicitors, court staff and HHJ Cooper and (the late) HHJ Bridge and his family. Tim Brown and Michael Procter devised questions that only they could answer. The winner was, we think, Sally Hobson but only by a short distance. Despite HHJ Cooper's valiant efforts he came last but he vowed to do better next time! Donations went to charity and a good time was had by all.

Certain members of the Bar decided to use their new-found leisure time to explore new avenues of interest. Charles 'Mr Fitness' Falk channelled his inner Joe Wicks and distributed his own Vimeo exercise video.

Stephen 'Steve-not-quite-Wright-in-the-Afternoon' Mather took to setting up an online radio station, whilst James 'Twitch' Earle was reportedly seen recording the dawn chorus at 4:15 most mornings in the spring. Mark 'Mr Green' Shelley boosted his eco-credentials by adding an electric bike to complement his electric car. The cycling phenomenon has no doubt been helped by HHJs Lowe and Enright leading by example. Maybe we should follow and petition for secure bike sheds in the judges' car park so that we can keep our bikes secure from some of our light-fingered clients and also avoid the prohibitive cost of parking in Cambridge, where the daily rate is roughly equivalent to the historic fee we were paid for a bail application. Many of us took to running, cycling or playing darts to keep ourselves fit, consoling ourselves that despite not earning much we were saving much more by not frequenting the usual sandwich and coffee shops to get through the day.

Life in the local courts has assumed, to coin a phrase, a 'new normal' with the ubiquitous plexi-glass appearing everywhere. Jury trials are being conducted, and we've heard on the grapevine that additional space will be bought in locally in Cambridge to enable further trials to be heard. That should compensate for losing the Huntingdon Court Centre to St Albans Crown Court? Local practitioners can try to order their working lives now (apart from the fact that the list office never seems to appreciate that Peterborough and Cambridge are geographically 40 miles apart). What next? Well, s.28 is now in force and, despite the best intentions of the legislation, counsel (and their clerks) will no doubt encounter numerous headaches in organising their diaries to accommodate all the required hearings without disrupting the rest of their practice.

To end on a sad note we can only add to the many tributes paid to HHJ Stuart Bridge whose tragic and premature death has left us all with a deep sense of shock and sadness. He will be missed.

Grant Chester

CENTRAL CRIMINAL COURT BAR MESS

HHJ Mark Lucraft QC was appointed the Recorder of London on 7 April 2020, and over the summer HHJ Poulet QC retired after eight years of tireless service on the bench.

The Central Criminal Court continues its recovery from lockdown 1 thanks to the sterling efforts of court staff and users alike. Hand sanitiser and masks are

available at court, and a one-way system allowing for social distancing has been introduced. Court procedures are subject to a bi-weekly assessment. Advocates and staff have become used to sitting in unorthodox ways to ensure that trials can continue to be heard, and from 24 October 2020, over a period of three weeks, perspex screens have been added

to eight court rooms to enable jurors to sit safely in court. As of November 2020 the Central Criminal Court was running eight effective trial courts.

Joel Smith, Furnival Chambers, Central Criminal Court Bar Mess Junior

CENTRAL LONDON BAR MESS

The three courts making up the Central London Bar Mess are doing their best to keep to, and are even exceeding, targets in terms of reopening for trials:

Woolwich Crown Court was the first to reopen for trials. HHJ Kinch QC kindly hosted a pre-opening tour of the court building to introduce the new socially-distanced facilities for the bar and jurors. The robing and reading rooms are marked out to ensure social distancing is maintained provided none of the furniture is moved.

Initially, trials recommenced in only one of Woolwich's 12 court rooms. A total of 7 trials completed in the course of July and the first week of August. A second trial court opened in September 2020. The target for 31 October 2020 was to have plexiglass installed in courts and in the jury lounge and to open a third court room for trials. In the event, ahead of its target, there were 5 courts ready to take trials by 26 October 2020. A further 3 trial court rooms are likely to be made available in the

very near future. The most up-to-date risk assessment permits 4 – 5 defendants in the dock in courts 2 & 3.

Woolwich has adopted a default position of remote attendance for most hearings other than trials, sentencing and other significant hearings when a defendant attends. The Judges recognise the advantages of remote hearings and are keen to retain this flexibility into the future.

Southwark Crown Court re-opened on 23 June this year. The first trial in a socially-distanced court room was fixed to commence on 6th July 2020. Southwark now has 8 court rooms available for trials on site, with a further 3 court rooms hosting trials in the Nightingale extension court at Prospero House. The anti-virus measures in place seem to be working well; the canteen is closed but a brave sole caterer in the lobby sells sandwiches and drinks.

Whilst most of the familiar pre-lockdown judges have returned to their usual court

rooms, at least two of Southwark's most popular judges have moved on. HHJ Loraine-Smith retired on 23 May 2020, and HHJ Gledhill QC moved to sit at Oxford Crown Court.

Trials recommenced at **Inner London Crown Court** on.... 13 July 2020. Dipping its toe in the water with only one room available at first, there are now 5 court rooms in which jury trials can take place. Despite its age, Inner London functions well with all of its social distancing measures; parts of the building may be tired, but it is clean and the older court rooms in the main building are well ventilated. Security staff are always friendly, and thanks to the continued efforts of The Recorder of Southwark HHJ Karu's to revive catering facilities on site at Inner London Crown Court, there is now a stand in the lobby similar to that in Southwark, selling drinks and sandwiches to the Bar and public.

Allison Hunter QC, 23 Essex Street, Central London Bar Mess Chair

EAST ANGLIAN BAR MESS

Both Ipswich and Norwich Crown Courts have re-opened for trials and other work since the initial lockdown, with varying degrees of success and co-operation.

Norwich has been a beacon of enlightenment in respect of remote hearings, Ipswich far less so. There have been two reported cases of people working at Norwich Crown Court testing positive and a decision was made not to inform the local Bar, which understandably caused outrage. The issue has now been resolved, I am pleased to report.

Otherwise, there is little to note. HHJ Stephen Holt, the Resident Judge at Norwich, is due to retire next April and we all hope that circumstances are such that

he can be given a proper send-off. HHJ Emma Peters is a welcome recent addition to the Ipswich bench. We are fortunate in that virus rates in East Anglia are relatively low and life continues largely unchanged, although the temporary closure of Cool Beans, the very pleasant coffee shop next to Ipswich Crown Court, is a sad loss and we hope to see it re-open after the current lockdown.

Simon Spence QC, Red Lion Chambers, East Anglian Bar Mess Chair

ESSEX BAR MESS

It's been a while since we last reported from Essex, during which time there have been significant comings and goings, including baton handovers by each of our Resident Judges. Despite difficult times, Basildon and Chelmsford continue to justify their billing as the happiest and friendliest venues, where consideration is shown to advocates that is not always experienced elsewhere.

This time last year we bade an emotional farewell to HHJ John Lodge who, after eleven years at Basildon, moved on to serve at 'Lodderland' in SW London. In his valedictory address, HHJ Ian Graham recounted to a packed gathering how he'd taken John, a renowned West Ham fan, to the opera: he'd warned his colleague that the Crush Bar served neither pies nor pints and that the interval was not to be referred to as 'half-time'.

John's departure coincided with what, sadly, was destined to be the last Bar Mess Dinner for some time. Our Leader, Christine Agnew QC, and Junior, Nick Bonehill, took us back to the excellent and convenient Mercer Restaurant in Threadneedle Street for another delightful evening.

The reins of Basildon Residency have been taken up by Essex stalwart HHJ Samantha Leigh who has continued her predecessor's policy of open communication and collegiate interaction with court-users. It may make those of us who were Sam's contemporaries at the Bar feel old to see her running the show and presiding over multi-handed murder

trials, but she's taken the elevation fully in her stride. A particular delight is seeing her no-nonsense reaction in court-user meetings to any agency representatives who try to hide behind acronyms and daft 'policies'.

The Basildon judicial cohort has been supplemented by the welcome arrival, as long ago as last spring, of Judges Samantha Cohen and Andrew Hurst. Their installation coincided with the retirement of HHJ David Owen-Jones, a highly popular figure who seemed to enjoy his eight years at Basildon despite, perhaps, it not being a location entirely consistent with his cultured tastes. Sentencing the robber of a petrol station, he was perturbed to hear of the supplementary theft of a *Ginsters Pork Slice* which the defendant had summarily consumed at the scene. No separate penalty was imposed in respect of that: "Your Honour may feel it was a crime that punished itself?" "Well quite ... quite!"

In July this year, HHJ Chris Morgan calmly took over from HHJ Charles Gratwicke as Resident Judge at Chelmsford. His revered predecessor has since been deployed touring around the country as a specialist murder Judge, including a welcome return to our county where he'd spent seventeen happy years. It's rumoured that Charlie hastily arranged his return after he realised that there were still a few members of the Bar Mess who'd failed to purchase his novel, *Sawson's Quest*. Before umpiring last year's cricket match, Charlie sold a crate of copies in

the pavilion to batsmen eager to insure against receiving a contentious lbw decision. Actually, it's a thumping good read, peppered (as might be expected) with copious references to thirst-slaking ale. The author has mischievously assigned the surnames of judicial colleagues to characters throughout his story, for example:

"The landlord was Bully Turner. He was, at first meeting, a charming and quietly spoken man, but appearances can be deceptive ... cross him and there was every chance that you would be set upon in a dark alleyway."

The Chelmsford bench was reinforced in April by the appointment of HHJ Tim Walker who was a defence solicitor for 25 years. Of course, there is a tradition of Essex Judges being drawn from that branch of the profession, triggering treasured memories of former Resident Judges Ben Pearson and Frank Lockhart. It could be imagined that such a background might make a Judge particularly defence-minded; the contrary view is that, after years of midnight police station visits to whinging clients, the Bench affords an opportunity for pay-back. However, the initial impression, with respect, is that this Judge will steer straight down the line.

Finally, we salute the appointments as Queens Counsel of Jamas Hodiola (not seen so often nowadays, but formerly of this parish) and Essex regular Chris Paxton. Very well done, chaps.

Southend Pierre

HERTS & BEDS BAR MESS

As we struggle through the second lockdown the courts in our area, Luton and St Albans, have worked hard to address the huge backlog of cases in the system.

Although we are still a long way from getting back to "normal", both courts now have the capacity to run up to 4 jury trials each. St Albans is currently running two out of St Albans (soon to be three) and two out of Huntingdon. Luton can now run four. It is of course very unfortunate that this capacity has only increased to this level recently and practitioners who rely on jury trials to survive have found the long delay very challenging to say the least. The Mess appreciates that the courts have to negotiate with many agencies and other court users to get to

this level of service and for that we are grateful. We hope that capacity will be increased further as listing any trial in 2022 is simply unfair to witnesses, victims and defendants.

The Judges sitting at St Albans are HHJ Kay QC (Resident), HHJ Foster (former Resident of Luton), HHJ Warner, HHJ Lithman, HHJ Simon, HHJ Grey and HHJ Wigin.

The Judges sitting at Luton are HHJ Bishop (Resident), HHJ Tayton QC, HHJ Herbert, HHJ Evans and HHJ Lucie. Recently HHJ Bright QC retired (former Resident of St Albans) but the Covid19 restrictions meant this event could not be marked in a way deserving of such a servant of the Bar, our Mess and the Judiciary. He will be much missed. Sadly

we saw the passing of HHJ Bridge, who used to sit at Luton, but had moved to Cambridge Crown Court a couple of years ago. His loss was a shock to all who knew him and I have included a transcript of what HHJ Foster had to say at his passing.

Finally, I had the pleasure of saying a few words on behalf of the Bar when HHJ Mensah left Luton at the end of October to move to Wood Green Crown Court. HHJ Mensah sat at Luton for 15 years and was hugely popular with the Bar, court staff and her fellow Judges. She will be sorely missed.

Kevin Molloy, Church Court Chambers, Herts & Beds Bar Mess Chair

HERTS & BEDS BAR MESS remember His Honour Judge Stuart Bridge

When I heard the terrible news about Stuart my first reaction after the shock was of course to think of Beverley and his children, but that was followed by thoughts of what a waste of such talent.

A man who had been a practising Barrister, a Bencher of Middle Temple, a distinguished academic, a Law Commissioner and a judge – but overarching all that was Stuart the man who put his family first.

Others can speak better than I about his life before becoming a judge but I am here to pay tribute to his judicial career. But I cannot resist mentioning the tributes which have poured in including those from Leeds University, The Faculty of Law of Cambridge University, Queen's College, Cambridge and the Law Commission

Professor Anna Lawson of the School of Law at Leeds paid this tribute: "as well as being intellectually brilliant, he was also an extremely kind, supportive and gifted lecturer". Professor Michael Cardwell said that "his contribution to legal scholarship and law reform has been immense". The Faculty of Law at Cambridge said that he is remembered with affection by generations of students and that he was "a passionate advocate of promoting access to Cambridge" as well as being "a dedicated public servant of the law" and "a distinguished scholar of property law".

At the Law Commission he led the pioneering work on the property rights of co-habiting couples – the project entitled "Cohabitation: the Financial Consequences of Relationship Breakdown".

He was also a prolific legal author on the law of property and trusts, including being editor of *Theobald on Wills* as well as being joint author of *Megarry and Wade's Law of Real Property* and *Snell's Equity* – all the leading text books in their field.

Whilst still at the Law Commission he became a Recorder (a part-time judge) in 2004 before becoming a full-time Circuit Judge in 2012. He was deployed to Luton Crown Court where I had the privilege of being his Resident Judge. My Presiding High Court Judge – Jeremy Cooke – phoned me one day to say that he had a real star for me. Someone whom it had been difficult to place because – I later learnt – he was not prepared to sit anywhere which was not in easy travelling distance from his home – not out of laziness but because of the priority he gave to being able to support Beverley in her career and look after his family. His impish sense of humour is perhaps encapsulated in his entry in "Who's Who" which refers to his recreations as including "family and other animals"!

I already knew Stuart as he had often sat at Luton as a Recorder. I recall that we used to joke in those days as to who had the oldest

Volvo! I think at that time he won by some margin. It came as no surprise to me that he applied a few years later to transfer to Cambridge Crown Court.

And a real star he was. As a former Lord Chief Justice, Igor Judge used to repeatedly remind us that Circuit Judges have more power than the Prime Minister – we can send people to prison whereas he cannot. But with that power goes immense responsibility. And Stuart took on that responsibility with great acumen. Being a criminal judge in the Crown Court does not require the intellectual talent which Stuart had – if it did I would not have a job. But it does require a sense of justice and fair play with good judgment and what is sometimes called "judge craft". Stuart possessed those skills in abundance.

Tributes have flooded in from practitioners, colleagues and court staff. Here are just a couple:

"I am beyond sad. He was the most lovely man and a fantastic judge. Such a huge loss."

"If ever the accolade of 'the perfect judge' could be ascribed to a human being with that title, His Honour Judge Stuart Bridge was it. I doubt I will ever see his like again in my lifetime."

There is absolutely no doubt that he could have achieved higher judicial office – to the High Court Bench and beyond. But he did not want it. I well remember him coming into my room one morning after he had been to a reception at the Supreme Court the evening before. He told me that he had been cornered by Baroness Hale (then Deputy President of the Supreme Court and herself a former Law Commissioner) trying to persuade him to apply to become a High Court Judge. But he said he could think of nothing worse than spending half the year away from home on circuit and the rest of the time working long hours commuting to London. But let's be clear this was no sacrifice by Stuart – a sacrifice is giving up something you want. He genuinely did not want it.

He was the antithesis of the arrogant academic or the pompous judge. But most importantly he was a fine human being and a loving husband and father.

But for the current restrictions this funeral would have been standing room only. And it is so sad that we cannot put our arms around Beverley and his children – but we do so in spirit.

I finish where I began – although I have faith that Stuart is in a better place I am angry that he has been taken from us before his time.

This is a transcript of the words of HHJ Foster on the passing of HHJ Stuart Bridge.

KENT BAR MESS

Much has happened since the last edition of the Circuiteer. Back in the mists of time, when we didn't have to socially distance or wear masks, in 2019, a wonderful evening was had by all who attended the Kent Bar Mess Summer Drinks Party hosted by the new Chairman of the Mess, Cairns Nelson QC.

We also enjoyed the highly successful annual dinner on 22 November 2019 at the medieval Crypt in Ely Place, adjoining Bleeding Heart Yard. There were

around one hundred attendees from both the Bar and Bench, including the High Sheriff of Kent, three High Court Judges and the Kent Judges. Ian Foinette (Mess Senior), HHJ Adele Williams, and Don Ramble (Mess Junior) spoke entertainingly after dinner. Chatham House rules, common decency, and the need to protect the innocent prevent anything said in those speeches from making its way into print, save to say congratulations to HHJ Philip Statman for winning a gavel in the judge's competition.

Unfortunately, this year's Bar Mess dinner at Leeds Castle has had to be put back to 16 April 2021. We also plan to hold an outdoor summer party next year to make up for lost time.

In other news, HHJ Charles Macdonald QC retired from Maidstone Crown Court last year. His valedictory was held on 31 July 2019. The Mess wishes him well for the future in his well-deserved retirement.

We were delighted that in January 2019, HHJ Simon James was appointed to the

position of Resident Judge at Canterbury Crown Court, stepping into the shoes of HHJ Heather Norton who has become the Resident at Reading. We were very sad to see HHJ Norton go, but wish her well in her new position.

We held a well-attended welcome drinks event for HHJ Mark Weekes in the Bar Mess in April 2019, after his move to Canterbury Crown Court.

2019 also saw us welcome two new judges to the circuit bench in Maidstone, HHJ Tony Baumgartner and HHJ Stephen Thomas, and this year we welcomed a third, HHJ Catherine Moore.

We wish HHJ Martin Huseyin a fond farewell after two years at Maidstone. Maidstone Crown Court's loss is Lewes Crown Court's gain but HHJ Huseyin is welcome back any time!

Marking the end of an era, HHJ Adele Williams' valedictory was held on 3 July this year. The live-streamed event was joined by nearly 200 people! HHJ Williams, a true friend of the Bar, is sorely missed. The next Bar Mess dinner will also mark and celebrate HHJ Williams' career at the Bar and on the Bench, so the speeches should be pretty good!

We were greatly saddened last year by Dominic Webber's untimely death. Dominic was very popular, a real character and a stalwart of the Kent Bar. It seemed that Dominic was a fixture in the Canterbury robing room, with his valued smile, always sharing a joke about the case he was in. Dominic was a great defence counsel; his distinctive defence

statements alone marking him out as someone who went the extra mile for his clients. Of course, Dominic also had a great life outside the Bar and shared a passion for horses. Our sympathies remain with Dominic's family. He is truly missed.

We also mourn the passing of HHJ Michael O'Sullivan. Respects were paid to the great man on 14 October 2020 at Canterbury Crown Court. Mark Heywood QC and Ian Foinette spoke movingly at the tribute, which was live-streamed to old friends at the Bar and on the Bench. Michael's career, his contribution, humanity, laughter and love of rugby were celebrated. Particularly poignant, was the moment when Ian Foinette read out a poem by Michael's son, Ciaran.

Save Me A Seat At The Bar

*A new journey begins, a
new chapter turned*

*Your electricity moved,
recycled, not burned*

A welcome noise drifts from afar

Save me a seat Dad, a seat at the bar

Irish music stitched with laughter

Lively, loved, and ever after

*With friends lost and found,
all in your prime*

A wave to us all from time to time

Save me a seat Dad, a seat at the bar

All rise, all smile, all raise a jar

And when I push upon that door

Through the crowd, we'll meet once more

We are grateful to both Resident Judges at Maidstone and Canterbury for navigating through the current public health crisis. We are particularly grateful to the court staff, for all the work they have put in to help keep things on the rails as much as possible.

This is a difficult time. The Bar has pulled together to make things work, despite the real financial hardship, to ensure that the system carries on. Of course, we have had little support in return for our efforts. If there is anything we can do to help, please get in touch.

As always, applications to join the Mess are encouraged from all members of the Bar (both civil and criminal practitioners), particularly those who practise in Kent and should be directed to the Junior, Don Ramble at 5 St. Andrew's Hill, London, EC4V 5BZ or donramble@5sah.co.uk.

Please also visit www.kentbarmess.co.uk for news and details of upcoming events.

Don Ramble, 5 St. Andrew's Hill, Kent
Bar Mess Junior

NORTH LONDON BAR MESS

Wood Green Crown Court

The building is open. The court has been fitted with screens and the court is able to accommodate jury trials in four courtrooms. Currently there are three trials underway.

HHJ Lucas QC has reported that he is pushing for a Nightingale court and the court has a good chance of obtaining a further three jury trial courtrooms at Hendon MC. Nevertheless, the current backlog of trials is increasing by an order of about 30 trials per week.

Losses:

The court lost HHJ Greg Perrins to Southwark earlier in the year and HHJ Ray Singh has left to return to the North of England.

Gains:

HHJ Joanna Greenberg QC was due to retire this year but her retirement age has been extended and she is staying on. HHJ Barbara Mensah has now joined from Luton.

Mr Mahesh Patel (who used to be the list officer at the CCC) has now been appointed Operations Manager (Court Manager in old money). Mrs Lisa Hammond has also been promoted and is no longer list officer, having been replaced by Ms Bobbie Grewal.

Snaresbrook Crown Court

Snaresbrook is now one of the courts operating the split hours pilot scheme. I have not heard how this is faring. Currently three courts are hearing trials.

Harrow Crown Court

Currently Harrow has 3 trial courts in operation. As with most courts there is now a team of cleaners who are working throughout the day to keep the court clean. The court is actively listing to lower footfall throughout the court.

Philip Misner, 4 Brems Buildings,
North London Bar Mess Chair

SURREY AND SOUTH LONDON BAR MESS

Generally, in common I suspect with all of the Bar Messes, it has been a frustrating and anxious year for us. We have not been able to run any social events and, as lockdown progressed, the appetite for virtual events decreased. We welcome CVP and remote hearings, and the Judiciary and court staff at Guildford, Isleworth, Kingston and Croydon Crown Courts have been fantastic in understanding and helping the Bar get back to work safely.

Just before the first lockdown we were due to have a drinks party at 23 Essex Street which sadly had to be cancelled. We hope to re-organise and hold an event as soon as we can all gather without face masks and metres between us!

Guildford Crown Court

Guildford CC moved swiftly to get jury trials back up and running and the court continues with remote hearings and jury trials.

Guildford will be running four courts using a portacabin in the judges' car park as a jury room from the 9 November 2020. Court 5 is being refurbished which is probably long overdue.

A small drama recently took place in court 1 when part of the lighting on the ceiling caught fire. All were evacuated and thankfully nobody was hurt.

Guildford has recently had two murder trials running at the same time, believed to be the first time this has happened.

His Honour Judge Moss (Peter) retired during the year after many years as a permanent judge in court 4. A virtual valedictory took place which he modestly did not encourage and many of his former pupils and friends were disappointed not to attend. We hope to have a proper send-off for Peter in due course.

In very sad news HH John Crocker died in October. He was a wonderful barrister, friend to many of us and Resident Judge at Guildford CC for many years. He will be greatly missed.

Kingston Crown Court

During the first lockdown Kingston CC was suspended but this will not happen during the second national lockdown. The plan is to continue to sit to the same level as recently – seven courts, five of which will run jury trials during the lockdown period. There may be variations to this depending on the work that can be accommodated but the maximum will be seven courts. The court will be listing non-jury cases virtually where possible to reduce footfall into the building.

Kingston's caterers will remain open during this service as a takeaway service which is welcome news.

Isleworth Crown Court

Isleworth CC continues to thrive and many members of the Mess will have been grateful to HHJ Martin Edmunds QC for his commitment to assisting the Bar as much as possible during this trying time. Those who have attended virtual talks will have benefited from his help and guidance.

There are six courts running jury trials up to a maximum of seven and six courts dealing with other work.

Sadly, the very successful Isleworth summer party obviously could not take place and was much missed.

Croydon Crown Court

I had the pleasure of attending Croydon CC with Mark Fenhalls QC and seeing the effort and commitment HHJ Robinson and her staff had put into getting jury trials back on track as soon as could be done after lockdown. Croydon CC continues to run approximately four jury trials and other list courts.

The committee of the Surrey and South London Bar Mess looks forward to resuming normal social events as quickly as possible.

Pippa McAtasney QC, Furnival Chambers, Surrey & South London Bar Mess Chair

SUSSEX BAR MESS

The Sussex Crown Courts at Lewes, Hove and Brighton were amongst those hardest hit by the enforced pause in jury trials from March onwards. Although a ten-court centre, the layout of the courtrooms proved to be particularly ill-suited to the obligatory post Covid public health requirements. Consequently, despite the best efforts and hard work of all concerned, it took longer than in some other court centres for jury trials to resume. Thankfully, by mid-September, jury trials were back up and running at Hove, followed by one of the courts in the magistrates' building in Brighton and – perhaps surprisingly, given its compact dimensions – court 4 at Lewes. Court 1 at Brighton Magistrates' Court is soon to be added as a further courtroom able to accommodate jury trials once some building work has been completed. We all hope that the Chichester court building, which to the great disappointment of all was closed in 2017, might soon be reopened; there are rumours that March 2021 may be the time when hearings resume there. All practitioners are grateful for the hard work which has gone into achieving the resumption of jury trials in the County, and for the regular updates provided by the Resident Judge at Lewes, HHJ Laing QC.

Sadly but inevitably, for the second year running, there was no Bar Mess Garden Party this year. Always a pleasant Sunday afternoon in the sunshine, we all hope it will return in 2021. Equally inevitable was the cancellation of other planned Bar Mess events, including a dinner in spring to welcome new arrivals to the local Bench and say farewell to those departing. Again, we hope such events will become possible again next year. The Mess was saddened to see the departure this year of two long-serving and ever popular Judges, David Rennie and Paul Tain. We all very much hope to raise a glass to them in the not too distant future, when such gatherings are again permitted. In the meantime, we wish them both a happy retirement.

Alan Gardner, 23 Essex Street, Sussex Bar Mess Representative

THAMES VALLEY BAR MESS

HHJ Ross has retired and, once Covid is over, we hope to have an event for him. He was very reluctant to do anything on the date.

Oxford Crown Court has three courts up and running at the moment, which is quite an achievement.

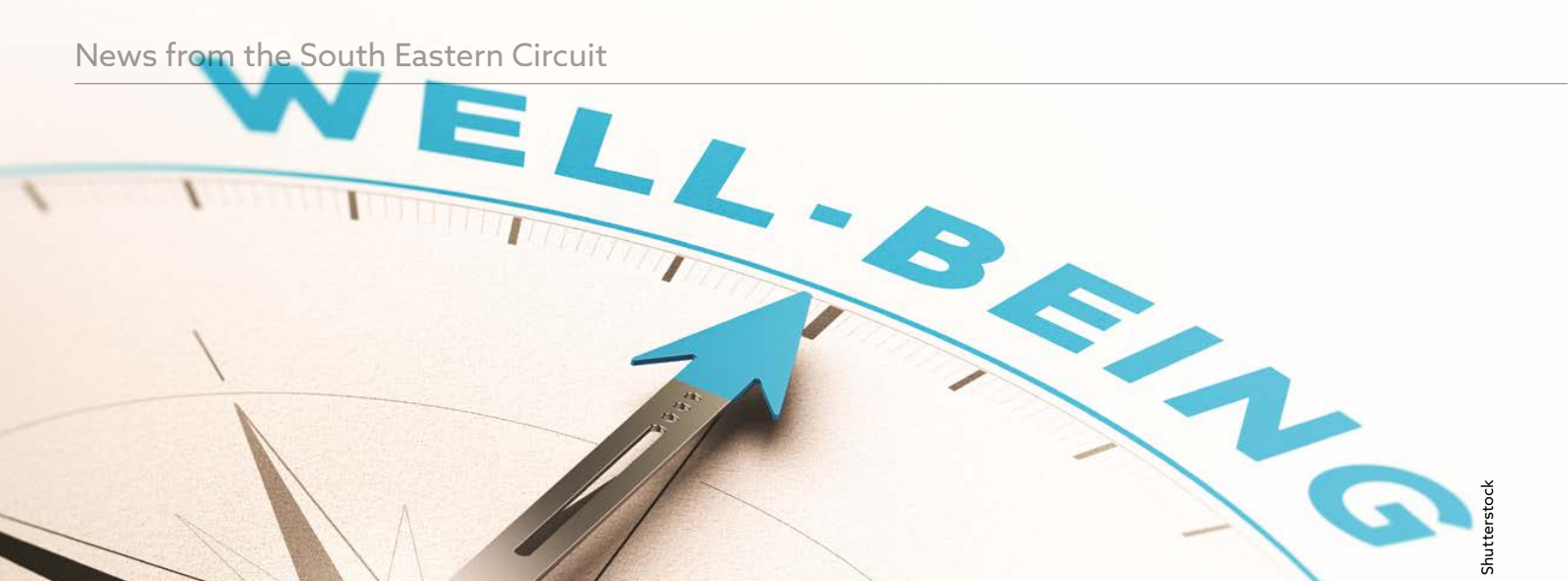
Reading Crown Court was one of the very first Crown Courts to reopen with jury trials back in May. While **Aylesbury Crown Court** took a while to reopen, the lists are now as full as ever and they are running several trials in the main building and in Amersham.

We are grateful for the energy and ingenuity of Judges and court staff alike who have worked so hard to restore capacity.

HHJ Morris is leaving Reading to take up the Resident Judge role at Winchester Crown Court in January. The Thames Valley's loss is the Western Circuit's gain.

Over the summer, we also said goodbye to Jane Brady who returned to her North Eastern Circuit roots. Jane had been the mess junior for a long time and her organisation skills will be sorely missed. We would like to thank her for all her hard work and to wish her all the very best for the future.

Adrian Amer, 36 Crime, Thames Valley Bar Mess Chair



Each week I have read newsletters from Amanda Pinto QC, Andrew Walker QC, James Mulholland QC, Mark Fenhalls QC, Caroline Goodwin QC and Kerim Fuad QC. Each have written about the toll and effect of sustained cuts to the justice system and the criminal bar.

Dostoyevsky said *"A society should be judged not by how it treats its outstanding citizens but by how it treats its criminals."* Mahatma Ghandi said *"A nation's greatness is measured by how it treats its weakest members."* You may not be surprised to hear that I cannot put it better. The criminal justice system needs support and this has been the constant refrain from successive leaders to governments throughout my career.

The efforts made to keep the criminal justice system up and running during the global pandemic are thanks to the barristers, judges and court staff up and down the country. There are no claps for keyworkers working in the justice system but within the profession there should be a recognition that those who work in publicly funded work are essential to a just and civil society.

I cannot wave a magic wand to action all that which the Chairs of the Bar, Circuit Leaders and Chairs of the Criminal Bar Association have been fighting for, but I do want to acknowledge each of you reading this for all that you do to keep the justice system running both during the pandemic and before.

I first wrote this article back in November 2019 and because of the pandemic its publication was delayed but the list I wrote then is as true now as it ever was. We should all acknowledge those things that you do each and every day (on the next page).

It could be that this looks like a list of 50 ways to leave the job you love but it isn't. It is only 50 reasons why you should be applauded; there are, I know, another 50 reasons. It is why when you walk into court each day you should know that you are doing a great job that many could or would never do. It is why during this pandemic the justice system has continued to run because, despite the fact many self-employed barristers have received no government financial support whatsoever, they have continued to assist to triage cases and prepare cases for trial and work in courts which are struggling to run as 'Covid secure' courts.

Knowing that you have gratitude and acknowledgement may not be sufficient when you are feeling powerless in the face of all that you cannot change. In 2019, the biopic of Judy Garland,

Judy, tracing her struggles in the face of adversity ended with a quote from *The Wizard of Oz*: *"a heart is not judged by how much you love but by how much you are loved by others"*. For all that your struggles go unacknowledged, you do make a difference and you should be applauded.

What has the CBA and SEC wellbeing set out to do to help you deal with any negative thinking that you may understandably have following the effects of cuts and under-resourcing that you face daily?

Since the cuts at the criminal bar affect both the bar and bench we first ran a series of events which brought the judiciary and bar together and where judges gave their thoughts on wellbeing. The aim was to open up the conversation on wellbeing. We continue to run events to encourage the bar and judiciary to mix and swap 'war stories' although a move online has meant that there is less opportunity to do so now maybe when it is needed most.

We ran a series of events to introduce various professionals who offered a different way for criminal barristers to think about the difficulties they experience. Perhaps by changing the context in which we view our experiences we might also change our experience of them. The hope is that a change in the way we think energises us and helps us to find a way to facilitate real change and achieve our full potential at work and at home.

Our first lecture was from an executive coach and an employed lawyer, Chetna Batt, founder and CEO of Being Lawyers. We then invited Gillian Higgins, a mindfulness coach and author of *Mindfulness at Work and Home*, to speak to us on how a mindfulness practice can assist our overall mental health.

There is no one person who might facilitate change but our hope was that a selection of different people could inspire criminal barristers and judges to become more resilient and better able to deal with the challenges we face.

Society is no longer afraid to mention difficulties with mental health. Our job is a high stress job. We need to embrace the opportunities for us to be kinder to ourselves and others so that

1. You pick up a brief late and do the job brilliantly
2. You work tirelessly often for no fee
3. You sort things out by working in the early mornings, lunchtimes and late into the night
4. You miss family events because the trial must go on
5. You juggle illnesses of your own and those close to you because 'the show' must go on
6. You go to court buildings which have no ergonomics
7. You sit in uncomfortable chairs
8. You work in buildings that have no daylight
9. You often don't eat all day unless you brought to court some food
10. You meet a defendant in the cells whose expectations of you are impossible and to whom you break the reality
11. You meet a defendant in the cells who shouts at you and you stay calm
12. You meet a defendant in the cells whom no one cares about but you care
13. You appear in court before a difficult Judge and you are calm and professional
14. You appear in court against a difficult opponent and you manage to work with them
15. You appear in court on a difficult and complex case and no one appears to notice
16. You win the case and no one tells you that you did a good job
17. You win the case and think that it wasn't because you did a good job, even when you did
18. You lose the case and think it's all your fault, when it isn't
19. You cross examine vulnerable witnesses/defendants and you do it sensitively
20. You cross examine dangerous individuals and you do it professionally and well
21. You finish a traumatic case and find it hard to forget the trauma
22. You help the judge and jury see the wood for the trees on difficult and long cases
23. You draft skeleton arguments overnight for no extra fees
24. You speak to your instructing solicitor in the evening ignoring your personal commitments
25. You do extra work in chambers to support chambers
26. You support the independent bar by working on committees
27. You volunteer outside of work using your legal skills
28. You take on additional cases because it helps out chambers but doesn't make financial sense
29. You work weekends because that is the norm even though you get no additional pay for doing so
30. You forget to look after yourself when you should
31. You worry about your cases outside your working day
32. You forget to take care of those close to you because work takes priority
33. You don't exercise in the week because there isn't time
34. You supervise pupils and support them
35. You answer government consultations
36. You meet with government departments/ civil servants to discuss proposed changes
37. You act pro bono in cases
38. You go on holiday and take calls/ emails about cases
39. You answer emails out of hours whenever you are in court
40. You advise in writing quickly when no one else will
41. You work for fees that reduce each year
42. You build a rapport with the judiciary
43. You build a rapport with those with whom you co-defend or are against
44. You treat court staff kindly even when you are under pressure
45. You work even if you are unwell
46. You are ready to answer difficult points of law whenever they arise
47. You are prepared for the unexpected
48. Your experience is a guide to those who don't know what to do
49. You share your knowledge with others
50. You care about the case and make sure it reaches a conclusion

we can be stronger in the face of such swingeing cuts. Mental ill-health can affect any one of us. There is an assistance program which is free for members of the bar and which you can use if you want some support – 0800 1692040. We want to make sure no one suffers in silence.

We also promote the resources listed on the wellbeing at the bar website www.wellbeingatthebar.co.uk. The CBA also promotes the <https://app.talkspot.com> for anonymously reporting incidences of bullying, harassment, discrimination or any Covid safety concerns.

In addition various senior barristers have completed the Bar council's waiver training so that you can speak to them confidentially and where they are not obliged to report matters to the Bar Standards Board. Those who have undertaken waiver training are Mark Fenhalls QC, Chris Henley QC, Valerie Charbit and Nicola Shannon.

Since Covid 19, we have run some virtual events. The challenge of a global pandemic and its associated mental health consequences is not lost on us. In May 2020 we ran an online event with Judith Kark, a qualified and accredited counsellor, on 'Coping Mechanisms during this time of Isolation and Social Distancing' and in July 2020 we invited Noel Janis-Norton,

author of Calmer Easier Happier Parenting, to speak to us about parenting tips during this difficult time.

We encourage you all to use the events to support your mental health just as you use exercise to support both physical and mental health. Let us know how else we can support you; we are always willing to listen. Our next event is with Dr Bill Mitchell, a clinical psychologist and author of 'A time to breathe', about how to develop resilience during the global pandemic.

In the meantime, behind the scenes, we are clapping each and every one of you.



Valerie Charbit

Red Lion Chambers
CBA Wellbeing Director

THE KALISHER TRUST



The Kalisher Trust has had another busy year, despite the devastating consequences of Covid-19 on the profession. Our charitable aims are:

- To broaden the ethnic and social representation of the criminal bar by supporting those who, despite their potential, have faced multiple challenges as they strive to achieve their career ambitions.
- To provide training, financial support, mentoring and assistance to encourage and inspire young people from diverse backgrounds to achieve their potential through the development of advocacy skills.
- To encourage and support young people who would not otherwise be able to afford to pursue a career at the criminal bar.
- To encourage and support recently qualified barristers who meet the criteria above to help them develop sustainable and successful careers at the criminal bar.

The Trust continues its educational outreach work to secondary school students, building links with new schools and reaching out

virtually to those who could benefit from our programmes. This ambition has been boosted by the recruitment of Sue Freestone as our new Director of Education from 2020. And our focus on this work could not be more timely as research shows that those who will be most affected by the pandemic are likely to be the most disadvantaged young people (see for example this Sutton Trust research paper [<https://www.suttontrust.com/our-research/social-mobility-and-covid-19/>]).

2020 started with a very successful event at the London School of Economics where a team from the Kalisher Trust attended a networking event for students from a number of schools within London: we talked to the students about life at the Bar, with practical guidance and advice.

Coronavirus has changed the way we have approached the year: we have moved to a virtual approach for our workshops, including a series of short films on life as a young barrister at the Crown Prosecution Service, and a summer school of educational seminars discussing various aspects of life and work at the Criminal Bar such as "Submissions using Skeleton and Speeches", "Transition from pupillage to tenancy" and "The role of junior counsel", which were

very successful. It was particularly pleasing that those from outside London were able to benefit from the training and we will continue with virtual events even when we are able to meet face-to-face again. If you'd like to view any of the virtual sessions, they can be found at our website, www.thekalishertrust.org

The autumn programme has seen the Trust run a question and answer session in conjunction with the Access Project which aimed to demystify certain aspects of the profession for A-level students who were just starting to consider studying law at university. We are looking forward to an emerging partnership with the Harris Federation – one of the largest academy chains addressing deprived areas – and to running an outreach session for aspiring lawyers in conjunction with Wadham College, Oxford this December.

As ever we are immensely grateful to the organisations with whom we partner and also the volunteers who give up their valuable time in order to make these events happen as well as those whose donations allow our work to continue. If you would like to help us in our important work, please contact us at administrator@thekalishertrust.co.uk.

MEET OUR MOST RECENTLY APPOINTED TRUSTEES ...

Merry Van Woodenberg

Merry is a member of 2 Hare Court Chambers and specialises in criminal, regulatory and tax law. She has a particular expertise in financial crime, serious sexual offences, and cases involving vulnerable individuals.

"I was awarded a scholarship by the Trust in 2012 as a contribution towards the cost of the BPTC. As soon as I became a tenant, I began to volunteer with the Trust, acting as Secretary for several years, before becoming a Trustee in 2019. Given that I have been on both sides of the table, I take great pleasure from working with the Trust as I know that targeting the right help, at the right time, can make a world of difference to individuals' lives and careers."



Ed Gross

Ed is a member of Furnival Chambers and was called to the Bar in 2016. His areas of practice largely involve General Crime and Financial Crime. He also has a growing Sports law practice along with instructions from the Government Legal Department.

"My particular focus is on outreach work and teaming up with universities to reach out to prospective students who satisfy the Kalisher Trust criteria and encourage them to try their hand at advocacy. While there is emphasis on the Criminal Bar, it is equally important to support as many people as possible to have a go at some public speaking."



Fatima Jichi

Fatima is a junior barrister at Garden Court Chambers. Prior to joining the Bar, she was a Senior Medical Statistician at University College London with an expertise in mental health research. Her community engagement work inspired her to retrain as a barrister focusing on crime and social justice issues.

"I believe in the importance of a representative Bar in order to properly protect the rights of society, and that led me to volunteer with the Kalisher Trust."



advocate



Advocate (formerly the Bar Pro Bono Unit) is the Bar's national charity that makes it possible for barristers to balance a dedicated practice with making a significant contribution to the community.

We exist because committed barristers across England and Wales care about access to justice for everyone. We match members of the public who need free legal help with barristers who are willing to donate their time and expertise in deserving cases for those who are unable to obtain legal aid and cannot afford to pay.

2020 has certainly been quite a year for both pro bono and the barristers and chambers that provide it. At the beginning of the first lockdown, Advocate went from being an entirely paper-based organisation to completely digital in the space of one (long) week. Advocate COO Shyam Popat wrote about this experience and how we did it in Counsel magazine [<https://www.counselmagazine.co.uk/articles/access-to-justice-in-the-lockdown>] and it has truly revolutionised the way we work, enabling us to create electronic bundles and push through applications faster than ever. And honestly, we've needed it because the number of vulnerable applicants has increased exponentially this year.

Fortunately, so has the level of assistance from the Bar, which has shown us incredible support in times that have been incredibly tough for barristers. We have had a record number of sign-ups this year and barristers have undertaken some impressive work in response to the pandemic.

One of the things we have tried to do is keep a better note of some of the more interesting cases that come through our doors. This not only benefits us when encouraging people to join our ranks of volunteers but also enables us to engage more with our many external stakeholders. Some of our favourites include:

- The story of the Richford family and how they fought for justice for baby Harry [<https://www.counselmagazine.co.uk/articles/fighting-for-harry-pro-bono-in-action>].
- The houseboat dweller whose case changed the law for several thousand others [<https://weareadvocate.org.uk/Franks-story.html>].
- The war veteran with PTSD who won the right to a bigger pension and peace of mind [<https://weareadvocate.org.uk/Brians-story.html>].

- The mother who succeeded in preventing her child from being taken to live abroad by her controlling partner [<https://weareadvocate.org.uk/Avas-story.html>].

In addition to processing a record number of pieces of work, we are recovering from the whirlwind that was Pro Bono Week, which ran from 2 to 6 November and in which we hosted a number of events for the Bar which members of the South Eastern Circuit attended:

- The FLBA and Advocate held their first joint event. FLBA Chair Cyrus Larizadeh QC and Junior Pro Bono Barrister of the Year winner Zimran Samuel talked and answered questions about their experiences and the role of pro bono in family law in a lively and interactive session. We were also honoured to hear from an applicant who had benefited from pro bono help in the Supreme Court. Read a summary here: [<https://weareadvocate.org.uk/advocate-and-flba-host-joint-event-for-pro-bono.html>]
- New panel members were invited to have Tea with the Team on Zoom on 3 November and had the chance to talk to the staff about some of our important work and most interesting cases.
- In conjunction with the IBC and ABC Chambers' Solutions, Advocate hosted a Clerks' hour. Chambers' support is integral to our success so we highlighted how clerks and practice managers can help to encourage their members to take cases and discuss what other sets are doing.
- We also launched our first ever Top Ten newsletter. Intended to be a monthly publication, it is designed to engage and inform while being quick and easy to read. Please sign up to receive it straight to your inbox and find out more about our cases, our barristers, news, quotes and much more [<https://www.surveymonkey.de/r/advocatetopten>].

The highlight of Pro Bono Week for us was the 2020 Bar Pro Bono Awards. Reflecting the Bar's commitment over the past year, we received a record-breaking 51 nominations and the evening was a chance to celebrate the incredible work undertaken by everyone involved. Information about the nominees is available in the brochure [<https://weareadvocate.org.uk/public/downloads/AgaV7/Brochure.pdf>] and the winners are included in a summary [<https://weareadvocate.org.uk/a-round-up-of-the-bar-pro-bono-awards-2020.html>] of the evening. It reinforced our faith in the good intentions we see from our barristers every day and was a wonderful way to bring the pro bono community together.

And next year will be our 25th birthday - we look forward to celebrating with you and sharing our plans for the next 25 years.



Rebecca Wilkie

Chief Executive Officer,
Advocate

Care Work in the Family Courts Since the First Lockdown

The family courts continued to function, at least in part, during the time of in-person court closures which began in March. Much of the courts' public children work, which concerns the protection of children at risk, is urgent and, accordingly, many of the hearings simply had to go ahead and could not be delayed.

Out-of-hours applications have been heard by telephone for years and, using the familiarity with that technology, applications for emergency protection orders and urgent interim care orders were heard by the judiciary in that way for the first month or two. It was not an ideal procedure (particularly for the lay litigants), but it permitted time-critical decisions to be made. Before long, non-trial hearings were also added to the list of work being heard by telephone. Advocates were required to adapt how they worked to enable meaningful pre-hearing discussions to take place. The rigour and discipline required in methodically and succinctly advancing arguments was no disadvantage.

By early July most courts had started to use video platforms (CVP once available, but initially Microsoft Teams, Skype and Zoom) for hearings. Fortuitously that change of practice came shortly after guidance from the Court of Appeal that video was to be preferred over telephone for removal hearings where possible (Re B [2020] EWCA Civ 584).

Over the summer, as the transmission rate of the virus reduced slightly, many courts started listing in-person final hearings or, where appropriate, 'hybrid' hearings. A hybrid hearing may proceed primarily by video but with certain days (usually when the lay parties give evidence) attended in person, or alternatively where some participants attend physically and others attend remotely. This

flexibility has allowed numerous trials to go ahead (albeit fewer than would otherwise have been the case) with a reduced need for court rooms to be open. For example, in July a two-week non-accidental injury fact-finding hearing, involving leading and junior counsel for each of the four parties, was effective with expert and medical witnesses being cross-examined by video link (with all participants at home), the parents' evidence being heard by the judge live in court (with leading counsel attending) and submissions subsequently being delivered in writing and by video. The solution avoided what would otherwise have been months of delay.

The options which have been revealed and developed since March have allowed cases to continue to be heard since the return of additional movement restrictions in November. Most interim hearings continue to be listed and heard remotely, giving advocates flexibility in how to work and permitting those who are more vulnerable to continue to participate. Final hearings are still being listed, with some court centres preferring all-in-person hearings and others being prepared to consider the hybrid model.

Challenges remain, particularly around the ability of some courts to hear more than four interim matters per day remotely (and a short-lived effort to start listing hearings at 8.30am in the ordinary list was not sustained), but the courts have been able to function and hear the most urgent cases.

It is to be hoped that some of the new ways of working will continue even after things return to normal.

William Dean

9 Gough Chambers
Elected member of the SEC
Executive Committee

Lockdown: a junior's viewpoint

When Boris Johnson locked the country down on 23rd March of this year, my diary for the foreseeable future became redundant.

I recall the mass confusion which was created overnight. Was I required at Court? Would I be in trouble with the Judge for not attending in person? How much do I trust my clerks and the senior members of chambers when they were advising whether or not I was required? It was completely unknown territory for everyone. Instantly, I found myself becoming an avid follower of the CBA, Bar Council, MOJ, Crime-Line and every other source of information which was available through Twitter, to try to find reliable answers to all of these questions.

After the initial shockwaves of lockdown began to subside, and when the Courts and MOJ developed alternative ways of managing cases, such as via CVP, work began trickling into my diary. Although it goes without saying that it is impossible for any barrister to survive off a diet of mentions, most of which resulted in me waving goodbye to my trials which were re-listed for late 2021 and into 2022.

My lifeline in terms of income was the Grenfell Tower Inquiry which I had been instructed on long before Covid times. After a short break in hearings when lockdown hit, oral evidence resumed and we were able to live-stream the hearings on YouTube. Having a regular source of income from my work on the Inquiry was a huge relief to say the least.

During August, I was instructed as junior defence counsel on a historic murder trial in Chelmsford Crown Court which I believe was one of their first effective trials since lockdown. Between March and July, we had lost all hope that it would be going ahead. However, after an extremely productive PTR a few weeks before the fixture date, with the Court being proactive in assisting the

parties in getting the case trial ready, it soon became clear that it would be effective. The 3-week trial went ahead as planned thanks to a joint commitment between the defence, the prosecution, and the Court to get the case off the ground. Another huge relief from my perspective.

Save for the Inquiry and the murder trial, all of my own cases were kicked off into the long grass. This is an issue which disproportionately affects the more junior end of the bar. Our 2 to 3 day ABHs, burglaries, affrays, and bladed article trials, where the Defendants are ordinarily on bail, fall to the bottom of the pile when it comes to listing. These short trials are junior barristers' bread and butter; however not only are our own cases being listed on dates in late 2021 and into 2022, but we are not being briefed in any returned trials because everybody else's cases are being treated in the exact same way. As I said above, a diet of mentions, PTRs and sentences is unsustainable on any view.

There is no doubt that 2020 has been a tough year for everyone in the profession, not just the junior end. I have had a lot of time to reflect upon matters from a personal and professional standpoint. In these challenging times I do consider myself lucky to be in my current set, where I have felt supported and secure. Indeed, the resilience of the Bar as a whole has been impressive and seeing how the profession has done its best to support each other gives me confidence that there are better days to come.

Sophia Dower

2 Hare Court
SEC Second Assistant Junior





REFLECTING ON THE Management of Chambers in a time of Covid

Pixabay, Gerd Altmann, Sang Hyun Cho

I had never heard of Zoom. What innocence!

As I write, a second lockdown looms. It may be called something else, euphemism being central to the art of government. But further severe restrictions upon free movement are inevitable.

When our Prime Minister lugubriously – he of ‘bung a bob for Big Ben’ had somewhere found a serious face – intoned his message of doom on the evening of March 23rd, the criminal justice system closed down. The viability of Drystone, a set of chambers that largely depended on jury trials for its income, went from assured to doubtful.

I had mistakenly thought that the preceding decade of austerity, particularly the grim, sad Grayling years, had inured me to the excess of the moment. But Covid-19 was something new. No courts meant no fees. Incomes must plummet. Staff could not be paid. A fine 17th century building in Bedford Row could neither be maintained nor, in the longer term, sustained.

Karim (Khalil) and I, as joint heads, were keenly aware that what we did and how we did it would probably determine whether the set survived. And that was the first, and most significant, decision we took. Drystone would still be standing, no matter what.

This was not for quixotic or sentimental reasons. We both believed, then and now, that the practice of advocacy is best delivered through the medium of traditional chambers. This is not to deny all modernisation. But no other structure nurtures independence of mind

and pursuit of excellence – indeed most decry the first and pretend to the second solely for the purposes of marketing. The barrister is no businessman and the businessman no barrister.

Yet all this independence has perhaps contributed to making counsel *en masse* somewhat strange and unruly creatures. Towards the outside world, they aspire to courage, compassion, intelligence and wit. Towards each other, less attractive characteristics often prevail.

My greatest fear, as our finance committee held its first Zoom meeting, was that the ties, professional and personal, that held the set together would prove too fragile in face of the gathering storm.

I would be proved quite wrong. Acute self-interest in all its tedious manifestations was nowhere to be seen. In its place came a self-seeded solidarity, epitomised by the Drystone pub, an online meeting place via which senior and junior, inebriate or teetotal, found, perhaps to their surprise, common ground and common purpose.

Yet camaraderie pays no bills. The most urgent task was to ensure our solvency in the medium term. Karim and I had some advantages. Drystone had no debt. We had a sympathetic landlord. And we had a committed, experienced and selfless finance committee.

But as we soon discovered, financial planning during a pandemic – and of course like the rest of the world, we had not planned for a pandemic – is little more than guesswork.

And so it remains. Herculean efforts by HMCTS and others have led to the opening of the courts in numbers that we would have dismissed as wishful thinking, had the plans been advanced in April or May. But for how long? No one today seriously doubts the determination of the senior judiciary to halt and reverse the backlog. Yet is it credible, in the event of a widespread and deadly second or third wave, to suppose that court centres and the journeys to them will be perceived, by practitioners and the public at large, as risk free?

We had resolved to keep as many of our staff as we could, albeit upon reduced salaries. Yet our financial capacity to do so was obviously compromised, and without the furlough scheme, impossible. This is an unhappy state of affairs, for it both undermines a pre-existing sense of security of employment and provokes a lingering anxiety.

The last 8 months have taught me that in the management of Drystone there is no single strategy and certainly no silver bullets. So what of the future? All I know for sure is that we shall have to adapt, and at times, very quickly. There will be hard, and perhaps heart-breaking, decisions to be taken. I also know, which I doubted in March, that we are equal to the challenge.

Andrew Campbell-Tiech QC

Joint Head of Drystone
Chambers

THE GOOD, THE BAD AND THE UGLY

– the County Court during Covid

The view from the Personal Injury Bar

Unsurprisingly, Covid-19 has been the defining feature of County Court practice over the past year. When lockdown was first announced back in March, the entire estate ground to a halt. We are pleased to say that the courts are now, finally, adapting to the various restrictions and work is beginning to filter into diaries.

So, what has changed? And, perhaps more importantly, what has not? This view, from the perspective of the personal injury bar, may well be reflective of the wider civil experience.

The move to remote hearings for the majority of cases represents the biggest shift in the status quo. We have all been used to simple CCMC and applications being by telephone but in March it suddenly all went online.

The need to roll out the CVP platform earlier than planned may reap rewards in the end, but its application is patchy and courts seem to adopt as many different solutions to getting justice done as there are judges trying to effect the change. The 'online revolution' has certainly brought its own challenges. Technological problems are rife, and there has also been a lack of clarity and uniformity as to *how* remote hearings are to be listed. Hearings can be on Zoom, Teams, Skype, telephone or in person. Bundles are required to be lodged to the particular ken of the Court or judge. This has caused unnecessary confusion and we have heard so many horror stories of barristers failing to attend due to unclear listing. The impact on witnesses and litigants in person is far greater. It is hard enough to manage a trial when one has access to secure broadband, two or three screens and a good desk. All too often witnesses or LIPs are struggling with one smart phone – which will inevitably turn out to belong to another member of the family and be short of battery by about 11:15. This is not meant as a criticism of the lay client / LIP. Rather it serves to show how Covid has thrown up every issue of inequality of arms and every problem that falls under the umbrella of diversity issues, and magnified them tenfold.

In more positive news, we welcomed the addition of the Blackstone/Nightingale/ Covid Courts undertaking civil work. The Stevenage court should be singled out for praise: court staff were helpful, and trials

proceeded without technical problems and on time. Regrettably, it has now been closed by HMCTS. We cannot see any reason why the Stevenage court could not have been used to deal with the growing backlog of civil work from other courts on Circuit (or indeed further afield).

Earlier this year, HMCTS sought to introduce "extended operating hours" ('EOH') as a way of dealing with the backlog. This was seen by many as an attempt to bring in "flexible operating hours" ('FOH') by the back door – despite the fact that the long awaited evaluation of the Brentford FOH pilot scheme had yet to be published – and it raised a number of concerns about the potential impact on equality/diversity and wellbeing. One may suspect that the pilot scheme was a less than resounding success given the persistent requests for publication of the results falling on deaf ears.

The mass roll-out of EOH was avoided, though designated civil judges have been given the option of introducing EOH in consultation with local practitioners. While the response to the EOH proposal was mixed – some practitioners are understandably desperate for as much work as possible – we cannot help but feel that EOH and the erosion of evenings or weekends as non-work periods will not, in the long run, be good for the welfare of any Court users – staff, litigants, judges or practitioners. It will inevitably be most favoured by the most resourced. As far as we are aware, none of the DCJs on the SEC is consulting about the introduction of EOH at the present time. But you should watch this space. Without a wholesale increase in the funding provided to the Courts and the Court system we fear the EOH would be a costly sticking plaster of a scheme.

Of course, we all know that the backlog is not due to Covid alone – no matter what HMCTS may say! The County Court remains chronically under-resourced. Thus, heinous block listing practices and

the late vacation of cases due to "judicial unavailability" continue.

A few anecdotes serve to show the wider problems:

(1) **Inappropriate use of telephone hearings:**

one may wonder how a trial can be listed on **telephone** – but it happens. A claim with an issue of fundamental dishonesty was, rightly, adjourned for an in person or video remote hearing but trials have none the less gone ahead by phone. A judicial comment that it is difficult to assess veracity when one cannot see the witness would perhaps be a ground for appeal there and then – but it is a comment that has been made shortly before judgment was given

(2) **Lack of early communication by the Court:** we all know that the court staff are battling against a welter of difficulties, but listing a trial by telephone when one party required an interpreter could never be a good idea. It is our view that any trial with live witnesses is inappropriate for a telephone listing, but the practice does continue.

(3) **Late notification that a matter will be held remotely:** this happens on numerous occasions. It has caused the following problems:

- a. In one case, solicitors were informed with only 48 hours' notice that the trial would be heard remotely and they were required to produce an e-bundle with only 100 pages. The trial bundle was three times this length and they were working from home, so it was a logistical nightmare. They had already filed and served paper bundles and so this was a duplication of work already done in a fixed fee case (i.e. recoverable costs not going to compensate them).
- b. In another case, the parties were told at midday the day before that the matter would be held on Skype. The claimant only had a mobile phone to access the hearing



Pixabay

- and read the trial bundle (not feasible to do both on the same device). He was not able to get hold of another device, and the matter ended up having to be adjourned on the day. No one got their costs.
- c. A significant concern with late notification is that one expects to be able to speak to a client at court before the hearing. Whereas, with a remote hearing, one has to speak to them the day before in order to iron out any technical issues and explain the procedure to them. Last minute notification of remote hearing requires a scrabble to ensure matters are dealt with in time
- d. Fast track RTAs etc often have Counsel meeting and sharing a map or a plan of the location – missed from the bundle it can be a crucial assistance when trying to explain who was where and when. Lack of time/ remote hearings beforehand makes this sort of communication impossible.

Experience suggests that some simple steps could really help remote hearings going forward. Recurring problems include:

(1) **Managing documents** – trying to examine a remote witness and refer to documents and ensure everyone is looking at the same document at once is very difficult. It is too much for witnesses to manage while also focussing on questions being asked. Often parties end up with the Counsel who is not witness handling being the document handler – effectively managing the bundle for one's opponent, and then screen sharing the result. This is cumbersome, requires both parties to have

Counsel – and for everyone to co-operate. A way forward would be for a clerk or member of court staff to be online and in charge of bundle management. Might this be part of the future budget cost of a trial?

(2) **Fatigue** – there is no doubt that on line court is harder on everyone, much more tiring. Oddly those paying attention but not actively participating (and this includes the Judge) find it hardest – the lack of adrenaline / performance focus perhaps? Maintaining regular breaks are crucial. On average one can expect a trial / hearing to take 30-40% longer if remote

(3) **Early organisation** – if remote hearings are only set up at the last minute there is no time to speak to the client/ liaise with one's opponent to organise papers and bundles etc. Good notice and details of the opposing Counsel at the time the listing is announced would greatly ease pre-hearing communications

(4) **Court / party co-operation** – all part of the same thing but a short PIR/ communication a few days before a hearing would iron out many problems from the obvious ones like needing a translator etc to the more subtle – particular needs of the parties – it might be wishful thinking for time spent in preparation, so a short PIR a week or so before, would ease and speed the final hearings

(5) **Mental health** – there is no doubt it is harder working in isolation. This is true both for those who live alone and who are denied social interaction before and after Court, following a day of solo working, and also for those living in groups or families who

may have the pleasure of social interaction after work but face the juggle of keeping the family away from "Court" during the day. We all need to be alive to the mental strain of remote working for us all.

Looking ahead, in view of the ongoing public health crisis, it seems likely that remote hearings of all sorts will continue for the foreseeable future. In fact, we anticipate that they are here to stay for good – particularly in the case of interim applications and other counsel-only hearings (for example, Stage 3 hearings). We hope that there will be an eventual return to in-person hearings for trials at the very least, it is important for a sense of justice being done, however well we have been able to cope for now. In our view, there is also scope for greater technological innovation: moving away from paper files would enable the County Court to be more flexible and environmentally-friendly even when Court returns from the virtual world. However, investment both in technology and in its intelligent use will take time and resources, for which investment is required. The current system continues to creak with underfunding and, as in so many areas of our work, copes based on the goodwill and unpaid, unacknowledged heavy lifting and graft of those involved throughout the Court system. Covid has thrown into sharper focus (if it were needed) all of the problems that we faced before – it has highlighted the weaknesses of the system. It is time for change.

Elizabeth Gallagher (Temple Garden Chambers)
Dan Laking and Emily Formby (39 Essex Chambers)

Committee members of PIBA



QT re CVP

In the run-in towards the first lockdown on 24th March 2020, I made the fundamental mistake of getting in touch with Mark Fenhalls QC. I was seeking his assistance to keep my by then badly-limping 5-week rape trial on track, without masks, without plexiglass, without COVID knowledge, with 2m distancing and with only 2x small bottles of hand sanitiser. Those efforts inevitably failed, but as the saying goes – one good turn deserves another....

SEC Tech Group

So less than 24 hours later, with that jury well and truly discharged, a more challenging new brief hit my Inbox at 6pm on 25th March from Mark. "Design and facilitate a working system for the Bar to engage in remote video hearings"; whilst you are at it write a User Guide that will make that happen not just for the tech-savvy, but also for the less tech-minded Bar masses. And by the way, we need it like errr now. If the Bar was not to slip quietly down below the surface, something needed to be done to help keep the system moving. Fortunately, the same brief landed simultaneously on other more talented tech-minded circuit colleagues Andrew Johnson and Josh Normanton.

Skype for Business

In these ever-changing times, it now seems quite surreal talking about Skype for Business. We frankly used it, abused it and left it on the side of the road – it is now just a sad icon long-forgotten in the corner of our Desktops. But whilst the HMCTS tech suppliers were talking about needing many weeks to get their new cloud video solution up and running anywhere, DOM1 laptops already had this legacy software pre-installed, and so it got the SPJ nod (just). And for the next 3 days the Circuits around the country pooled their collective resources, sharing tech experience like we never had before. And out of this new blitz-style collaboration was born the first *SEC (Skype for Business) Guide* on Fri 27th March. And so we all jumped into the remote video hearing deep end and did our best impression of swimming...

Zoom

Meanwhile in another place we were all getting used to Zoom. As someone from another Circuit cutely described it – Zoom was to Skype for Business what Netflix was to Betamax. Zoom meetings with mates, Zoom drinks with Chambers, family and friends, breakout groups and private chat on the sidebar. Just don't try to talk for longer than 40 minutes....

CVP

Then just as we were all getting used to S4B and dabbling here and there with a bit of MS Teams, along came CVP. And so the next generation *SEC (CVP) Guide* was born. Better graphics (except for Blue Barrister who was retained from the original), more screenshots than you could shake a stick at, FAQs, it had it all. This time the SEC Techgroup decided, with a longer-term product anticipated, and full nationwide rollout timetabled, on a greater level of ambition. TechSPOCS from participating Chambers were identified and in fairly short order direct CVP training was cascaded down through to the SEC Membership.

Where have we got to?

My overwhelming impression is that, by and large, CVP is working. It is of course not perfect. Court audio hardware needs substantially upgrading to improve the audio experience, eliminate feedback and generally improve audibility. Procedures for authorising CVP use for particular hearings, with dedicated email Inboxes and prompt attention to CVP requests are only just starting to come into being. End users from the Bar need to embrace the new norm: wired ear buds, high speed fibre broadband, testing their kit before joining every hearing. And during this bedding down phase the Bar needs to keep playing its part in getting the fundamentals right just as you would do in person. Be on time, be ready, be properly dressed (if only from the waist up). Because by doing so, judicial confidence in the more widespread use of remote video hearings will equally grow. All participants in the process, Judges included, will become progressively more skilled in handling the remote video environment, and achieving as much effective progress out of video remote hearings as they could expect to get out of a live in person hearing. The practical reality is that remote video hearings bring massive benefits for the Bar and the interests of justice – whole day trips to the other side of the Circuit or to Wales for short or ineffective hearings – eliminated in just a few clicks of a mouse. Appearing in multiple Crown Court centres in the course of a single day – no problem. For the Court, Trial Counsel available to attend pre-trial hearings in most cases – case ownership like Crown Court Judges have never had it before.

What still needs sorting out?

The Prisons. Having been a member of the London Crown Court CVP Implementation Group for the better part of 6 months now, the primary obstacle to defendant participation in CVP hearings is the HM Prison Service video setup. Funding is urgently required to increase HMP video conferencing capacity in terms of both hardware and staff training. Government needs to recognise that the vast savings that are available in terms of prisoner handling and transport to/from Court need to be matched by investment in video facilities, not just for remote Court hearings but also to ensure proper pre-trial access for legal conferences.

And now Common Platform....

Mark Seymour

Foundry Chambers
Elected member of the SEC
Executive Committee



Since we don't all pick up on all the official announcements I thought it may be helpful to share my understanding of some of the changes that (despite Covid-19) are coming our way both soon and in the more distant future. I hope most will regard them as good news at an otherwise bleak time. What follows is my assessment of where we are and not an official HMCTS announcement.

Disclosure - on the DCS for new cases from 16th November

The big news is that disclosure is going onto the DCS. This will apply to new cases created on DCS from **16th November 2020**.

There will be two new sections. They work just like current sections so no additional training is needed.

"Unused Material - Disclosed - Notices and Schedules" - This will be the place to find the non-sensitive schedule(s), disclosure notices and Disclosure Management Documents (but not sensitive unused schedules). This will be accessible to Judges and parties.

"Unused Material - Disclosed" - This will be the place to find the underlying disclosed material together with a second copy of the non-sensitive schedule (for convenience). In multi-defendant cases there will be separate sections for separate defendants. **This section will ONLY be accessible to the parties and NOT the Judge.** This is necessary for data protection reasons, and because, under the CPIA, it is not the job of the Judge to review that material. **If a party wants to show an item to the Judge, they will have to download it and upload it to an appropriate section such as "Trial documents" or provide it in some other way.**

Where information to be disclosed is highly sensitive the prosecutor may choose to make the disclosure in another way.

Probation Breach Proceedings

These can now be created on the DCS (as a DCS file separate from the original proceedings). There has been a delay with London but that is being sorted out.

CACD

The Court of Appeal (Criminal Division) now uses the DCS. **You will shortly see some new CACD sections in the file structure list at the left side of the review screen.** They will be empty until such time as they are populated when an appeal is commenced. Appeals must still be commenced by the appellant filing the appeal at the CACD - ie not by uploading directly to the DCS.

LAA; AG's Office; CCRC

From November 2020 the Legal Aid Agency, AG's Office, and Criminal Cases Review Commission will be able, subject to appropriate restrictions, to view DCS files on a "read only basis" ie they can look but not change. **This will not affect Judges or practitioners** - although it is good news for defence practitioners in that when a defence advocate invokes the second appeal stage on Legal Aid, the LAA caseworker can request access from the defence advocate and quickly be able to look at the file.

Coming soon: Confiscation; Non-CPS prosecutors; Counter-terrorism

These are ongoing projects. Work on putting confiscation on the DCS is at an advanced stage. For non-CPS prosecutions "proof of concept" work is being done with the SFO. Similar work is planned with the Insolvency Agency and Environment Agency. Likely next in line will be HSE and Local Authorities. The key thing is that a prosecutor will have to be accepted as an "approved user" before they can use the DCS. Some sensitive cases including counter-terrorism cases, have hitherto not been on DCS. Special "invitation only" measures are being put in place so that these cases can be on DCS.

If there is a DCS glitch please report it

If you encounter a problem - or the DCS does not appear to be working as you expect - please report it to crimeitsupport@justice.gov.uk identifying the specific case and the problem. The team really will look into it and you can expect them to report back to you.

DCS and Common Platform

Common Platform is, as yet, only live in Derby. The timetable for further roll-out depends on many factors so this is really a heads up for the future.

In the Crown Court: As and when Common Platform is rolled out, it will take the place of the Xhibit system used by court staff BUT Judges and practitioners will continue to use the DCS for the present - so Crown Court practitioners will not need Common Platform training any time soon.

In the Magistrates' Court: Common Platform will start to hold Magistrates' Court new cases as it is introduced and so practitioners in the Magistrates' Courts will want to look out for announcements on where CP will come in, to make sure that they register for access and take advantage of the training materials that will be available.

His Honour Judge Martin Edmunds QC

Resident Judge, Crown Court at Isleworth

Hon Recorder of the Royal Borough of Kensington and Chelsea

Judge alone criminal trials

In July this year HMCTS rightly acknowledged that the pandemic had *"imposed unprecedented challenges on the justice system"* and concluded that *"more radical action will be needed to get back to pre COVID-19 capacity and start reducing the number of outstanding cases"*. Amongst the solutions put forward by the politicians at the time was a temporary reduction in trial by jury and the wider use of judge alone criminal trials. The proposal was met with resistance from the vast majority of the profession, a reaction belittled by some as the usual cry of those set in their ways and promoting their own self-interest. Whilst the idea was abandoned, neither the HMCTS report nor the politicians definitively rule out its return. Since the summer there has been discussion and debate on the issue, and sadly the idea has not gone away.

The central justification for the retention of trial by jury in 2020 is not by an unfocussed reliance on an Englishman's historic rights; at its core it is an issue of public involvement, public confidence and legitimacy. A jury trial is not just an expendable luxury which if cut back will increase speed and efficiency and equally, a judge alone trial is not the holy grail of modern and progressive justice. The whole idea fails to appreciate why trial by jury is essential to the preservation of public confidence in our justice system.

When Lord Devlin said in 1956 *"that trial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives"*, importantly, he further explained why, namely that *"no tyrant could afford to leave a subject's freedom in the hands of 12 of his countrymen."* Whilst I would not suggest the current government is tyrannical, the great strength and resilience of the justice system is the involvement of

the public in the process and in the outcome. As David Corker, a vastly experienced criminal solicitor, commented of his own jury service, the one thing he hadn't expected was *"the extent to which people called up to do jury service believe that it's an opportunity for them to express their rights as citizens and do something important for society. As a mechanism for fostering social cohesion across all parts of our community, jury service is a small but effective one."*

Social cohesion was not high on the agenda in 2020. Brexit, the Black Lives Matter movement, and the rise in populist politics, have all been divisive. Arguably the replacement, even temporarily, of trial by jury with a judge alone trial will add further to the growing sense of *"us and them"* which resulted in judges being branded as the *enemies of the people* in November 2016.

It doesn't help that crown court judges are not generally regarded as representative of the society they serve. According to MoJ statistics published in 2019 only 4% of crown court judges identified as being from a BAME background. The average age of a crown court judge is 52. Over 40% of crown court judges are over 60. There is also a lack of socio-economic diversity with 71% of senior judges having attended Oxford or Cambridge University. These statistics represent a serious challenge to the prospect of a trial conducted by a judge alone being regarded by the public as just and fair. For public confidence in the outcome of criminal trials to be maintained, trial by jury is the only realistic option.

By contrast, public confidence in the jury system appears to be well placed. For over 20 years Professor Cheryl Thomas QC of University College London has done unparalleled research into juries and the jury system. She found that juries are remarkably representative of the local populations from which they are summoned in terms of age, gender, ethnicity and socio-economic status. From her analysis of every single jury verdict in England and Wales over a 10 year period, she concluded that juries reach verdicts based on the evidence and the law, there isn't a postcode lottery for jury trials where verdicts by juries in different parts of the country are significantly different for similar offences, nor are there significant differences in jury conviction rates across all offence categories for white and BAME defendants.

For their part defendants are also happier to put their trust in a jury. Whilst there is no evidence that a judge or a magistrate will by definition take a view of the facts less favourable to the defence, that does not stop defendants from believing their chances are better with a jury. Yet even after the verdict, just as convicted defendants don't blame fair prosecutors for doing their job, by and large they don't blame the jury for convicting them. Over the years I have heard many more criticisms of the decisions of trial judges than of juries, defendants seem to appreciate that the duty to ensure a fair trial vests in the trial judge and not the jury. In general, convicted defendants are likely to be far more accepting of the verdict of their peers than they would be of the verdict of a judge alone.

Those in support of judge alone trials often point to the lack of a jury in most civil trials. It is not a true comparison. There is a fundamental distinction to be made between the resolution of civil rights and remedies between two or more private parties, and a criminal trial. Indictments are brought in the name of the Crown and as Lord Bingham pointed out *"a crime is an offence against the good order of the state. It is for the state by its appropriate agencies to investigate alleged crimes and decide whether offenders should be prosecuted"*. Furthermore, before any prosecution can be brought it must be in the public interest (and that includes a private prosecution which will be taken over by the CPS and discontinued if it does not meet the public interest test). Moreover, following conviction, whilst the court may consider issues of restorative justice, ultimately it is society which demands the punishment.



Getty Images

For all these reasons the need for the public to be involved in the process cannot be overstated.

As for the solution, the current backlog is not susceptible to a quick fix. What is needed is a permanent long-term plan to increase capacity and, over time, significantly reduce the delay that has long bedevilled an under-resourced court service. The solution is not to discard fundamentals such as trial by jury, it is to continue the progress made in recent years by the judiciary and trial advocates to ensure that future trials are conducted safely and efficiently. The increased use of case management powers and technology has resulted in greatly increased efficiency and I can see a permanent place for some of the practices which have recently evolved to deal with remote hearings.

2021 might also be the moment to reconsider the role of the lay magistracy, after all magistrates have been responsible for maintaining law and order in their local areas since 1361. For decades there have been debates about adjusting a defendant's right to elect trial by jury in relation to certain categories of less serious offences, and expanding the sentencing powers of the magistracy. Now may be the moment to revisit some of these old chestnuts. I believe adjustment to the jurisdiction of the magistrates' court would enjoy greater public support than judge alone trials in the crown court.

In part, greater public confidence in the magistracy is soundly based: magistrates are more representative of the society they serve than the crown court bench. As the Lord Chief Justice said when addressing the Magistrates Association on the occasion of its 100th anniversary in October 2020:

"By the end of the 1940s, nearly a quarter of the Magistracy were women. Today that figure is 56%. The Magistracy did not just lead the way in respect of gender diversity. In 1962, Eric Irons was appointed as the first black magistrate. With great distinction he dispensed justice until 1991, having been awarded the OBE for his services in 1978. Today, 13% of magistrates are from ethnic minorities. The magistracy is representative of the society it serves in a way that neither the legal profession nor the paid judiciary has yet achieved" ... "By increasingly reflecting the diversity in our society, by drawing on the strength of different perspectives, of different experiences, of the whole of our community, our Magistracy continues and will continue to be, the democratic jewel without price."

James Hines QC

Three Raymond Buildings



A LIFE IN PLASTIC

Plexiglass and Jury Trial

Before the pandemic descended on the Courts, the prospect of having to address a tribunal through several panes of plexiglass was unimaginable and, with the beginnings of some good news as far as vaccines are concerned, it might even be that we can bid plexiglass a fond farewell at some point next year. For now though, those of us who have been lucky enough to have our trials called on have had to come to terms with the restrictions that clear plastic can bring to advocacy.

Looking back a little from now at where the Courts were in April and May, the solution to conducting a socially distanced trial seems clear. In June I came away from seeing what my local shops had done with some plastic to ensure they were able to stay open and wondered why, if they could do it, what was getting in the way for the Courts. I remember addressing more than one Court about the possibility of plastic barriers for juries and lawyers to ensure a murder trial could start, when having to confront applications to extend custody time limits. These submissions were at the time quite properly, but woundingly, characterised as ambitious. It was therefore satisfying to discover, in July, that serious efforts were being made by HMCTS to order and install plexiglass to ensure that juries could all sit on the same side of the court, rather than being spread throughout the room as they were in some of the first socially distanced trials. They were described by one Resident Judge as a 'game changer' for multi-handed cases.

Although plexiglass was trailed as 'on its way' and a number of us with trials fixed for August watched in hope as pictures of installations in Leeds and Liverpool appeared on social media, screens only arrived in my life halfway through a trial at Croydon in September. They were reserved only for the jury and so we in Counsel's row were still able to live a plastic-free existence, though we tried hard to ensure we were as socially distanced as possible in the circumstances. As far as I can tell, and it's difficult to know for sure, the jury appeared unfazed by the changes to their working environment over the weekend. I suspect that they were more concerned with the evidence and getting to the right verdict than with the furniture surrounding them in the court room. We had no complaints other than asking counsel now and again to speak up.



So that was screens for the jury only, in a small multi-handler. I am currently in a much larger multi-handler where all counsel have their own plexiglass booths. That has placed, from my position on the back row, three screens of plexiglass between myself and the Judge and more than double that between me and the jury. All counsel have microphones to ensure that we can be heard by the witness and the jury, microphones that will pick up on the sort of sedentary chuntering to which some of us may be prone – or asides to co-defending counsel or juniors.

Is it ideal? Well it is not the same as it was. For one thing, it is very difficult to see the jury while the evidence is being heard. But in the round, that is not necessarily a bad thing – no juror wants to be stared at by a barrister trying to work out from their body language whether a piece of evidence is being well received. Working space is much more limited between the panes, but that just requires better organisation, and there's always the exciting prospect of at least one barrister sending a screen flying as they try to leave the court too enthusiastically at a break. Speeches are certainly a different beast, and it is definitely more difficult to gauge how enthusiastic a juror might be about a point.

The reality for complainants, witnesses, defendants and their families is that without this innovation the possibility of trying large multi-handed cases would remain simply a hope. The solution, before plexiglass, was to sever into a series of smaller trials – at much greater expense to the public, to the serious inconvenience of witnesses who might have to give evidence repeatedly and with the greater probability of acquittals against the weight of the evidence. That does not mean of course that large multi-handed trials are being tried to the extent that they were, and defendants on bail are likely to have significantly more time to wait before their trials are heard. What plexiglass does mean and has meant however is that, where defendants are facing very serious allegations and are in custody, their multi-handed trials can be held and justice be done, rather than being left simply waiting on remand with no real prospect of resolution.

Leon Kazakos QC

2 Hare Court
Elected member of the SEC
Executive Committee

