GUILDHALL CHAMBERS

Crime News

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Editorial

I sit down to write this days after having been swamped with the Criminal Justice Act Commencement Order no 8. It arrived by email unofficially on 5 April bearing no date other than: *'Made - - - - 2005'* – it was purporting to bring into force some measures with effect from the day before. The eventual version that HMSO published bore the date 25th March 2005. Breathtaking inefficiency or dishonesty? What is considerably more concerning is that the Statutory Instrument, comprising 17 pages, brings into force no fewer than 175 sections and 14 schedules. Of Schedule 32 it brings into force 189 paragraphs, but not all in full (their content varies from the Piracy Act of 1837 to the Repatriation of Prisoners Act 1984). Of course not all the material is in force in its entirety. My favourite is the following passage from Schedule 1:

(34) Paragraphs 91 to 98, 100 to 102(1), (2)(a), and (4), 103 to 108, 109(3)(a) and 109(1) in so far as it relates to it,110 to 121, 123 (except subparagraph (3) and in sub-paragraph (5) the words "paragraph 7 of Schedule 3 of" and "paragraph 4(2)(a) or 5(2)(a) of Schedule 3 or"), 124, 126 to 129, and paragraph 90 in so far as it relates to them (the Sentencing Act).

I am a firm believer in the rule of law but how can the law 'rule' if it is not understandable without the need for considerable and skilled research?

Of course not all taxpayers' money is being spent upon legislation - technology has its share. We have seen local examples with the rolling out of XHIBIT - apparently it cost well over a million pounds to install it in Gloucester Crown Court alone. It is to promote efficiency and savings but seems to entail the need for even more court staff than ever before.

Determined not to be outdone we have installed a screen displaying XHIBIT in the clerks' room in order that they have their finger even more securely upon our pulse. Some of our members, who shall of course remain nameless, are concerned that one can no longer ring the clerks and claim that "the Taunton trial drags ever on", while making for the golf course. There is always a price to be paid for progress.

Chambers are about to revamp our web site and we hope to be able to offer you much more information as to current criminal developments. Please let me have any suggestions you may have as to what you would find of use to you.

Meantime we learn from *R v Johnson & Hind CA 11 04 05* the answer is never to leave your cell - if only we could!

Andrew Macfarlane, Editor

The end of applications to stay in historic sexual cases?

"Most abuse of process arguments are in themselves an abuse."
Lord Justice Judge addressing a recent Criminal Bar Association conference.

An application to stay a trial on the grounds of delay is one that is rarely successfully made. Not only was it found in the leading case of *Att.-Gen.'s Reference (No. 1 of 1990) 95 Cr. App.R. 296, CA*. that stays should be granted only in exceptional circumstances but it is for the defendant to prove (albeit on the lesser burden) that owing to the delay he will suffer prejudice to the extent that he cannot have a fair trial.

The most common example of 'delay' cases arises in regards to historic sexual allegations. Examples range from a mother reporting an elderly family member for abuse that she suffered, fearful that it may be repeated on her child; to complex investigations into children's homes with allegations of widespread abuse. This category of application in cases involving historic sexual allegations has now been separated from any other example of delay cases - see the Court of Appeal's judgement in the case of *Smolinski [2004] 2 Cr. App.R 40*.

The judgement in *Smolinski* directed that any such application to stay should not be made at the beginning of the trial; rather it should be made *after* the Crown's case. Lord Woolf concluded his judgement:

We hope to have made clear two things in the course of hearing this appeal. One is that we discourage applications based on abuse in cases of this sort. Secondly, where evidence is given after so many years, the court should exercise very careful scrutiny at the end of the evidence to see whether or not the case is safe to be left to a jury

Whilst it is easy to see the common sense in the second proposition, it is of some concern to the defence that it is made after the first. A 'blanket' discouragement of making such an application followed by directing that any such application should now be made after the complainant's evidence signifies, perhaps, the beginning of the end of applications to stay in this type of case. A tactical decision for the defence has to be "do I run this case to show that I have a good case that the jury should find compelling" or "do I run this case as to show the judge that my client hasn't got a chance of a fair trial?" Some dilemma!

Difficulties for the defence are illustrated in the more recent case of *Burke [2005] EWCA Crim* 29. The facts of *Burke* related to allegations made against the defendant 30 years after the acts were alleged to have been committed. Mr Burke had worked in a care home for boys who had been accused of criminal offences and remained for short periods at the home whilst they were assessed. The head master of the school, who had lived on site and would have been an invaluable witness for the defence, was dead. The only physical document left, in regard to the boys in the home, was a register stating the arrival and departure of the boys. Documents which recorded all incidents, medical matters, complaints, etc. had all been destroyed. The defendant gave evidence at trial and denied all matters. As a man of good character, the defendant also called many and varied character references.

The first ground of appeal was the judge's refusal "without hesitation" to stay the case given the delay, the absence of any documentation and the death and unavailability of potential witnesses. The court considered the judgement in *Smolinski* and concluded that the judge should not have been asked to stay the case before it started and that:

This was pre-eminently a case in which the fairness of the trial could only properly be determined when all the evidence was called and any particular difficulties caused by the passage of time and the destruction of documents and unavailability of witnesses could be identified and considered against the background of the case.

The court went on to consider whether the defendant did receive a fair trial. One particular incident relating to a count on the indictment involved an allegation of buggery when the victim had been returned to the home after running away. The Court of Appeal concluded that if there had been evidence that the defendant had not been on night duty then sensibly no jury could convict, but that:

The crucial documents which would have existed and would have shown whether the appellant was on duty (i.e. the duty rota and/or the form which would have been signed by whoever was on duty to acknowledge receipt of the boys) are missing.

In relation to this count alone the defence were successful in their appeal.

The absence of potential witnesses owing to time lapsed was considered. One of the victims stated that he had reported all matters to three teachers. All three of these witnesses were dead. The Court of Appeal then spent some time in their judgment envisaging situations whether these witnesses may or may not be helpful to the defence. Whilst acknowledging it was a matter of *'considerable speculation'*, the court concluded that as the alleged acts had not taken place in front of anyone else the unavailability of these witnesses was not a reason to stay the trial. Ironically, the Court of Appeal deemed a *document* to have been crucial, as it would have proved or not that the defendant was on duty, however deemed potential *witnesses* were not because their evidence would have been a *matter of considerable speculation*. It is, perhaps, easy to have sympathy with the defence team.

However, it must be accepted that the approach in *Smolinski* is, in many ways, an intellectually attractive one. It allows a judge to consider the complainant's evidence and cross examination in light of the defence submission to stay. The argument (as seen in the case of Burke) becomes almost a quasi delay / no case submission upon which a judge could more comfortably find that it was not the delay in itself that caused the unfairness - instead it was inconsistencies in the evidence compounded by delay.

Tabby Macfarlane

Crack house closure orders – a summary

Part 1 of the *Anti Social Behaviour Act 2003* came into force on the 20th January 2004, and despite a relatively slow uptake nationally, the courts are now dealing with increasing applications by the police for the closure of properties caught by the legislation. The most up to date figures from the Home Office indicate that 158 such orders were granted between January and September 2004[1]. However, at the time of writing a further 40 closure orders formed part of a co-ordinated campaign between 30 police forces to interdict the supply of cocaine in *Operation Crackdown*.

Background

Although the term 'Crack House' has been applied to the subject of closure orders the Act actually refers to 'Class A Drug Premises' and the powers of the act are aimed at closing premises where Class A drugs are used, produced or supplied. The purpose of the Act is to disrupt the drugs infrastructure in urban areas and in doing so to prevent the nuisance associated with addresses where Class A drugs are present[2]. The powers within the act are aimed at property rather than its occupants although the impact of an order on an occupant renders such a distinction academic. The Act is extremely powerful, and is generally agreed to be a draconian response to a perceived social ill. Upon the granting of the order the occupants of a property lose any right to remain there and the properties are often sealed up within the day.

The Act is heavily weighted towards co-operation between the police and local housing authorities, social services and drugs support agencies. Nevertheless the power to close properties lies solely at the discretion of the Police, with the consent of the Courts.

The powers of the Act

The Act allows a police officer of the rank of Superintendent or above to apply for the closure of an address, initially for a period of 3 months. The officer need have no more than a **reasonable suspicion** that Class A drugs are present at the address, and that the address is associated with serious nuisance or disorder. Under s. 1(8) it is not necessary that any occupant of the premises has been convicted for drugs use, production or supply. Initially the police will serve a closure notice on the occupiers of the property. The notice must then be effectively converted to a closure order by the magistrates within 48 hours of service.

The closure notice

The first step in the obtaining of an order by the police is the drafting and service of a closure notice, under section 1(1) of the Act.

Closure notice

1 This section applies to premises if a police officer not below the rank of superintendent (the authorising officer) has reasonable grounds for believing:

- **a** that at any time during the relevant period the premises have been used in connection with the unlawful use, production or supply of a Class A controlled drug, and
- **b** that the use of the premises is associated with the occurrence of disorder or serious nuisance to members of the public.

What is evident from this section is that there need be no causal link between the presence of Class A drugs and the nuisance – however given the generally chaotic nature of the lives lived by occupiers of Class A premises a degree of nuisance is invariably a concomitant of their lifestyle. The relevant period is the period of three months prior to the drafting of the closure notice (s. 1(10)). Section 1(2) of the act then provides:

2 The authorising officer may authorise the issue of a closure notice in respect of premises to which this section applies if he is satisfied:

- **a** that the local authority for the area in which the premises are situated has been consulted;
- **b** that reasonable steps have been taken to establish the identity of any person who lives on the premises or who has control of or responsibility for or an interest in the premises.

3 An authorisation under subsection (2) may be given orally or in writing, but if it is given orally the authorising officer must confirm it in writing as soon as it is practicable.

Thereafter the authorising officer must ensure that the notice is served on the occupants of the premises and that a court hearing at the Magistrates Court can be arranged to be effective within 48 hours of the service of the notice. The notice itself must contain the following information (s. 1(4)).

- **a** give notice that an application will be made under section 2 for the closure of the premises;
- **b** state that access to the premises by any person other than a person who habitually resides in the premises or the owner of the premises is prohibited;

[1] Source, Home office press Release 042/2005 - 1 Mar 2005

[2] For a full discussion of the relevant provisions see the Home Office Guidance Note at *www.drugs.gov.uk/ReportsandPublications/Communities/1074606449/NotesofGuidanceFINAL.doc*

c specify the date and time when and the place at which the application will be heard;

d explain the effects of an order made in pursuance of section 2;

e state that failure to comply with the notice amounts to an offence;

f give information about relevant advice providers.

The Closure Notice must be served by a Constable and the means of service of laid down in s. 1(6) of the Act. The effect of the notice is that it prevents anyone other than the occupiers of the premises from going into the property until the application for an order has been determined. In addition to the occupiers of the property, any other persons likely to be affected by the notice must be served with a copy (s. 1(7)).

Typically the sorts of behaviour complained of include constant coming and going at the address; verbal and physical intimidation of local residents by visitors, general disorderly conduct in and around the address; and the consumption and sale of drugs by visitors and residents both in public and on the premises.

The closure order

Section 2 of the Act deals with the powers of the Magistrates to grant the closure order. The hearing of the application is deemed to be a civil matter[3], although the standard of evidence remains a moot point. In many hearings it has been accepted that the principles established in the case of R *(on the application of) McCann and others) v Crown Court at Manchester* [2003] 1 AC 787 should be applied to the standard of evidence. Thus, although the hearing is a civil one, the standard of evidence is the enhanced civil standard. Some courts have taken the view that as the *McCann* case pre-dated this legislation, their Lordships could not have had closure orders in mind when they made their ruling and that consequently the lower civil standard is applicable.[4] Experience locally indicates that few district judges or Crown Court appeal judges subscribe to this interpretation.

Hearsay evidence

It is an inescapable aspect of this type of legislation that many local residents do not wish to give formal complaints to the police. Nevertheless, a closure order will only be granted where a nuisance is complained of and the Police and local housing authority are often equipped with numerous anonymous complaints in letters and pro-formas.

A problem arises with the admissibility of hearsay evidence. Clearly the 48 hour time-frame for the closure order makes compliance with the 21 day period under *The Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999*, impossible. However, the evidence can still be admitted under s. 2(4) of the Civil Evidence Act 1995 without a notice. Under this provision the Court will be mindful of the weight to be attributed to such evidence. The fact remains however that once such material is read it becomes highly persuasive.

In hearing the application for an order the Magistrates must consider three points laid down in section 2:

Closure order

1 If a closure notice has been issued under section 1 a constable must apply under this section to a magistrates' court for the making of a closure order.

2 The application must be heard by the magistrates' court not later than 48 hours after the notice was served in pursuance of section 1(6)(a).

3 The magistrates' court may make a closure order if and only if it is satisfied that each of the following paragraphs applies:

   a the premises in respect of which the closure notice was issued have been used in connection with the unlawful use, production or supply of a Class A controlled drug;

   b the use of the premises is associated with the occurrence of disorder or serious nuisance to members of the public;

   c the making of the order is necessary to prevent the occurrence of such disorder or serious nuisance for the period specified in the order.

4 A closure order is an order that the premises in respect of which the order is made are closed to all persons for such period (not exceeding three months) as the court decides.

Again it is apparent that in considering points 2(3) a-b that there need be no causal link between the serious nuisance and the Class A presence on the property.

Under s. 2(6) the Magistrates may adjourn the hearing of the application for a maximum period of 14 days in order to allow:

a the occupier of the premises,

b the person who has control of or responsibility for the premises, or

c any other person with an interest in the premises, to show why a closure order should not be made.

During this time the Court **may** order that the terms of the closure notice be retained (s. 2(7)). Clearly there is discretion here to lift the restrictions of the notice, but the lifting of the restriction would be a rare event in the light of the evidence already gathered by the police.

In ordering an adjournment the Magistrates must not go beyond the statutory 14 days, notwithstanding their powers under s. 54 of the MCA 1980. To do so has been deemed as frustrating the purpose of the 2003 Act, where speed is of the essence[5].

Enforcement of the order

Section 3 of the act deals with the enforcement of the order and provides for any appointed person to enter and secure the premises. In practice this means that the Council housing department (or in the case of private property, a police appointed contractor) will board and shutter the property.

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[3] per Mitting J in *Commissioner of the Metropolitan Police v Hooper* [2005] EWCH 340 (Admin)

[4] *Closing a crack house*. J.P. 2005, 169(3), 33-34

[5] per Mitting J in *Commissioner of the Metropolitan Police v Hooper* [2005] EWCH 340 (Admin)

Entry may be permitted for essential maintenance during the currency of any order. There is no real packing up period for the occupants of the property and in many cases they will be locked out within a day of the order. The unintended consequences of such orders are that often all of the occupier's possessions are locked up in the property, and often occupiers will depart with only clothes and light belongings.

Offences under the Act

Section 4 of the act provides:

Closure of premises: offences

1 A person commits an offence if he remains on or enters premises in contravention of a closure notice.

2 A person commits an offence if:

- **a** he obstructs a constable or an authorised person acting under section 1(6) or 3(2),
- **b** he remains on premises in respect of which a closure order has been made, or
- **c** he enters the premises.

3 A person guilty of an offence under this section is liable on summary conviction:

- **a** to imprisonment for a period not exceeding six months, or
- **b** to a fine not exceeding level 5 on the standard scale, or to both such imprisonment and fine.

4 But a person does not commit an offence under subsection (1) or subsection (2)(b) or (c) if he has a reasonable excuse for entering or being on the premises (as the case may be).

5 A constable in uniform may arrest a person he reasonably suspects of committing or having committed an offence under this section.

A reasonable excuse under 4(4) would appear to be entering the premises to check maintenance or to recover possessions. In the light of s. 4(5) such entry would generally have to involve consultation with the police – generally the Community Beat Manager. It is notable that the penalties for breach of the order are nowhere near as severe as those for the breach of an ASBO, and this is a point that is also raised in submissions on the standard of evidence.

Extension and discharge of the order

Section 5 of the Act allows:

For the Police to make an application for an extension to the order where a Superintendent or higher ranking officer:

a who has reasonable grounds for believing that it is necessary to extend the period for which the closure order has effect for the purpose of preventing the occurrence of disorder or serious nuisance to members of the public, and

b who is satisfied that the local authority has been consulted about the intention to make the complaint.

Generally such applications are supported by further evidence from local residents about improvements in the neighbourhood since the order was made. Again this evidence invariably takes the form of admissible hearsay collected by means of questionnaire and reported anonymously via the OIC or the local housing officer.

The extension can be for a further period of three months, rendering the maximum permissible period of the order 6 months. Many solicitors find that where an extension is granted, their clients are unable to resist civil re-possession proceedings by local authorities or housing associations.

Under s. 5(6) an occupier, or other interested party, may by complaint to the Magistrates apply for discharge of an order. However the Court will only make such a discharge order where it is satisfied that the original grounds for the enforcement of the notice no longer exist.

Appealing an order

Appeal against the decision of a Magistrates Court (s. 6) in respect of any order under s. 2 or 5 of the Act is heard at the Crown Court, as a re-hearing, with a judge and two lay members of the bench. The right to appeal lies with the police and the local authority as well as any other interested party.

Further provisions

Section 7 of the Act allows for access to property by the owner or other occupiers of land in which an order is in force.

Section 8 of the Act provides for the provision of costs in favour of the applicant where an order is granted. It is highly unlikely that any application for costs will be successful where the occupant is a drug addict/user on benefits.

Section 9 outlines the exemption of the police for any act or omission arising from their actions in applying for an order or imposing a closure notice. The exemption is circumscribed by the requirements of the police to act in good faith and to proceed at all times in observance of s. 6(1) of the HRA 1998.

Section 10 permits the recovery of compensation for financial loss arising from a closure notice or order.

Conclusion

This Act is an extremely powerful tool for the regulation of problem addresses associated with Class A drugs. The neighbourhoods where these orders are sought are often amongst the most deprived areas of inner cities and the Government has clearly seen fit to advance a highly utilitarian approach to improving such areas by focusing on those responsible for a perceived nuisance.

The issue remains that those responsible for such nuisance are themselves often amongst the most vulnerable by virtue of extreme poverty and drug addiction. The fact that they then lose their rights to protected housing as a result of these orders is deemed acceptable in the face of the perceived greater good occasioned by the closure of their homes. This is an issue which remains unresolved and has caused some antipathy towards the legislation from those responsible for representing them.

Henry Stevens

"Which of you did it?"

The injustice of the loophole in the law which previously enabled those jointly accused of the murder or manslaughter of a child to escape justice, has long been recognised. The crucial question of *"which of you did it?"* was all too often left unanswered, usually by the accused remaining silent or blaming each other.

The Domestic Violence, Crime and Victims Act 2004

This Act has set out to dramatically change the potential to successfully answer that same question.

The Prosecutor's dilemma to date has existed where it can be proved that one or more of a small group of people living in the same household as the victim caused the death of that victim, but not specifically which one of them. Section 5 of the Act provides for a new offence of '*causing or allowing the death of a child or vulnerable adult*'[1], which, together with procedural changes provided for in Section 6, will allow prosecutors to close the net on those criminally responsible within the household. The relevant sections came into force on the 21 March 2004, and apply to acts committed after that date.

Section 5(1) of the Act provides that:

"A person ("D") is guilty of an offence if:

a A child or vulnerable adult ("V") dies as a result of the unlawful act of a person who:

i was a member of the same household as V, and

ii had frequent contact with him,

b D was such a person at the time of that act,

c at that time there was significant risk of serious physical harm being caused to V by the unlawful act of such a person, and

d either D was the person whose act caused V's death or:

i D was, or ought to have been, aware of the risk mentioned in paragraph (c),

ii D failed to take such steps as he could reasonably have been expected to take to protect V from the risk, and

iii the act occurred in circumstances of the kind that D foresaw or ought to have foreseen.

Section 5 will no doubt be employed as a serious 'stand alone' offence, the maximum penalty for which is 14 years. However, it is also clear that the section will often be used in *conjunction* with an allegation of murder or manslaughter. This is particularly so having regard to the evidential and procedural assistance provided for by section 6 of the Act (see below).

The conditions

The new offence provides that *members of a household*[2] who are 16 years of age or over,[3] and who have *frequent contact* with the child or vulnerable adult victim, will be guilty if they *caused* the death of that victim or, *alternatively*, three conditions are met, namely that:

- They were aware, or ought to have been aware, that the victim was at significant risk of serious physical harm from another member of the household, and
- They failed to take reasonable steps to prevent the victim coming to harm, and
- The victim subsequently died from the unlawful act of a member of the household in circumstances that the Defendant foresaw or ought to have foreseen.

Thus the Act provides for potential prosecution where the Defendant may have *caused* or *allowed* the death of the victim. The Prosecution **do not** have to prove which of the two different circumstances apply to the Defendant.[4] Equally, charges can be brought under the offence even when evidence suggests that the Defendant could not have directly caused the death, but there is sufficient evidence that he or she allowed the death to occur. This enables a Prosecution to be brought against two Defendants even where they remain silent as to what happened or blame each other.

The rationale of the Act

In times where new legislation is often criticised in all quarters, it is refreshing to see a new statute which adopts a measured approach to the issue that a person who has a duty to protect a victim from harm, is expected to take some action and not simply stand by and do (and subsequently say) nothing. The new provisions echo the public concern and expectation that it is indeed reasonable that such a person should be held to account to the Court for the circumstances of the victim's death.

That Act has been drafted to ensure that all potential offenders are caught within the particular net provided for by this

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1 Namely someone over 16 years of age whose ability to protect himself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness through old age or otherwise.

2 A person is to be regarded as "member" of a particular household even if he does not live in that household, if he visits it so often and for such periods of time that it is reasonable to regard him as a member of it, Section 5(4)(a).

3 Unless they are the Mother or Father of the victim, in which case a prosecution can be brought against someone under 16, Section 5(3).

4 Section 5(2).

legislation. Those at risk of investigation are members of the household having *"frequent contact"* with the victim, such a description being considerably wider in its description than, for example, that provided for by a "carer" within the cruelty provisions of the Children and Young Person's Act 1933. This is modern legislation where Parliament has recognised that the family and household unit is today very much more dynamic than was the case a few years ago. One parent may strike up a number of short term relationships with new partners, each such partner having no "caring" role, but nevertheless being in the position of a household member whose "frequent contact" affords him a responsibility for a child or vulnerable person within that same household.

Reasonable steps

Quite what *"reasonable steps"* the Courts will decide should have been taken by members of the household having that frequent contact with the victim is a considerably more difficult question. Reasonableness in this context is an objective test, and it will be for the Court to decide what was reasonable for a person in their particular circumstances and having regard to their particular relationship to the victim. For example, if the Defendant is a foster child of 16, the steps which he or she could be expected to take to protect a younger member of the same household might be limited in the extreme. What account is to be taken of a member of the household who may have been simply too frightened to take any sensible steps that might in other circumstances have been available to them. Some insight to the expectations in this regard is provided for in the Home Office Guidance accompanying the Act, and from some of the observations made by the Law Commission consultation and report documents. Reasonable steps were variously envisaged to include contacting Social Services, attending promptly upon the police, informing schools, the NSPCC, and other voluntary organisations. Calling upon the assistance of neighbours and addressing the addictions of other fellow householders were also identified as reasonable expectations.

When one returns, by way of example, to the plight of the young, frightened fellow house member, one must ask how realistic (and so reasonable?) it would be to expect steps to be taken of the kind discussed. A body of case law will develop in this regard, but it can sensibly be anticipated that a rigorous and demanding level of expectation will be placed upon householders, not least to reflect the public concern that those in a position to "do something" are called upon by the Courts to do just so.

Surviving a submission of no case

In addition to the potential to prosecute under Section 5 alone there will be renewed enthusiasm to prosecute a householder where suspicion points to that individual having been responsible for murder or manslaughter. This is so because there are evidential and procedural implications provided for by Section 6, if the Defendant is charged with the victim's murder/manslaughter **and** an offence pursuant to Section 5. The legislative intention is to ensure that more cases survive a submission of "no case to answer." The changes are twofold, namely:

1. The drawing of adverse influences from silence in Court and
2. Postponement until the end of a Defence case of the decision on the question of whether there is a case to answer.

Inference

Where a person charged with the new offence fails to give evidence, and the Jury would be able to draw an adverse inference[5] from that silence, section 6(2) provides that the Jury may **also** draw an adverse inference from the silence in respect of the murder/manslaughter charge faced by the same Defendant. The silence can be used in determining whether he is guilty of the murder/ manslaughter even if there would otherwise be no case for him to answer in relation to that offence.

Postponement of the decision whether there is a case to answer

Where a person is charged both with the new offence and with murder/ manslaughter section 6(4) of the Act provides that the decision on a Defence submission of "no case to answer" made at the end of the Prosecution case shall be postponed until the close of all the evidence providing that the Prosecution has successfully established a case to answer on the charge of the new offence. Without this new procedural safeguard there would have remained the risk that the murder/manslaughter charges would already have been lost at the close of the Prosecution case despite the fact that new evidence may well emerge during the course of the continued trial in respect of the new offence.

Police station advice

There is now the need for revised consideration as to the advice that may or may not be given at the police station. When previously faced with two persons having been found in the household with the deceased victim, ordinarily advice would have been given to the effect that he should remain silent in anticipation of the Prosecution being left utterly unable to prosecute. Careful consideration will now have to be given as to whether the lay Client should give an account of their lack of involvement and sound reason as to why they were unable to take steps to act if indeed the circumstances of the offence did, or may, have called for the same.

This is a new legislation which one suspects will be much used. No doubt it will be applauded by all as to its intentions. More often we will learn, *"which of them did it."*

Richard Smith QC

[5] Section 34 of the 1994 Act.

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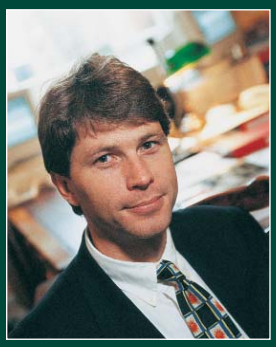

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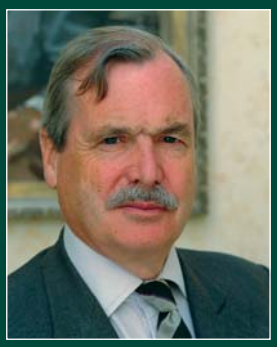

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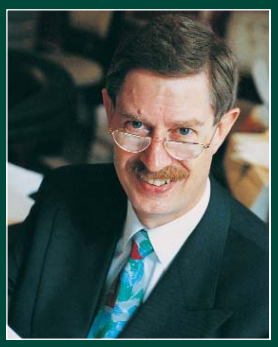

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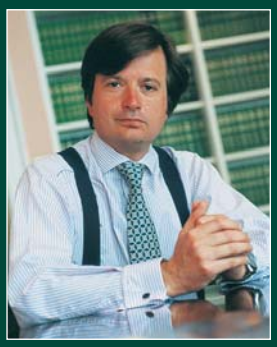

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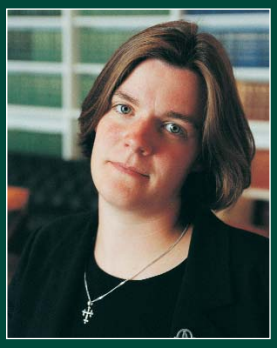

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The sentencing of dangerous offenders

ss 224- 237, Criminal Justice Act 2003

The Act replaces the existing provisions for dangerous offenders i.e. discretionary life sentences, automatic life sentences, longer than commensurate sentences, and extended sentences with three new sentences:

- life imprisonment,
- imprisonment for public protection [IPP], and
- extended sentences.

The accompanying chart shows the steps to be taken.

The 'gateway' to qualification for any of these sentences, is a conviction for one of the offences listed in Schedule 15 of the Act as a "specified offence."

- Part 1[1] lists violent offences and there are 65 specified violent offences, ranging from manslaughter to affray and including cruelty to children and causing death by dangerous driving
- Part 2 lists sexual offences - there are 88 of these ranging from rape to sexual penetration of a corpse, including the possession of indecent photographs of children and exposure.

The intention of the new sentences is that they be used to protect the public from "serious harm". This is defined to mean "death or serious personal injury, whether physical or psychological". I assume the public means the living public, which raises concern about the inclusion of the penetration of a corpse.

These sentences are mandatory

If the relevant criteria are present, the court must impose the relevant sentence. In relation to extended sentences, the restrictions on the availability of the sentence are such that the qualifying conditions will rarely be satisfied; when they are, although the court must impose an extended sentence it has control over the length of the appropriate custodial term and over the length of the extension period.

The assessment of dangerousness

Section 229 creates two categories of case:

The offender who was aged under 18 or who has not been convicted previously of any "relevant offence" - any "specified" (not necessarily "serious") offence, or an equivalent offence in Scotland or Northern Ireland.

In this situation the court in making an assessment of whether the offender represents a significant risk of serious harm to the public must take into account all information available to it about the nature and circumstances of the offence, and may take into account any other information relating to the pattern of behaviour of which the offence forms part and any other information about offender.

The offender is over 18 and has previously been convicted in any part of the United Kingdom of a "relevant offence"

The court must assume that there is a significant risk of serious harm to members of the public unless, having taken account of all information available to it about the nature and circumstances of the offence, any information relating to the pattern of behaviour of which any of the offences forms part and any other information about the offender which is before it, the court concludes that "it would be unreasonable to conclude that there is such a risk".

Offenders under the age of eighteen on the date of conviction[2]

'Young person' versions of the sentences apply to offenders under the age of eighteen on the date of conviction.

For life sentence read 'detention for life'.

For IPP read 'detention for public protection'

For extended sentence read 'extended sentence of detention'

Committals from a Youth Court

There is a new power in section 51A of the Crime & Disorder Act 1998 for juvenile defendants who might need a sentence for public protection or an extended sentence to be sent to the Crown Court for trial.

Section 3C of the Powers of Criminal Courts (Sentencing) Act 2000, requires a defendant under 18 who has been tried and convicted by the magistrates and appears to meet the criteria for a sentence under s226(3) or s228(2), to be committed to the Crown Court for sentence.[3]

Andrew Macfarlane

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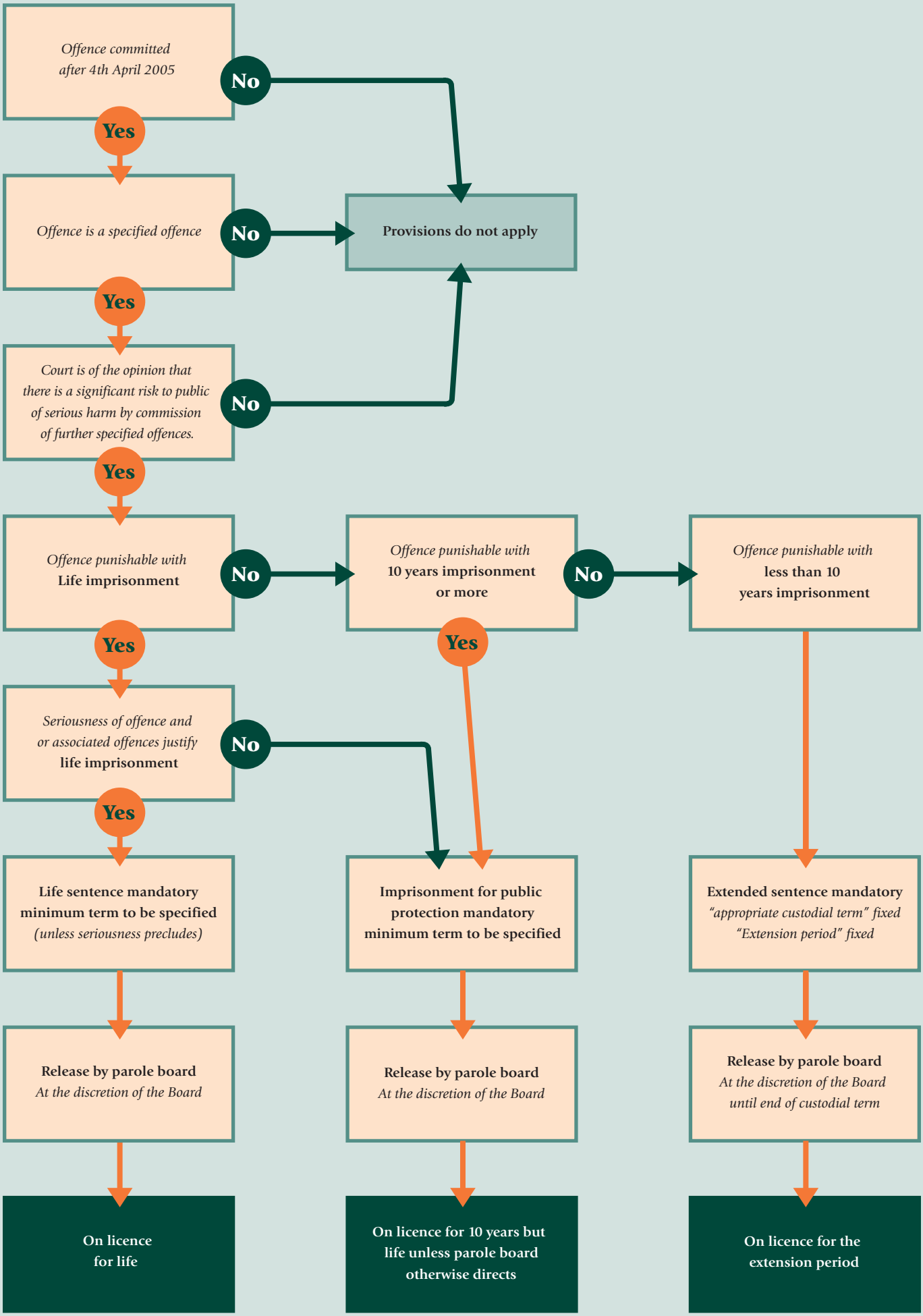
1 http://www.hmso.gov.uk/acts/acts2003/ 30044-bh.htm#sch15

2 http://www.legislation.hmso.gov.uk/si/si2005/20050643.htm

3 The equivalent provision for adult defendants, section 3A, will be brought into force at a later date with the rest of Schedule 3; in the meantime an adult who is convicted by the magistrates of a specified offence and who appears to meet the criteria for a sentence for public protection or an extended sentence should be committed to the Crown Court for sentence under section 3 of the Powers of Criminal Courts (Sentencing) Act 2000.

The sentencing of "dangerous offenders"



"It's not my case"

1. Introduction

This familiar escape clause will no longer do. The Criminal Procedure Rules 2005 (CrPR) came into force on the 4th April 2005 and with them a change in culture. The CrPR introduce into the criminal justice system the concept of "active case management". It is hoped that by active management, judges will ensure that criminal cases are dealt with "efficiently and expeditiously".

The CrPR are to be found in SI 2005 No.384 (L4); the statutory instrument is divided into 78 Parts, each part containing a number of rules. A detailed analysis of and guide to the rules is beyond the scope of this article; alas there is no substitute for reading them:

http://www.legislation.hmso.gov.uk/si/si2005/20050384.htm.

Let me treat you to an overview of the legislation and an examination of "active case management".

2. Overview

2.1 Rationale

We are familiar with rules of criminal procedure; rules which govern, for example, expert evidence, special measures, preparatory hearings, dismissal of charges, confiscation and indictments. Hitherto, they have been found in primary legislation, statutory instruments (almost fifty of them), local and national practice directions. The CrPR are the first step towards codifying criminal procedure for the Magistrates' Court, the Crown Court and the Court of Appeal (Criminal Division). The product, a single criminal code, will make the rules of criminal procedure more readily accessible than before.

However, the CrPR go further. They promote a change in culture; they introduce new rules which give criminal courts explicit powers and responsibility to manage cases. Such management will be "active", not passive. The thinking behind this new regime is not difficult to discern. In handing down *Amendments No. 9 (Jury Service) No.10 (Forms for use in Criminal Proceedings) & No. 11 (Case Management) to the Consolidated Criminal Practice Direction and A Protocol for the control and management of heavy fraud and other complex criminal cases*, on 22nd March 2005, Lord Woolf LCJ, speaking on behalf of a five-man Court of Appeal (Lord Woolf LCJ, Auld, Thomas & Hooper LJJs, Calvert Smith J) commented that active use of the case management rules will "reduce the numbers of ineffective hearings that cause avoidable distress to witnesses and inconvenience and expense to everyone" (Notes to Amendment 11, paragraph 6(3) - for a transcript see:

http://www.dca.gov.uk/criminal/procrules_fin/contents/pdf/transcript.pdf)

2.2 Format

Those familiar with the *Civil Procedure Rules* will recognise the style adopted in the drafting of the CrPR. Lord Woolf was behind those rules; now as Lord Chief Justice, he chairs the Criminal Procedure Rule Committee ("CPRC"). It is the CPRC that has vested in it the criminal procedure rule making powers once held by the Lord Chancellor and Crown Court Rules Committee. The CPRC was established by the Courts Act 2003, following recommendations in Lord Justice Auld's 2001 report, *"The Review of the Criminal Courts England & Wales"*.

The rules are ordered so as to follow in broad terms the criminal process from "Preliminary proceedings", including for example committal and transfer to the Crown Court, indictments and preparatory hearings (Parts 7-17) through to "Appeal" (Parts 63-75) and "Costs" (Parts 76-78). There is a glossary and notes to help readers identify other legislation to which they may need to refer.

Obviously much is not new: you'll find special measures directions at Part 29, for example. Existing rules have been modified and improved: a preliminary hearing is not required in every case sent for trial under section 51 of the *Crime and Disorder Act 1998* (rule 12.2). Other parts reflect changes effected by the *Criminal Justice Act*, 2003, for example hearsay (Part 34) and bad character (Part 35). Further, some parts are incomplete: there are no rules, for example, on pre-trial hearing in the magistrates' court (9) or disclosure by the prosecution (22) or by the defence (23), save for expert evidence (see Part 24). We can expect the CPRC to attend to such areas in the near future.

The preceding paragraphs omit reference to Parts 1-6. Part 1 sets out the "overriding objective", while Part 3 contains the case management provisions.

3. "Overriding objective" – Part 1

The "overriding objective" is "criminal cases will be dealt with justly" (rule 1.1(1)). Dealing with a criminal case justly includes "acquitting the innocent and convicting the guilty" (1.1(2)(a)), as well as "recognising the rights of a defendant" (1.1(2)(c)) and "dealing with the case efficiently and expeditiously" (1.1(2)(e)). There is nothing new here.

Rule 1.2(1) imposes on each participant in the conduct of each case a duty to:

a prepare and conduct the case in accordance with the overriding objective;

b comply with the rules, practice directions and directions made by the court; and

c at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by the rules. "Anyone involved in any way in a criminal case is a participant in its conduct for the purposes of this rule" (1.2(2)). The rule will apply not only to legal representative but also, for example, to the defendant, witnesses and third parties, such as those holding medical records and social services files.

The above changes nothing in relation to the rules regarding legal professional privilege or indeed to the professional duty to a lay client. Nor does it detract from the defendant's right to silence. We shall see whether we are required to inform the court "at once" when our lay client fails to attend for conference or a police officer fails to deliver unused material ordered to be disclosed.

The court must further the overriding objective, in particular when "exercising any power given to it by legislation" including the CrPR or "when applying any practice direction or interpreting any rule or practice direction", (1.3). It is by actively managing the case that the court furthers the overriding objective (3.2(1)).

4. Case management - Part 3

4.1 The Rules

Part 3 applies to all proceedings in the Magistrates' and Crown Courts, (rule 3.1). It sets out the principles of case management. Rule 3.2(2) provides that active case management includes,

a the early identification of the real issues;

b the early identification of the needs of witnesses;

c achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;

d monitoring the progress of the case and compliance with directions;

e ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;

f discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;

g encouraging the participants to co-operate in the progression of the case; and

h making use of technology.

The court "must actively manage the case by giving any direction appropriate to the needs of that case as early as possible" (3.2(3)). Rule 3.3 imposes a duty on the parties to assist the court with or without a direction.

The court powers are extensive: "in fulfilling its duty under rule 3.2 the court may give any direction and take any step actively to manage a case unless that direction or step would be inconsistent with legislation" including the CrPR (3.5(1)). In particular, the court may:

a nominate a judge, magistrate, justices' clerk or assistant to a justices' clerk to manage the case;

b give a direction on its own initiative or on application by a party;

c ask or allow a party to propose a direction;

d for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means;

e give a direction without a hearing;

f fix, postpone, bring forward, extend or cancel a hearing;

g shorten or extend (even after it has expired) a time limit fixed by a direction;

h require that issues in the case should be determined separately, and decide in what order they will be determined; and

i specify the consequences of failing to comply with a direction.

Rule 3.5(2)

At the beginning of a case each party must, unless the court directs otherwise, nominate a case progression officer and inform other parties and the court of that person's name and how he/she may be contacted. That person is responsible for progressing the case, (3.4(1)), which responsibility includes monitoring compliance with directions (3.4(4)(a)). Where appropriate, there will be a court case progression officer.

The parties may agree between themselves to vary a time limit fixed by the court. This is not a licence for non-compliance for the variation must not affect any fixed hearing date or "significantly affect the progress of the case in any other way". In any event it is subject to the all-seeing eyes of the court progression officer.

Rule 3.9(2)(a) requires that each party must comply with court directions. By virtue of 3.9(2)(d) each party must "promptly inform the court and all other parties "of anything that may (i) affect the date or duration of the trial or appeal, or (ii) significantly affect the progress of the case in any other way". Certificates of readiness are still with us, (3.9(3)).

Rule 3.10 is significant. It provides that "in order to manage the trial or (in the Crown Court) appeal, the court may require a party to identify" - which witnesses he intends to give oral evidence and the order in which they will be called; what arrangements have been made to facilitate the giving of that evidence; what written evidence he intends to introduce; whether he intends to raise any point of law that could affect the conduct of the trial or appeal; and what timetable he proposes and expects to follow.

Consideration of the issues identified above will be driven by the use of a case management hearing form; the form will be used at the plea and case management hearing ("PCMH").

4.2 Implementation

Amendment No. 11 to the Consolidated Criminal Practice Direction (Case Management), amended the Practice Direction (Criminal proceedings: Consolidation) [2002] 1 WLR 2870 (*"Consolidated Practice Direction"*). The amendment was effected by substituting a new paragraph 41 of Part IV thereof; by the addition of a further paragraph to Part V and by the addition of Annex E; it is Annex E that contains the PCMH form, which will be used under rule 3.11(1). If, like me, you spent Easter on holiday with friends and family, you will have read the aforementioned *Amendment No. 11 to the Consolidated Criminal Practice Direction (Case Management)* (*"Amendment No. 11"*): it (helpfully) appeared in *The Times* on Easter Monday. For those who did not, the following links should take you to *Amendment No. 11* & to the PCMH form – *Amendment No. 11*:

http://www.dca.gov.uk/criminal/procrules_fin/contents/pdf/pd_amd_11.pdf

Form:

http://www.dca.gov.uk/criminal/procrules_fin/contents/pdf/f96page1-11.pdf

Amendment No. 11 took effect on 4th April 2004, the day upon which the CrPR came into force. The practice direction applies to any case sent, committed or transferred for trial on or after that date.

Use of plea and case management hearing forms is to be piloted at the Central Criminal Court and in the Crown Courts at Preston and Nottingham. The fact that use of the forms will be piloted at those specified centres does not mean that other courts will not be subject to the CrPR. As Lord Woolf made clear on 22nd March 2005, the distinction between pilot and non-pilot areas is "that in the pilot areas positive action will be taken to ensure that the PCMH form is used strictly in accordance with its guidance notes by the judge and the advocates for the prosecution and the defence"). By contrast, in non-pilot centres, unless there is agreement between local criminal justice agencies and practitioners, judges will use the PCMH form as a checklist to "ensure that all the necessary directions are given" (*Notes to Amendment 11, paragraph 19*).

4.3 Impact

We may not have to complete the form, but we'll have to do the work. The new system will demand greater levels of preparation by advocates and those who instruct them. That preparation will be required much earlier than under the present regime. The parties will have to be "almost trial ready" at the PCMH. At that hearing advocates will be required to complete the very detailed questionnaire, addressing and answering the issues raised. PCMHs will take much longer than existing plea and directions hearings. The questionnaire comprises six pages, including two annexes. The questionnaire addresses some twenty-five subject areas. The court will want to know, for example, the real issues in the case ("guilt" will not appease even the most "traditional" of judges); which witnesses are required and why ("abundance of caution" will not do); make orders in relation to the preparation of schedules and formal admissions for service and agreement well in advance of the trial; and the drawing up of a trial timetable. None of this will be possible without full and detailed instructions: for those who defend, conferences, signed proofs and comments; those who prosecute, full instructions on and particulars of additional evidence and further outstanding inquiries.

The now amended (i.e. by *Amendment No.* 11) paragraph 41.8 of the *Consolidated Practice Direction* recognises that the effectiveness of such hearings depends on prior preparation and upon the presence of the trial advocates. Significantly, it requires that "resident judges, in setting the listing policy, should ensure that list officers fix cases so far as is possible to enable the trial advocate to conduct" the PCMH and the trial.

Thereafter, there may be further directions issued without further hearing, of the court's own motion or sought by telephone, letter or email (3.5(2)(b), (d)). That rule 3.5(2)(h) requires that issues in the case should be determined separately and opens the door possibly to more pre-trial hearings to resolve such issues as severance or admissibility.

4.4 More work, more money?

No. Well in fairness, not yet. Lord Woolf observed that "an area of great concern to defence practitioners has been that it has proved impossible to arrange the way in which they are to be rewarded for their professional services...the Department of Constitutional Affairs has recognised the need for an adjustment" (*Notes to Amendment 11, paragraph 19*). As the Lord Chief Justice commented such matters are "extremely complex"; as yet, no "adjustment" to the present remuneration scheme has been made. Negotiations with the Department of Constitutional Affairs continue. Judges are said to be aware of this and sympathetic: whatever the extent of such sympathy I am not sure how that will help the ever-more-put-upon practitioner.

5. Conclusion

There is much to commend the CrPR. The Bar Council and Law Society support the changes. A single criminal procedure code is long overdue. The principle of active case management designed to produce a more efficient and effective criminal justice system is to be welcomed.

6. Postscript

Those readers familiar with the last article I produced for this publication might recall my fondness for lobster. The world of active case management has no place for crustacea: now we're dancing with Woolf.

Christopher Quinlan

Cross-examining the non-defendant

The judicial protection of witnesses under the CJA 2003

Part 1: Exposing lies or slinging mud?

The bad character provisions of the Criminal Justice Act 2003 were introduced in our last issue[1]. Most practitioners will by now have some experience of the repercussions in terms of applications made by the Prosecution to adduce the previous convictions of a *defendant* in circumstances where, prior to the commencement of the act, such a course would have been unthinkable.

But a less-heralded consequence of the bad character provisions relates to the way in which, once these provisions are properly understood and applied, cross-examination of *witnesses* by mounting an attack on their credibility is not as simple (nor as fun?) as it used to be.

At first blush the provisions relating to 'Non-defendant's bad character' set out in section 100 of the Act seem to be confined to the adducing of evidence in some discrete way, of the bad character of a witness – rather than to create a prohibition or control on cross-examination.

But it is clear both from the legislative history of the section[2] and the wording of the section itself, that the effect of the Act is to require (save where there is agreement between the parties) *leave of the court*[3] before embarking upon any cross-examination relating, for example, to a witness's propensity for dishonesty.

By 100(1)

'evidence of a non-defendant's bad character is admissible if and only if

a it is important explanatory evidence,

b it has substantial probative value in relation to a matter which

i is a matter in issue in the proceedings, and

1 Surprising most by coming into force 15 December 2004 – before the judiciary were trained.

2 See the Law Commission's Draft Bill

3 s100(4)

ii is of substantial importance in the context of the case as a whole, or

c all parties to the proceedings agree to the evidence being admissible.'

So questions relating to a witness's credibility (e.g. the old favourite *'You have been dishonest in the past, haven't you?'* - before referring to convictions for dishonesty) –is only going to be permitted[4] if a court can be persuaded that it has **'substantial probative value'** to a matter in issue and is of **'substantial importance'** in the context of the case as a whole.

This seems a long way from where we were. Previously (subject to leave where convictions were spent) we seemed to have a relatively free hand – if we thought a Court might doubt a witness or like him less, or trust him less, we 'went for it', sometimes putting on a helmet if we thought the Judge might not like it. Judges on the whole seem to like it less than Juries unless the prosecuting advocate triumphantly cross-examined a defence witness as to his past, in the course of rubbishing a false alibi. In fact for the Crown it has always been easier: no worries about the 'loss of a shield' in a way that inhibits the defence of the Accused with a past.

Now, whichever party wants to travel that road has

a to give notice in advance of trial in the relevant prescribed form

b obtain the leave of the Court in the absence of agreement

c jump over hurdles that seem much higher than the previous threshold test of mere relevance - it has to be demonstrated that the answers sought to questions relating to credibility of a witness would have *'substantial probative value'* to a matter in issue AND would be of *'substantial importance to the case as a whole.'*

Time will tell how those twin tests are applied. Will it be sufficient to say of a witness whose credibility is being challenged, that a conviction a year ago for shop-lifting **might** affect the Jury's inclination to accept his testimony as truthful?

Won't most Judges/magistrates be disinclined to dignify what they might in the past have regarded as gratuitous mud-slinging but with a judicial sigh have permitted on the grounds that the line of question was theoretically relevant to the credibility of the witness?

Whether something has *'substantial probative value'* or is *'substantially important to the case as a whole'* probably in the end depends upon the Court's assessment, at the time of the application, of whether the witness is telling the truth. Of course such an approach begs the question and is circular. It is an assessment that is necessarily premature being made before the cross-examination as to credit is carried out – and before other evidence in the case – perhaps from other witnesses – has been called. How else can the Court approach the question? No doubt a conviction for Perverting the Course of Justice will be easier to put – but what about a complainant against whom it is said the Accused was defending himself, who has a conviction for violence 5 years ago? In the past, provided the defendant did not risk his own character going before a jury, one might have put such a conviction to a witness when defending on the basis that a jury might be affected by their assessment of the complainant. Such a course would not doubt be 'substantially important' to a defendant – but would the judge view it as 'substantially important to the case as a whole'?

If the hurdles are higher now, that of course is the intended effect of the legislation. In the past, the check on cross–examination as to the credit of witnesses seemed to lie in the fact that it would – and often did – back-fire if done gratuitously or in an insulting or cack-handed way. As with so much recent legislation, the Act trusts the practitioner less and invites the Court to protect the witness in a way that will mean witnesses can leave the witness-box less insulted by their experience – at the price of the fact-finders having less information with which to assess them.

Part II: How bad is 'reprehensible'?

The Act governs not only cross-examination of witnesses as to previous convictions, but to any aspect of their alleged 'bad character'. This is defined as *'evidence of, or a disposition towards, misconduct on his part'*[5] and 'Misconduct' is in turn defined as the commission of an offence *'or other reprehensible behaviour'*.[6]

For a modernising act, the term reprehensible seems strangely out-dated. What is reprehensible is surely in the eye of the beholder - different judges will have different answers to the question whether any given conduct is 'reprehensible'. Some are inevitably more broad-minded than others.

The effect is that some cross-examination is going to stray into forbidden territory (i.e. requiring leave as set out above) where we might otherwise have thought we were dealing with pretty routine attempts to discredit a witness or to cast doubt on their reliability.

The exception is if the evidence (and therefore the questions) *'has to do with the alleged facts of the offence'*[7] - so no problem if you want to put to the complainant that he was very drunk at the time of the offence - but if being very drunk is 'reprehensible' leave will be needed before you ask him if a gallon of cider is his usual intake - or if you are putting to a passer-by witness that he was very drunk - because that, presumably does not *'have to do with the alleged facts of the offence'*

The Law Commission's draft bill seemed even wider, defining misconduct as *'behaviour that might be viewed with disapproval by reasonable people'*. In parliamentary debate, loud music at night and fox-hunting were cited by objectors as two examples illustrating the objectionable breadth of the definition. But does 'reprehensible' narrow it? The OED definition of 'reprehensible' is: *'Deserving of reprehension, censure or rebuke; reprovable; blameworthy.'*

Will we need leave before asking a witness if, in relation to some occasion other than the one relating to the alleged offence, he was late? Or aggressive? Or selfish? Or unreliable? Or unfriendly?

No doubt common sense will prevail. No doubt there are no advocates and no judges or magistrate's court clerks who will take such a literal or pedantic approach to the Act,[8] pegging-back an enthusiastic cross-examiner, confining him to questions *'to do with the alleged facts of the offence'* unless leave is sought and the twin peaks of *'substantial probative value'* and *'substantial importance to the case as a whole'* can be demonstrably scaled.

Andrew Langdon

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4 Barring agreement per 100(1)(c)

5 Section 98

6 Section 112

7 Section 98(a)

8 On second thoughts there may be one or two.

Criminal Justice Act implementation timeline

Nov 2003

- Royal Assent
- Wildlife offences (s. 307)
- Order making power for Sentencing
- Guidelines Council (s. 168(1) & (2))
- Order making power for intermittent custody (s. 183(8))
- Part 14 – general provisions (Ss. 330, 333 to 339)

Dec 2003

- Murder provisions. (Chapter 7 of Part 12)

Jan 2004

- PACE Amendments (Ss. 1, 2, 4, 6, 7, 8, 11, 12)
- Outraging public decency (s. 320)
- Civil liability (s. 329)
- Offenders transferred to mental hospital (s. 294 to 297)
- Increased period of detention for terrorist suspects (s. 306)
- Minimum sentences for firearms offences (s. 287 to 293)
- Intermittent custody (pilot) (s. 183 to 186 & other sections as relating to that disposal)
- Cannabis measures (s. 3,284)
- Increase in penalties for identity fraud offences (s. 3,286)
- Charging powers (s. 28)(piloted in Greater Manchester and then being rolled out across 13 priority LCJBs initially)
- Removal of requirement to sub-stantiate information on oath (s. 31)

Feb 2004

- Parenting orders and referral orders (s324)
- Increase in penalties for driving offences causing death (s. 285)
- Sentencing Guidelines Council (s. 167-173)

Apr 2004

- DNA & fingerprints (s. 9,10)
- Restriction on bail for drug users (pilot) (s. 19)
- Jury Service (s. 321)
- Bail provisions (13,15(3),16,17,20,21)
- Use of documents to refresh witnesses memory (s. 139 to 141)
- New MAPPA arrangements (s. 325 to 327)

May 2004

- Disqualification orders (s. 299)
- Individual support orders (s. 322,323)

Jun 2004

- Foreign national prisoners (s. 262)

Jul 2004

- Conditional cautions (pilots) (Part 3)

Aug 2004

- Pre-charge drug testing for juveniles (pilot) (s. 5)

Sep 2004

- Extension of investigations by CCRC (s. 313 to 314)
- Power to substitute conviction of alternative offence on appeal. (s. 316 to 318)

Dec 2004

- Drug treatment and testing in action plan or supervision orders (pilot) (s. 279)
- Evidence of bad character (Part 11 Chapter 1)

Feb 2005

- Prosecution appeals (terminating rulings)(s. 57-61)
- Prosecution rights of appeal in bail cases (s. 18)
- Preparatory hearings (s. 309-312)
- Retrials (Part 10)

Apr 2005

- S.18 bail: appeal by prosecution
- Application of the new disclosure provisions
- S. 32 – Objective test
- S. 33(1) – Cross-service to co-defendants; s. 33(2) more details
- S. 33(3) – Updated defence statement;
- S. 34 – Defence witness notification; and s. 35 – defence expert notification – will not be commenced on 4 April.
- S. 36(1) – Statement shall be deemed to have been given with the authority of the accused
- S. 36(2) – Duty of the judge to warn the accused at a pre-trial hearing about the consequences of defence disclosure failures.
- S. 36(3) – Power for the judge to direct that a copy of defence statement is given to the jury.
- S. 39 – Extends the list of defence disclosure failures and removes the requirement to obtain the leave of the court for making comment in respect of some of them.
- Retrial for serious offences – Part 10
- Hearsay evidence – Chapter 2
- S. 142 – Purposes of sentencing
- S. 143 – Determining the seriousness of an offence
- S. 144 – Reduction in sentence for guilty pleas
- S. 145 – Increase in sentence for racial or religious aggravation
- S. 146 – Increase in sentences for aggravation related to disability or sexual orientation
- S. 147 – Meaning of community sentence
- S. 148 – Restrictions on imposing a community sentence
- S. 149 – Passing of community sentence on offender remanded in custody
- S. 150 – Community sentence not available where fixed by law
- Ss. 152 and 153 – General restrictions on discretionary custodial sentences
- Ss. 156 to 160 – Pre-sentence reports etc
- Ss. 162 to 165 – Fines
- S. 166 – Savings for power to mitigate, etc
- S. 174 – Duty to give reasons for, and explain effect of, sentence
- S. 175 –Duty to publish information about sentencing
- S. 176 – Interpretation
- Ss. 177, 179 &180 – New Community Order
- Ss. 189 to 194 – Suspended sentences
- Chapter 5 Dangerous Offenders
- Ss. 240 to 242 – Crediting of periods of remand in custody – terms of imprisonment and detention
- S. 238 – Release on licence
- S. 244 – The release of fixed term prisoners
- S. 246 – Early release from custody
- S. 247 – Release of prisoners serving an extended sentence.
- S. 250 – Secretary of State to set out conditions for licence
- Ss. 254, 255 and 256 – Provisions for the recall of fixed term prisoners
- S. 278 and Schedule 23 – New provisions about deferment of sentence
- S. 308 – Non-appearance of defendant; plea of guilty
- S. 309 – Preparatory hearings for serious offences not involving fraud
- S. 310 – Preparatory hearings to deal with severance and joinder of charges
- S. 311 – Reporting restrictions for preparatory hearings
- S. 312 – Award of costs
- S. 315 – Appeals following reference by Criminal Cases Review Commission
- S. 319 – Appeals against sentences in England and Wales

Dec 2005?

- Custody plus for 18-21 year olds (s. 181-182)
- Allocation (s. 41)
- Increased magistrates sentencing powers (s.154,155)

May 2006?

- Full implementation of custody plus (s. 181 to 182)
- Alterations of penalties for offences (s. 280 to 283)

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