Guildhall CHAMBERS

Newsletter

CRIME NEWS WINTER 2011

IN THIS ISSUE

Legal Week British Legal Awards Chambers of the Year Winner 2011

The Legal 500 UNITED KINGDOM TOP TIER 2011

TOP RANKED CHAMBERS UK BAR 2012 Leading Set

"See here links of a chain that often draws young men (to) destruction: drinking, gambling, whoring… his extravagancies reduced him to …little sharking tricks, and afterwards pilfering small things whenever he had an opportunity… and… having been put into gaol made criminal acquaintance…he became one of their party, and so continued like a Beast of prey robbing and spoiling honest people until he happened to be taken (by the constable)"

It could, with only a fairly superficial rewrite, come straight from an journalistic opinion piece on the August riots; but the defendant Fowler whose life is parenthesised above was hung at Tyburn on the 5th of July 1676, and these words come from the Old Bailey records, *"an ordinary's account of the execution of old offenders who had enough fair warnings given to them"*, published *"for a warning to all that read to avoid these wicked courses which brought them to a shameful end"*. As deterrent sentencing rolls into the new millennium, a less cynical soul than the editor of this newsletter might wonder at what stage a government will conclude that this approach is nearing the end of its trial period.

Deterrence (or incapacitation) in sentencing seems to be the harvest following the Summer of discontent, and it may be that this attitude will pervade even those areas of the criminal law completely disconnected with the kind of violence which poured on to the streets a few months ago. Our Winter newsletter strives as ever to keep you abreast of the latest and most important changes and trends in the law with an approach that is both analytical and practical. On one view, the new burglary guideline which will come into force on the 16th of January 2012 will change very little, barring setting out for the first time a guideline for aggravated burglary. For the standard domestic burglary (recast as a 'category two' burglary) a starting point of 12 months for a first offender is indicated, with a starting point of three years for an offender who is both more than usually culpable and who has caused a greater degree of harm. It appears to be a restatement of judicial sentencing practice since *Saw*, with a strong focus on evaluating harm to victims.

Conversely, as Sue Cavender demonstrates in her article "The New Proposed Drugs Guideline", the Sentencing Council seems to be proposing a real break with current drug sentencing practice. Sue focuses on the practical implications of the guideline coming into force in its current guise, contrasting the Council's approach with the sentences one would receive for cannabis offences following the *Xu* and *Auton* jurisprudence. The guidelines seem to reflect a more generous attitude to those who may sometimes be exploited as 'gardeners' and those who are not profiting from their activities, whilst increasing sentences for defendants for whom drugs are big business; perhaps bringing the law into line with popular opinion. The editor notes the interesting but probably irrelevant sign of the times from the Council's website – 25% of the focus group had used drugs themselves at some point in their lives.

Left to right: Jo Broome (Marketing Manager), Hamish Munro (Chief Executive), Lucy Northeast (Principal Crime Clerk), Peter Blair QC (Head of Chambers) at the Chambers Bar Awards.

One of the high profile proposals currently being mooted in Parliament is the abolition of Indeterminate sentences for Public Protection (IPPs), in an apparent recognition by the Justice Secretary that indeterminacy in sentencing can lead to inconsistency and injustice, and to the undesirable and uneconomic result of *"6000 people languishing in prison… we haven't the faintest idea of when they are going to get out"*. However, this does not signal that more discretion would be put in the hands of the judiciary – the suggestion is that mandatory life sentences should be introduced for anyone convicted of a second "serious violent or sexual offence" (as yet undefined). As release on life license after the expiration of the minimum tariff depends on the parole board, it is hard to tell whether the number or the type of defendants treated as lifers would be altered by repealing IPP legislation and rolling out more mandatory life sentences. For the moment, the idea of a change in the law releasing anyone from any sentence seems so politically unpalatable, it may well be that the abolition of IPPs is as yet a fairly distant prospect. In the meantime, judges struggle to make a rational prediction of defendants' risks of causing serious harm. In acknowledging the real difficulties faced by judges in going about this task, the Supreme Court in *Smith* has stated that judges cannot be expected to consider a defendant's future risk, but must assess the risk posed by the defendant as he stands before the sentencing court. Nicolas Gerasimidis and the editor in their article "Dangerous Assumptions" analyse this case in the context of current IPP case law and the confines of clinical risk assessment, and examine the possibly far reaching implications of this markedly changed approach.

A reminder that some changes are to be very warmly welcomed: the Crime Team are happy to say that we have a new pupil. Caighli Taylor will be completing an exclusively

criminal pupillage under the supervision of Brendon Moorhouse. Caighli joined us in September after completing Bar training in Manchester and a law degree in Oxford, and makes her first contribution to the team newsletter with a précis in this edition of some of the more important appellate decisions and a summary of the long awaited changes to special measures. We wish her every success as the newest recruit to a Chambers which we are proud to say has recently been announced as the Regional Set of the Year 2011 at the Chambers Bar Awards. Guildhall scored 7 top tier Western circuit rankings in the 2012 edition with 65 member rankings in total – with 12 members ranked in Crime. Peter Blair QC, head of chambers said, "This fantastic accolade reflects the exceptional service which our barristers and staff provide and Guildhall is proud to be recognised as one of the country's leading barrister sets".

Our Head of Chambers contributes to this edition of our newsletter with an article concerning his appearance in the recent Court of Appeal case *St Regis Paper Co Ltd v The Crown,* which deals with where a company's mind is located.

HOT OFF THE PRESS! As we go to print, we are proud to announce that in addition to winning "Regional set of the Year" Guildhall also landed the coveted "Chambers of the Year" award at the recent British Legal Awards 2011. Key factors taken into account were chambers' legal expertise and innovation, strategic vision, business winning, client care and an ongoing commitment to diversity and corporate social responsibility. Guildhall are the first regional set to win the award despite a particularly competitive shortlist of top-rated London sets.

Please email the editor at mary.cowe@guildhallchambers.co.uk if you have any comments about this edition or thoughts on what you would like to see discussed in future editions of our newsletter – we are always keen for ideas and suggestions to help make these articles and the content in our free e-news subscription of greater relevance and interest to our readers.

Mary Cowe, Editor

RECENT KEY DEVELOPMENTS

Special measures

As of the 27th of June 2011 various amendments made by sections 98-103 and 105 and Schedule 14 of the Coroners and Justice Act 2009 came into force (Coroners and Justice Act 2009 (Commencement No 7) Order 2011 {SI 1452/2011}).

The amendments provide for greater flexibility in the way in which vulnerable witnesses give their evidence. The principal amendments include:

- Witnesses under 18 (rather than 17) are automatically eligible;
- Child witnesses may opt out of giving their evidence by either a video-recorded interview or live link or both, so long as the court is satisfied that it will not diminish the quality of their evidence. In such cases there is a presumption that they will give evidence from behind a screen;
- All child witnesses are treated the same, as the category of child witnesses in need of special protection has been removed; and
- Witnesses in specified gun and knife crime offences are automatically eligible.

Time on remand and suspended sentences

R v Hewitt [2011] EWCA Crim 885 has clarified the question of how time spent on remand is relevant when passing a suspended sentence. Time spent on remand may be relevant to the decision as to whether a custodial sentence is in fact appropriate. Where the court considers that a suspended sentence is appropriate, normally the correct approach is to fix the term without giving credit for time spent on remand and to indicate that, in the event that the sentence is activated, days spent on remand would be taken into account when an order under s.240 CJA 2003 is made.

R v Maughan [2011] EWCA Crim 787 is a controversial decision, and highlights the difficulties faced in taking into account days spent on remand when passing a suspended sentence. The defendant had spent 13 months in prison on remand. The Judge at first instance imposed a sentence of six months imprisonment suspended for two years accompanied by a work requirement. The Court of Appeal substituted the sentence with one of six months immediate imprisonment, holding that the sentence passed by the Judge did not allow the defendant to have the 'benefit' of the time spent on remand.

Criminal Procedure Rules 2011

The new Criminal Procedure Rules, which came into force on the 3rd of October this year, consolidate the existing rules and introduce some changes. Some of the main replacement rules include rules about preparatory hearings in the Crown Court, forms and court records, restrictions on public access to criminal cases, reporting restrictions and the electronic service of documents. Amendments have also been made to the time limits for making applications and giving notices in connection with special measures, hearsay evidence and bad character evidence. The full text of the Rules can be found at www.legislation.gov.uk/uksi/2011/1709/contents/made

Joint enterprise murder

In the last year the Court of Appeal has been asked on several occasions to consider convictions for murder where the defendant was one of several involved in an assault surrounding a murder but did not administer the fatal blow. In *R v A, B, C and D* [2010] EWCA Crim 1622 the Court of Appeal reaffirmed established principles. An appeal was allowed where a Judge failed to direct the jury that the principal must commit the fatal act with intent to kill or to do grievous bodily harm, and also failed to direct the jury that they must be sure that someone had committed murder in order for the secondary party to be guilty. It is not necessary that the principal be identified.

In *R v Gnango* [2010] EWCA Crim 1691 the defendant was one of two participants in a car-park shoot-out. The Crown accepted that the victim was killed by the shot of the defendant's opponent. The Court rejected the Crown's argument that the defendant should be convicted on the basis of joint enterprise affray because the defendant and his opponent had diametrically opposed intentions: they were intending to kill each other and were not acting in concert.

In *R v Willett* [2010] EWCA Crim 1620, the defendant committed a burglary with X. Both the defendant and X tried to escape in a van driven by X when the victim appeared in front of the van and tried to stop it. X drove the van into the victim and killed him. The Court of Appeal held that where there was no advance plan to commit a murder during the course of the burglary, and the defendant only foresaw at a late stage the real possibility that X might commit murder, it must be proved that he had positively encouraged X in his actions once he had foreseen that X might commit the murder.

Caighli Taylor, Crime Team pupil

Focus on cannabis

The Sentencing Council has recently ended a period of public consultation prior to compiling a definitive Guideline for sentencing drug offences. It will provide a formal tabulated structure, and makes interesting comparison to recent case law - *Auton & others v R* [2011]EWCA Crim 76 and *R v Xu & others* [2008]2 Cr.App.R(S.) 50 (p308) - which set out sentencing guidelines for small-to-medium-scale production and large-scale cultivation and production respectively.

The new Guidelines cover 7 offences, grouped into 5 categories;

1 Importation;

2 Supply/possession with intent to supply;

3 Production/cultivation of cannabis;

4 Permitting premises to be used; and

5 Simple possession.

The idea is that by codifying and tabulating the various stages of the sentencing process it will be simpler and easier to progress through, stage by stage.

The first task, common to all offences, is to determine the culpability of the offender by assessing his/her role in the offence which is divided into categories of:

- **Leading role :** fairly obviously an organiser or someone who expects a high financial gain, or a professional dealer (e.g. with paraphernalia), but - and this is new - if the defendant is a prison officer or a prisoner supplying others they go straight into this group.
- **Significant role:** includes, with the usual middle-man types, those who expect to make some money from dealing; and also includes, regardless of amount, supply to a prisoner.
- **Subordinate role:** a runner; someone who is expected to make only a very small financial gain, if any. The bottom of the food chain.

"All in all the proposed Guidelines are much more precise; they are also more lenient at the lower end, whilst remaining similar or even tougher at the top end."

The second stage is to look at the 'harm' which (in the consultation paper at least) is measured simply by looking at the quantity of drugs involved, not - at this stage – the quality. The proposal is that quality should be largely ignored unless the drug is particularly pure - which of course may indicate that it is close to source, in which case it becomes an aggravating factor. This is the preferred suggestion in the consultation paper although it may not be the final decision.

The quantities involved are in 5 bands; each drug has its own weight limits. For example:

Quantity	Heroin	Cannabis
Very Large	2.5 – 10kg	100kg – 400kg
Large	500g - 2.49kg	25kg – 99.99kg
Medium	50g – 499.9g	1kg – 24.99kg
Small	5g – 49.9g	100g – just under 1kg
Very Small	Up to 4.98g	Under 100g

Ecstasy, LSD, Amphetamine and Ketamine are also given weights in each category. These amounts seem remarkably tightly defined, and each case will of course deal with drugs that vary enormously in purity, which makes the suggestion that purity be almost ignored seem rather odd.

Having determined the defendant's culpability and the quantity of drugs involved, the sentence can then be seen at a glance in the tables provided for each class of drug. The tables show a starting point and category range for each quantity and each role played.

This is where it gets interesting! The tables are clearly organised and well laid out. At first blush, they allow very little room for manoeuvre. It is instructive to compare the current case-law guidance with the new (proposed) tabulated Guidelines. The new Guidelines show tables for each of the 5 sets of offences, but to keep matters simple I will look only at production and cultivation of cannabis, all found in one table. From this we can see how the new regime will compare with existing categories as set out in *Auton* and *Xu*.

Firstly, production of cannabis in a small way with no supply at all.

Looking at *Auton* the sentence after trial would be in the range of 9-18 months. However, the new Guidelines will require new details – how many plants? Presuming a 'subordinate role' (see above for definition – this is not a loose term!) the sentence will vary depending on the number of plants grown.

- 8 plants or less means a category range from discharge to low level community order;
- 9-15 plants will result in a low level community order to 26 weeks custody; and
- 15 plants or more can result in a sentence ranging from medium level community order to 51 weeks custody.

So in comparison to the *Auton* guidelines these sentences are appreciably lighter. They are also a great deal more tightly organised, there being 14 different starting points and category ranges from which to choose. Of course using the number of plants will not always be straight forward – there is no mention of the health or size of the plants – but once that is done the range and starting point are easy to see. All in all this seems to make for realistic (and generally much less custodial) sentences at the lower range.

Further up the scale of production/cultivation, staying with the 'subordinate role' (so a mere gardener not a middle-man or organiser) the next two levels in the new Guidelines are:

- Large quantity – High level community order to 2 years custody; and
- Very large quantity – 2-4 years custody.

If we are to take these quantities to be akin to the ranges envisaged in *R v Xu* (large scale production) and remaining with the 'subordinate' role, then the proposals are still appreciably lighter; *Xu* suggests 3 years for the lowest level of involvement as opposed to the community order to 2 years bracket in the new Guidelines. Only with the largest quantity is the sentencing level for a subordinate the same.

If, however, we look at the managers ('significant role') and organisers ('leading role') then the suggested Guidelines do not seem so soft.

Under the *Xu* guidelines a manager would be looking at 3-7 years; under the new Guidelines someone with a 'significant role' in very large scale commercial operation would be in the category range of 3-7 years - exactly the same.

The *Xu* organiser would get 6-7 years; in the Guidelines someone with a 'leading role' is in the category range of 6-8 years – slightly stiffer.

Once the precise category has been reached then the final sentence can be decided, subject to the familiar aggravating and mitigating factors, which are listed for each offence.

All in all the proposed Guidelines are much more precise; they are also more lenient at the lower end, whilst remaining similar or even tougher at the top end as a result of being so specific and varying so much according to the role played. This seems to be long overdue, though of course we will not know exactly how the Guidelines will look until they are published in final form. At present the Sentencing Council cannot say when this is likely to be, so we may be waiting some time!

Sue Cavender

Dangerous assumptions

Following the recent decision of the Supreme Court in *R v Smith* [2011] UKSC 37, our current understanding that the imposition of a sentence of Imprisonment for Public Protection (IPP) is contingent on the judge's view of a defendant's 'future risk' to the public has been thrown into confusion.

One would be forgiven for thinking that in a number of recent cases, the Court of Appeal had implicitly accepted that the legislation imposed upon the sentencing judge precisely that task of assessing the risk the defendant *will* pose once he has served his sentence. This seemed to be the rationale for obtaining a pre-sentence report which typically dealt with the risk the defendant would pose if he continued on his current 'trajectory', and which also commented upon those factors which are likely to intervene in the defendant's life which may increase or decrease the likelihood of recidivism. In a serious case the additional assistance of a psychiatric report would normally be asked for to obtain a psychiatric opinion using both an actuarial assessment and a clinical judgement. It is right to observe that even actuarial assessments have regard to dynamic risk factors; that is, a clinician will factor into his or her judgment the likelihood of a defendant continuing to engage in or desist from behaviours such as substance abuse rather than look solely at static predictors like number of previous convictions, gender, etc. Even what is often thought to be a mathematical calculation about a defendant's risk involves some acceptance that risk fluctuates, rather than suggesting that the 'score' given to a defendant could represent his risk both now and forever. Putting to one side whether there is any real value in obtaining such medical reports (given that the informed and expressly stated view of the sentencing judge will rarely be contradicted by a medical professional with a different clinical judgement) it now seems that the Supreme Court adjudges that such considerations place *"an unrealistic burden on the sentencing judge… It is asking a lot of a judge to expect him to form a view as to whether the Defendant will pose a significant risk to the public when he has served six years* (Smith's minimum term of imprisonment). *We do not consider that section 225(1)(b) requires such an exercise."*

It would appear that no reference was made or consideration given to a number of authorities from the Court of Appeal. In *R v Lang* [2006] 2 All E.R. 410, C.A., the Court made express reference in the case of young offenders of the need to take account of the fact that they may mature more quickly than adult offenders, a fact said to be highly pertinent in assessing future risk. This would be irrelevant if the only issue was current risk. In *Att.-Gen.'s Reference (No. 55 of 2008) (Reg v C and other appeals)* [2009] 2 All E.R. 867, C.A., the need to consider all the other available sentencing options to avoid the need for an IPP was emphasised with future risk in mind.

The basis for the *Smith* judgement was that section 225 (1) (b) is in the present tense: *"the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences"* and therefore it was *at the moment of sentence* that the judge had to decide whether the defendant posed a significant risk of causing serious harm to members of the public. The *Smith* case itself was unusual in that it involved a defendant who received an IPP when he had already been recalled on licence for a discretionary life sentence. Counsel for the Appellant argued that as the defendant was being returned to prison to serve out the remaining years of his life sentence, the sentencing Judge should have assessed if the defendant would pose a significant risk of serious harm at the end of that sentence, rather than simply saying the defendant had demonstrated that he was currently a danger. One might have some sympathy for the Supreme Court in this situation: they were effectively being asked to conclude that there were enough protections around this particular defendant which reduced his risk to the public - notwithstanding that those protections existed by virtue of the fact that he had previously been assessed as someone who was sufficiently dangerous to merit the imposition of a discretionary life sentence.

It may have been that the Court could have restricted the rationale of their Judgment by observing that past behaviour is routinely treated as one of the best predictors of future behaviour. The defendant in *Smith*, having been assessed as being of sufficiently low risk to warrant release on parole, had gone on to commit a series of armed robberies. Neither prison nor licence conditions had altered his behaviour: he was said by the probation service to be a career criminal. It may be that the risk he would pose in the future was unlikely to be any different to the risk he posed as he stood before Judge Greenwood in Harrow Crown Court as no one was able to identify any factors which might militate against further offending. However, in explicitly saying that risk assessment in general is about assessing risk 'at the moment' that the judge imposes the sentence, the Court has made a significant departure in the approach to assessing dangerousness.

It might be argued that apart from the relatively rare cases of defendants like Mr Smith (a man who had received sentences totalling more than thirty years before receiving a sentence of life imprisonment), it would be very difficult to evaluate someone's risk without regard to factors such as the likely effect of imprisonment, the likelihood of their accessing drug rehabilitation or counselling services, their family ties, significant life events, or whether they might legitimately be expected to have any growing up still to do. These factors are staples of mitigation because it is tacitly accepted that risk is in its very nature a fluctuating and forward looking concept: it is a prediction. Regarding past behaviour as being the sole predictor of future behaviour without regard to what may change in a defendant's life could yield potentially unjust results. The 18 year old affray defendant without qualifications who persistently and violently offends whilst drunk and with delinquent peers may be a high risk now, but it is at least arguable he would present a very different level of risk after serving 18 months detention, breaking ties and bad habits, and getting some form of education.

It is certainly difficult to imagine that either clinicians or probation officers are going to stop having regard to these kinds of variables in giving the court

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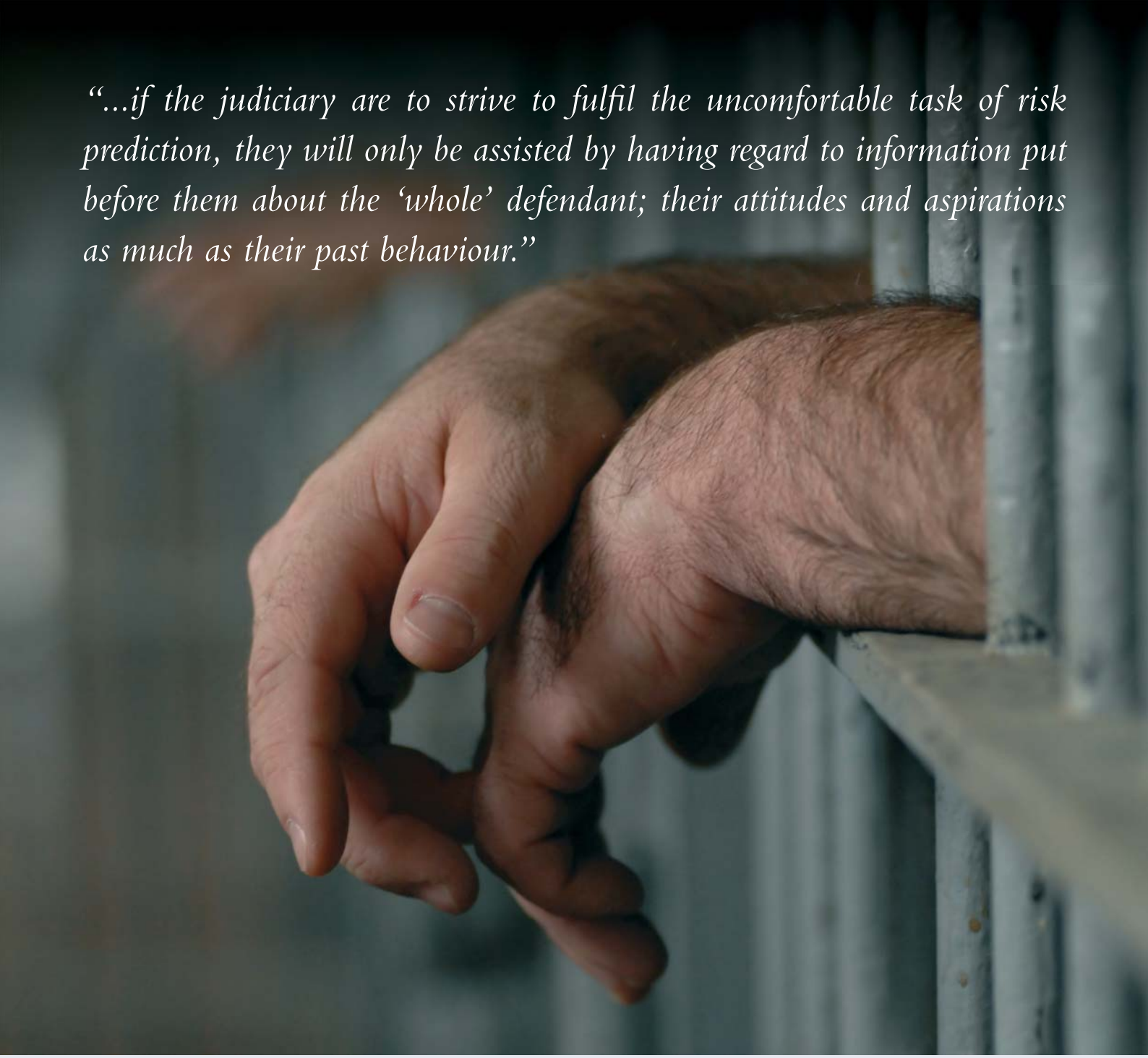

the benefit of their professional judgment. It is salutary to reflect on some of the recent academic findings about the current reliability of clinical risk prediction: a 2009 analysis of 118 recidivism risk assessments for sexual offenders found that there was a correlation in two thirds of cases between being assessed as high risk and engaging in further violent or sexual offending. This study by two Canadian researchers looking at risk assessments in 41 different countries advocated the use of actuarial assessments, as they were significantly more reliable than unstructured 'professional judgment' risk assessments. However, although actuarial assessments seem to yield more consistent and reliable results, they still result in one third of offenders having the 'wrong label' attached to them. If this is the best clinicians can do, how is a judge to unpick the complicated business of dangerousness with a psychiatric report full of disclaimers and half a dozen conflicting authorities?

It might be said that the Supreme Court has in the *Smith* Judgment tried to 'row back' the judiciary from the difficult position that the legislature has put them in – the Criminal Justice System has been tasked with the quasi-clinical job of trying to evaluate and incapacitate people who would otherwise end up having criminal careers like Mr Smith. The Supreme Court may be acknowledging in its Judgment that it is very difficult for any judge to reliably predict the risk anyone may pose in the future because human behaviour does not obey deterministic physical laws but is effected by things which are irrational or unforeseeable: one person will react to the death of a friend from a drugs overdose by self-medicating, and for another it will be the genuinely transformative 'wake-up call'. It is the contention of the authors of this article that if the judiciary are to strive to fulfil the uncomfortable task of risk prediction, they will only be assisted by having regard to information put before them about the 'whole' defendant; their attitudes and aspirations as much as their past behaviour. Irrespective of one's philosophical or jurisprudential instincts about the justice in dealing with fellow human beings in this way, it seems to make sense to our fellow professionals - probation officers or psychiatrists try to make assessments factoring in as many variables as possible, static and dynamic, rather than wringing their hands at the enormity of the task.

However one analyses the Judgment in *Smith*, on a practical level it adds a new and difficult dimension to the question of how to prepare mitigation for a defendant who is in jeopardy of receiving an IPP. When such sentences can properly be imposed will undoubtedly be the subject of further, if not imminent, appellate work.

Nicolas Gerasimidis and Mary Cowe

Where is a company's mind located?

Criminal practitioners advise daily on the meanings of words such as: intentionally; recklessly; carelessly; maliciously; wilfully; knowingly; dishonestly and fraudulently. The mental element of an offence is generally well established. Individual defendants can be told with certainty what has to be proved. But what if the defendant is a limited company?

The common law has struggled to establish a clear and consistent test as to how the mental element of an offence can be proved against a company. In the civil law of obligations (contractual or tortious) a company is usually held to be vicariously liable for the actions of its employees.

The criminal law has recognised that a company can only act through humans, but (as a matter of policy) has generally resisted the use of vicarious liability as a justifiable basis for convicting a company when none of its directors can be proved to have had the requisite mental element of the crime in question.

A handful of discrete areas of the criminal law have grown up (such as in liquor licensing) where the unknowing employer can be convicted of an offence with a mental element, on the basis of vicarious liability for his employees offending. However, these are few and far between and are regarded as a closed list. Therefore, by way of example, Parliament decided to deal with gross negligence manslaughter for companies by passing the Corporate Manslaughter Act 2007.

Criminal case law developed the 'identification' or 'attribution' principle for offences requiring proof of mens rea: asking, "whose mind is to be identified and attributed as being the mind of the company"? If a person, identified as having a controlling mind of the company, is proved to have had the necessary guilty mind, then that is attributed as the company's mind (cases such as *Tesco v Nattrass* 1972 (HL)).

The Environment Agency has recently made an attempt to challenge the status quo in the case of the Pollution Prevention and Control Regulations prohibiting the intentional falsification of emission records under a permit. Using a dictum of Lord Hoffman in the Privy Council (*Meridian Global v Securities Commission* 1995 (PC)) the EA tried to argue that if a court considers that Parliament intended companies to be caught by the regulation, and the use of the company's primary rules of attribution would defeat that intention, the court can *"fashion a special rule of attribution for the particular substantive rule"*. At first instance in Exeter Crown Court this found favour with HHJ Wassall. He decided that a very lowly manager, at one of the defendant company's several paper mills, who had broken express and clear company policy when falsifying records of emissions into a river, was capable of being the company's guilty mind, so making the company guilty of intentional falsification.

However, our own Peter Blair QC, instructed by Osborne Clarke solicitors, appealed against a 'binding ruling' and the subsequent convictions. In a forceful judgment on behalf of the Court of Appeal by Moses, L.J., the company's submissions were completely vindicated and the EA's approach comprehensively rejected – *St Regis Paper Co Ltd v The Crown* [2011] EWCA Crim 2527. A proper construction of the Regulations made it impossible to suggest that any relaxation of the rule in *Tesco v Nattrass* was necessary. Moses, L.J. quoted a case from 1889 to support the view that a company should not be convicted and punished for an offence like this where it had "no blameworthy condition of mind". The company was saved approximately £1¼m in fines and costs.

Peter Blair QC

"Criminal case law developed the 'identification' or 'attribution' principle for offences requiring proof of mens rea: asking, "whose mind is to be identified and attributed as being the mind of the company"? If a person, identified as having a controlling mind of the company, is proved to have had the necessary guilty mind, then that is attributed as the company's mind."

Wishing you a Happy Christmas and prosperous New Year from all in the Crime Team.

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