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# *The* London Advocate

THE ELECTRONIC NEWSLETTER OF THE LONDON CRIMINAL COURTS SOLICITORS' ASSOCIATION

EDITORIAL

PRESIDENT'S REPORT

LCCSA NOTICES & NEWS

EVENTS

MIND THE GAP

BOOK REVIEW: CRIMINAL APPEALS HANDBOOK

BOOK REVIEW: JEREMY HUTCHINSON'S CASE HISTORIES

CITIZENS ADVICE - SERVICES FOR DEFENCE WITNESSES

SAY NOT THE STRUGGLE NAUGHT AVAILETH

# Editorial

The London Advocate, the newsletter of the LCCSA, has been re-launched in electronic format and the reader is warmly welcomed to this, its first edition. We hope that you find the format convenient to use and easy to read on electronic devices. Please do [let us know your thoughts](#). We are accepting new members, and now would be an excellent time to join the Association - just in time for the AGM on 7th November 2016. An application form can be found [here](#).

## Embarrassment Clause

We are delighted that the Legal Aid Agency have agreed to re-think their Orwellian "embarrassment clause" in the new crime contracts, designed to silence criticism of the government. The Chief Executive of the LAA Shaun McNally recently told solicitors at the Legal Aid Practitioners' Group Conference that he is listening to us and believes we can do things differently. Let's see if he means it.

## Court Closures

£800,000 for a 2 bedroom flat on Camberwell Green? Yup, and apparently the government's on to this too and has launched a consultation on plans to close and sell both Camberwell Green and Hammersmith Magistrates' Courts. The consultation document argues that the courthouse on Camberwell Green is not fit for purpose because... wait for it... "The Camberwell Magistrates' Court building requires substantial investment to replace all of the windows throughout the whole building."

Camberwell Green is one of the busiest magistrates' courts, with its utilisation rate above the London average. But not to worry, as the contingency plans have been thoroughly thought through. One plan is to re-locate the Hammersmith Youth Court to Highbury Corner. According to the consultation document, the journey by

car is 10 miles and you can expect it to take you 16 minutes. We would not advise our members to drive at such speed unless you want your place at Highbury to be in the dock!

If prosecutions move out from Camberwell Green to Croydon Magistrates' Court, as the consultation suggests, not only will it seriously inconvenience defendants, but much of South London will become a legal advice desert, as firms head nearer the courts to cut down on travel costs. The plans are short-sighted, badly thought through, and contribute to the sense of alienation and desertion in some parts of Inner London. The consultation closes on 27th October at midnight. The LCCSA will be responding and we would encourage those of our members who would be affected to do the same [here](#).

Leigh Webber  
GT Stewart Solicitors & Advocates

## LCCSA 2015-16

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# President's Report



**I**t has been nearly a year since I took over from Jon Black as President of the Association, at a time we were still trying to ascertain whether Gove really could be an improvement on the odious Chris Grayling, we hadn't voted to leave Europe, and few had heard of Liz Truss.

The AGM/dinner was fully-booked and a great success, with food and plenty of wine in

a packed Soho restaurant. We had all the traditional hallmarks of a gathering of criminal lawyers including heckling the guest speaker.

In 2015 we had fought and lost a titanic battle with the MOJ in our litigation against two-tier competitive tendering. Despite the change of Lord Chancellor, the government proceeded and ex-

pected vast amounts of public money and time on a tendering process which was not fit for purpose. In the final analysis, two tiers led to lots of tears, and cost the MoJ £600k.

Our Association had by necessity almost re-invented ourselves as a campaigning organisation, now we sought to return to our roots - providing training, networking opportunities and information, responding to law reform, and representing the interests of all our members, whether litigants or not, whether legal-aid practitioners or not.

We remain the largest voluntary membership representative body supporting solicitors in criminal law, and our current committee is diverse reflecting our membership. As we approach the next AGM, we are looking for "new blood" so do please think about whether you would be interested in serving on the committee, and feel free to contact me or any committee member for more information.

Myself and Committee members have attended various Practitioner Group meetings and met with the LAA and MOJ regarding the new legal aid contracts. To make sure we were on track held a members meeting and conducted a survey of member views on those topics (only representative body to do so)

In December Paul Harris and I met the LCJ (Lord Thomas) and Lord Leveson. We had a frank discussion, and raised matters of concern, including BCM.

In January we supported a Justice Alliance Event which got the New Year off to an uplifting start, with speakers including Jeremy Corbyn, then just elected as Labour leader (for the first time) I briefly met Michael Gove when he visited Highbury Court, and was promised a follow-up meeting. It never happened, as Gove concentrated on Brexiting, and ended up exiting.

We held a BCM event at Snaresbrook Crown Court, and have raised matters of concern about digital case systems and CJS at the highest level including with the Senior Presiding Judge.

For the Autumn Conference we visited Ghent, which followed a successful Summer Party. All our events have discounts for members.

We aim to ensure that this Association remains relevant to the needs of our members. I would like to thank members for their ongoing support, and look forward to seeing many of you at the AGM on November 7th.

*Greg Foxsmith, Freelance Solicitor-Advocate*



# LCCSA Notices and News

## Embarrassment Clause

*LCCSA welcomes LAA decision to rethink 'gagging' clause*

The LCCSA are delighted to confirm that the Legal Aid Agency has agreed to rethink the controversial "embarrassment clause" (clause 2.2) contained within the new Legal Aid Contracts.

The clause became known as the "gagging" clause, because many believed it would have stifled legitimate criticism of the Legal Aid Agency or Ministry of Justice, restricting freedom of speech. The LCCSA on behalf of its membership challenged the clause that had caused some concern amongst the profession, and together with Tuckers Solicitors and Ben Hoare Bell LLP, instructed PLP to issue a letter before Claim.

As a result the LAA have agreed to clarify a sensible remit for the clause, which as initially drafted was unlawfully broad and vague.

The LCCSA are delighted at the outcome, and welcome the LAA decision to think again and engage with the profession on this. We are continuing to have constructive dialogue with the LAA on other contract terms and issues that affect our members. A press release from PLP is [here](#).

*Greg Foxsmith*

## Consultation Update

There are currently several consultations of interest to our members and to which the association will be responding:

1. Sentencing Council Consultation on Guidelines for Bladed Article and Offensive Weapon Offences, likely to lead to a harsher sentencing regime for knife offences. Closes 6th January 2017.
2. MOJ Consultation on the Closure of Hammersmith and Camberwell Green Magistrates Courts – a controversial proposal notwithstanding high court room utilisation stats. This is likely to result in considerable inconvenience to all court users as the proposals include residents of Peckham travelling to Croydon and those in Fulham using Hendon MC. Closes on 27th October.
3. MOJ Consultation on Transforming our Justice System – part of the government's much trumpeted plans to harness digital technology at all levels of the justice system. The part which concerns us is the introduction of on line guilty pleas. This closes on 27th October.
4. Law Commission Consultation on Reforming Misconduct in Public Office – the next stage of the project sees two models put forward for creating a statutory offence with a further option of abolition of the old offence without any replacement. This consultation runs until 28th November.

5. Law Commission 13th Programme of Law Reform – we have until 31st October to make proposals to be included in the next programme. Among ideas under consideration by the Association are a possible statute of limitation on prosecuting either way offences and making pre-charge anonymity of suspects a statutory requirement.

6. SRA Consultation on a New Route to Qualification: The SQE – Readers may recall a previous consultation by the SRA to which the LCCSA responded. They have now published the detail of the shape of the SQE and responses are required by 9th January 2017.

7. CPS Consultation on Crimes against Disability, Sexual Orientation, Gender Identity and Racially and Religiously Aggravated Offences – this pertains to new public policy statements on how the CPS will approach these offences. Responses can be made to all or just one of the categories of crime and the deadline is 9th January 2017.

8. MOJ Consultation on Modernising Judicial Terms and Conditions – closing on the 10th November -proposals to create fixed term tenure of position for new fee paid judges with possibility of existing office holders being switched at a later date. The LCCSA is not minded to respond to this consultation but it is likely to be of interest to our members holding or seeking judicial office.

*Tony Meisels, Lewis Nedas*

### Touting

A meeting occurred on the 6th October with representatives from the Solicitor's Regulation Authority, The Law Society, the CLSA and committee member Lucinda Nicholls representing the LCCSA.

This meeting was called in order to discuss the live issue of touting in the profession and the forms in which touting occurs. Not only were specifically troubled areas discussed, but also the appropriate consequences for Solicitors and firms who persistently breach the Codes of Conduct by bringing the profession into disrepute. The meeting was extremely productive from all perspectives and it has been agreed that a pro-active approach will occur moving forward. A recent consultation hosted by The Law Society had invited Solicitors to provide their comments on this issue and those comments were available to those at the meeting and discussed in depth addressing as many of the issues as possible within this initial meeting.

Crispin Passmore, on behalf of the SRA, outlined the procedures currently in force. The SRA receive approximately 12,000 complaints a year. A traffic light system is now in place, meaning the more complaints received relating to a particular individual or firm, increases the level of seriousness and the type of investigation that takes place.

If specific information is provided, then the SRA can undertake

a more thorough investigation and appropriate action, but difficulties are faced when information is vague or general. The SRA has requested current examples of what the profession class as touting so that these areas can be targeted in priority order. The LCCSA and others present are now drafting a short document to assist the SRA in their approach moving forward and to ensure that professionals who act with integrity and principle, do not suffer at the hands of those who breach our Codes of Conduct.

It was clear, that by the end of the meeting, the SRA are making genuine attempts to deal with this live issue the profession face from minority individuals and firms. The LCCSA welcome the opportunity to work with the SRA and The Law Society addressing the concerns we face as a profession from rogue traders.

*Lucinda Nicholls, Freelance Solicitor*

### Legal Aid - LGFS Negotiations

This time last year, we put out an open letter calling for a level playing field over the review of LGFS. It was common knowledge that the Criminal Bar Association had been negotiating with Government over the new AGFS structure and, in light of the 17.5 % cuts (later reduced to 8.75%), it was our belief that we should have input towards a review of the LGFS so as to ensure a degree of parity for our members. The Ministry of Justice (MOJ) accepted our argument and we have spent some time advancing our views on the structure of any new scheme.

For us it is important that any new structure recognise the nature of the work that goes into preparing cases; that one size does not fit all and that if the current system continues in any incarnation then defendants will be denied access to justice as quality provision is no longer viable at the rates on offer. It is of course our preference that the MoJ carries out a consultation with a choice of options for the new scheme so that members and non-members can make their own representations, whilst crunching the numbers.

We will keep you updated when we can, noting of course that the discussions in regards to the AGFS scheme are at an advanced stage, having commenced in 2014 when discourse developed between The Bar and MOJ.

*Jon Black, BSB Solicitors*

## Events

### LCCSA European Conference 2016

*We came, we conquered, we Ghent*

For over 20 years, the LCCSA has maintained three annual highlight events: the AGM, the annual dinner (now summer party) and the European Conference. It is the gift of the President to choose the destination for two nights of catching up with friends both old and new over drinks, food and CPD points.



When Greg Foxsmith announced Ghent as the venue for this year, I have to admit that I wasn't over-excited. A small town that I had barely heard of; it certainly wasn't on my bucket -list. In recent years, we have been to Lyon, Alicante and Madrid but I can truly say that Ghent was the most enjoyable in terms of location.



Ghent is a small town in Northern Belgium with a small river running through it, banked by rows of quirky centuries-old buildings. Behind those ran warrens of interesting streets full of restaurants bars and shops (that would be packed with hipsters if in Shoreditch). Unlike most other European cities, we were not overwhelmed by posesses of stags and hens donning matching t-shirts and tiaras (and long may that last) which meant we could enjoy the vast array of gin bars & beer taverns. And how we did. Although some of us had enjoyed an afternoon in the sun sitting by the river tasting a variety of Trappist beers, on Friday night we gathered, as is tradition, for drinks (sponsored by 5 St An-

drews Hill chambers) before making the short journey on foot to a restaurant overlooking a quiet square. The meal was held in what seemed like a livery hall, Greg, donning his presidential chain, welcomed all the guests before we enjoyed a three course meal washed down with local wines.

Saturday morning's lectures (3 CPD) saw a strong attendance despite the lateness of hour that many retired at. Rudi Fortsen QC of 25 Bedford Row took us through the latest developments and arguments on joint enterprise post-Jogee and some updates in relation to firearms legislation (yes, I was listening not tweeting), followed by his colleague Adrian Eissa who gave us a run-down of defending civil recovery in confiscation cases. On Sunday morning, David Josse QC of 5 St Andrews Hill shared a a fascinating insight of life in the international Criminal Tribunal for Yugoslavia .

A city tour is usually an optional extra for Saturday afternoon, but this year we shook things up a little and turned it into a sunset boat trip along the river with not only a guide / skipper to inform, but beer and cheese for the 4D experience. All courtesy of 25 Bedford Row. The sun shone for us all weekend, the evenings were warm and there was no better way to move into Autumn whilst claiming CPD. I hope to see many colleagues again next year.

*Jon Black, BSB Solicitors*

#### Upcoming Events: Annual General Meeting and Dinner 2016

The LCCSA Committee usually meets on the second Monday of each month, but please note this year the AGM/Dinner is on Monday 07 November. We look forward to your attendance! The venue is the 600 year-old Crypt at St Ethelredas, Farringdon.

**AGM** the formalities will take place at the start, and it is free to attend for all members. The atmosphere is informal and there is a bar with alcoholic beverages and soft drinks. Our committee is elected, including new members. Outgoing president Greg Foxsmith will present a short review of the last year.

We are delighted that committee member Greg Powell has indicated he is willing to return to the Presidential role, and we have vacancies on the committee so please contact any committee member or our administrator if you are interested in joining. All members can attend the AGM, and there is no obligation to stay for the dinner, but we encourage you to do so.

**Dinner** The formalities are followed by a spectacular dinner , with a outgoing Chief Magistrate Howard Riddle as the guest speaker. The cost is £60, for a three course dinner with wine catered by the fabulous French bistro the Bleeding Heart. Last year over 100 members enjoyed a raucous night. Try and keep Tuesday morning booked out of Court!

Booking for the dinner is [here](#)





Mind the GAP...

Too often our members will have attended court for a case which will be contested only to find it has been designated a GAP case (anticipated guilty plea). As a consequence they receive a charge sheet, a scant MG5 and hopefully a PNC. This causes problems for all parties. Follo`wing representations made by the LCCSA and other bodies, changes are to be made to the CrPR to control the use of undisclosed information at sentence & bail hearings, which goes only some way to address-ing the issue.

The designation of cases at the point of charge where a plea is anticipated has its origins in the Transforming Summary Justice initiative. Interestingly the document from which the initiative de-rives intended both the police and CPS work together to identify uncontest-ed cases, to ensure they were resolved more quickly. In reality it is the police who seem to have sole responsibility for this task and this lies behind the prob-lems that have followed.

From those recommendations there fol-

lowed the National File Standard (see box right). Regrettably the guidance is highly nuanced and leaves a lot open to interpretation. There are 2 situations from which a guilty plea can be antic-ipated. The first is simple: where the suspect makes a clear and unambiguous admission, saying nothing which could be used as a defence. It is the second cri-terion which is neither clear nor easy to interpret. It states:

*the suspect has made no admission but has not denied the offence or otherwise indicated it will be contested and the commission of the offence and identification of the offender can be estab-lished by reliable evidence (e.g. of a police of-ficer or another reliable independent witness) or the suspect can be seen clearly committing the offence on a good quality visual recording.*

In cases where the suspect has remained silent, the police are must consider whether commission and identification are proven by reliable evidence, which means from a police officer or reliable independent witness, This should lim-it the number of cases designated GAP following a no comment interview, but

CONTENTS OF NATIONAL FILE STANDARD (NFS) MAY 2015				
PRE-CHARGE REPORT FOR CPS CHARGING DECISION	FOR 1 <sup>st</sup> MAGISTRATES COURT HEARING		POST 1 <sup>st</sup> MAGISTRATES COURT HEARING	
1. To Police Supervisor, CPSD or CPS Area Based Prosecutor	2. ANTICIPATED GUILTY PLEA (GAP) CASES - TSJ	3. ANTICIPATED NOT GUILTY PLEA (TSJ NGAP) CASES & CROWN COURT CASES (Irrespective of Plea)	4. Magistrates Court Cases	5. Crown Court Cases
<p><b>MUST INCLUDE:</b></p> <p><b>MG3/MG3A</b> ** - Report/further report to Crown Prosecutor (<b>include</b> any DV checklists, hate crime incident reports)</p> <p><b>Previous Convictions</b> of suspect and key prosecution witnesses</p> <p><b>MG11(s)</b> – <b>Key</b> witness statement(s) or ROVI</p> <p><b>Any material that undermines the prosecution case or assists the defence case. Disclosure schedules are NOT required at this stage</b></p>	<p><b>MUST INCLUDE:</b></p> <p><b>MG4/ 4A</b> Charge Sheet and bail/variation <i>or</i> <b>MG4D/DPG/E</b> –postal/written charge (where Digital Case File (DCF) not in use)</p> <p><b>MG5 (DCF where in use)</b> Case Summary including Common Law Certification on Disclosure</p> <p><b>MG6**</b> - Case File Evidence and Information</p> <p><b>Previous Convictions</b> - print of defendant</p>	<p><b>MUST INCLUDE:</b></p> <p><b>MG3 /3A**</b>- Report/further report to Crown Prosecutor</p> <p><b>MG4/ 4A</b> Charge Sheet and bail/variation <i>or</i> <b>MG4D/DPG/E</b> – postal/written charge (where DCF not in use)</p> <p><b>MG5 (DCF where in use)</b> Case Summary including Common Law Certification on Disclosure</p> <p><b>MG6**</b> - Case File Evidence and Information</p> <p><b>MG9**</b> - List of Witnesses</p> <p><b>MG10**</b> - Witness non-availability</p> <p><b>MG11(s)</b> - All <b>key</b> witness statement(s) or ROVI</p> <p><b>Streamlined</b> Disclosure Certificate (NGAP only)</p> <p><b>Previous Convictions</b>- print of defendant and key prosecution witnesses</p>	<p><b>NO FURTHER FILE BUILD AND SUBMISSION REQUIRED</b></p> <p><i>Except any further material</i></p> <p>identified, prior to or at the Case Management Hearing, as being necessary for trial (e.g. updated medical report, or MG15 interview record).</p> <p><i>or</i></p> <p>that may come into police possession post 1<sup>st</sup> hearing.</p>	<p><b>MUST INCLUDE:</b></p> <p><b>All initial NGAP/Crown Court case material</b></p> <p><i>plus</i></p> <p><b>Full MG6 disclosure series</b></p> <p><b>MG11</b> - All other statements (including corroborative, continuity etc.) and material identified on an MG3/3A action plan and not yet provided.</p> <p><b>MG15</b> - Interview Record</p> <p><u><b>unless specifically advised that any less material is required for early guilty plea or following initial case management</b></u></p>
<p><b>Where applicable also include:</b></p> <p><b>MG6**</b> - Case File Evidence and Information</p> <p><b>MG7**</b> - Remand Application(where DCF not in use)</p> <p><b>MG11</b> – VPS (or ISB, CIS)</p> <p><b>MGDD</b> Drink/Drive forms</p> <p><b>Indication of:</b> Special Measures, Hearsay, Bad Character, Video-Link evidence to be applied for</p> <p><b>Other key evidence:</b> CCTV* (where the CCTV is of evidential value and to be relied upon at any trial. If not available, summarise content &amp; ID offender and/or offence), medical or forensic reports, photographs, documentary exhibits, 999 tapes etc. If not available indicate on the MG6 the date requested and timescales for results to be returned/available.</p>	<p><b>Where applicable also include:</b></p> <p><b>MG2**</b> - Special Measures Assessment</p> <p><b>MG3 /3A**</b> Both to include any DV checklists and hate crime incident reports</p> <p><b>MG4A/B/C</b>- Bail Conditional/ Vary/Security/Surety</p> <p><b>MG7**</b> - Remand Application (where DCF not in use)</p> <p><b>MG8**</b> - Breach of bail conditions(where DCF not in use)</p> <p><b>MG11</b> – VPS (or ISB, CIS where appropriate)</p> <p><b>MG11</b> - <b>key</b> witness statement /evidence e.g. CCTV*, only if necessary to explain or supplement the case summary or where viewing may have an impact on sentence</p> <p><b>MG18</b> - Offences TIC</p> <p><b>MG19** or</b> Compensation documentation e.g. estimates or invoices. Only use MG19 if cannot be incorporated on MG5/DCF.</p>	<p><b>Where applicable also include:</b></p> <p><b>MG2**</b> - Special Measures Assessment</p> <p><b>MG4A/B/C</b> - Bail Conditional/Vary/Security/Surety</p> <p><b>MG6B**</b> - Police officer/staff misconduct record (NGAP only)</p> <p><b>MG6D**</b> - Schedule of relevant sensitive material (NGAP only)</p> <p><b>MGDD</b> - Drink/Drive forms</p> <p><b>MG7**</b> - Remand Application(where DCF not in use)</p> <p><b>MG8**</b> - Breach of bail conditions (where DCF not in use)</p> <p><b>MG11</b> – VPS (or ISB, CIS where appropriate)</p> <p><b>MG12</b> –Exhibits list</p> <p><b>MG16**</b> - Bad Character/Dangerous Offender</p> <p><b>MG18</b> - Offences TIC</p> <p><b>MG19**</b> - Compensation form and details</p> <p><b>[MG] SFR</b> - Forensic Submissions/results series of forms</p> <p><b>Other key evidence:</b> CCTV* (where the CCTV is of evidential value and to be relied upon at any trial and/or sentence), medical or forensic reports, photographs, documentary exhibits, 999 tapes etc. If any of the above are not available <b>must indicate</b> on the MG6 the date requested and timescales for results to be returned/available</p>		
<p><i>*CCTV and any other visual/multimedia not listed</i></p> <p><i>**Not Discloseable to all parties</i></p>	<p><i>*CCTV and any other visual/multimedia not listed</i></p> <p><i>**Not Discloseable to all parties</i></p>	<p><i>*CCTV and any other visual/multimedia not listed</i></p> <p><i>**Not Discloseable to all parties</i></p>		

the concern is that too many officers are stretching what ‘reliable’ means in this context. Now is the time to provide ex-amples where a case has been incorrect-ly designated, with reference to police URNs and provide a short reason why the case clearly did not meet the Nation-

al File Standard. The CPS would wel-come this information, as their staff also suffer for want of information, If this criterion proves too vague for officers, it should be abandoned. Only those cases where there has been a clear admission should be fast-tracked to GAP. Mem-

bers are invited to send such examples to [info@lccsa.org.uk](mailto:info@lccsa.org.uk) using only URNs to identify cases.

Mark Troman, Powell Spencer

# Book Review: Criminal Appeal Handbook

Joel Bennathan QC, Daniel Jones and Greg Stewart. Bloomsbury

We have not always enjoyed a right of appeal in this jurisdiction. The criminal Appeal Act 1907 and subsequent Acts introduced the right, subject to leave being granted, and the Court of Appeal and its powers remains a creature of statute. Negotiating a way through the relevant Law, procedures, practice directions and etiquette can nonetheless still be a minefield for the inexperienced.

Some criminal lawyers have forged a reputation and developed expertise in criminal appeal work. One such is LCCSA member Greg Stewart, who heads the appeal team at his firm GT Stewart, and who co-authors this excellent handbook together with barristers Daniel Jones and Joel Bennathan.

Specialists in this field often find themselves preparing appeals in cases where it was unlikely there would have been a conviction in the first place if there had been adequate representation at the original trial. This book sets out the approach to defence investigation and preparation

of appeals which shows not only how it should be done, but regrettably all too often how it should have been done in the first place. Dealing with the sensitive issue of criticism of previous lawyers is ably covered in this text.

For criminal lawyers who are not appeal specialists, this practical handbook makes the appeal process less daunting.

The book's thematic approach plots a linear path through application, process, funding & costs, and has comprehensive footnotes and a full index. Each chapter concludes with a summary of the key points.

For a Solicitor familiar with advocacy in the lower courts and then acquiring Higher Rights, it may be the drafting of an advice on appeal after conviction that appears more alien than cross examination or the jury speech. Without the collegiate environment of chambers, HCAs may have less opportunity than counsel to seek peer or mentor advice. Yet the drafting of grounds and advice on appeal are the essential pre-requisite for obtaining leave. This text reminds us that brevity is appreciated and unnecessary inclusion

of authorities are deprecated. Relevance is the key, repetition the bête-noir. There are examples of drafted Grounds and Advice on Appeal in the comprehensive appendices.

I would have liked to see a section dealing with advocacy in the Court of Appeal, but in fairness there are many other textbooks on advocacy, and the best preparation is probably to spend time in Court in advance of your own hearing to acclimatise to the rarified environment.

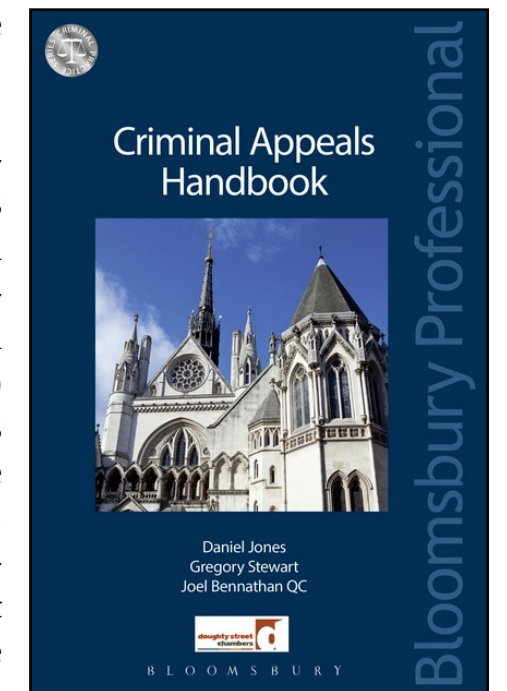
There is a timely reminder about the risk of loss of time served after unsuccessful appeal. This harsh sanction, meant as a deterrent against frivolous appeals devoid of any merit, is unfair as it operates more harshly on those who have spent longer periods in custody, and has no deterrent on, for example, the middle-class fraudster privately funding an appeal against conviction without risk because the sentence was non-custodial. The power has traditionally been exercised sparingly, but anecdotal evidence suggests an increased appetite for imposition of the sanction. The section on appearing at hearings is useful, although so far as presence of the appellant/applicant is concerned it omits to include the op-

tion of appearance by video-link.

Finally, the handbook has chapters on the CCRC (well written by Rebecca Penfold from Dyers chambers) as well as appeals to the Supreme Court and ECtHR. Appendices include the relevant Criminal Practice Direction, relevant Criminal Procedure Rules and sample pleadings, making this a comprehensive, informative guide which deserves a place in every solicitors office.

We have often heard Counsel muttering about the "intellectual dishonesty of the Court", but remember that if an appeal has merit, is properly prepared and well argued, it is there to be won. This book will help you do just that.

Greg Foxsmith





# Book Review: Jeremy Hutchinson's Case Histories

Thomas Grant QC. Hodder and Stoughton

As the title suggests, this book summarises some of the many illustrious cases in which Jeremy Hutchinson appeared. It is not a conventional biography, and all the better for it.

Hutchinson was defence counsel of choice in some of the greatest trials in the 1960s and 1970s. His roll-call of cases includes defending both Christine Keeler and Howard Marks, as well as appearing for Penguin Books in the "Lady Chatterly" trial.

He was always well prepared, speaking fearlessly to judges and clearly to juries.

What is clear is that as much as he was highly regarded, he was also greatly liked by colleagues, solicitors and clients alike. He is one of those characters about whom it is hard to imagine anyone having a bad word to say, and his natural modesty meant he never put pen to paper to set out an autobiography, despite several invitations to do so.

Thankfully, Thomas Grant QC, who met Hutchinson (now 101) a few years ago has performed a valuable service in penning this book, telling the stories of some of the best cases from Hutchinson's career thematically rather than chronologically.

Each fascinates, and even those that are already familiar pieces of social history are brought vividly to life.

Hutchinson is the "golden thread" that binds together the battles played out in the Old Bailey: defending alleged spies and traitors, peace protesters, art thieves, and battling against reactionary forces- from heavy handed Government to Mary Whitehouse. This is a book that is informative but also a pleasure to read, and should appeal equally to a wide readership, not just lawyers, as is often the case in legal biographies.

Grant makes the case that Hutchinson represents the finest traditions of the Independent Bar.

He certainly had the right background (son of an eminent QC and Judge, public school education followed by Oxbridge, and an opportunity to be Judge's Marshall with a "family friend"). He bought his first home with the proceeds of a Monet painting that he had been gifted. That's not the start that all of us enjoy. Hutchinson was nonetheless happy to take on the establishment if that what was justice required, and defended without fear or favour. For this reviewer, the introductory chapter that charts the connections with numerous well known luminaries of the era was the least satisfactory. Of more interest are the wonderful portraits in the case histories of some of the legal characters of the day- an array of cantankerous opponents and eccentric judges.

Reading about the trials is a reminder how much has changed from what was a truly adversarial system to the case managed process of today. Here you will be reminded of the days of contested committals with live witnesses, defences not disclosed until the start of

the case, and the right to jury challenge, as well as the right to silence without adverse comment.

In one case, Hutchinson introduces without prior notice a defence witness who would only identify himself as "Agent X", who purportedly worked for the Mexican Secret Service and gave evidence that the defendant had also done so. No "Notice of Defence Witnesses" required!

The longest case that Hutchinson ever conducted was a multi-handed drug importation which lasted two months. Now similar cases can last much longer, due to the modern tendency to "read" or play long passages of intercept transcripts, and lengthy mobile telephone and cell-site material. But it is not just trial length that has increased- so have the length of sentences, leading to a phenomenal rise in the prison population. Heavy sentencing and overcrowded prisons are matters that Hutchinson deprecates, and in his retirement from the bar he has, amongst many other worthwhile endeavours, supported Penal Reform and campaigned for the abolition of the "dock".

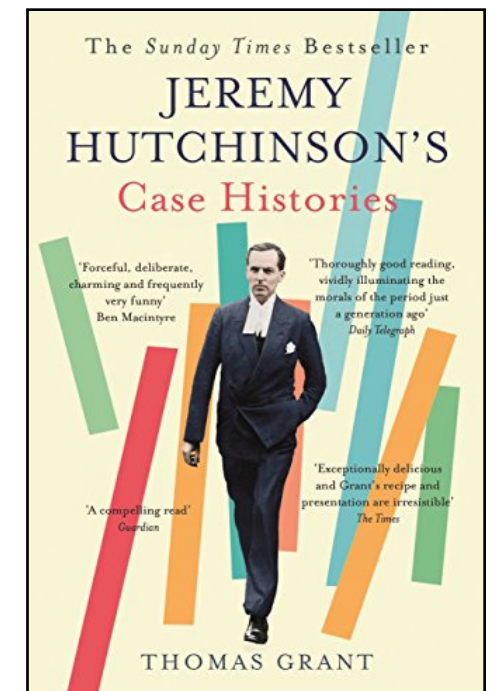
Some things have not changed much- the frustration of defending in cases that cannot properly be in the public interest to have been prosecuted at all is as contemporary now as it was during Hutchinson's era.

We need advocates of his calibre and courage just as much today, with increased police and surveillance powers, police discrimination, prosecution incompetence and recent cases like the "naked rambler"

facing a seemingly permanent prison sentence.

The book concludes with a post-script from Jeremy Hutchinson himself, now a sprightly Centurion. He explains how when called to the bar there was no formal advocacy training, and he learned his trade by countless appearances in the Magistrates' Court. This will strike a chord with many solicitor HCAs who trained in the same way, yet are criticised by some of the contemporary bar leadership for "lack of training". He laments Government cuts to Legal Aid, and lambasts the previous incumbent but one of the office of Lord Chancellor- the odious Chris Grayling MP. Still forthright, his views are cogent.

This book is an affectionate tribute to one of the greats of Adversarial Advocacy. Mr Grant clearly grew to like Jeremy Hutchinson very much. After reading this book so will you.



# Citizens Advice - Free Services for Defence Witnesses

## Are you using the free services available for defence witnesses?

The Citizens Advice Witness Service offers free, independent and impartial support for defence and prosecution witnesses in every criminal court in England and Wales. They provide practical information about the process as well as emotional support to help witnesses feel more confident about giving evidence.

### Supporting defence witnesses - by understanding their needs

While the Witness Service supports defence and prosecution witnesses, many in the defence community haven't made use of the service available. The Witness Service wanted to understand why, so they worked with an organisation called Supporting Justice to find out. They spoke to defence lawyers to learn what might be preventing them from referring witnesses for support. They found that many defence solicitors and barristers didn't know about the service or saw it as a prosecution-only service.

### There are real benefits to referring witnesses to the Witness Service

When witnesses feel informed and supported, they're more likely to attend court - and support can help them feel more confident and able to give their best evidence. On the day of the trial Witness Service volunteers can also keep defence witnesses informed of proceedings, allowing defence lawyers to spend more time with their client.

### What the Witness Service offers - and how to refer

Referring witnesses in advance (using the online referral form) can help to reassure witnesses before trial. The Witness Service contacts witnesses in advance to offer support and talk them through the process. Highly trained and dedicated volunteers can show witnesses around court before the trial date so they know what to expect on the day. They also offer a more in-depth 'outreach' service to vulnerable and intimidated witnesses - pre-trial support away from court, perhaps in their home, school or community cen-

tre. Volunteers are there to support witnesses on the day too. They provide someone to talk to in confidence (but not about the evidence in the case), information about court and legal processes, support for special measures and emotional support in dealing with the impact and experience of attending court. In most courts they can provide a separate waiting room and meetings rooms for defence witnesses.

If you're a defence lawyer, find out more by visiting [www.citizensadvice.org.uk/witness](http://www.citizensadvice.org.uk/witness).

### Key messages

- Citizens Advice Witness Service supports defence witnesses as well as prosecution witnesses.
- Research conducted by Citizens Advice showed that witnesses do need and want the service provided but they weren't aware the service was available. Many defence lawyers did not know about the service or exactly what it offered and in some cases wrongly thought that it was a prosecution-only service.
- In most courts we can provide a separate waiting room and meetings rooms for defence witnesses and can keep defence witnesses up to date on the day of trial. Different volunteers will be assigned to support defence and prosecution witnesses.
- Witness Service staff and volunteers go far beyond offering witnesses and their families a cup of tea and a friendly face. They undertake intense training and show incredible commitment to ensure the service is free and independent of the police, prosecution agencies and courts, and is tailored to meet individual needs, including those who are vulnerable and intimidated.
- The Witness Service provides independent support and information to allow witnesses to give their best evidence. It offers:

» a preparation service which includes contacting witnesses in advance of trial to talk them through the process of giving evidence

» The opportunity to visit an empty courtroom before the trial day and familiarise themselves with what it will be like when they give evidence

» Support and information while they're at court for the trial and help with claiming expenses

» An outreach service for vulnerable and intimidated witnesses who may need a higher level of preparation and support which includes preparation sessions at the witness's home or a community location as appropriate

• The service has significant benefits for defence solicitors. Their witnesses are likely to give better evidence and it may reduce the attrition rate of witnesses not attending as they feel supported and prepared. It can allow defence solicitors more time to spend with their client rather than having the constant distraction of trying to keep defence witnesses updated on proceedings when at court.

• Witnesses can be referred in advance via our online referral form. Advance referrals mean that we can contact the witness in advance of the trial date to offer support.

• While advance referral offers significant benefits witnesses can also be referred on the day directly to the Witness Service who are based in every criminal court. Ask the court office where to find us. For more information about the Witness Service, visit [www.citizensadvice.org.uk/witness](http://www.citizensadvice.org.uk/witness)

*Paula Ellen, Consultant: Defence Witness Engagement Project, Citizens' Advice*



# Say Not the Struggle Naught Availeth.....

**Squirrel Nutkin** "Hi Felix, gutted about Camberwell closing?" He looks out the window, " Hey, what's with the press cameras - is some soap star willy-waving again?"

**Felix Mansfield** "No, The Grand Poobah and some Orcs from the Ministry of Truth are visiting on a Fact Finding Expedition. Wanda Rabbit is showing him round. It will be the usual mix of "I feel your pain" and "We are the Masters now!"

*Wanda and the Fact Finders emerge onto the Court Concourse.*

*The "Resistance" have fixed up a Camberwell Welcome for him.....*

**Wanda** "Proud of our commitment to value for money service delivery to a deprived but richly multi-cultural inner-city area...."

*She stops, confronted with the sight of 21 pairs of bare buttocks.*

**Wanda** "Felix, if you are behind this....."

**Felix** "Unfortunate phrasing, Wanda, I will have you know that Camberwell leads the country in synchronised mooning, it is a gesture of respect!"

*21 sets of underwear are raised and ceremonially lowered three times.  
The embroidery spelling out "Camberwell Loves Cuts"*

**Felix** "A 21 Bum Salute, Mr Poobah, you should be flattered indeed, Not even Jack Straw commanded that!"

*Knickers rearranged, the wearers go about their business of defending the Ungodly on reduced pay.*

**Wanda** "Felix, there will be a Court Users Meeting about this!"

**Grand Poobah** "An unusual welcome, I am sure; but I do understand this is South London...."

"Welcome, O Grand Poobah!" roar Phineas Fieldmouse, Nogbad Nightingale and Oscar Owl. An Orc is felled by the following fusillade of footwear.

**Felix** " You are indeed honoured, Sir, 'The Salutation of the Shoe' - it means that the throwers are willing to go barefoot to fulfil the Government's austerity program."

**Grand Poobah** "Very moving! It is heart-warming to local traditions woven into the fabric of our society. Get up, Flannel! That stiletto only scratched you. Now tell me, Mr Mansfield, what are that group of people over there chanting? The ones with the rat waving an inflatable penis. Their dialect escapes me."

**Felix** "That will be the Camberwell Barmy Army, Your Poobahness, a local group of friends and family who come to court to of-

fer succour and support to those on trial. In their rich local patois they are suggesting that you take more time to spend with your family. How can I put it; especially with your mother....."

**Grand Poobah** "Would that I could, would that I could; but we must be on our way. Wait a minute, where is my briefcase!"

*Larry Lizard, who has never owned a briefcase, is sauntering casually towards the front exit with one when Felix accosts him.*

**Felix** (wearily) "Give it back Larry!"

**Larry** "Sorry Felix, just an expression of solidarity, besides, I thought it was abandoned...."

*Felix returns it to a grateful Grand Poobah.*

**Grand Poobah** "Thank you Mr Mansfield, that briefcase contained the Top Secret plans to turn Wimbledon Magistrates into a Charity Shop complex, I am eternally grateful!"

**Felix** "Won't need that Court Users Meeting now, will we Wanda?"

*Bruce Reid, Steel & Shamash*