

# THE JUSTICE PAPERS

The Bar Council

## Criminal Justice



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Even if you are one of the people who, by happy chance, lives a life so uncomplicated that you never come into immediate contact with the criminal justice system (CJS), you will be affected by it. Your fundamental sense of safety in going about your daily life is intimately connected with a CJS that can function well enough to allow certain reasonable assumptions. That if you are victim of crime, the police will investigate your complaint and that the Crown Prosecution Service (CPS) will prosecute it; that if you are a witness to a crime, that you will be able to make your plans with some certainty about when you will need to come to court to give evidence; that if you are accused – perhaps wrongly – of a crime, that you will be properly represented and properly heard, irrespective of your ability to pay. It is reasonable to make all these assumptions and yet, increasingly, you would be wrong to do so.

Many people are familiar with the swinging cuts to police services over the last decade, and most of them can make the obvious connection with the dwindling numbers of crimes being solved. Some may also know of the disastrous experiment in privatising the probation service, and the serious impact this has had on the effective supervision of those convicted of crimes. We in the legal professions have of course been horrified at the 40 per cent cuts over the last decade to the fees paid to criminal barristers for defending in the most serious cases in the Crown Court. I have watched in despair in recent years as increasing numbers of junior barristers, who have made a real difference to

the lives of so many, walk away from the profession that they love because they do not come from wealthy families and cannot contemplate a career in which they stand little or no chance of surfacing from the ocean of debt incurred by the years of study and training.

Lesser-known consequences of the quiet draining of justice resources in recent years include, for example, a lack of lawyers working for the CPS with the necessary experience to consider and prepare cases that have life-changing consequences for the people involved. They do not have an IT system that is compatible either with the police IT system or that used in the Crown Court. They frequently do not have so much as a working photocopier at court or folders to put documents in front of a jury. The cumulative effect of only one or two of these apparently trifling difficulties can be the loss of so much court time that cases have to be adjourned to another day, with devastating effect for the parties.

An emptying out of both personnel and corporate knowledge from both the CPS and police service means that failures to disclose vital material to the defence (such as that which, at the eleventh hour, exonerated Liam Allan from a rape charge) is now so common that most criminal barristers can cite you a number of their own similar experiences without the need to take a moment to reflect. By way of unexceptional example, two consecutive trials this summer in which I was defending people accused of very serious sexual allegations

were adjourned because key evidence had not been disclosed. This had undoubtedly occurred because there is a vacuum where investigative and prosecutorial expertise had once been, and the consequences are not only inefficiency, but ultimately miscarriages of justice.

Cuts to legal aid also mean that people on relatively modest household incomes are now ineligible for legal aid. People who are charged with offences which will have far-reaching ramifications for them, their finances, their job prospects and their families are being denied legal aid unless it is inevitable that they would be sent to prison if convicted. And where a person who has had to pay privately for representation is acquitted, they cannot even recoup their legal costs.

Of course, many of those who have been refused legal aid cannot afford to pay privately, and are, increasingly, representing themselves. People who have no experience of how a system operates, or of what information is important and what isn't, cannot be expected to navigate that system without problems. Judges invariably find themselves extending hearings by hours or days in order to explain the processes and rules to a defendant who is unrepresented (known as a litigant-in-person). Coupled with the fact that efforts to save money on judicial salaries and pensions now routinely leave criminal courts without enough judges to deal with the caseload, it creates ever-greater delays to trials.

The situation is exacerbated by the fact that the contracts between the Ministry of Justice and various service providers oblige the courts to wait hours for prison vans and interpreters who, too frequently, do not speak the right language. Courts are told that a defendant 'refused' to come out of his cell, even while that defendant is phoning his solicitor to ask why he hasn't been collected to go to court.

Days of trials are lost, and whole trials are derailed because of such delays.

Victims of crime, witnesses, defendants, police officers and families of everyone concerned can wait for months for a trial date, only to be told the day before that the case has been 'pulled' for the want of a judge, and that they must wait months more. This does not only happen to hardened criminals and police officers, but also to the innocent, the vulnerable, and the victims of terrifying crimes; to those who are least equipped to deal with the experience. Perhaps the most unpalatable response to this practice is a decision by the Ministry of Justice to close dozens of courthouses, forcing those same people to take longer, anxious journeys to more distant courts.

These ill-considered cuts must be reversed; they are simply too costly - and all of us who value fairness, protection of the public and the rule of law must be clear that it is not only lawyers and other CJS professionals who pay the price.