CRIMINAL APPEALS BULLETIN
SEPTEMBER 2025

Address
54 Doughty Street
London, WC1N 2LS

Follow Us
Bluesky: @doughtystcrime.bsky.social

E: crime@doughtystreet.co.uk
Tel: 0207 400 9088

Emma Goodall KC
Member of the Doughty Street Criminal Appeals Unit

Welcome

Welcome to the September 2025 edition of the Criminal Appeals Bulletin. I am stepping in as the editor of this publication on behalf of our Head of the Appeals Unit, Farrhat Arshad KC.

After twenty-eight years, two trials and three appeals the CACD quashed Justin Plummer's conviction for murder. He was represented by Katy Thorne KC and Peta-Louise Bagott who provide an analysis of the final **Plummer** appeal which focuses upon the flaws in the admission of the hearsay evidence of a 'cell-confession' from a deceased prisoner.

David Bentley KC considers **Ayre** which deals with the limited practical application of the defence of an overwhelming supervening act.

Peter Wilcock KC looks at **ANL**. This is an unsuccessful appeal against a ruling from a preparatory hearing permitting a retrial for murder after a guilty manslaughter verdict had been taken at the first trial.

There have been a number of criminal appeals that have been granted leave to appeal before the Supreme Court in 2025. Omran Belhadi considers the most recent judgment of **Hayes and Palombo** and the criticisms of the CACD.

I look at **Hurley** in which the CACD sets out the approach for the admission of evidence of alleged false complaints and the interplay of the bad character and sexual behaviour provisions in trials for sexual offences.

Daniella Waddoup considers the practical guidance in **Kurtaj** on issues of representation and funding in relation to appeals pursuant to s.15 of the Criminal Appeal Act 1968 following a finding of unfitness and a 'trial of the facts'.

I also consider **de Zoysa** which deals with fitness to plead and effective participation at trial.

Tayyiba Bajwa looks at **Hedges**, a judgment which addresses the admissibility of expert forensic odontologist evidence relating to bite marks.

Jessie Smith considers **Tallentire** and the approach of the CACD to judicial comment on the failure of the defence to call a witness.

In appeals against sentence Louise Willocx looks at three judgments: **Hajdaraj, Miah** and an Attorney-General's Reference **McMullen**. In each of these cases the CACD addresses the perennial problem of delay in sentencing and the circumstances where a conditional discharge may be imposed.

Our Crime Team is ranked # 1 in both Legal 500 and Chambers and Partners. We have a wealth of talent in Criminal Appeals. Please feel free to e-mail us or to call our crime team on 0207 400 9088 to discuss initial ideas about possible appeals. More information on our services can be found on our website.

We hope you enjoy this issue of the Bulletin.

Emma Goodall KC
Member of the DSC Criminal Appeals Unit

In this issue

England & Wales

- Appeals against conviction
- Appeals against sentence

Contact us

If you would like to know more, or discuss how our barristers may be able to help you and your clients, please contact Senior Crime Clerk, Matthew Butchard on 0207 400 9088 .

Useful links

CASE SUMMARIES AND COMMENTARY

APPEALS AGAINST CONVICTION

By Katy Thorne KC and Peta-Louise Bagott

R v Plummer
[2025] EWCA Crim 1036

The Appellant's conviction for murder was quashed for the second time in July 2025 after he had spent over 25 years in custody protesting his innocence.

The victim was viciously assaulted in February 1997 and died at her home, a static caravan. She was stabbed multiple times, garrotted with an electrical flex and beaten. The caravan was then set alight. The Appellant was originally tried and convicted in December 1998. However, this conviction was quashed and a retrial ordered after serious flaws in the expert evidence were exposed. The instant appeal was against the conviction arising from this retrial in 2023.

The prosecution's case in 2023 was principally based on an alleged cell confession to the murder, said to have been made by the Appellant in June 1997 to a fellow prisoner, Christopher Dunne, while on remand for other offences in prison. This evidence had not been relied upon in the first trial. Dunne died in 1999. The Judge (encouraged by the retrial ruling of a previous Vice President, Lord Justice Fulford) decided to admit his statement as hearsay evidence under section 121 of the CJA 2003 and not to exclude it either under section 126 of the 2003 Act, or section 78 of PACE 1984.

The new Vice President, Lord Justice Edis, considered the approach taken by the judge and found that the evidence at trial was not the same as when the admissibility decision was made, such that:

(a) having admitted Dunne's evidence, the judge should have carried out the required assessment in section 125 CJA 2003, and had he done so, would have been driven to the conclusion that the confession was the "decisive evidence" on which the prosecution could rely on in order to prove its case [91-92]

(b) In the absence of Dunne's evidence, there was no evidence on which the jury could convict, or, at least, that such other evidence was tenuous and weak [91]

(c) the jury should have been informed that the whole case depended on whether they accepted that the Appellant had made the confession to Dunne [93- 94]

(d) The directions provided to the jury were insufficient, and in particular did not provide the jury with guidance on the matters they had to consider in assessing or testing the reliability of Dunne's evidence [96-99].

The CACD concluded that the conviction was unsafe because the judge should have stopped the case under section 125 of the CJA 2003 (which meant that it was unnecessary for it to decide whether it was wrong to admit the evidence in the first place) [100-110].

Commentary

The background to this case, including the impact of the Prosecution's change of tactics between the 1998 and 2023 trials created unique challenges for the judge in assessing the admissibility of hearsay evidence. These complexities carried through to the appeal, where the long passage of time sharpened concerns about the appellant's ability to test the evidence. The Defence argued that the jury was ultimately unable to properly assess its reliability.

The CACD's decision raises three important points.

First, it reiterated the second-best nature of hearsay, and the importance of the staged approach set out in *R v BOB* [2024] EWHC Crim 1494 for a judge considering admission of such evidence, reliability and fairness are distinct inquiries and evidence may be technically admissible but still excluded.

Second, it reconfirmed the need for specific and detailed judicial directions to assist the jury with not only the general approach to hearsay evidence, but also the factors they have to consider in assessing or testing its reliability.

Third, it focussed on section 125, and the duty on the judge to reconsider matters at the end of the case, as *"there will continue to be cases where the state of the evidence called by the prosecution, and taken as a whole, is so unsatisfactory, contradictory, or so transparently unreliable, that no jury, properly directed, could convict"* [10] . It reminded judges

that where the basis on which any hearsay evidence was originally admitted changes during the course of the trial, there remains a need for both the parties and the judge to keep the questions raised in section 125 CJA 2003 under review. It noted that this "*issue is best decided at a point when the judge can assess the safety of any conviction in light of tailored direction which will be given to the jury if the evidence remains before them*" [107].

The success of this appeal reminds practitioners (if they needed such reminders in the aftermath of *Firkins* [2023] EWCA Crim 1491) of the importance of challenging cell confession evidence and of challenging the admissibility of hearsay evidence generally. It also provides an optimistic view of the Court of Appeal's approach to alleged miscarriages of justice.

Katy Thorne KC and Peta Louise Bagott represented Mr Plummer in his first successful appeal against conviction. They went on to represent him in the re-trial and subsequent successful appeal. They were instructed by Annalisa Moscardini of Tilly Bailey & Irvine solicitors.

By David Bentley KC

R v Callum Ayre and others
[2025] EWCA Crim 255

This is the most recent in a string of cases looking at the concept and practical application of overwhelming supervening act (OSA) – a concept highlighted in *R v Jogee* [2016] UKSC 8 and applied in *R v Grant* [2021] EWCA Crim 1243.

Summary

CA and the other 2 appellants (CT and SH) were passengers in a car driven by AD. They had all got into the vehicle following an altercation outside SH's home address with a group that included AF (the deceased). AF had thrown what appears to have been a hammer towards SH's property. The vehicle set off, with the occupants intent on following and confronting the AF group. The passengers were variously armed with sticks and bats. As the vehicle drove slowly along some local roads, the AF group came into sight, and the vehicle turned and drove at speed into them. AF was killed by the impact – others were injured, one seriously. The vehicle then drove on and the occupants decamped.

The driver and all the passengers were charged with murder, manslaughter, attempted murder, causing/attempting GBH and ABH – charges relating to the four victims. Following a five-week trial at which all the accused gave evidence, AD was convicted of murder (and of causing/attempting GBH with intent in relation to the others injured). CA, CT and SH were acquitted of murder but convicted of manslaughter. They were also convicted of s20 and s47 offences in relation to the other injured persons. A fourth passenger (CR, who had no weapon with him) was acquitted of all charges.

The appellants' cases at trial

All three maintained that whatever their prior intentions, they had not either contemplated or encouraged the use by AD of the vehicle as a weapon. Nor had their intention ever been to inflict GBH on the group. In essence, AD had, without any prior warning, gone on a "frolic of his own" in driving his vehicle at the AF group.

The appeal

The key ground of appeal was that on the facts of this case, the actions of AD were so remote from the intentions of his passengers, that his actions could be seen as an OSA – and that the jury should have been directed to that effect. It was argued that this submission was reinforced by the eventual outcome at trial – where the appellants were convicted of manslaughter only. This, it was submitted, showed that they did not share the intent of AD (to kill/cause GBH). It was further submitted that the use of the car as a weapon would inevitably involve an intention to kill/cause GBH, rather than just some harm. The jury must have decided that the use of the car as a weapon was an OSA and, had they been directed appropriately, the appellants were entitled to a full acquittal, as their plans up to that point had been "consigned to history". The case of *R v Grant* [2021] EWCA Crim 1243, although bearing a number of similarities to the facts of the present case, could, it was argued, properly be distinguished. Further, the Crown's case had been put to each of the appellants in cross-examination that the original plan alleged as they set off in the vehicle (an assault in the street with weapons) had changed, en route, to a new plan to use the car as a weapon.

The Court disagreed with the appellants' submissions, and upheld the convictions, finding that the judge had been entitled to reject the application of OSA. As to the submission that the change of plan had led to a new plan, the Court rejected that as an attempt to re-introduce the now discredited concept of "fundamental departure" via "the back door."

In a key paragraph of the judgment [§48], the Court stated:

"Is it then possible to argue that in the seconds which elapsed between the car turning into Western Link Road and driving at the pedestrians, AD …. acted in a way which relegated to history the earlier actions of the others, and destroyed "all material connection" between the earlier planned violence and the running down of the victims? It is, in our view, clear that the answer to that question must be in the negative. The joint intention to use unlawful violence against the other group was still continuing, and it was put into effect by AD acting in a way which resulted in death."

Comment

The Court used this case as yet another opportunity to marginalise the concept of OSA as a defence in criminal cases. Although parts of the Jogee judgment had opened this up as a possible line of defence, the Court here emphasised that it was not necessary to prove that a secondary party encouraged/assisted the principal to commit an offence in a particular way. The Court endorsed the approach taken in Grant and stated (at para 45) that *"cases in which there is sufficient evidence for a judge properly to leave such an issue to the jury will, we anticipate, be rare."*

This, in the author's view (full disclosure - I acted for SH in this appeal) is yet another illustration that the initial excitement generated in the defence community by the Jogee judgment was misconceived. In much the same way that the ending of the foreseeability test for secondary parties was replaced with the (arguably) equally damaging resurrection of the concept of "conditional intent", so too here the "fundamental departure" test has been effectively narrowed to its vanishing point.

David Bentley KC acted for SH and was instructed by Hussain Solicitors, Birmingham

By Peter Wilcock KC

R v ANL

[2025] EWCA Crim 969

Summary

The appellant ("ANL") was convicted of manslaughter (count 2), which had been added to the Indictment as an alternative to the prosecution's original allegation of murder (count 1).

The case came before the CACD, not as an appeal against conviction, but as an appeal from a preparatory ruling under s35 Criminal Procedure and Investigations Act 1996 in which the trial judge rejected submissions on behalf of ANL that in the particular circumstances of this case the prosecution were precluded from retrying ANL on the allegation of murder in the light of the procedure that had been adopted in relation to the taking of verdicts. The CACD concluded that the Judge's decision was correct and dismissed the appeal.

Having reviewed the relevant authorities, the CACD concluded that there is no authority justifying a "rule" that where a defendant is charged with two or more offences which are alternatives to each other in the strict legal sense, s/he cannot be convicted of both or all of them such that if there is a conviction for a lesser offence then a verdict of guilty cannot be returned on any more serious offence, either at the same trial which resulted in the conviction or at a retrial following that first trial.

In this case, the jury were discharged from returning a verdict on count 1 after providing notes culminating in an indication that they had reached a verdict in relation to count 2 but were unable to do so in relation to the alternative count of murder. When the matter was discussed in court, neither the prosecution nor defence objected before the judge discharged the jury from reaching a verdict in relation to count 1. Indeed, the Court of Appeal judgment records that the judge was "invited to discharge the jury from returning a verdict on the murder count and to take the manslaughter verdict." Accordingly, and without asking whether a retrial might be sought on the murder count, that is what he did.

The prosecution subsequently indicated that they intended to retry ANL on the murder allegation and a co-accused (who had been acquitted of that murder) on the manslaughter alternative. ANL objected based on the procedure adopted in the taking of the verdicts. A preparatory hearing was ordered so that the issues could be argued and determined. At that hearing, the judge decided that it was lawful for ANL to be retried on the murder count.

The CACD decision

The CACD identified the case of Saunders (1987) 85 Cr App R 334 as the ostensible origin of the common-law "rule" contended for by the appellant but concluded that on close analysis "in fact … it holds that where the jury cannot agree on murder, but are able to agree a guilty verdict on manslaughter, the judge can

discharge the jury from returning a verdict on murder" where the judge, even if the prosecution do not agree, considers that justice is properly satisfied by such a verdict. In ANL's case the judge had not reached such a conclusion.

In distinguishing Saunders from the present situation, the CACD observed that the decision in Saunders was based on the then existing practice of not including a separate count of manslaughter in cases where count 1 alleges murder arising out of the same killing. The CACD observe that not only has that practice "long fallen into disuse" but that Saunders does not say what should happen where the judge has not reached a decision that the manslaughter verdict alone does not meet the justice of the case.

In relation to the submissions made on behalf of ANL that the judge should have followed the post-Saunders decision of Bayode (2013) EWCA Crim 356, and allowed the defence application to stay the murder re-trial as an abuse of process because of the conviction for manslaughter, the CACD observed that this decision had: (1) been the subject of some criticism in professional text books and was also (2) a case where the judge decided (on a later date) that the conviction for manslaughter was a sufficient reflection of the evidence in the case and therefore the interests of justice did not require a retrial for murder and (3) an issue arose as to whether the relevant part of the reasoning in Bayode on this topic was obiter. Accordingly, the CACD held that the decision was not binding on the facts of this case and therefore declined to follow it.

Comment

This is another example of the CACD emphasising the "overriding objective" of the Criminal Procedure Rules that "criminal cases be dealt with justly" and that procedural decisions should therefore be assessed against the objective of "acquitting the innocent and convicting the guilty." It should therefore not be assumed that there is inevitably any tactical advantage to the defendant in allowing a jury to return verdicts on the lesser of strict legally alternative offences in the expectation that no further proceedings will be possible for the more serious offence.

There may, of course, be situations in which a retrial may be arguably unfair for reasons over and above the simple conviction for a lesser offence. This may be particularly so in cases where the retrial is likely to involve "cut-throat" defences. As the CACD observed: "If the retrial cannot be fair, then it should be stayed by the trial judge. If he wrongly fails to take that step, then an appeal lies to this court after any conviction even if the ruling is not made within a preparatory hearing to enable an appeal to be brought before trial. Before staying the retrial, the judge would explore all options to ensure that prejudicial evidence is not wrongly admitted, against ANL and those options, in this case, might include severing the trial from that of the other person who faces a retrial."

By Omran Belhadi

R v Hayes and Palombo
[2025] UKSC 29

Summary

The Supreme Court heard an appeal against the convictions of two former financial traders for conspiracy to defraud.

Their convictions arose out of investigations into LIBOR and EURIBOR. These are interest rates set by groups of banks used as benchmarks for other financial products. Each contributing bank submitted a rate at which it could borrow funds if asking for and accepting inter-bank offers in a reasonable size market. Because the rate offered represented a subjective assessment by each bank, the rates could differ across banks and on different days. The prosecution alleged that the Appellants had dishonestly conspired with others to manipulate the rates through false or misleading submissions.

The appeal to the Supreme Court followed several unsuccessful appeals before the Court of Appeal including *R v Hayes* [2015] EWCA Crim 1944, *R v Bermingham and Palombo* [2020] EWCA Crim 1662 and *R v Hayes and Palombo* [2024] EWCA Crim 304.

The certified question was whether, as a matter of law upon the proper construction of the LIBOR and EURIBOR definitions:

1. If a LIBOR or EURIBOR submission is influenced by "trading advantage" it is for that reason not a genuine or honest answer to the questions posed by the definitions; and
2. The submission must be an assessment of the single cheapest rate at which the relevant bank or banks could borrow at the time of submission rather than a selection from within a range of borrowing rates.

The Supreme Court decision

The Supreme Court answered both parts of the certified question in the negative and allowed the appeals.

The first sentence of the judgment reads:

> *"The history of these two cases raises concerns about the effectiveness of the criminal appeal system in England and Wales in confronting legal error."*

The judgment goes on to set out in detail the lengthy procedural history of the case. Specific criticisms of the way the Court of Appeal addressed the successive appeals included their cursory treatment of grounds of appeal [§140], a failure to engage with the arguments [§141] and having no appetite for giving Mr Hayes' case fresh consideration [§152].

The Court also criticised the prosecution case for being vague. At §54 the Supreme Court held

> *"Regrettably the indictment did not give sufficient particulars to enable the defence and the trial judge to know clearly and precisely the nature of the prosecution's case. Had it done so, the problems which have beset this case might have been avoided."*

The legal error in this case stemmed from the trial judge's ruling that, as a matter of law, any rate submission which considered the commercial interests of the bank or trader was not a genuine or honest answer. This ruling prevented Mr Hayes and Mr Palombo from properly advancing their defence. They both claimed the rates they put forward were genuine and honest.

The Supreme Court held that a trader considering a trading advantage was a relevant factor for the jury. It was a matter of fact for the jury to weigh whether this meant a submission was false. The trial judge erred in treating this question as a matter of law based on the interpretation of non-binding guidance documents about LIBOR and EURIBOR.

At §162, the Supreme Court held there was ample evidence on which a properly directed jury could convict, much of which came from Mr Hayes himself. However, he was entitled to have his defence to the allegation "fairly left to the jury." In relation to Mr Palombo, at §234, the Supreme Court held that given the multitude of flaws in the legal directions it cannot be safely assumed the jury would have convicted without them.

Comment

The Supreme Court judgment lays bare the logical contortions of successive iterations of the Court of Appeal. The nature of the appeal system may help explain successive leaps of logic.

The appeal system focusses primarily on the safety of the outcome rather than the integrity of the process. The integrity of the process is important insofar as it informs the safety of the outcome. It is not enough to show unfairness in the process. Appellants must demonstrate that this unfairness would have affected the outcome of the trial.

Where the decision maker—such as in first-instance extradition decisions—sets out their reasoning in a written judgment, it is much easier to assess whether correcting legal error would have made a difference.

Yet jury deliberations are secret. It is impossible to know what weight a jury has placed on a particular piece of evidence or how one piece of evidence interacted with the legal directions they received. Where safety is the test, it involves deciding that a jury would have convicted even where legal errors have been identified. This amounts to stepping into the jury's decision-making arena without the benefit of their deliberations or their approach to the evidence.

An appeal test relating to the outcome of a trial rather than focussing on the process creates an appeal system focussed on the outcome. Practitioners will be all too familiar with Court of Appeal judgments where errors are found but a conviction is upheld because the error is not considered material or there was other evidence which pointed to guilt. Here, the Supreme Court focussed on the process rather than the outcome.

The evidential picture mattered less than the integrity of the process. The Supreme Court found there was evidence on which a jury could convict Mr Hayes. The conviction was nevertheless quashed because the judge's directions deprived him of a fair trial. While the errors in this case were grave and fundamental, the judgment is a reminder of the importance of the trial process regardless of the strength of the evidence.

By Emma Goodall KC

R v Hurley
[2025] EWCA Crim 642

Summary

In 2016 the appellant was convicted of assault by penetration and rape. In 2018 his non-counsel application for leave to appeal those convictions was dismissed by the Full Court. The CCRC referred the case back to the CACD having identified fresh evidence of alleged false complaints of rape and domestic violence against third parties that raised concerns about the credibility and reliability of the complainant, Y.

The appellant was a close relative of Y's partner H. The prosecution's case was that the appellant invited Y out for the day after she had an argument with H. Y drank heavily and they went back to the appellant's house where Y went upstairs to lie down. The appellant got into bed with Y and without her consent penetrated her vagina with a sex toy and vaginally raped her. It was the defence case that no sexual activity had occurred. At Y's request the appellant had got into bed but he rebuffed her sexual advances.

The issues on appeal were identified as three-fold; admissibility of rape complaints; admissibility of domestic violence complaints and the safety of convictions. The CACD conducted a review of earlier authorities extracting seven propositions governing the admissibility of false complaint evidence in sexual cases [49].

(i) Evidence that a complainant has made false complaints of rape on occasions other than those on the indictment is always non-defendant bad character evidence for the purposes of section 100 of the Criminal Justice Act 2003, because it is evidence of misconduct as defined in section 112(1) of the 2003 Act as "the commission of an offence or other reprehensible behaviour".

(ii) Therefore, admissibility requires meeting the enhanced relevance test under section 100(1)(b) of the 2003 Act, which mandates that (1) the evidence must have substantial (but not necessarily conclusive) probative value in relation to the complainant's credibility, and (2) such credibility must be a matter in issue of substantial importance in the proceedings as a whole.

(iii) False complaints where the complainant claims to be the victim of other sexual offending will engage section 41 of the Youth Justice and Criminal Evidence Act 1999 if the evidence is "about" the complainant's "sexual behaviour" for section 41 purposes. Where the questioning is not about any sexual activity of the complainant, but about what the complainant said, then section 41 will not be engaged and the admissibility issue will be resolved applying section 100 of the 2003 Act. In the paradigm case, there may have been no sexual behaviour involving the complainant at all, simply a false assertion that there had been. In other cases, this clear distinction may become harder to sustain. This is important because, if section 41 is engaged at all, section 41(4) may often exclude this kind of evidence.

(iv) Before section 41 can be avoided on this basis, there must be "a proper evidential basis" for concluding that the complaint was false.

(v) The "proper evidential basis" can be less than a strong factual foundation indicative of falsity. It must, however, have substantial probative value in relation to a matter in issue and be of substantial importance in the context of the case as a whole, otherwise it will be inadmissible because of section 100 of the 2003 Act.

(vi) Whether applying section 41 of the 1999 Act or section 100 of the 2003 Act, the admissibility decision will be highly fact-specific, and it is neither possible nor desirable to delimit or prescribe the circumstances in which the test will be met in any individual case.

vii) When determining whether the admissibility test is satisfied, the court is not exercising a discretion but making an evaluation about the quality of the evidence.

After engaging in an in-depth evidential analysis, the CACD dismissed the appeal holding that the fresh evidence would not have been admissible at trial and the appellant's convictions were safe.

Comment

The already high bar for the admission of this type of evidence has been both evidentially and procedurally reinforced. In assessing the evidential threshold required to establish a false complaint the CACD confirmed that a decision by a complainant to retract a complaint, or not proceed with a prosecution, could not be simply equated with its falsity. The submission that multiple rape allegations may give rise to an inference that they are false was held to be a dangerous line of logic as every case is acutely fact sensitive. The starting point in *Hurley* was a contextualised consideration of the complainant's chaotic life [90]. *Hurley* was applied in *YAW* [2025] EWCA Crim 1143 where the height of

the bar was further considered. It was held it was not enough to state that the jury might come to that decision, but neither did the defence have to prove the falsity of the allegation for the jury to consider it. There has to be "some material that was capable of founding a proper inference" that the earlier allegation was false.

However, the real significance of this judgment lies within the third proposition where the CACD draws a distinction between two types of demonstrably false sexual allegations. A wholly fabricated allegation where no 'sexual behaviour' occurred remains outside the ambit of s41 YJCEA 1999 and the admissibility is governed by s100 CJA 2003. However, where there was 'sexual behaviour' but the lie relates to whether it was consensual, both s100 CJA 2003 and s41 YJCEA 1999 apply to the admission of evidence including s41(4) which prohibits evidence intended to impugn the credibility of the complainant.

By Daniella Waddoup

R v Kurtaj
[2025] EWCA Crim 1163

Summary

This was a renewed application for permission to appeal against a finding made under the Criminal Procedure (Insanity) Act 1964, s.4A that the applicant, having been found unfit to plead, had done the acts relevant to the twelve charges of computer hacking he faced. Leave to appeal was granted on one of the four grounds of appeal (concerning evidence of bad character), but the appeal was dismissed.

The decision's practical importance lies in the court's comments on issues of representation and funding in relation to appeals such as these made pursuant to s.15 of the Criminal Appeal Act 1968 following a s.4A 'trial of the facts'. The position following *R v Roberts* [2019] EWCA Crim 1270 and *R v Antoine* [1999] 2 Cr App R 225 is as follows:

- A person who has been found to be unfit ("the unfit accused") cannot bring a s.15 appeal in their own right: it must be brought on their behalf by the legal representatives appointed in the Crown Court proceedings to represent their interests – if those representatives consider arguable ground(s) arise.
- If, as in *Roberts*, the representatives advise that no arguable ground(s) arise and the unfit accused attempts to make an application in person for leave to appeal, the papers should be referred to a single judge; and if the single judge considers there may be arguable grounds of appeal, fresh counsel may be appointed to settle any appropriate grounds and to present the appeal if leave is granted.
- Because s.15 appeals are not "criminal proceedings", the Registrar cannot grant a representation order as in conviction appeals. If leave is granted, counsel will be remunerated, whatever the outcome of the appeal, by an order for costs out of central funds.

The specific question raised by *Kurtaj* was as follows: what is the position if the single judge refuses leave to appeal? The unfit accused may well wish the application for leave to appeal to be renewed to the full court, but s/he is considered, by reason of the finding of unfitness in the Crown Court, unable to give binding instructions.

The court held that the principles underlying *Roberts* applied equally in this scenario. The renewal of an application for leave to appeal, where counsel thinks it proper, comes within the authority conferred by the appointment in the Crown Court: no fresh appointment of counsel by the court is necessary. The court made clear, however, that:

- There is no mechanism for an unfit accused to renew an application for leave to appeal to the full court if the representatives are not satisfied there are grounds which merit renewal.
- Even if the representatives are so satisfied, they must be prepared to act *pro bono* in the knowledge that, if the renewed application is refused, good reason will have to be shown why an order should be made for the payment of their costs from central funds.

Comment

The asymmetry with a fit accused (who may renew without first having to establish arguable grounds, albeit that s/he runs the risk of a loss of time order) is stark. Given the possible consequences of a s.4A finding that the accused did the act/made the omission – indefinite detention in hospital, ancillary orders that are potentially punitive in effect– the loss of an unfit accused's full rights of appeal is concerning.

The court's procedure in these cases amounts to somewhat of a blunt tool. Does it really follow "inescapably", as the court in *Kurtaj* held, that a person found to be unfit in the Crown Court is also unfit to commence or conduct an appeal? There may be a principled case for decoupling "trial capacity" from "appeal capacity" given the differing demands involved in these distinct proceedings. This only serves to underscore the need for wholesale legislative reform of the law and procedures governing unfitness to plead, as recommended by the Law Commission in 2016. In the meantime, practitioners should use the *Roberts* route where appropriate and be aware of funding limitations at the point of considering renewal.

By Emma Goodall KC

Regina v de Zoysa
[2025] EWCA Crim 668

Summary

This is a renewed application for leave to appeal a murder conviction. Shortly after being brought into police custody the applicant shot and killed the custody sergeant. The final shot that was discharged hit the applicant's neck and dissected his left carotid artery. He suffered a stroke causing physical disability, receptive and expressive aphasia, and apraxia of speech as well as some cognitive impairment. Since childhood he had been diagnosed with autism spectrum disorder.

At trial the prosecution was put to proof as to the applicant's intent and in the alternative, it was advanced that he was suffering from diminished responsibility due to an autistic spectrum disorder meltdown. There was a preliminary determination of fitness to plead with conflicting psychiatric evidence presented by the parties. The trial judge concluded that the applicant was fit to plead because, although the allegations were extremely serious, the scope and issues in the trial were limited. The applicant was provided with an intermediary throughout, and tailored adjustments were made to the trial process.

It was argued on appeal that although the applicant would have been fit to plead in a straightforward murder trial the defence advanced of diminished responsibility made the trial process more complex rendering him unfit. The CACD rejected the application. Applying the *Pritchard* criteria the requirement that a defendant understands the charges and is able to decide how to plead does not mean being able to understand the legal complexities of a diminished responsibility defence and the detail of medical evidence in support of such a defence. Many defendants will come before the court and not have the ability to understand complex legal issues or nuanced expert evidence, whether for reasons of intellectual deficiency, mental health, youth or otherwise, and they do not need to. What is required is different and will vary depending on the specific circumstances of the case [27]. In this case every possible step that could be thought of was taken to ensure the applicant's participation met the strict requirement of a fair trial [29].

Comment

The defence application focused upon potential tensions that can arise between establishing a defendant's fitness whilst advancing the defence of diminished responsibility. The CACD reaffirmed the legal principles governing fitness to plead under *R v Pritchard* (1836) 7 Car & P 303 and reiterated in *R v M (John)* [2003] EWCA Crim 3452 : (1) understanding the charges; (2) deciding whether to plead guilty or not; (3) exercising his right to challenge jurors; (4) instructing solicitors and counsel; (5) following the course of proceedings; (6) giving evidence in his own defence. In *Marcantonio* [2016] EWCA Crim 14 cited in *Vinnell* [2024] EWCA Crim 1294 the CACD stressed that the court's assessment of these matters should be made in the context of the case in hand, rather than in the abstract, and that it should also take into account the various ways in which the trial process can be modified to assist in enabling an accused to effectively participate in the trial process. The *Pritchard* criteria has been subject to longstanding calls for reform due to being outdated and failing to adequately assess capacity for participation in court. Identifying where a defendant's inability to understand complex legal concepts and adjustments for effective participation can satisfactorily coalesce is a difficult balance to strike.

By Tayyiba Bajwa

R v Hedges
[2025] EWCA Crim 1051

Summary

The applicant sought leave to appeal against a conviction for murder. The appeal centred on the admissibility of expert forensic odontologist evidence relating to bite marks.

The applicant and her partner were convicted of the murder of her 18-month-old son. They had been in a caravan with her son in the period when the fatal injuries were sustained. The medical investigation revealed many injuries to his body. The pathologist determined he had died following a significant and sustained assault. The pathologist also recorded marks to the body that might have been bite marks.

The marks identified by the pathologist were photographed and analysed by a forensic odontologist, Dr Marsden, who also took impressions of the applicant and her co-defendant at trial. He concluded that two injuries were "probable" bite marks, and one was a "possible bite mark" in accordance with the British Association of Forensic Odontologists in their Guideline for Good Practice in Bite Mark Identification and Analysis (2010). He also concluded that there was insufficient detail in relation to two marks for him to conclude whether either defendant at trial was or was not responsible for them. In relation to one mark, he was able to exclude the applicant's co-defendant as the source and concluded that the applicant *could* have made one of the probable bite marks.

At trial, the Crown wanted to adduce Dr Marsden's evidence to show that (i) as part of the attack the child had been bitten and (ii) to connect the applicant with the violence that resulted in death on the basis that the applicant's co-defendant had been excluded as the cause of one of the probable bite marks. Both defendants at trial accepted some contact between their teeth and the child's skin but denied that it was done with such force as to cause injury.

The applicant challenged the admissibility of Dr Marsden's evidence by way of a *voir dire*. The defence relied on their own expert evidence to the effect that there was no sufficiently strong scientific basis for ever admitting evidence of bite mark identification and bite mark comparison at trial and outlined the controversy relating to the admissibility of such evidence by reference to academic studies and evidence from the U.S.

At the conclusion of the *voir dire* the judge ruled that Dr Marsden's evidence was admissible, noting his qualifications, that his approach was consistent with good practice and that that such evidence had generally been held admissible in the past.

The Court of Appeal refused leave. The Court concluded that (i) Dr Marsden had eschewed the approach criticised in the US whereby similar experts purported to make positive identifications from odontology evidence alone, rather he had indicated the limitations of his own evidence and adopted a careful approach declining to make findings in relation to two marks and limiting his conclusions on the third; (ii) the approach adopted by scientific and academic papers recognised that bite marks were no longer said to be unique and to allow individual identification but that a properly qualified expert could include or exclude a suspect from a list of potential biters; (iii) there was "no question" but that he had relevant qualifications and experience.

Comment

The Court of Appeal emphasised that this was "otherwise a very strong case against the applicant" in circumstances where she had (i) accepted she had bitten her son, and (ii) had been in a small caravan with her partner for most of the night during which the fatal injuries were sustained. Against that backdrop, it is unsurprising that the Court concluded there was "no danger" of the applicant being convicted on the basis of the expert evidence and refused leave.

In some ways, this decision is welcome. The Court of Appeal accepted there are "undoubtedly limitations on the scope of expert forensic odontology evidence on bite mark identification and comparison" and the approach adopted is similar to that taken by the Court of Appeal Civil Division in the context of family proceedings (see, for example, In re T [2021] 4 W.L.R. 25). However, while it was true that the evidence of Dr Marsden did not identify the applicant as the only individual potentially responsible for the mark, the Crown invited that conclusion from his evidence based on the circumstances of the death in question. Notwithstanding the clear limitations expressed by Dr Marsden as to the nature and extent of his evidence, the reality was that the jury were invited to draw a conclusion of individual identification based on expert evidence; a conclusion the Court of Appeal accepted was one well-recognised to be problematic. It is concerning that expert evidence of such limited import is not only admissible but admissible for the very purpose which the Court of Appeal said had been eschewed by the scientific community.

By Jessie Smith

R v Tallentire
[2025] EWCA Crim 885

Introduction

R v Tallentire considers the ambit of prosecution and judicial comment on the defence failure to call a witness. It follows a line of authority from the CACD including *R v Gallagher* (1974) 59 Cr App R 239; [1974] 1 WLR 1204 and *R v Khan* [2001] EWCA Crim 486; [2001] Crim LR 673.

Summary

Matthew Tallentire was convicted of two counts of rape and one of attempted rape. The co-defendants - Mr Smethurst and Ms Reynolds - were convicted of cruelty to a person under 16 years, on the basis that they allowed the rape to occur.

The complainant's account was that the co-defendants were friends of her mother. On 8 August 2020 she travelled with them to Blackpool where they met Mr Tallentire and his partner, Ms Hutchinson. She was given alcohol and cannabis throughout the day. They went to various pubs and then to Mr Tallentire and Ms Hutchinson's home. The co-defendants later returned to their hotel room with the complainant, accompanied by Mr Tallentire, where the rapes occurred. Ms Hutchinson stayed at home. The complainant's account was that she did not speak to Mr Tallentire again.

The appellant was interviewed in 2021 and denied that sexual intercourse had taken place. He confirmed that there had been no contact with the complainant since that night. In his defence case statement, filed in 2023, Mr Tallentire revised this aspect of his account. He stated that on 9 August the complainant had in fact called him when in the presence of Ms Hutchinson and so he put the phone on loudspeaker. In his evidence, the appellant stated that he later contacted Blackpool CID to report the call from the complainant at Ms Hutchinson's suggestion, as he had not mentioned it to police in interview. Rebuttal evidence was called that there was no record of any contact from Mr Tallentire to Blackpool CID.

Ms Hutchinson became the focus of this appeal relating to two matters: whether contact had occurred with the complainant after the event, and whether police had been notified. Ms Hutchison had given a statement to police. It was common ground that she was compellable as the statutory prohibition at s80A of PACE applies only to a spouse or civil partner. She was inadvertently witness summonsed by the prosecution. The Crown decided not to call her. She otherwise attended court each day to support the appellant, and he drew attention to her presence in court. The jury sent a note asking whether or not she would give evidence.

The prosecution speech contended that the defendant's failure to call Ms Hutchinson went to his credit. The defence speech drew attention to the prosecution's failure to call her in support of the prosecution case and underscored the burden of proof on the Crown. The judge directed the jury as follows: "*it is for you to decide whether to hold against him that he didn't call her as a witness in support. If you think it of no importance, ignore it. If you think it is important, then you may take it into account against him by way of it reflecting on the truthfulness of his account as to these two points relating to the telephone calls. If you do decide to hold it against him, you mustn't convict him wholly or mainly on account of it, but it can amount to some support for the prosecution's case against him if you think that right.*"

The CACD concluded that there was no error in the summing up. The court observed that a judge may, as a matter of discretion, and depending on the judge's assessment of fairness in the particular circumstances, comment on the failure of the defence to call a witness. If a judge is intending to make such a comment, counsel for the defence should be given an opportunity, in the absence of the jury, to make submissions. If the judge does make a comment they should remind the jury that there is no burden of proof on the defendant. What fairness requires will depend on the circumstances, but it will not be fair to make an adverse comment about the failure to call a witness who is not available to be called. The court observed that it was more productive for prosecution, defence and judge to consider the evidence that has been called, rather than the evidence which has not.

Comment

It is apparent that there are an expanding range of circumstances where forensic decisions on behalf of the defence might attract an adverse inference from the jury. In *Khan* the court observed now that a defendant's failure to give an explanation in interview or his failure to disclose his case in advance may be the subject of comment, the case for permitting comment on failure to call an available and obviously relevant witness may be stronger.

However, the factors which might justify judicial comment remain finely balanced. There are a number of reasons why a defendant might not call a witness. The previous convictions of a witness may damage the defendant by association. A witness may also be unavailable due to fear for their safety or fear of prosecution.

In *Tallentire* both prosecution and defence pointed to the failure of the other party to call the witness. However, the directions inevitably focused the jury on the significance of the absent witness to the defence case. This underscores the need for defence counsel to review – at an early stage – the position of witnesses that are not relied upon by the Crown (often placed in the 'unused' material) and those who might be considered capable of assisting the defence case.

APPEALS AGAINST SENTENCE

By Louise Willocx

R v Hajdaraj
[2025] EWCA Crim 443

Summary

In *Hajdaraj,* the appellant had been sentenced for being concerned in the production of Class B drugs, cannabis. He was found in a property with 42 cannabis plants. He had put forward a basis of plea, stating that he had been brought to the property 3-4 days before his arrest and pressured into cultivating the cannabis. This basis of plea was accepted by the prosecution, and the Recorder accepted the parties' submissions that this case was best placed at the higher end of C3 (lower culpability, category 3 harm) on the sentencing guidelines. Category C3 has a starting point of a High-Level Community Order and a range of a Low-Level Community Order up to 26 weeks' custody.

Importantly, the appellant had already spent 228 days on qualifying curfew and 247 days on remand by the time of the sentencing hearing. This means that he had already served the equivalent of a 23-month custodial sentence, which is about 4 times the maximum he should be sentenced to under the Sentencing Guidelines. Given his time spent on remand, both the Crown and the defence invited a short custodial sentence allowing for immediate release. However, the Recorder sentenced the appellant to an 18-month community order with a 180 hours' unpaid work, 25 rehabilitation activity requirement days and 6 months of GPS trail monitoring.

The Court of Appeal accepted that given the appellant's time already spent in custody, a community order with these onerous and punitive requirements was a manifestly excessive sentence. An appropriate sentence would have been a short custodial sentence as had been proposed by the parties. However, the Court was in a difficult position, because this would mean that they would deal more severely with the case than the Crown Court as prohibited under section 11(3) of the Criminal Appeals Act 1968. As such, the Court substituted the sentence with a 6-month conditional discharge to reflect the time he had already spent in custody.

Commentary

It is important to keep in mind that the Court must also take into account time spent on remand when imposing a community order. On various occasions, the Court of Appeal has deemed it inappropriate to impose further punitive elements in a community order if the defendant had already spent significant time on remand (e.g. *R v Hemmings* [2007] EWCA Crim 2413 [6]; *R v Pereira-Lee* [2016] EWCA Crim 1705 [22]). As set out in *R v Rakib* [2011] EWCA Crim 870 [38], the issue is more nuanced when it comes to rehabilitative requirements as opposed to punitive requirements: the Court is not precluded from imposing the former in a community order when a defendant has already spent significant time on remand.

The ultimate outcome in this kind of situation will depend on the specific facts of the case. In this case, the Court found that the unpaid work and GPS monitoring were clearly punitive elements and interfering with the Appellant's liberty, and that there was little point in imposing RAR days. In the hearing, the Court was critical of the Recorder's decision to impose 25 RAR days without any clear purpose. Indeed, as the appellant did not have the right to work nor any form of leave to remain in the country, it was hard to see why the Recorder had imposed RAR days to assist him in finding work, education and housing.

Louise Willocx acted for Mr Hajdaraj. She was instructed by Tricia O'Sullivan from Sperrin Law.

R v Miah
[2025] EWCA Crim 1100

Summary

The Appellant appealed his sentence of 9 months' detention in a Young Offenders Institution for the offence of non-fatal strangulation, 2 months' detention concurrently for assault by beating, and 1 month detention concurrently for the offence of criminal damage. The Appellant was only 17 years' old at the time of the offending, and he pleaded guilty after his 18th birthday.

The offending all related to an argument between the Appellant and his then-partner on New Year's Eve, on 31 December 2022. The victim had locked herself in the bathroom and the Appellant had kicked through one of the panels of the bathroom door and crawled through the hole. At some point, the Appellant also kicked her to the thigh resulting in bruising. He then throttled her, placing his hands around her neck for at least five or six seconds. The victim said she found it difficult to breathe and he used full force with his both hands. The Appellant ultimately released his grip and the victim escaped and notified the emergency services.

In addition to his age, the Appellant had strong mitigation. He suffered from PTSD due to the trauma he had incurred in his childhood. The Appellant's father physically abused his mother and also the Appellant when he sought to interfere. His father ultimately killed his mother whilst the Appellant was asleep in the next room. He was only nine. Further, his father died in custody in 2022 before the Appellant saw him again, as he had decided he would wait until he was 18. This background meant that the Appellant struggled to manage his emotional distress.

The judge had taken the starting point of 18 months' custody for non-fatal strangulation as identified in *Cook* [2023] EWCA Crim 452. Taking into account the aggravating and mitigating factors, the judge found that the starting point for an adult would have been 15 months'. The judge further reduced this to 10 months' to reflect the fact that he was a minor at the time, and then reduced it to 9 months' to give credit for the Appellant's late guilty plea. The judge refused to give him a community order, despite the fact that if he had been sentenced as a 17-year old, he would most likely have received a Youth Rehabilitation Order (YRO), the equivalent of an adult community order.

The Court held that the judge's sentencing could not be faulted, and that he was right to find that a custodial sentence was appropriate on the facts and that appropriate deductions had been made for the Appellant's age. However, the Court took issue with the sentence in light of the fact that the Appellant had already served 10 months' in custody, the equivalent of a 20-month sentence. Even though he had been released immediately after the sentence hearing, he was then subject to onerous licence conditions for 4.5 months' and subsequently 5 months' post-sentence supervision. Given he had already served twice the sentence the judge wished to impose, the appropriate disposal was a conditional discharge, as this would prevent any further punishment through licence conditions and post-sentence supervision.

Commentary

The case is significant, because all too often, defendants are being sentenced to time served following an extensive time on remand. Rarely does the Court take the punitive effects of licence conditions or post-sentence supervision into consideration when imposing a sentence. This case indicates that, where significant extra time has been served on remand, it may be appropriate not to request time served, but instead a conditional discharge to avoid the defendant being subject to even further punishment in the form of post sentence conditions. The Court emphasised that this is the case regardless of whether the defendant is a child or an adult.

Further, it should be noted that the Court's approach to domestic violence cases, and non-fatal strangulation in particular, remains particularly harsh. The Court did not take the principle aims of the youth justice system (rehabilitation and wellbeing of the child) as the starting point but started from deterrence and punishment. Indeed, there was little reflection as to whether the *Cook* starting point was appropriate, as in the youth justice system a custodial sentence is "a measure of last resort". The 1/3 reduction for his age was applied almost mechanically without proper consideration of what the Appellant's age together with his PTSD meant for his culpability and how a rehabilitative approach was needed.

R v McMullen
[2025] EWCA Crim 1112

Summary

The appeal followed a reference by the Attorney General for an unduly lenient sentence. The offender was sentenced to a three-year conditional discharge for an offence of burglary which had taken place on 31

December 2022. He had a long history of dishonesty offences and dwelling-burglaries in particular. Consequently, he was a "third-striker" and the minimum sentence provisions for dwelling-burglary applied. Even though the offender had been linked to the burglary through a forensic report in March 2023, he had not been charged by postal requisition until March 2025. The Crown was unable to provide any good explanation for this.

Meanwhile, however, the offender had been sentenced in June 2024, for a burglary in November 2022, and 5 burglaries between October 2023 and March 2024. The offender had received a 3-year sentence for the November 2022 burglary and a 6-year concurrent sentence for the other 5 burglaries, after 25% credit for plea had been taken into account. The offender's burglary on 31 December 2022 was entirely similar to the other burglaries and they all fell into Category B1. It was agreed that if the December 2022 burglary would have been sentenced together with these other burglaries, there would have been a minimal impact on sentence, if any.

Given the comprehensive sentencing exercise in June 2024 and the fact that this burglary would have been dealt with as well were it not for the CPS' delay, the sentencing judge accepted that there were exceptional circumstances present which allowed him to sentence below the minimum sentence. Moreover, he decided to impose a conditional discharge, in light of the fact that had there not been the CPS' delay, the burglary would have been dealt with in June 2024 with a minimal effect on his total sentence. If the offender were to reoffend in the future the three-year conditional discharge would allow the Court to re-sentence him for the December 2022 burglary, rather than this reoffending simply triggering a 28-day recall.

The Solicitor General appealed on the basis that a conditional discharge was unduly lenient and that whilst regard had to be had to the sentence imposed in June 2024, this should have still resulted in a custodial sentence. The Court found that the Solicitor General's submissions had no merit because it was agreed between the parties that (i) there were exceptional circumstances allowing the Court to sentence below the minimum sentence, (ii) that it was open to the judge to order a conditional discharge and (iii) that the judge could make an adjustment in light of the unreasonable delay. In these circumstances, the Court found this was a reasonable sentence, well within the judge's sentencing powers, and an intelligent way to try to deal with the situation.

Commentary

It is a very frequent problem that without good reason, the Crown charges in a disjointed manner, especially in the case of serial offenders. This causes defendants to be sentenced on separate occasions, potentially leading to an overall higher sentence than if the Crown had not delayed any charges and these offences had been dealt with together. This judgement is important authority to persuade sentencing judges to deal with delayed offences in a manner which places the defendant in a position similar to the position the defendant would have been in if he had been sentenced together for all matters.

CONTRIBUTORS TO THE SEPTEMBER EDITION

Peta-Louise Bagott specialises in domestic and international criminal law. She is regularly instructed in serious criminal offences and has a broad range of experience in this area, including appellate work.

Tayyiba Bajwa combines a criminal defence practice with work in related areas including inquests, crime related public law, prison law and actions against the police. In terms of her appellate practice, she regularly advises individuals on appeal against conviction and sentence in relation to a wide range of offences.

Omran Belhadi is a criminal defence specialist. He is regularly instructed to represent those accused of serious criminal offences including firearms and complex drugs offences. He has a growing appellate practice.

David Bentley KC regularly appears in the Court of Appeal and has extensive experience preparing submissions to the CCRC. He advises internationally including in a prospective appeal from Bermuda to the Privy Council and upon securing a pardon for a prominent Malaysian politician. He has recognised expertise in appeals involving contested expert evidence – in particular issues relating to DNA and is co-author of the DNA chapter in the latest edition of Rook and Ward on Sexual Offences.

Emma Goodall KC is a specialist criminal practitioner who is regularly instructed to advise on appeal. She has appeared in a number of reported authorities involving both complex conviction and sentence appeals and has considerable experience in making submissions to the Criminal Cases Review Commission and in Judicial Review proceedings. Emma is a contributor to Taylor on Appeals.

Jessie Smith's practice encompasses crime (both domestic and international), extradition and public law. She currently represents defendants charged with a range of serious offences, including murder, foreign interference, terrorism, military-grade weapon import/ export, modern slavery and protest. Jessie is regularly instructed to advise on appeal, both before the CACD and Privy Council.

Katy Thorne KC has a long and varied appellate practice which she combines with her trial practice in homicide, fraud and sexual crime. She is an expert on challenging expert evidence and is also an Assistant Coroner and an editor of Mason's Forensic Medicine for Lawyers.

Daniella Waddoup has a keen interest in criminal appeals, particularly those involving appellants with mental disorder and children and young people. Daniella acted as judicial assistant to Lord Mance JSC and is regularly instructed in appeals to the Privy Council by the Death Penalty Project.

Peter Wilcock KC is an experienced and busy specialist in criminal defence who, for over 30 years, has been regularly conducting criminal appeals at all levels including the Court of Appeal and Supreme Court. In that period, he has persuaded the CCRC to refer around 14 cases to the CCRC many of which (including the well-publicized cases of Hallam, Nealon, Lalchan & Layden) resulted in the Court of Appeal quashing convictions.

Louise Willocx frequently appears in the Court of Appeal for her level of call and is keen to expand her appellate practice. Additionally, she has substantial experience appearing before higher courts in extradition law and before international bodies in international criminal law. Louise further has a particular interest in representing young and vulnerable clients in the Crown Court and the Youth Court.