



New Park Court

ANNUAL REVIEW 2026



New Park Court



A Message from the Heads of Chambers

The end of any year is, almost inevitably, a time both for reflection on the passing of one year, and for looking forward, in anticipation of the year to come.

It is an enormous privilege, as Heads of Chambers, to note the success of Chambers and our members in the course of the year just gone, as well as the promise of what is to come in the future. A particular pleasure is watching the progress of some of our most junior members as they establish themselves in their career, starting on the journey that all of us in Chambers have made and continue to make.

In any successful Chambers, it is always about the people. The success of our members is reflected in our Band 1 and Tier 1 status in the Legal 500 and Chambers and Partners and the acknowledgement of individual members. Though they are too numerous to mention, the following are worthy of particular note this year:-

- We are delighted to note that the year ends with Jason Pitter KC, being named “Silk of the year” in Crime, by Chambers and Partners, a well-deserved accolade. It happens to coincide with the end of his three year term as Leader of Circuit. He has served Circuit and its members with unswerving integrity, industry and his usual good humour, and these Chambers are incredibly proud of him. Jason started as a pupil in Chambers. Last years pupils, Lea Levine, Freddie Adams and Miah Nath, now tenants, can have no better example, in their careers, both personally and professionally, we wish them well.
- Geraldine Kelly was appointed King’s Counsel in January, a very well deserved honour which delighted, not just those of us in Chambers, but all who know her across circuit. We have no doubt that Geraldine Kelly KC will continue to flourish in Silk.
- Tom Moran has been appointed a Circuit Judge, His Honour Judge Thomas Moran will sit in Newcastle. Whilst we will miss him from Chambers, we wish him every success.

- Emma Hughes has set a wonderful example to others with her commitment to pro bono work, assisting those who may not otherwise have representation. Emma's commitment resulted in her being "Highly Commended" for the Pro Bono Excellence Award at the Bar Pro Bono Awards.
- We have also been joined in the last year by Helen Chapman, Jessica Heggie and Gurjot Kaur, who have joined us as tenants. We are delighted to welcome them. Similarly Professor John Cooper KC and Iain Simkin KC have joined us as door tenants.

Last year we received the accolade of being named Chambers of the Year at the British Legal Awards and this year we were named LexisNexis Chambers of the Year 2025. Such awards coming in such quick succession demonstrate, not just our success on circuit but our success on a national basis and the commitment and dedication of members and staff.

Finally, our Leeds premises, has undergone a programme of decoration and refurbishment, the first stage is nearing completion and our "grand old lady" as we like to think of our wonderful building, is looking much improved following her facelift!

We wish you all a very peaceful and enjoyable Christmas and wish you and your families the very best for 2026.



Left: Nicholas Lumley KC, Claire Anderson, Amber Walker, Teresa Pugh and Kirsten Frankland at the Lexis Nexis Legal Awards 2025



Chambers Appointments and Achievements in 2025

We are delighted to be able to celebrate the many appointments and achievements of our people over the course of the year. Recognising and celebrating success is an important part of who we are. So congratulations to:

- Geraldine Kelly on her appointment as King's Counsel.
- Tom Moran on his appointment as a Circuit Judge.
- Jason Pitter KC on being named Crime Silk of the Year at the Chambers UK Bar Awards 2025.
- Nicholas Lumley KC on his shortlisting for Crime and Extradition Silk of the Year at the Legal 500 Bar Awards 2025.
- Ashleigh Metcalfe on her appointment as a Fee-Paid Judge of the First-Tier Tribunal.

Right: Jason Pitter KC, collecting his award for Crime Silk of the year at Chambers UK Bar Awards 2025

Below: Rob Wagg, Teresa Pugh, Jason Pitter KC, Nicholas de la Poer KC and Paul Greaney KC





Chambers Appointments and Achievements in 2025 (cont..)

- Helen Chapman, Jessica Heggie and Gurjot Kaur joined our chambers as tenants and Professor John Cooper KC and Iain Simkin KC joined chambers as door tenants.
- Freddie Adams, Miah Nath and Lea Levine accepted offers of tenancy following successful completion of their pupillages.
- Samantha Brown, Oliver Kilvington and Caitlin Smith who joined us for pupillage.
- Richard Holland (Panel B), Danielle Gilmour (Panel C) and Ben Whittingham (Panel C) on their appointments to the Attorney General's list as Junior Counsel to the Crown.
- Lee Fish (Grade A), Adam Birkby (Grade A), Jade Bucklow (Grade A), Claire Anderson (Grade B), Richard Holland (Grade B), Ashleigh Metcalfe (Grade B), Ryan Donoghue (Grade B), Danielle Gilmour (Grade B), Oliver Connor (Grade B), Amber Walker (Grade C) and Ben Whittingham (Grade C) on their appointments to the list of Specialist Regulatory Advocates.
- Lee Fish to the CPS Specialist Fraud Panel (Level 3), Marte Alnaes (General Crime Level 4), Oliver Connor (General Crime Level 3) and Daisy Wrigley (General Crime Level 2) on their successful CPS appointments and regradings.



Winners...

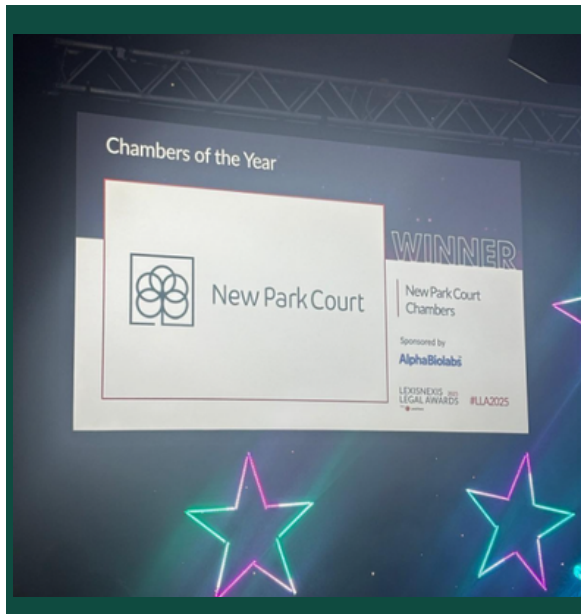
In **March**, we were beyond delighted and proud to be awarded the prestigious title of Chambers of the Year at the LexisNexis Legal Awards 2025.

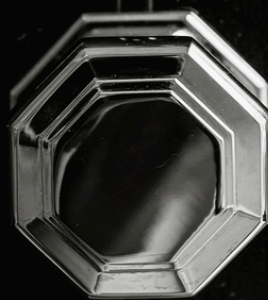
We thoroughly enjoyed the evening which was held at the Park Plaza London Riverbank Hotel in London.

In their commentary, the judges praised not only our exceptional specialist legal services but also our ambition to be recognised as a holistic 'force for good' and to show that the Bar can be something more. The judging panel also commended our diversity initiatives, environmental sustainability, commitment to wellbeing and standard setting across the profession.

We are very grateful to our clients for their excellent testimonials and outstanding feedback.

Thank you.





A Celebration of Women at the Bar

In **March** and in celebration of International Women's Day, Jessica Slaughter was invited to speak at two events.

At the first event Jessica joined St John's College Law Society, University of Cambridge, for a panel session entitled Exploring Domestic Abuse through the lens of Criminal and Family Law. Jessica was specifically selected due to her knowledge and experience of domestic abuse cases in both Criminal and Family Law proceedings.

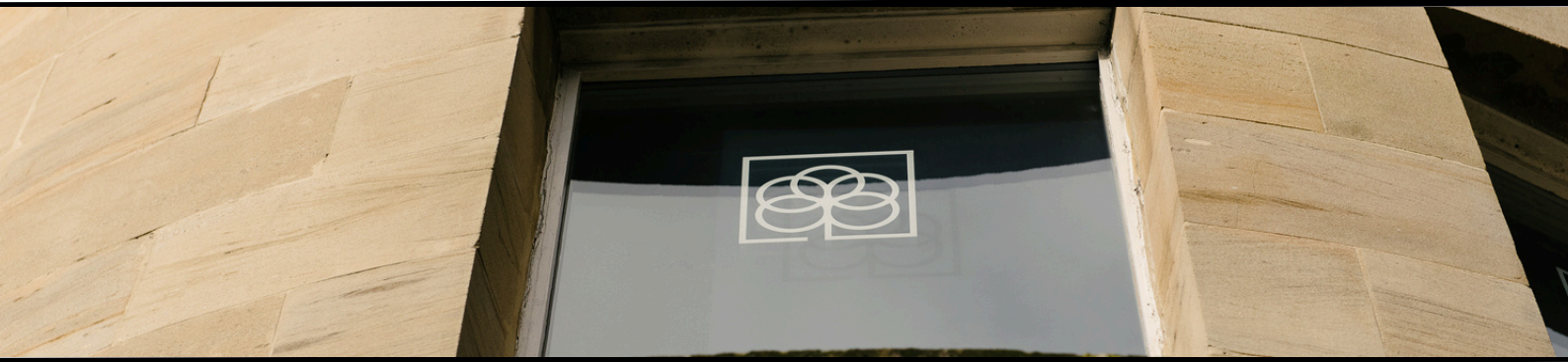
The second event was hosted by a number of University Collaborating Societies: Ladies in Law (ULaw), LSE Women in Law Society, Liverpool Diversity in Law Society, Durham Women in Law and Warwick Future Female Lawyers.

The event celebrated Leading Women in the Legal Sector. Jessica took part in a panel discussion and led a separate workshop on Criminal Law. The event gave a valuable insight to female students considering a future career in Law.



Also in **March**, we welcomed to Chambers the Chair of the Bar, Barbara Mills KC. The Chair met with our members, future pupils and members of staff to discuss and share insights on a variety of topics from the condition of the court estate, the future of family law, challenges within the criminal justice system and ending violence against women and girls, one of the Chair's priorities.





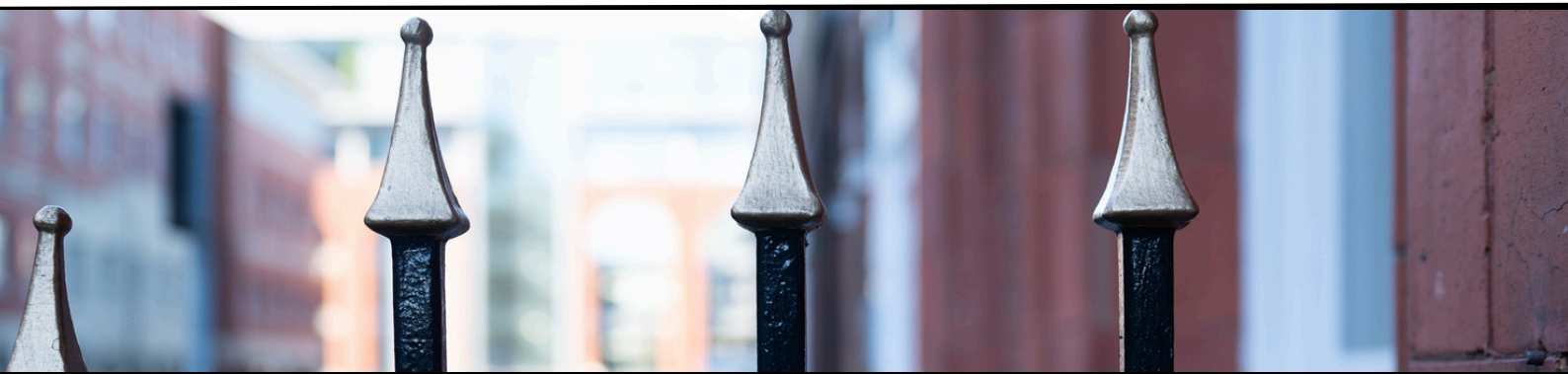
In **June**, we welcomed the Durham University Women in Law (DUWIL) Society to our Newcastle Chambers to share an insight into both New Park Court and life at the Bar.

The event began with Miah Nath and Antonia Adie speaking about Pupillage and becoming a new Tenant, respectively. Gurjot Kaur shared her experiences of the CPS, the Employed Bar and transitioning into Chambers. Jessica Slaughter spoke about the Family Bar and Claire Anderson gave an insight into Criminal Law. Rob Wagg and Claire Anderson wrapped up the day by giving the attendees an insight into our Pupillage recruitment process and how to make an application stand out.



In **April** we hosted our second North Eastern Circuit wide Men's Mental Health Seminar, led by Sharon Beattie KC and moderated by Alistair MacDonald KC.

Ian Wootton, a registered Clinical and Forensic Psychologist and Chartered Psychologist, gave a talk on 'over control' and potential impact this can have on wellbeing. Wendy Showell Nicholas, a BACP Accredited Psychotherapist, spoke about how to spot mental health warning signs and techniques for overcoming them.



Corporate Social Responsibility at New Park Court in 2025

In **May**, we were proud to congratulate Emma Hughes, who was Highly Commended for the John Collins Pro Bono Excellence Award at the Advocate Bar Pro Bono Awards 2025.

Emma was recognised for her outstanding commitment to pro bono work, alongside her busy criminal and family law practice. Her recognition being testament to her dedication to access to justice and the role of advocacy in supporting the vulnerable.



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10,000 BLACK INTERNS



10000 | INTERNS FOUNDATION



In **June**, we once again took part in the 10,000 Black Interns Programme, offering an internship for a week shadowing one of our barristers. Our placement was awarded to a current law student and offered them a valuable insight into life at the Bar. Having been one of the first sets of Chambers at the Bar to sign up to the initiative, we are pleased to share that we have committed to provide further placements in 2026 and beyond.



In **December**, we were pleased to congratulate Oliver Kilvington who was awarded a Gray's Inn Senior Scholarship. The Senior Scholarship is Gray's Inn's most prestigious scholarship and is only awarded to Pupils of exceptional merit who demonstrate excellent written and oral ability.



In **June**, we raised money for the Access to Justice Foundation by completing the Legal Walks in Leeds and Newcastle. We raised a total of £665 for the Foundation, who work tirelessly to support and enable the delivery of free legal advice to those most in need.

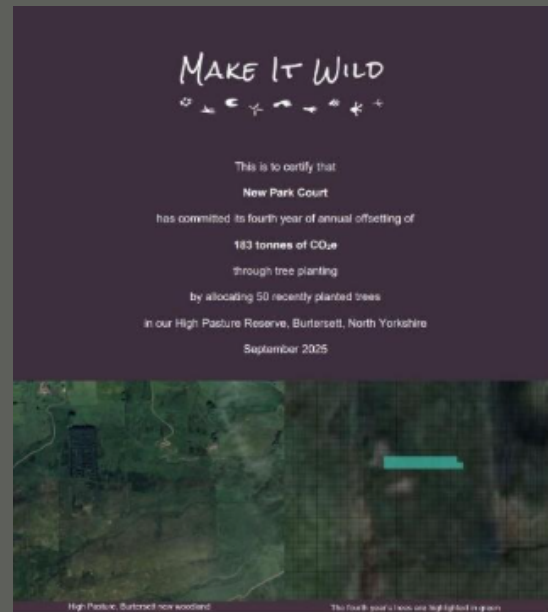
This is a great charity and one which we are very proud to support.





In **September**, we extended our partnership with Make it Wild for a fourth year by growing the New Park Court Woodland (based in North Yorkshire in between our Leeds and Newcastle hubs) to over 200 trees.

We are making real and sustained progress in our commitment to offsetting our carbon footprint. This is concurrent to being more energy efficient and improving our infrastructure to allow and encourage our members and staff to leave their cars at home and run and cycle to work.





In **October**, we once again welcomed **The Diversity Trust** to join us to deliver our Race Awareness Training.

This year our training focussed on contextualising the Race at the Bar Report (2021), Race at the Bar Report: 3 Years On (2024) and the recommendations from the recently published Harman Report.



As a Bar Council Wellbeing Certified set of Chambers we embrace the responsibility of supporting our members and staff.

We were very pleased in **June** to extend our collaboration with Bupa Healthy Minds which provides all of our people and their immediate families with 24/7 confidential access to counsellors and specialist advisors.



Reaching out to the Future Bar

Throughout 2025 our unique University Outreach Programme has been in full flow.

We have met with students and academics at a number of Law Careers Fairs as well as meeting and lecturing law students on life at the Bar and The Business of Chambers. These have included events at the University of Cambridge, the University of Durham, Northumbria University, University of York, University of Sunderland, University of Law and Leeds Beckett University to name a few.

Members and staff also attended the first Pupillage Fair North (jointly run by the North Eastern Circuit and the Northern Circuit) in Leeds, where our members delivered talks, assisted with CV clinics and spoke with potential applicants.

In **January** we also hosted our own annual Pre-Pupillage Open Events for prospective pupils in both Leeds and Newcastle, allowing students to meet us and learn more about Chambers.





In **June**, Chloe Hudson was invited by the Johannesburg Society of Advocates to speak as part of an International Panel on success in pupillage and early years of practice. Along with David Hay KC (Westwater Advocates) and Bibi Badejo (4 Paper Buildings), Chloe delivered a seminar and question and answer session on building a practice and being a success at the criminal bar to 80 delegates from across South Africa.



Also in **June**, our Chief Executive, Rob Wagg, and our Deputy Head of Chambers Newcastle, Lee Fish, appeared on separate episodes of the Call to the Bar podcast.

Rob gave listeners an insight into The Business of Chambers and his role as CEO of New Park Court Chambers. Lee shared his expertise on rape trials and the busy life of a criminal barrister.





Working and collaborating with our partners

Throughout 2025 we enhanced and extended our partnerships with local law societies, including Leeds Law Society, Sunderland Law Society and Newcastle-upon-Tyne Law Society.

We delivered a range of CPD seminars across our key practice areas of Family, Regulatory and Crime. All of which were supplemented by a regular drum beat of thought leadership based articles from our members.

We were also very pleased to sponsor and attend a wide variety of events, some of which are highlighted below.



Left: Sharon Beattie KC and Nick Lane presenting a seminar on Coercive and Controlling Behaviour and disclosure between the family and criminal courts for the Sunderland Law Society.



Above: Valerie Sterling and Sally Terris delivering an insightful session on Private Law Children and a Financial Orders Update co-hosted with the Newcastle-upon-Tyne Law Society.

Section.22 POCA Applications - when POCA comes back for a second bite - webinar with

Richard Holland

Date: 19th March 2025
Time: 17:30 - 18:30
Where: On-line only
This event is hosted by:



EVENT



Developments in Disclosure

webinar with

Nick Murphy

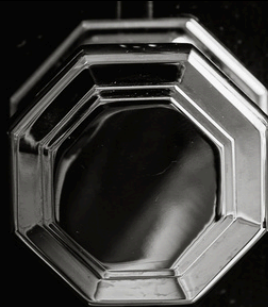
Date: Monday 14 July 2025
Time: 17:30 - 18:30
Where: On-line only
This event is hosted by:



EVENT



Richard Holland and Nick Murphy delivered online training for Leeds Law Society POCA and Developments in Disclosure.



In **June**, we had the pleasure of being invited to attend the President's Summer Charity Party, hosted by Newcastle Upon Tyne Law Society.

We had a wonderful evening and thoroughly enjoyed meeting and socialising with peers and colleagues from the legal community in the North East and all in support of a very worthy charity – The Child Brain Injury Trust.

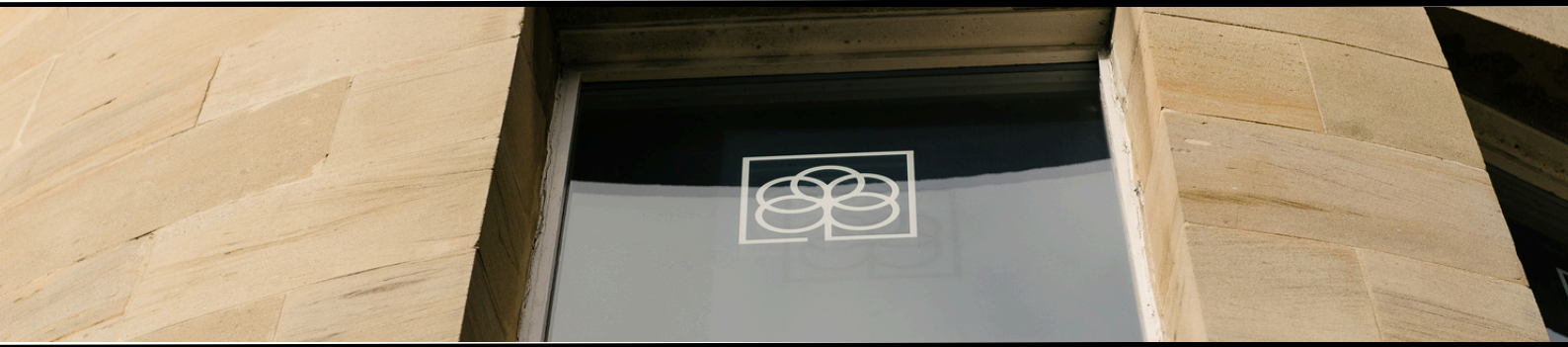


In **October** we were honoured to once again sponsor and attend the Newcastle Upon Tyne Law Society Annual Law Dinner.

We joined colleagues from across the region to celebrate the North East's legal community where Rob Wagg, our CEO, was privileged to present awards to those named as Law Students of the Year.



In **May**, We were delighted to attend the Association of Regulatory and Disciplinary Lawyers (ARDL) Annual Dinner at the Guildhall.



In **June**, we were proud sponsors of the Humberside Police Federation Bravery Awards 2025.

Nick Lumley KC had the honour of presenting bravery awards to two courageous officers who risked their lives to save a young woman in danger on the Humber Bridge – a genuine act of real heroism.

It was a privilege to be part of such an inspiring evening.



In **October**, we once again sponsored the Criminal Law Solicitors Association Conference and AGM in Manchester. This year's theme, "Don't Look Back in Anger," provided many forward-looking discussions on the future of the criminal justice system.



Also in October, we were delighted to support a Resolution Pathfinder training event hosted at Stewarts Solicitors and organised by Head of our Family Team, Valerie Sterling, as part of her work on the Resolution panel.





What the Directories say...

In **October**, we were thrilled once again to be recognised as a leading set across our practice areas in both Chambers and Partners UK Bar Guide 2026 and the Legal 500 2026.

We were awarded Band status across our key practice areas of Crime, Inquests & Inquiries, Professional Discipline and Business and Regulatory Crime. Individual members were also recognised for Environment, Financial Crime, Health and Safety and Family.

Commenting on our rankings, our CEO, Rob Wagg, said, "It is incredibly pleasing to see such a strong increase in our rankings as well as such excellent feedback from our clients, peers and those across law, thank you very much. I am delighted to see that, collectively, our specialist legal knowledge and talent is recognised by our being ranked in our key areas of Crime, Inquests & Public Inquiries and Professional Discipline and that our barristers are well known across the country for their expertise."

The set houses a *"quality of counsel within this set which is second to none."* - **Chambers and Partners 2026 (Crime)**

'New Park Court Chambers is an excellent set, which provides elite barristers at the top of each of its practice groups.' - **Legal 500 2026 (Crime)**

'New Park Court Chambers demonstrates a considerable depth and breadth of expertise in the inquests and inquiries field' - **Chambers and Partners 2026 (Inquests and Inquiries)**

'New Park Court are a top set to deal with who have a great range of exceptional barristers in this field. Counsel consistently show high levels of expertise in the area, and provide quality advocacy. Counsel provide a first-class service, and are professional, but approachable and friendly, and pragmatic in their approach to cases.' - **Legal 500 2026 Professional Disciplinary Law**

'an exceptional set. The depth and breadth of counsel about regulatory crime are excellent.' **Legal 500 2026 Business and Regulatory Crime**



Refurbishment of our Leeds Chambers

This year also proved to be an important one in terms of investment and infrastructure. Following the full refurbishment of our Leeds Chambers, we are pleased to have struck the right balance between creating a contemporary working environment whilst respecting and accentuating the Georgian history of our wonderful building.

Looking forward, our attention now turns to upgrading our Newcastle Chambers and turning our Leeds basement area into a multi-use seminar, events and hosting suite.





New Park Court



A message from our CEO

Sharon Beattie KC and Nick Lumley KC, our Joint Heads of Chambers, very neatly captured the most important reflections of the year in their opening message; the successes and growth of our people, both collectively and individually.

In doing so, this therefore allows me to shine a brief light on and share my pride in our efforts of a subtly different kind, our positive and conscious impact on the world around us.

Seeing the New Park Court Woodland grow to over 200 trees, via our partnership with Make It Wild, is a particular highlight of mine. Not only because of the Carbon Offsetting it provides but also because of the joy we know it brings to so many who visit this protected and nurtured corner of nature.

You will have also read about the time, energy and support we have given to a range of activities, from Legal Walks raising monies for charity, through to our University Outreach Programme that aims to showcase and offer insight into both who we are and what life at the wider Bar looks like. All of these, including our sponsoring of 10,000 Black Interns, Pro Bono work and promoting access to justice, share a common theme – our commitment to being both a ‘force for good’ and much more than the average set of Chambers - something I am incredibly proud of.

With further infrastructure and commercial development projects planned for the forthcoming year, 2026 promises to be one of continued growth for us.

Of course, none of this is possible without the enduring support and engagement of our thriving client base, and for this we are very grateful. Thank you.

I wish you and yours a prosperous 2026 and beyond.



Some of our notable casework in 2025

Jason Pitter KC appeared for Peter Sullivan, an appellant who had spent the last 38 years in prison following his conviction for the brutal murder of Diane Sindall in 1987. The case was referred to the Court of Appeal and the conviction ultimately quashed in light of new DNA evidence.

It is understood to be one of the longest-running “miscarriage of justice” cases of its type, following a previous appeal and engagement by the Criminal Cases Review Commission. The case received widespread national publicity.

James Edward Staley v Financial Conduct Authority (Upper Tribunal)

Robert Smith KC acted for Mr Staley throughout the proceedings which commenced in 2021 in respect of Mr Staley’s approval of a letter drafted by Barclays Bank when he held office as Chief Executive Officer and which concerned a response to the FCA’s enquiry concerning the history of Mr Staley’s relationship with Jeffrey Epstein.

The Upper Tribunal dismissed the reference by James Edward Staley against the decision of the Financial Conduct Authority but substantially reduced the fine which was originally imposed. The Prohibition Order remains in place.

An Environment Agency prosecution involving **Lee Fish** featured in the BBC Fraud Squad Series. Lee Fish was instructed to prosecute Greenology, its directors and others involved in running the company. The case concerned a number of illegal plastic recycling sites, however, the major focus was a site near Redcar. At this site waste was stored illegally and dangerously. The result was a very large fire at the site that had a significant impact on the surrounding area.



Nicholas Lumley KC and **John Hobley** prosecuted a murder and child cruelty case towards a 22-month-old child at Teesside Crown Court. Christopher Stockton was sentenced to life imprisonment with a minimum term of 25 years for the murder of 22-month-old Charlie Roberts.

He was sentenced to an 8-year concurrent sentence for cruelty towards Charlie, who he had intentionally injured on a number of occasions in the year prior his death.

Mr Justice Goss also imposed a 4-year custodial sentence on Paula Roberts, Charlie's mother, for child neglect following her guilty plea during the trial, accepting she had failed to seek medical attention for Charlie for injuries inflicted by Mr Stockton in the weeks before his death.

Mr Stockton, Paula Roberts's partner, had telephoned an ambulance while looking after Charlie in January 2024, claiming he had collapsed after having choked on a biscuit. Pathological results revealed Charlie had suffered catastrophic brain injuries from being shaken or thrown against a hard object shortly before his collapse. Further investigation of photographs of Charlie revealed a pattern of inflicted injuries coinciding with Mr Stockton's involvement in Charlie's life.



Paul Greaney KC and **Nicholas de la Poer KC** appeared at hearings of the Omagh Bombing Inquiry as Counsel to the Inquiry.



Jason Pitter KC and **Ben Campbell** appeared for the prosecution in the tragic case of a man, dubbed a “Good Samaritan” by the media, who was murdered when he was driven over by the Defendant.

The circumstances of the case had attracted widespread national publicity because the deceased, who had been out on a family walk in the days after Christmas, had stopped to assist an apparently unconscious woman on a road in Sheffield. In doing so he became unwittingly involved in two families feuding in relation to a wedding earlier that day. Tragically, whilst administering that assistance he was run over and killed, by the defendant who was the woman’s brother. The woman along with her mother and another passerby also suffered life threatening injuries.

The defendant was convicted after a 5-week trial before Mr Justice Morris of murder, 4 counts of causing GBH with intent and 2 counts of wounding with intent. His father was convicted of perverting the course of justice, in relation to hiding the knife that was used.

Sharon Beattie KC and **Chloe Hudson** acted for the Prosecution in the case of R v Kramarski.

The Defendant was convicted of Manslaughter and Arson [being reckless as to whether life was endangered] in respect of a fire set outside the flat he shared with the deceased, who was trapped in the flat and subsequently died as a result of smoke inhalation. This fire also resulted in a family with young children being trapped in an upstairs property and having to jump to safety.

At Leeds Crown Court the Defendant was sentenced to an extended sentence of 21 ½ years in respect of the manslaughter conviction [17 ½ plus 4 years extension] and an 8 years concurrent sentence in respect of Arson.



Nicholas de la Poer KC and Richard Holland secured a murder conviction of John Belfield.

On 3 July 2025 John Belfield was convicted of murdering Thomas Campbell and conspiring to rob him. The verdicts marked the end of a four week trial in which evidence arising from a meticulous investigation by Greater Manchester Police was presented to the jury by Nick and Richard.

Thomas Campbell was murdered in appalling circumstances, with the judge accepting when sentencing the prosecution's description that he was "tortured to death". The motivation behind the murder was both a desire by John Belfield to steal drugs from Thomas Campbell and also his wish to take revenge on Thomas Campbell who was in a relationship with John Belfield's ex-partner.

The evidence assembled by the police painstakingly reconstructed the last week of Thomas Campbell's life and demonstrated that he had been targeted by a sophisticated criminal gang, led by John Belfield. Thomas Campbell's vehicle had a tracker placed upon it and hostile reconnaissance was carried out of his home. In addition the gang also obtained information about Thomas Campbell from his ex-wife, Colleen Campbell and carried out a dress rehearsal for their attack. Following the attack John Belfield fled to Suriname, from which he was ultimately deported. The jury were presented with evidence from multiple sources including: cell-site, CCTV, GPS, mobile telephone calls and messages, tracker data, crime scene investigation, DNA and pathology.

In Spring of 2023 Nick and Richard prosecuted other members of the gang, including Colleen Campbell, securing a conviction for murder and conspiracy to rob in the case of one of those who attacked Thomas Campbell, and manslaughter and conspiracy to rob in the case of Colleen Campbell and another gang member.

Following John Belfield's deportation from Suriname, he was arrested on suspicion for murder and tried over the course of the last four week in front of Mr Justice Garnham.

On 4 July 2025 John Belfield was sentenced to imprisonment for life with a minimum term of just over 34 and a half years.



Lee Fish was part of prosecution team in a major Encrochat case which featured on the Channel 4 documentary "Operation Dark Phone: Murder by Text." The case involved the prosecution of Jamie Rothwell and 9 others, many of which were significant members of a serious organised crime group. The group were convicted of involvement in the supply of Class A drugs on an industrial scale, the purchasing of firearms with intent to endanger life, agreements to murder/seriously injure individuals and ordering the shooting of individuals. The case arose following French authorities being able to access encrypted mobile phones and the secure communications that these serious criminals trusted ultimately led to their downfall. This was a large and complex investigation. The leading figures in these conspiracies were found to be dangerous offenders and received sentences ranging from 36 - 43 years imprisonment.

Jason Pitter KC leading **Ben Campbell** appeared for the prosecution of Marcin Majerkiewicz who was convicted of the gruesome murder of his flatmate.

The high-profile case received national publicity when the investigation was triggered by the discovery of unidentified body parts in various locations in the Greater Manchester area and the horrific circumstances surrounding the killing involving the deceased's body being sawed into pieces. The defendant had engaged in an elaborate exercise of distributing the body parts and concealing the death, including by assuming the deceased's identity. A complex investigation led to the tracking of the Defendant and the discovery of 27 different body parts comprising only one third of the deceased's body.

Paul Greaney KC attended the UK COVID-19 Inquiry hearing to represent Deloitte LLP.



Tom Storey KC prosecuted a far right extremist sentenced to life imprisonment for attempting to murder an asylum seeker. Callum Parslow was sentenced at Woolwich Crown Court by Mr Justice Dove to life imprisonment for attempting to murder an asylum seeker in a terrorist-motivated attack.

The defendant was found to have in his possession multiple works reflecting an extreme right wing or neo-Nazi ideology, and to have posted multiple messages on X (Twitter) of an extreme racist nature, expressing a willingness to use extreme violence towards non-white people in this country.

He had armed himself with a specialist hand-made knife and travelled to a hotel outside Worcester that had been used by the Home Office to house asylum-seekers, specifically with the aim of attacking and killing one such resident.

He had prepared a terrorist manifesto document which he was in the process of posting to X at the point he was arrested after his attack. The Defendant was convicted after a trial heard at Leicester Crown Court.

Nick Murphy, Jessica Slaughter and Claire Anderson were instructed to represent defendants charged with high value burglaries, including at the home of Newcastle United footballer Alexander Isak.

Giacomo Nikolov, Jela Jovanoic, Charlie Jovanovic and Valentino Nikolov travelled to the UK from Italy in April 2024. They conspired together to target properties belonging to high net worth individuals, including footballer Alexander Isak and entrepreneur and care home operator, Helen McCardle CBE. Three houses in the North East were targeted over a 5 day period and more than £1.3m worth of property was stolen, including jewellery, designer handbags, money and an irreplaceable CBE medal.



New Park Court

Our Articles:

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Family Briefing

by Jessica Slaughter



Jessica Slaughter has a mixed barrister practice in criminal and family law, with her family cases, especially those involving abuse, complementing her criminal caseload. Jessica has represented clients in family law cases since 2010 and before Pupillage worked for a domestic violence organisation.

In a private family law case, after proceedings have commenced, can a parent simply withdraw their application?

In private law proceedings, the large majority of applicants are paying privately for their representation or representing themselves. But what happens when the money runs out, or they do not wish to pursue their application for other reasons?

There may be a number of reasons for an applicant to seek to withdraw their application. It may be that their circumstances have changed during the course of proceedings, and they are no longer in a position to seek what they were initially asking the Court for. Or they may feel unable to represent themselves or are no longer able to pay privately for their representation. It may be that there has been a section 7 report from CAFCASS or the Local Authority that gives recommendations contrary to the applicant's position. This sometimes will be enough for an applicant to reconsider their position. Sadly, there will also be cases where the children's views are included in reports, and they do not wish to have contact with their non-resident parent. Despite that parent loving their child and wanting to care for them, they may have taken the difficult decision to take a step back and follow the child's wishes and the recommendations of the childcare professionals in the case.

Now, in these sorts of circumstances, can the applicant simply inform the Court that they want to withdraw the application, and proceedings will come to an end without further hearing? The short answer is no. Once proceedings are before the Court, there is a duty on the Court to consider the welfare of the children as a paramount consideration. If there has been a section 7 report with recommendations, the Court should consider that before concluding any proceedings.

In terms of the formalities of seeking to withdraw an application, this is covered by Family Procedure Rule 2010, rule 29.4. An application may only be withdrawn with the permission of the Court.



An applicant who wishes to withdraw their application should complete Form C2, stating their reasons for wishing to withdraw and including a reference to the effect that there may be upon the child. If this written request has been provided, and all other parties / relevant persons directed by the Court (for example, a section 7 report author) have had an opportunity to make written representations to the Court about the request, then the Court may deal with the application without a hearing.

Alternatively, it may be possible to make an oral application to the Court at a hearing where all parties are present.

The Court will consider the welfare of the child and how the withdrawal of the application will impact upon this before determining whether or not to grant permission for the application to be withdrawn.

Jessica Slaughter has represented clients in family law cases since 2010. Before Pupillage, she worked for a domestic violence organisation, gaining in-depth knowledge and experience on these delicate and sensitive issues. Her experiences have honed her abilities as a barrister to deal with vulnerable individuals, assisting them through the trial process while ensuring that the significant points are dealt with thoroughly. Jessica's knowledge of criminal cases, including the disclosure process and police material, has also proved invaluable in her presentation of her family cases. With her advocacy skills honed in the criminal courts, she is particularly in demand for fact-finding hearings and is at ease forensically cross-examining professionals, including medical experts.



Criminal Briefing

by David Povall



David Povall is a specialist criminal practitioner, having spent his entire career to date appearing both for the Crown and the defence across the full scope of criminal work in the Crown Court and the Court of Appeal.

Sentencing Historical Sexual Offences

“It’s a riddle wrapped in a mystery inside an enigma” - WS Churchill

Sentencing historical sexual offences

As if sentencing contemporary sexual offences were not tricky enough, historical cases add a thick layer of additional complexity and a number of traps for the unwary. Sadly, much of the fun of reading chunky Court of Appeal authorities and considering how the Children and Young Persons Act 1933 was amended by the Criminal Justice Act 1988 has been denied us, because there are now useful and accessible summary resources available: the key is to know where there might be a problem and where to look for the answer.

Maximum sentences – adults

There are no particular issues here. The normal principle applies: the maximum sentence available is that at the date of commission of the offence. A useful table is provided in the Sentencing Council’s Guideline, found [here](#).

Be alert to those offences where the maximum sentences changed over time, or where they depended on particular combinations of circumstances. The most commonly encountered will be indecent assault on a woman (Sexual Offences Act 1956, s.14) and indecency with a child (Indecency with Children Act 1960, s.1): both of these may well be used to charge conduct that would now amount to more serious offences with very heavy sentences. Buggery (Sexual Offences Act 1956, s.12) needs particular care, as the offence as drafted encompasses conduct that could now be either rape or not a crime at all.

Common problems can be avoided if sentencing powers and relevant dates are considered when the indictment is drafted. The problem of counts that straddle relevant dates is considered below.

Maximum sentences – youths

This is where life gets more ... interesting. How is the court to treat an adult who committed serious sexual offences while a youth? The abolition of doli incapax from 30th September 1998 has increased the number and complexity of cases concerning sexual offences committed by children.



A series of recent decisions has been considered in *R v Ahmed (Nazir)* [2023] 2 Cr. App. R. (S.) 32. In very bald summary, sentencers will generally be limited to the maximum sentence that would have been available had the offender been prosecuted at the time and at the age he/she was at the time. While the Court of Appeal (what mischievous scamps they are!) dangled the tantalising possibility that there might be exceptional circumstances in which the contemporary maximum might be exceeded (para. 32.v), they also struggled to think of circumstances in which this would be appropriate. It will be a bold sentencer who decides to give it a go. With an evil, prosecutorial glint in my eye, I wonder whether one possibility might involve the use of consecutive sentences: an offender who committed multiple offences of indecent assault at an age when he/she could receive a maximum aggregate sentence of 2 years could perhaps receive a series of consecutive 2-year sentences in order to reach a more adequate overall sentence, especially where the indecent assaults would now be charged as much more serious offences. I don't recommend trying it, but it would be interesting to see how the Court of Appeal would view such an approach.

For those who would rather avoid a very public telling-off at the RCJ, an invaluable resource is the set of tables in Chapter A8 of *Current Sentencing Practice*. Each table summarises the availability of custody for each age from 10 to 17 over the period from 1933 to 2020. Such is my rock and roll lifestyle that I have them downloaded and saved on my laptop.

It will be a rare case indeed where offences committed before 30th September 1998 by somebody then under 14 will be charged. In consequence, there will be few problems where rape or buggery of a child is charged: from 1st August 1963, a 14-year-old could be sentenced up to the adult maximum if the offence attracted a maximum sentence of 14 years or more. Before 1st August 1963, however, the maximum for a 14-year-old could be no more than 6 months.

From 9th January 1995, any child from the age of 10 could be sentenced up to the adult maximum if the offence attracted a maximum sentence of 14 years or more. By the time, therefore, that *doli incapax* was abolished, the problem of sentencing children for the most serious offences had been resolved.

In those very rare cases where there is sufficient evidence to rebut *doli incapax* and thus charge a defendant for offences committed before September 1998 and when he/she was under 14, beware the effects of a parliamentary flipflop between 1988 and 1995. From 1st August 1963 to 30th September 1988, any child from the age of 10 could be sentenced up to the adult maximum if the offence attracted a maximum sentence of 14 years or more. From 1st October 1988 to 8th January 1995, however, this applied only to manslaughter and not to any sexual offence.

Where offences of indecent assault or indecency with a child are charged, offences that encompassed conduct that would now be charged as assault by penetration or oral rape, the court will often be constrained to impose manifestly inadequate sentences (until somebody comes up with a workaround). This situation will apply in all cases where the offending pre-dates the coming into force of the Sexual Offences Act 2003 (1st May 2004).

Charges straddling important dates

In an ideal world this wouldn't happen, but, either because of inadvertence (who, me?) or because of a lack of clear evidence, we sometimes end up with charges that particularise conduct on either side of a date that affects the court's sentencing powers (because of legislative change or because defendant or victim passed a relevant birthday). The default position remains that the offence(s) should be taken to have been committed at the time most advantageous to the defendant. It is, however, arguable that a sentencer is entitled to find that there is unequivocal evidence that the offending, or at least some of it, was perpetrated under the more severe sentencing regime. In that situation, the indictment really should have been drafted or amended to reflect the evidential position, but there is some authority for the proposition that the sentencer is entitled to



make a finding of fact and sentence more severely in reliance upon that finding. See para. 30.60 in *Rook and Ward on Sexual Offences 6th Edition* and *R. v R (Paul Brian)* [1993] Crim. L.R. 541 and *R v Harries (Michael John)* [2008] 1 Cr. App. R. (S.) 255.

Guidelines

We are all by now familiar with how to apply the Sentencing Guidelines where the maximum available sentences are lower than those that would now apply: we treat the seriousness of the offending with modern eyes, but we are constrained by the historically available maximum sentences. Be alert to the fact that the septuagenarian defendant in the dock will be entitled to consideration under the Overarching Guideline on Sentencing Children and Young People if being sentenced for offences committed when he/she was under 18.

Special sentences

Section 244ZA of the Criminal Justice Act 2003. The applicability of the release provisions under this section are governed by the date of sentence and by the sentence being imposed for an offence for which an adult over 21 could receive a life sentence. Most rapes, whenever committed, will thus result in automatic release after two thirds of the sentence has been served.

Section 279 of the Sentencing Act 2020. The availability of an extended sentence is, likewise, retrospective. Specified sexual offences include many under the Sexual Offences Act 1956. Section 282 of the Sentencing Act 2020 likewise extends the power to pass an extended sentence to pre-1956 common law offences subsequently codified in the 1956 Act.

Section 278 of the Sentencing Act 2020. A special custodial sentence for an offender of particular concern is available only if the defendant was 18 or over when committing a sexual offence. So long as that condition is met, the section will bite for any offender convicted of rape of a child under 13, assault by penetration of a child under 13 (including an attempt or conspiracy to commit such an offence, or aiding, abetting, counselling or procuring such an offence), or an “abolished offence” which would now be charged as one of those offences: the obvious examples are offences under section 5 of the Sexual Offences Act 1956 (intercourse with a girl under 13), section 12 of that Act (buggery), where the victim was under 13, or sections 14 or 15 of that Act (indecent assault), where the victim was under 13 and the assault involved vaginal or anal penetration.

Conclusion

Couldn't be simpler, could it? There will be a test.



Criminal Briefing

by Lee Fish



“Lee Fish is a very good barrister and a pleasant opponent.”
Chambers and Partners 2024

Domestic Abuse and Res Gestae: Where are we now?

Res gestae evidence has been admissible for many years. It was a common law exception to the rule against hearsay which was preserved by the Criminal Justice Act 2003. The use of res gestae evidence in cases involving allegations of domestic abuse has increased in recent times particularly since the use of body worn video by police officers. Further, the courts have become more willing to consider cases based almost exclusively on res gestae evidence. The use of res gestae evidence in domestic abuse cases was considered in DPP v Barton [2024] EWHC 1350 (Admin) and this may well lead to an increase in cases, which rely wholly or mainly on res gestae evidence.

DPP v Barton

The facts in Barton tell a familiar story. Mrs Barton called the police and alleged that she had been assaulted by her husband. This was recorded in a 999 call. Police officers arrived shortly afterwards. Mrs Barton repeated her accusation of assault. This was recorded on body worn video. Police officers observed an injury and obvious distress. Mrs Barton never provided a witness statement. Further, following the decision to prosecute her husband she wrote to the Crown Prosecution Service suggesting she had been drinking heavily and the account she provided at the time may be unreliable. She also made clear that she did not support a prosecution. This scenario will be familiar to all criminal lawyers. It is not unusual.

The Crown Prosecution Service is required to adopt a robust approach when prosecuting allegations of domestic abuse, even when an alleged victim does not support the prosecution. The prosecution decided to continue with this case based on the 999 call and the body worn video on the basis that it was admissible as res gestae evidence. The court at first instance erroneously stayed proceedings as an abuse of process because the prosecution was able to call the alleged victim and were declining to do so. This was clearly wrong and will not be the focus of this article. The focus will be on the use of res gestae evidence.

Res Gestae

This common law exception to the rule against hearsay is preserved by section 118 of the Criminal Justice Act 2003. It allows hearsay evidence to be admissible in circumstances where a statement is made “by a person who is so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded.” It is important to note that there is no requirement to show that the witness is unavailable through fear or for any other reason. Therefore, often res gestae evidence will come from a witness who may be reluctant or unsupportive but is nevertheless available to be called as a witness.



The assessment of whether evidence should be admitted as *res gestae* is based on the cases of *Ratten* [1972]

A.C. 378 and *Andrews* [1987] A.C. 281. The crucial issues are these:

1. Can the possibility of concoction or distortion be disregarded?
2. In making this assessment, the court must assess the circumstances in which the statement was made.
3. For the statement to be sufficiently spontaneous, it must be so closely linked with the event that was being described as to still be dominating the thoughts of the maker of the statement at the time.
4. Are there any special features that are relevant to the possibility of concoction or distortion, such as a possible malicious intention on the part of the maker?
5. In assessing possible factual errors in the account that was given, can this be explained as normal human error, or does it go to the inherent unreliability of the statement?

It will therefore always be necessary to carefully consider whether evidence is admissible as *res gestae*, and it will be useful to use the factors identified above to assess admissibility. The focus should always be on the nexus between the statement and the event and whether there is anything which makes the statement inherently unreliable (such as intoxication/provable lies/malicious intention) or where it is impossible to exclude the possibility of concoction or distortion. It will be a balancing exercise as to which matters prevent the evidence being admissible and those which will simply go to weight.

The use of *res gestae* in the sensitive and specific circumstances of domestic abuse was considered in *Barton*. The following points emerge from the judgment:

1. The prosecution is not obliged to call a witness who has never provided a witness statement or who they anticipate will give evidence that is untruthful. The prosecution enjoys a wide discretion in this regard. The court applied well established principles in *R v Russell-Jones* [1995] 1Cr. App R. 538. The prosecution has an unfettered discretion in terms of witness statements it chooses to serve. Once a decision is made to serve a witness statement the discretion whether to call a witness is fettered and if it is exercised inappropriately the court can ask the prosecution to tender the witness or call the witness itself.
2. It is not a requirement that *res gestae* evidence can only be admitted where the individual making the statement can be shown to be “in fear.” In the context of domestic abuse cases, it will often not be unfair to adduce the *res gestae* evidence of a complainant where they are not called as a witness and are not shown to be “in fear.” The public interest may well demand such an approach.
3. If the evidence is admissible as *res gestae* evidence, as with all hearsay evidence, the court can nevertheless exclude it pursuant to section 78 of the Police and Criminal Evidence Act 1984. The court referred to *R v Riat* [2013] 1 WLR 2592 and the non-exhaustive considerations in section 114 (2) of the Criminal Justice Act 2003 as a useful way to assess admissibility under section 78.



Discussion

Many will argue that Barton is a further erosion of an accused person's right to challenge evidence against them. On the other hand, others will argue that res gestae evidence is a useful and necessary tool in robustly pursuing allegations of domestic abuse. It is often the case that victims of domestic abuse will make an allegation of assault and because of the nature of the relationship will not wish to pursue a prosecution against their abuser. 999 calls are not new but what has perhaps allowed courts to view res gestae evidence more sympathetically is the ability to record the initial account on body worn video. This does allow for an assessment of demeanour in a similar way that a jury or magistrates court would assess a witness who gave evidence.

It is, however, clear that if the prosecution exercises its discretion responsibly, it will no longer be enough to simply argue that the witness is available and could and should be called by the prosecution. It is always open to the defence to call a complainant (this was a point made in Barton) if they wish to do so. There is always a danger that prosecutors could become too reliant on res gestae evidence, however, it is expected that at the very least, a court would have to be assured that efforts had been made to obtain a witness statement before considering the admission of hearsay. In circumstances where it was revealed that no effort had been made to obtain a witness statement (when the witness is available) an application to adduce hearsay evidence would surely fail.

Rather than becoming bogged down in whether the witness could be called (often they will be available) the focus should be on the questions that emerged from R v Andrews (above.) How contemporaneous with the event is the statement? There is no maximum period but the further away from the event that the statement is, the less likely it is to be admissible as res gestae. Do the overall circumstances mean the possibility of concoction or distortion cannot be excluded? Where was the statement made? In what circumstances? Was the maker sober? Is there any other undermining material impacting on the reliability of the maker of the statement? Is there any supporting evidence such as injury? Many of these issues will impact on whether the evidence is res gestae and will feature in many section 78 applications.

It remains to be seen how willing the courts will be to admit res gestae evidence. The case of Vilhete v CPS [2024] EWHC 2171 (Admin) is an example of an appeal by way of case stated upholding a decision to admit res gestae evidence and following Barton. This was a case where the complainant had made a statement but then withdrew support for the prosecution. One of the issues raised by the complainant was the negative impact being compelled to attend court would have on her mental health. Following, what were found to be reasonable enquiries, a balanced decision was made not to compel her attendance and rely on the 999 call and body worn video. This was allowed it having been found that this was not a "lazy" application and that the prosecution had made all reasonable enquiries and had reached a balanced decision not to compel her attendance. This is perhaps indicative of how courts will approach such cases in the future if the prosecution act responsibly and are able to justify why a witness is not being called.

Conclusion

Prosecutions based on res gestae evidence are here to stay, particularly in cases of alleged domestic abuse. Increasingly, prosecution and defence will have to deal with cases based wholly or mainly on res gestae evidence. It is right that every case will turn on its own facts and each should be carefully considered on its own merits. It should never be forgotten that hearsay, by its very nature, is not the best evidence. The direction of travel, however, is clearly in favour of courts allowing res gestae evidence to be admitted in domestic abuse cases even when the witness is available and is not in fear. The key question, however, is how willing a court or a jury is to convict in cases based mainly on res gestae evidence.



Criminal Briefing

by James Bourne-Arton KC



Acknowledged as an accomplished and polished advocate, James Bourne-Arton KC has a national reputation for defending and prosecuting serious and financial corporate crimes, including complex fraud, professional disciplinary, and regulatory work.

Asset Forfeiture Orders – the need for better safeguards

The Proceeds of Crime Act 2002 in Chapter 3 introduced the power for Revenue and Customs officers, SFO officers, or police officers to seize, detain and then apply for forfeiture of cash. To seize cash [pursuant to section 294 POCA 2002] the officer must have reasonable grounds for suspecting the cash is recoverable property or intended by any person for use in unlawful conduct. Cash can be detained beyond 48 hours if the magistrates are satisfied the conditions of section 295 are satisfied. Ultimately, the officer can apply to the Magistrates for the cash to be forfeited. The Magistrates may order the cash to be forfeited if they are satisfied that the cash (or part thereof) is recoverable property or is intended by any person for use in unlawful conduct.

The Magistrates' Courts (Detention and Forfeiture of Cash) Rules 2002 provide the rules for compliance with the provisions of the Proceeds of Crime Act.

In general terms, the legislation and rules have not created any significant problems. The reality is that possession of large sums of money is prima facie suspicious, and most people use banks to hold their money. Therefore, possessing large sums of cash outside of criminal enterprises is relatively uncommon and due to the banking anti money laundering requirements people possessing large sums of cash are conscious of the need to explain where the cash has come from.

In 2017, Chapter 3A was introduced that allowed the seizure and forfeiture of listed assets (such as precious metals, stones, artwork, etc.). The grounds for seizure and forfeiture mirror the provisions of Chapter 3.

The Magistrates' Courts (Detention and Forfeiture of Listed Assets) Rules 2017 provide rules for the procedure of serving notices and hearing sworn evidence.

In February 2018, Chapter 3B was brought into force, allowing a freezing order and forfeiture of money held in bank accounts. The provisions in this chapter again are very similar to those in chapter 3, requiring an officer to have reasonable grounds for suspecting money held in an account is recoverable property or is intended by any person for use in unlawful conduct. There are exclusions that allow for a removal of money from the account for reasonable living expenses or to carry on a trade or business. It also allows payment to meet reasonable legal expenses.



There are again rules provided by The Magistrates' Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017.

Then, most recently, in 2024, Chapter 3C was brought into force, allowing the seizure of crypto assets held in crypto wallets administered by a UK-connected cryptoasset service. The provisions are very similar to those in Chapter 3B and allow for payments for living, business and legal expenses. There is no minimum amount requirement for the seizure of crypto assets.

The Magistrates' Courts (Detention, Freezing and Forfeiture of Cryptoassets, and Miscellaneous Amendments) Rules 2024 provide rules of procedure. Therefore, the scope and power to seize and forfeit assets has been greatly increased in recent years. The potential impact on individuals' lives and businesses is significant.

But what are the safeguards?

The statute sets a relatively low bar for the authorities to meet, as the Magistrates must be satisfied that the asset is recoverable property or intended by any person for use in unlawful conduct to the civil standard [Section 240 and 241(3)].

The provisions of the Criminal Procedure and Investigations Act 1996 do not apply, and neither do the Civil Procedure Rules. There are no statutory disclosure obligations on the applicant. This is clearly not satisfactory. All that remains is a "duty of candour" and the common law.

It is appreciated that in the majority of cases, there will have been criminal proceedings during which the CPIA would apply and provide some form of safeguard in allowing the respondent to know many of the lines of enquiry that have been followed and the results of those lines of enquiry.

There will be instances when the respondent whose assets have been frozen who has not been charged with any criminal offence and will not have had sight of any schedule of unused material or similar. What are the safeguards in these instances?

In the case of *R (on the application of Haq) v Uxbridge Magistrates Court* [2020] EWCA 2238 (Admin), Mr Justice Hillard considered that a Judicial Review relating to the District Judge's decision to adjourn the forfeiture hearing was wrong. In outlining the fact in his judgment, Mr Justice Hillard referred to the fact that, in the lower court, the NCA owed a duty of candour, and this was discharged by applying the test outlined in the CPIA. It was because this test was applied that the NCA sought an adjournment when it came to light that the disclosure process had not operated properly — the failure related to the accuracy of a schedule showing contact between relevant parties. Although the court did not consider whether it had been appropriate for the CPIA test to be applied this demonstrates the inadequacy of the current position.

An illustration of the risk of injustice is an unreported case involving a Zimbabwean national ("Mr Y") with three UK bank accounts. During a money laundering investigation, the NCA discovered that £16k from a company connected to the money laundering investigation was paid into one of Mr Y's UK bank accounts. An examination of the bank accounts revealed £366k had been deposited into the bank account. An application was made by HMRC to freeze and then forfeit all the money. Mr Y had responded to HMRC to explain that he was a successful businessman and had lent a fellow Zimbabwean ("Mr X") £450k for plant machinery. Mr X was operating an informal money exchange to assist people in Zimbabwe to move money in and out of the country, something made difficult due to the financial instability in the country.

Mr X allowed Zimbabwe's nationals in the UK to transfer money into his account and then paid the equivalent to the nominated individual in Zimbabwe. Mr Y agreed with Mr X that the loan could be repaid by money being transferred into his UK bank account. The payments into the account, therefore, were from different Zimbabwean nationals living in the UK.



HMRC did not accept this explanation and continued to seek a forfeiture order. They relied on a single statement from an HMRC officer outlining that an investigation, not carried out by him, had traced money from a company connected to a money laundering investigation to Mr Y's account. The account was examined, and large sums of money had been deposited into the account. This money had then been moved to another account controlled by Mr Y. It was concluded that this was sufficient for a court to conclude Mr Y was laundering money, and this was all recoverable property.

The difficulty faced in preparing Mr Y's case was that we were not provided with any of the information relating to the initial criminal investigation; there was no evidence provided to show that the £16k paid in by a company connected to the investigation was the recoverable property. There was simply a statement from an officer of HMRC asserting this as a fact. There was no schedule of unused material outlining what enquiries had been made in relation to the other payments into the account. There was no way of knowing if any of the named individuals or companies had been contacted or investigated.

Mr Y was able to demonstrate that some of the named companies who had paid money into his account were legitimate, but clearly tracing each individual was not possible. It was argued that HMRC should comply with the CPIA disclosure regime. It was also argued that any hearsay would require notices to comply with the civil evidence rules. These arguments were both rejected by the District Judge, but he ultimately refused the application for forfeiture. There was no need for the matter to be appealed and considered by the High Court.

If the District Judge had not refused the application, it would have allowed money to have been forfeited for which there may have been no reasonable lines of enquiry carried out by the applicant.

It is my opinion that the current lack of disclosure regime and rules on evidence creates an obvious risk of injustice. This is particularly so in cases which have not been litigated in the criminal courts.

The need for the applicants to be bound by defined duties of disclosure and rules of evidence is now greater than ever due to the power to freeze and forfeit the contents of company and individual accounts resulting in significant disturbance to lives and livelihoods based on hearsay and without a clearly defined duty of disclosure that can be challenged.

James Bourne-Arton KC has a national reputation for defending and prosecuting serious and financial corporate crimes, including complex fraud, missing trader cases, cash detention and forfeiture, copyright, money laundering and confiscation. In addition to dealing with Cash Forfeiture Orders, James has been instructed in a number of large Asset Forfeiture applications on behalf of the respondent. He has developed a legal practice defending professionals and company directors accused of fraud and offences under the Financial Services & Markets Act.

A fearless and persuasive advocate, James is known for giving clear and commercially astute legal advice in cases that involve a large amount of evidence, and he has the ability to make complex legal and financial issues easily digestible. James has a sharp grasp of tax regimes, financial procedures and business regulations, which aids in his preparation, presentation and delivery. His confident and pragmatic style is beneficial when preparing or cross-examining witnesses and explaining pivotal legal points to lay clients and juries.



Criminal Briefing by Amber Walker



Amber is known for her ability to engage, reassure and quickly build a rapport, and is often instructed to represent vulnerable clients.

The vulnerability of complainants in criminal proceedings

Much progress has been made in placing the vulnerability of complainants at the heart of criminal proceedings. Often, this relates to those complainants whom are especially vulnerable due to the prevailing circumstances. We know that the sentencing exercise in cases involving sexual offences requires nuance and careful consideration.

This was brought into particular focus in two cases I recently dealt with. The complainant in one case was sleeping at the outset of the incident, as well as being in her own home after an evening out drinking with friends. This was a factor which attracted special attention in the eventual sentencing exercise.

There have been a number of cases which have addressed particularly vulnerable complainants, most recently those whom were asleep or unconscious at the time of the offence. I take a look at some of those cases here.

R v Begley [2018] EWCA Crim 336

In this case, the Court of Appeal underlined that the correct criteria is 'particularly vulnerable due to personal circumstances.' It also observed that it must refer to vulnerability at the time of the offence.

Behdarvani-Aidi [2021] EWCA Crim 582

The fact of a complainant being effectively unconscious and heavily asleep at the time of the offence was said to significantly aggravate the offending. The Court stated that in this case, the issue of particular vulnerability was the 'key question'.

It was said that:-

'To that question, there can only be one answer. AA was so severely affected by drink and drugs that she was unconscious and unaware of the sexual offences committed against her, and unaware of BB's coming to her rescue. She could hardly have been more vulnerable.'



Makeri [2022] EWCA Crim 1299

The Court in this case emphasised the fact that each case turns on its own facts - but underlined the earlier conclusion in *Begley* that it was a particular vulnerability due to applicable personal circumstances.

Gacheru [2022] EWCA Crim 1090

To quote Spencer J:

'It seems to us that a sleeping victim is equally defenceless whether he or she is asleep simply through tiredness or asleep through intoxication with drink or drugs or medication. The reason why the victim is asleep cannot be the determining factor. But we repeat and emphasise that whether on the facts of a particular case a sleeping victim is to be regarded as particularly vulnerable due to personal circumstances will depend on an assessment of all the relevant circumstances.'

Conclusion

There is of course no set approach and no box ticking exercise; a thorough assessment of all factors is required. The extent of a complainant's vulnerability must be assessed and determined with great care. That being said, there are consistent themes in case law:-

- i) A complainant whom was asleep or intoxicated is indeed particularly vulnerable for the purposes of sentencing;
- ii) Where a complainant is deemed to be 'particularly vulnerable' due to circumstances, this will be given particular weight.



Regulatory Briefing

by James Bourne-Arton KC



Acknowledged as an accomplished and polished advocate, James Bourne-Arton KC has a national reputation for defending and prosecuting serious and financial corporate crimes, including complex fraud, professional disciplinary, and regulatory work.

The application of the Ivey test and the different approach taken by regulators to sanctions following a finding of dishonesty

Although each regulator has their own set of rules and procedures, the Ivey test for dishonesty is universally adopted. However, there appears to be some difference in approach to dishonesty in relation to its application and more significantly when it comes to sanction.

The Ivey test requires the court to adopt two stages:

- First, to ascertain the actual state of an individual's knowledge and belief as to the facts.
- Second, consider whether the conduct was honest or dishonest to be determined by applying the objective standards of ordinary decent people.

Examples of recent application

GDC v Williams [2023] EWCA Civ 481

This case involved a dentist charging additional private fees for cosmetic crowns (ceramic crown) as opposed to a porcelain one covered by the NHS.

PCC proceeded on the basis that "mixed fees/top up fees" was contrary to regulations. Ms Williams denied knowing that this was contrary to the regulations. She said that she had not considered the regulations.

The PCC found her to be dishonest and removed her from the register.

Williams appealed to the High Court, where the judge examined the regulations and found that her actions did not contravene the regulations that in fact allowed for private fees to be paid for some services.

The GDC appealed to the Court of Appeal, who held that the issue of regulations need not have arisen as, although the High Court was correct, there had not been a proper application to the Ivey test. There had been no finding as to the Dentist's actual state of mind. Thus, the finding of dishonesty should not have been made.



Professional Standards Authority for Health and Social Care v GDC and Amir [2021] EWHC 3230

A further illustration of GDC not applying the Ivey test appropriately.

In this case a dentist made numerous claims on his website that he could cure all manner of ailments with his heterodox treatment. He was so committed to his theories that he did not see the need to go through the process required of a dentist to confirm claims.

There was no scientific backing for these claims. Initially the committee did not find he had acted dishonestly on the basis he believed the claims and that this conduct would not be considered dishonest by the standards of ordinary people.

The High Court found that this was incorrect as ordinary people would expect claims to be backed up by research, trials etc.

Therefore, the Ivey Test was qualified by the judge who held: *“The objective standards of ordinary and decent people must involve the expectation that registered dentists will have at least some regard to the professional standards under which they are required to operate, pursuant to a system of regulation that is designed to protect the public.”*

Problems with Ivey

The lack of any subjective assessment can create problems. This is perhaps best illustrated by the case of:

Kefala v GMC [2020] EWHC 2480

Dr Kefala was a Greek doctor who practiced in France but had applied to Southampton University to complete some modules in an allergy program.

In 2005 she had been involved in an RTA with a motor cyclist. The motorcyclist had brought civil proceedings in which the doctor was found not to have been liable. However, in 2012 she was notified that in 2009 the Thessaloniki Court of Misdemeanours had convicted her in her absence of “bodily injury by negligence” for which she had received a five-year suspended sentence. This finding was made by the court on the balance of probabilities. It is therefore an offence not known to English law and applying the civil standard of proof.

She initially applied to the GMC and answered the question whether she had been convicted of an offence in a court of law with “yes” and provided details. This did not prohibit her admittance onto the roll.

She then applied to Southampton University where on the application form, she ticked “no” to the question of whether she had any criminal convictions. Later she was asked to complete a questionnaire for a DBS check and for the question related to criminal offences she initially ticked that she did not have any convictions. In a subsequent form she ticked no but then added details of the decision of the Thessaloniki findings. Then in a third DBS form she ticked yes and provided the same information. This triggered an investigation by the University who initially found she had acted dishonestly but overturned this decision on review. But in the meantime, the matter was referred to the GMC.

Dr Kefala had explained that she did not believe she had a criminal conviction as it had been suspended.

The MPT found that she had been dishonest, as she knew she had a conviction and therefore knew her declaration was untrue. They found that this conduct is clearly objectively dishonest.



In rejecting the appeal Morris J added that he had some difficulty in understanding the GMC's purpose in bringing these proceedings. She had notified the GMC she had no intention to practise. She had subsequently disclosed conviction and the university body had found there was no grounds to censure.

I suspect that had the Ghosh test applied she would not have been found to have been dishonest.

The courts have applied slightly different procedural requirements when dealing with allegations of dishonesty.

In **Singleton v Law Society [2005] EWCA 2915 (Admin)** it was held that dishonesty must be pleaded if it was to be alleged.

In this case a solicitor was charged with conduct unbecoming a solicitor. It was alleged that he had made false entries in books of accounts and made a secret profit from charges applied to telegraphic transfer fees.

The allegations were admitted, but did not contain a specific allegation of dishonesty.

The SRA in opening the case said it was alleged the solicitor had acted dishonestly. The SDT found that dishonesty was proven and passed a sanction on that basis.

On appeal the High Court quashed that finding. The court said that dishonesty was sufficiently serious if proven and consequences so serious that it was unacceptable for findings to be made without documentary pleading of such an allegation. Had the appellant been aware of the dishonesty alleged he may have sought legal representation or elected to give evidence.

This was followed in **Kiani v SRA [2015] EWCA 1981**. In this case the High Court allowed an appeal where, although dishonesty not specifically alleged, the SDT's finding made it clear that they were passing a sanction on the basis the solicitor had been dishonest. The High Court held that the decision was not saved by the phrase "Whilst there was no allegation of dishonesty", as that was simply a statement of fact.

Although, compare these decisions with the Court of Appeal decision in **Law Society of Ireland v Doocey [2022] IECA 581**.

In this case the solicitor hid a deficit in the client account by moving incorrect amounts from one client account to another, then by misdescribing transactions and amounts in account books. The solicitor denied acting dishonestly and no finding of dishonesty was made by the tribunal. The High Court struck her off. She appealed and the Court of Appeal said the finding of dishonesty was possible as the objective test in Ivey was satisfied. She knew the movement of money was incorrect and misdescribed, it does not matter that she did not consider her actions to be dishonest.

The differing approach to sanction where there is a finding of dishonesty

There appears to be a dividing line between the approach taken to lawyers (SDT and BTAS) and the medical regulatory bodies.

The SDT and BTAS both state a finding of dishonesty will almost invariably lead to disbarment or being struck off, in all but the most exceptional circumstances.

Whereas the MTPS guidance on sanctions states at paragraph 128 that: "Dishonesty, if persistent and/or covered up, is likely to result in erasure".

This is mirrored by other healthcare regulators.



In relation to the SRA and BTAS the question of exceptional circumstances has been the subject of numerous recent appeals.

The case of **James, MacGregor and Naylor [2018] EWHC 3058 (Admin)**.

James lied that a claim had been settled subject to damages.

MacGregor had helped cover up large scale fraud relating to disbursement claims connected to grossly exaggerated costs incurred by interpreters. On discovering the fraud, rather than report the partner, she assisted in checking that false invoices did not clash with legitimate claims.

Naylor, acting for a client, failed to make the necessary application to FCA in time but sent several emails to the client giving the impression that the application had been submitted.

All three argued that their mental health problems relating to anxiety/stress caused by work amounted to exceptional circumstances.

Initially, they were not struck off by SDT but the SRA appealed and the High Court had no hesitation in overturning the decision and striking all three of them off.

In **Salsbury v Law Society [2008] EWCA Civ 1285** there was a difference of opinion between the High Court and the Court of Appeal.

The solicitor, whilst acting as a clerk to the trustees of a school, had altered a cheque issued to him by adding a "1" and thereby increasing the value by £1000. The SDT initially struck him off but the High Court overturned this decision on the basis that the solicitor genuinely believed he was owed the £1000. This was appealed to the Court of Appeal who reinstated the decision of the SDT stating: *"High court must pay considerable respect to the sentencing decision of the tribunal. Nevertheless, if the high court is satisfied that the decision was clearly inappropriate then the court will interfere"*.

There are some recent examples reported on the BTAS website that demonstrates not everyone found to be dishonest is struck off.

Georgia Dibbo was at the time a first six pupil. Her pupil master went abroad to work and set her some work drafting an application for summary judgment on one of his previous cases. She found a copy of his application and relied on it heavily. He then reported her for plagiarism.

She was charged with professional misconduct under core duty 5 "undermining honesty and integrity". The BTAS found that she had acted dishonestly but did not disbar her due to her age, inexperience and genuine remorse. She was suspended for 18 months.

Yasser Mahmood, who was an unregistered barrister, had written his CV in such a way that he gave the impression he had been a practising barrister and a member of Tooks Chambers. The CV referred to advocacy skills, which he claimed at the hearing was a reference to speaking to other professionals.

In mitigation he sought to blame his dyslexia and claimed exceptional reasons existed not to disbar him but he was found by the BTAS to have been dishonest and was disbarred.

Taylor, a practising barrister, told a client that their file was at home. In fact, he did not know where the file was but knew they were not at his home address. It transpired that they had been accidentally shredded in chambers. Mr Taylor had in effect self-reported the matter and had admitted the error to his client and returned the fee at a relatively early stage. The tribunal suspended him but Mr Taylor appealed this decision. The High Court allowed the appeal and replaced the suspension with a fine of £25,000.



The softer approach of the GMC does result in some decisions that perhaps appear lenient.

Dr Umotong was convicted for going through a red light when not insured and disqualified from driving but he was also convicted of obstructing a police officer when she provided a false name. Perhaps surprisingly, the GMC did not ask for her to be struck off but suspended and she received an eight month suspension.

Dr Mukherjee-Bose asked a colleague to help her falsify Covid vaccination certificates and again she was suspended.

Dr Samuel Johnson set up a false email in the name of a colleague, Dr A, to submit a false work based training assessment. This gave the impression that Dr Johnson had seen a patient with Dr A, and that he had led the assessment of the patient. This was not true. Dr Johnson admitted acting dishonestly and was suspended for twelve months.

Conclusion

Care needs to be taken in cases which may involve allegations of dishonesty. If alleged, then the regulatory body should ensure it is clearly alleged and what the dishonest act was. Thereafter there is a distinction in what would appear to be perceived what the public would expect. An act of dishonesty by a member of the medical profession, unless persistent or covered up, results in a period of suspension. A finding of dishonesty for a lawyer will almost inevitably result in disbarment or being struck off.



Family Briefing by Valerie Sterling



Valerie Sterling is Head of the Family team and has a national reputation for representing her clients with skill, sensitivity, and empathy. Her family barrister practice covers the full range of family law, including finance, private law children cases, and public law care cases.

Practice Direction 12 Q - will it lead to an increase in the number of section 91 (14) orders, particularly in cases concerning perceived emotional harm to the carer or subject child?

- The purpose of section 91 (14) is to prevent further unnecessary litigation which could put an unnecessary strain on the person with care of the subject child.
- The court can, whether or not it makes any other order, make an order pursuant to section 91 (14) for a specified time and when considering this there is a balancing exercise to be undertaken. It is not a complete bar, but it does provide a safety net or filter.

Section 91 (14) Children Act 1989 provides:

"On disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.

Section 91A of the Children Act 1989 (brought into force by section 67 of the Domestic Abuse Act 2021)

Further provision about the making of orders under s 91 (14) is contained in s 91A of the Children Act 1989. Section 91A (2) of the Children Act 1989 contains the circumstances in which a court may make an order under s 91 (14).

They include - 'where the court is satisfied that the making of an application for an order under this Act of a specified kind by any person who is to be named in the section 91 (14) order would put -

- a) The child concerned, or
- b) Another individual ("the relevant individual"), at risk of harm.

Section 91A (3) specifically states that 'harm' in this section is to be read as a reference to ill-treatment or the impairment of physical or mental health.



Practice Direction 12 Q

In July 2022 FPR 2010 PD12Q came into force.

It sets out under para 2 the *key principles* to be applied when making s 91 (14) orders.

They are inter alia:

2.1 Section 91 (14) orders are available to prevent a person from making future applications under the 1989 Act without leave of the court. They are a protective filter made by the court, in the interests of children.

2.2 The court has a discretion to determine the circumstances in which an order would be appropriate. These circumstances may be many and varied. They include circumstances where an application would put the child concerned, or another individual, at risk of harm (as provided in section 91A), such as psychological or emotional harm. The welfare of the child is paramount.

2.3 These circumstances can also include where one party has made repeated and unreasonable applications; where a period of respite is needed following litigation; where a period of time is needed for certain actions to be taken for the protection of the child or other person; or where a person's conduct overall is such that an order is merited to protect the welfare of the child directly, or indirectly due to damaging effects on a parent carer.'

The leading modern authority is the Court of Appeal authority of **Re A (A Child) (Supervised Contact) (Section 91 (14) Children Act 1989 Orders) (2021) EWCA Civ 1749** which updates the **Re P** guidance on the making of a section 91 (14) order - ie **Re P (Section 91 (14) Guidelines) (Residence and Religious Heritage) (1999) 2 FLR 573** CA Butler-Sloss LJ guidelines.

With the advent of the smart phone and of social media 'in all its forms' (see King LJ at paragraphs 34 to 36 of Re A) the 'forensic landscape has changed out of all recognition' since the Re P guidelines were originally set out in 1999.

An interesting recent example of there being a section 91 (14) order made is the case of **Re D and E (Children: Assessment and Management of Risk) (2025) 1 FLR 505 Henke J 4.6.2024** where the court made a section 91 (14) order for two years to protect the subject child from risk of harm, being in her welfare interests. Letter box contact would allow the relationship between the father and daughter to be maintained. It was in the best interests of both children to make an order under section 91 (14) as they needed to be protected from litigation and the pressures it placed upon them because of its impact on the adults. However, an indefinite order would not be proportionate.

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