2 KING'S BENCH WALK NEWS

Issue 9 – Autumn 2018

# Chambers news and announcements

## Welcome

William Mousley Q.C., Head of Chambers

*L-R: Michael Hayton Q.C. (Leader of the Northern Circuit); HHJ Sarah Campbell; William Mousley Q.C. (Leader of the Western Circuit); Paul Hopkins Q.C. (Leader of the Wales and Chester Circuit)*

Welcome to our Autumn newsletter. This quarter has been both productive and busy for 2KBW.

Chambers welcomed Harper Marshall (formally of Reeds solicitors) as a tenant and are delighted that both Matilda Robinson-Murphy & Daniel Milner, our former pupils, have accepted invitations to join chambers. We also welcome our new pupils Naomi Aylwin and Shona Probert – you can find out more about them inside.

Our profile this quarter is on Angus Robertson, and this newsletter also features articles on our updated Equality & Diversity rules, Credit Hire and our ongoing support of Horatio's Garden. Our Members of Chambers have contributed these bespoke and specialist articles which I hope you find interesting and helpful.

Finally, we would be grateful if you could spare a minute to fill in the accompanying Survey in which we ask for your feedback on the newsletter – both positive and negative. Please note this feedback is anonymous.

## In this issue

# From the clerks' room

## It's the most wonderful time of the year

Daren Milton

The first of October; the Michaelmas term is upon us once more and the start of the legal year is marked by an historic religious service dating back to the middle ages to allow judges to "pray for guidance" at the beginning of the legal term.

These days the invitations go not only to judges but also to senior judicial officers; Silks; overseas judges and lawyers; and Government ministers to mention but a few.

I was fortunate to be present at this years' service at Westminster Abbey, the Lord Chancellor's Breakfast. It was wonderful to hear the Dean of Westminster pray for the judges, amongst many other things. As we look at the current judges resplendent in their robes we must not forget that it's the junior Bar that are the judges of the future.

The country needs a strong, honourable and esteemed legal profession filled with the brightest, most talented and driven young professionals who want to make a difference and we must look after those starting out as best we can in order to protect the future. That's what we try to do at 2 King's Bench Walk.

So, whilst October is an important time in legal circles, it also marks a very significant time for some members of chambers. In particular, Matilda Robinson-Murphy and Daniel Milner.

Matilda and Daniel commenced their pupillage with us last October and have both accepted invitations to join chambers. Their journey begins now, as does that of Harper Marshall, our other recent arrival to the ranks of junior tenancy.

The junior Bar can be a harsh environment and I have heard many horror stories of how junior tenants and pupils have been and are exploited by sets of chambers with ruthless indifference.

Not at 2KBW.

We take pride in our juniors. As I said in my spring message, "everything in life grows from the bottom up". We invest in our pupils and junior tenants, not only with generous awards for our pupils but with our time. My clerks' room has an open-door policy and, such is the collegiate feeling we have here across the board, our juniors know they can talk to us as well as their contemporaries at any time.

We enjoy and practice collective responsibility. Everybody's happy to play their part in furthering our juniors' careers and to help them progress. It's hard to imagine another set of chambers that has such a template, such a family feel if you like.

I recently celebrated 30 years since I started as a junior barrister's clerk. It started here at 2KBW in 1988 and it's fair to say that things were rather different back then: Bill Mousley and I both had

hair for a start, (not that Tony Bailey has changed a bit) and I had to clean the clerks' shoes every Friday morning—but the principle here remains, work hard and you will be successful. I feel privileged to be amongst a group of talented barristers and committed staff.

Long may that continue.

# Profile: Angus Robertson

*Angus Robertson was called in 1978. He has been a criminal practitioner in London and the South West for over 25 years.*

*He has experience in dealing with cases covering a wide range of offences including extremely serious cases involving violence, rape, sexual assault, armed robbery, arson, attempted murder and dishonesty matters where large sums are involved.*

*His experience enables him to deal with cases involving vulnerable witnesses and demanding clients.*

**What was your route to the Bar?**

I had some relations who were barristers but they appeared very remote and formidable characters. One day at school each member of my history class had to deliver a presentation to the form. After my effort the teacher said I had given the best talk and that I should consider doing something that involved public speaking. That planted the idea but it was not until university when I realised I needed a professional qualification to supplement my history degree. I chose law over accountancy as I thought it would provide a more interesting career!

**Who would you say was or is your role model?**

I would consider Richard du Cann Q.C. as one of the outstanding advocates of the generations with whom I have known. A commanding physical presence allied to the possession of superbly incisive skills in cross-examination, he seemed to me to be the epitome of what a barrister should be. He gave lectures to us at bar school. One of the things he emphasised was that we should be fearless in court, which was advice I have tried to follow.

**Is there anything you would change about your career?**

Realising earlier on—as is now being officially recognised—that in order to give your best 100% of the time at least some work/life balance is needed.

**What has been your most memorable day as a barrister?**

I had a client from Trinidad who had been a junior member of the USA soccer team who had travelled to the UK to try and break into football here. He hadn't succeeded in that but had managed to acquire a temporary girlfriend he had met in a Basingstoke night club. That relationship led to various run-ins with the police and ended up with my representing him in two separate trials. In one of the cases the chief prosecution witness fled from the court during my cross-examination and the judge ordered her to be arrested. But the memorable thing was that after he had been acquitted of all the charges he faced in both trials he warmly embraced me in

open court and said his Caribbean beach house was at my disposal—however I'm still waiting for the formal invitation!

**What has been your most memorable case so far?**

I was instructed to represent a defendant charged with aggravated burglary who was alleged to have scaled scaffolding on the building containing his ex-girlfriends flat and burst through the window brandishing a knife. He had then pursued the ex and her friends, al la Jack Nicholson in 'The Shining', through the flat with the knife whilst the hapless occupants attempted to barricade themselves in the kitchen. His defence was alibi and that the ex-girlfriend had fabricated the allegation out of spite.

As the defence involved an unrestrained attack on her credibility this unfortunately had the inevitable result that his numerous convictions for possession of knives and other weapons and including a conviction for wounding another ex-girlfriend with a shard of glass also went in. However this ex was now back with the defendant and on the morning that speeches were to be made there was a dramatic turn of events.

This was that she alleged that the complainant in the trial had called her the night before threatening to send a mob of heavies round to court the next day to 'do her over'. I insisted that the complainant be re-called to be cross-examined about this and of course she denied the allegations. Because of that the judge allowed me to call the former ex but now current girlfriend to prove that she had been phoned by the complainant and threatened.

In view of this perhaps unsurprisingly after about two hours deliberation the defendant was unanimously acquitted.

What was really bizarre about the case was that a victim of an offence relied on as evidence of the defendant's previous bad character was in the end successfully called as a defence witness!

**What attracted you to 2KBW?**

I had practised from chambers in Southampton for some years and had been in a number of cases with members of 2KBW. I had often thought that if I was ever to make a move from my then chambers then it was 2KBW I should wish to join as not only were its members high quality advocates but there was also a strong collegiate feel and sense of chambers identity.

When my own chambers decided to concentrate on family law, 2KBW were looking to recruit new members. I seized the opportunity and applied. I was lucky in that the chambers AGM was to be held a few days later and my application could be considered. I was fortunate enough to be accepted and I have never looked back.

# News

## New tenants join chambers

Chambers is pleased to announce three new tenants. Matilda Robinson-Murphy and Daniel Milner have joined chambers following the successful completion of pupillage. Matilda was supervised by Adrian Fleming and Marian Smullen and Daniel's supervisors were Matthew Farmer and Russell Pyne. Chambers is also pleased to welcome Harper Marshall who joins our criminal team having started her practice in-house at Reeds solicitors.

## New pupils

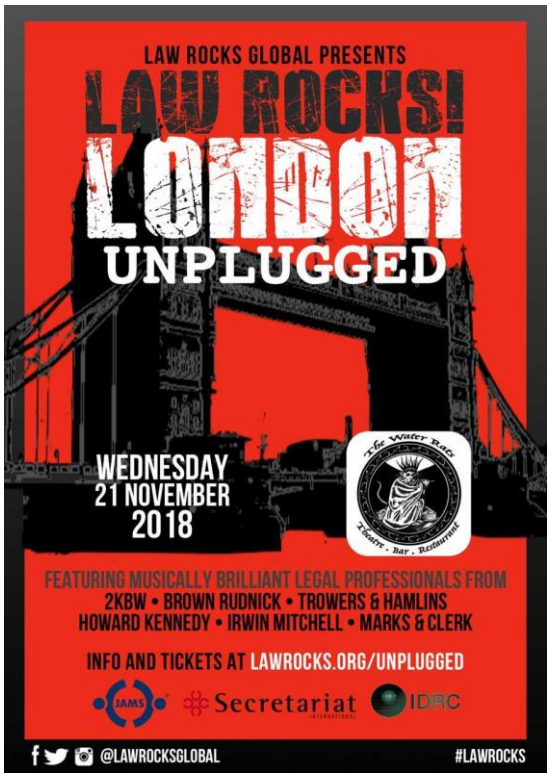
Chambers welcomes Shona Probert and Naomi Aylwin who commence their pupillage in October. Shona will be supervised by Marion Smullen and Naomi by Barry McElduff.

Shona grew up in Surrey and studied Law and Spanish at University, spending a year abroad in Spain. She has always been interested in sports and dance, and recently began running half marathons. She is soon to try her hand at triathlons. Since completing the BPTC, Shona has worked as a paralegal and in a prison, and has travelled to a variety of places across the world. Shona will be supervised by Marion Smullen.

Naomi was brought up in London and has spent the last four years living in Bristol. She studied English Literature at University and graduated in 2013. She began teaching after University, first in Bristol and then in Paris through Teach First, and has spent the last two years studying the GDL and the BPTC. Outside work, Naomi enjoys cycling as well as cross-country, road and trail running. Naomi will be supervised by Barry McElduff.

## Law Rocks!—The Bar Mess needs you

Chambers' band, The Bar Mess, will be playing two events for charity this Autumn and will be joined onstage by a VIP for one of them! The first event is on 7 November 2018 at the 100 Club on Oxford Street (tickets £30). Having won their 'Law Rocks!' heat in 2017, the band will be competing to go through to the Law Rocks! European Final in Vienna. Money raised will go to diverse charities such as Down's Syndrome Association and Great Ormond Street Hospital.




The second event is 'Law Rocks! Unplugged' at The Water Rats in King's Cross, on 21 November 2018 (tickets £15). The band will be joined onstage for the first time by none other than Bill Mousley, Q.C.! All money raised by the band will go to Horatio's Garden.

Chambers is responsible for selling a number of tickets for both events, and so please come and support the band, and please purchase your tickets in advance directly from Tracey McCarthy.

# 2KBW and Horatio's Garden

## Victoria Holton, Trustee of Horatio's Garden

*2KBW are proud to support Horatio's Garden, an award-winning charity that creates and cares for beautiful, accessible gardens in the heart of NHS regional spinal injury centres. The charity grew from the vision of an inspirational schoolboy.*

In the summer holiday of 2011, Horatio Chapple was preparing his application to medical school and volunteering at the Duke of Cornwall Spinal Treatment Centre at Salisbury Hospital. He believed that patients, who stay for many months in hospital, would really benefit from being able to get outside into nature. He devised a questionnaire to gather patients' feedback. Driven by their overwhelmingly positive response, Horatio found the perfect location for a garden right next to the spinal centre and started to plan fundraising activities.

Horatio never got to see his garden grow. Later that summer, he was killed by a polar bear while on expedition in Svalbard. Donations in his memory flooded in from family, friends and strangers alike. A year later, Horatio's Garden Salisbury opened.

Designed by six-time RHS gold medal winner, Cleve West, Horatio's Garden is a stunning sanctuary with an air of tranquillity and peacefulness. It is designed to nourish the soul with the gentle sound of flowing water, trees and perennial planting that provides ever-changing colour, scent and interest. Grasses gently catch the breeze and birds, bees, and butterflies have made their home there. Sculptures nestle in the planting. It feels a million miles away from the hustle and bustle of a hospital ward.

Curved limestone walls draw the eye to the gentle hills beyond the garden. An archway has many varieties of English eating apples and is intertwined with wisteria. The summerhouse and parasols provide shade and a heated garden room gives shelter on chilly days.

The head gardener, supported by a team of volunteers, keeps Horatio's Garden looking its absolute best all-year round. They're also on hand to chat with over a cup of tea and a slice of home-baked cake. They organise live music concerts and lunch in the garden's large gathering space and run creative and therapeutic activities such as art and garden therapy. Patients' family and friends are encouraged to join in too.

Myfanwy Foster was a patient at the Salisbury spinal centre in 2013-14 following a car accident where her C5 vertebra was fractured, damaging her spinal cord. The resultant paralysis has left Myfanwy reliant on a powered wheelchair.

Myfanwy remembers her first visit to the garden. A volunteer took her to Horatio's Garden in her bed. She told the Daily Telegraph in an interview about the charity: "*I was suddenly overwhelmed by people and the smell of delicious food. I saw it all from a slightly strange angle but it was great to reconnect with real life and feel the fresh air on my face.*"

She and her husband, 2KBW criminal barrister Simon Foster, have four children and Horatio's Garden became their second home while Myfanwy was a patient.

"*It gave them all a sense of normality. I have such fond memories of it. We had a lot of picnics, a lot of happy times in there. If you've got children, being in a garden is less horrifying than being on a ward. When you're outside, it's easier to look forward in a positive way,*" says Myfanwy.

2KBW have been supporting Horatio's Garden since 2015. In June this year Daniel Wright cycled from London to Paris; 280km in three days to support the charity. Chambers band 'Bar Mess' took part in Law Rocks, an annual event where legal professionals-turned-rockstars compete against each other. Their prize money has all been donated to Horatio's Garden too.

2KBW sponsored the hugely popular Chelsea Drinks Party in May, an event that ties in with the Chelsea Flower Show. William Mousley QC gave a speech to the 300 guests assembled for the annual event.

The success of Horatio's Garden Salisbury has led to other NHS spinal centres in the UK approaching the charity. Horatio's Garden Scotland, designed by James Alexander-Sinclair, opened in 2016 and it has transformed the patients' hospital experience.

BBC Gardeners' World presenter Joe Swift designed Horatio's Garden Stoke Mandeville which opened in September this year and patients are already benefitting. The first annual satisfaction survey reported that 81% of participants believe that spending time in Horatio's Garden Stoke Mandeville will improve their sense of wellbeing.

There are two further gardens in the pipeline – Horatio's Garden Oswestry has been designed by Bunny Guinness and will open in 2019 at the Robert Jones and Agnes Hunt Orthopaedic Hospital.

The capital appeal to build Horatio's Garden London at the Royal National Orthopaedic Hospital has launched. Designed by Tom Stuart-Smith, this garden is set to improve the wellbeing of patients, just as Horatio Chapple intended.

To donate to support Horatio's Garden, visit www.horatiosgarden.org.uk/donate. To find out more about the charity, visit www.horatiogarden.org.uk.

# Criminal update

## Case note: Contempt of court—*In Re: Stephen Yaxley-Lennon* [2018] EWCA Crim. 1856

Kaj Scarsbrook

**Contempt of court – breaches of Crim PR Rule 48 – correct procedure**

*Date of judgment: 1st August 2018*

The correct approach to dealing with contempt of court is not to act in haste but to give sufficient time for the alleged contemnor to secure representation and prepare a response to a properly particularised allegation. A time gap of five hours between the conduct complained of and the individual embarking on a prison sentence gave rise to a real risk that procedural safeguards would be overlooked, the nature of the contempt inadequately scrutinised, and points of significant mitigation missed.

Sudden outbursts or misconduct in the face of the court leading to a very short period of detention however will not usually merit a huge delay—a sense of proportion must be retained.

In any event the failure to follow the requirements of Part 48 of the Criminal Procedure Rules was much more than a technical failure. Where the contempt in question was not sufficiently particularised or put to the alleged contemnor there was no clarity at all about what the Appellant was admitting and what the judge considered to be his contempt. Even in cases where a summary detention is appropriate, care must be taken to properly apply Part 48 of the Rules.

**The facts**

Those reading this digest will doubtless be familiar to some extent with the facts of this case. On 8th May 2017, the Appellant attended Canterbury Crown Court during the rape trial of four defendants. He filmed on the steps of the court and inside the building itself and made various comments, describing the defendants as "Muslim child rapists". He published the footage on the

internet. He was found in contempt of court for filming within the precincts of the court and for the use of language which could have had the effect of derailing the trial. He was sentenced to a period of three months' imprisonment suspended for eighteen months.[1]

On 25th May 2018, the Appellant attended Leeds Crown Court and recorded a video of himself outside the court building which he livestreamed on Facebook. The recording lasted an hour and a half. There was an order in place in relation to the trial under s.4(2) of the Contempt of Court Act 1981 prohibiting the publication of any report of proceedings until after the conclusion of that trial and a further trial which was yet to take place. The jurors in the trial had retired; the Appellant's video was recorded close to the entrance used by defendants and jurors.

In it he referred to the trial, identities, charges, and charges not proceeded with against defendants. He confronted some of the defendants on the way into court. Shortly after 10:00, the Appellant was brought before the trial judge who viewed part of the recording and required its deletion, which the Appellant did.

The judge then told the Appellant that he was going to pursue proceedings for contempt of court. Proceedings began at 12:18, when the Appellant had secured representation. The judge referred to the video and that the Appellant had referred to religion and ethnicity in his videos and invited others to share it (and the fact that it had hundreds of thousands of hits), stating "*…that is the nature of the contempt*". The court then adjourned over lunch; proceedings resumed going straight to mitigation. At no stage was the alleged contempt put to the Appellant for him to admit or deny. The judge, and counsel, proceeded on the basis that he had admitted it.

When sentencing the judge referred to matters outside the s.4(2) matter, namely a wider concern that the broadcast was prejudicial to the interests of justice generally and in the trial. The Appellant was sentenced to 13 months immediate imprisonment.

**Discussion**

The judge was right to take immediate steps to mitigate the impact of the Appellant's 'reporting' by arranging its deletion from Facebook but he ought to have taken stock of the procedure; no consideration was given to an adjournment or referring the matter to the Attorney-General. The judge was in a difficult position in relation to the jury but when it was apparent that the Appellant was conforming by removing the material they could have been left to deliberate.

No particulars of the complaint were formulated in writing or put to the Appellant. It was clear from the record of proceedings that the thrust of the complaint was a breach of the s.4(2) order, but comments in the video could also be considered as a freestanding contempt themselves. The judge's sentencing remarks were, wrongly, concerned with these freestanding issues rather than the s.4(2) breach. There was clearly confusion about what was in scope during the proceedings. The Appellant was sentenced on the basis of matters outwith the s.4(2) breach.

As a result, the finding of contempt was quashed: (a) it was inappropriate to proceed instantly; (b) failure to comply with Part 48 of the Rules resulted in no clear statement of the conduct said to comprise the contempt; (c) it was unclear on what basis the Appellant was sentenced and (d) haste of proceedings led counsel to be unable to fully mitigate.

*As a side issue, it was noted that the record of proceedings in both cases suggested the Appellant was convicted of a criminal offence rather than found in contempt of court and the sentence was erroneously referred to as a suspended sentence of imprisonment. None of this was correct[2] and*

[1] Technically incorrect – see the last paragraph of this digest above.

[2] The importance of this is that under Rule 7(3) of the Prison Rules 1999, those committed for contempt are treated the same as those on remand pending trial and thus have different rights in prison; they are also entitled do be released unconditionally after serving half their term under s.258 of the Criminal Justice Act 2003 (*i.e.* not on licence).

*judges must check an order or record for accuracy when making findings of contempt* (*presumably it is also a good idea for counsel to be alive to this issue!).*

*Attempts have been made in some quarters to represent the Appellant's contempt of court conviction and alleged further contempt as 'political trials'. This digest will not give those claims oxygen.*

*It should be noted that no complaint could be had as to the procedure, and finding, in the earlier Canterbury matter. The retrial of the Appellant is set to begin imminently at the Central Criminal Court.*

# Civil update

## Credit hire—case review

Darren Bartlett

The judgment of Turner J. on appeal in the case of *Irving v. Morgan Sindall PLC* [2018] EWHC 1147 (Q.B.) has provided much needed clarity in respect of two frequently issue in credit hire claims: (i) enforceability of the hire agreement; and (ii) impecuniosity.

**Enforceability**

*First instance*

After an accident, for which the Defendant accepted liability, the Claimant claimed for losses of more than £20,000 for a replacement car.

HHJ Saffman dismissed the Claimant's claim because he "[had] *to be satisfied that the claimant is obliged to pay* [the credit hire charges] …" and he was not satisfied on the evidence that the Claimant was so obliged and so dismissed the claim. He did so on the basis that the Claimant's evidence was to the effect that it was expected the Defendant would pay such credit hire charges as liability was admitted but that she would not pay such charges if she were to lose the claim.

*Appeal*

The Claimant appealed. She submitted that if a Claimant is assured by the credit hire company that they do not have to pay the outstanding credit hire charges if the claim fails, that those charges are still recoverable against the Defendant insurer. Turner J. proceeded on the basis that the Claimant's liability to the credit hire company was 'contingent' upon succeeding on her claim and that she had no personal liability to pay the charges if her claim failed.

Turner J. referring to several authorities found [§16] nothing that "*precluded the recovery of a contingent debt as opposed to a free gift. Indeed, the contrary would appear to be the case*". Turner J. went on to find [§22] that Lord Mustill's reticence in *Giles v. Thompson* [1993] All E.R. at 349 was

> in respect of cases in which there is no legal obligation whatsoever upon the claimant to make any payment to the third party providing assistance and the benefit from which is thus truly "free" and not where there is a debt, albeit contingent.

The appeal was therefore allowed and Turner J. concluded that HHJ Saffman was wrong to deem the oral assurances given to the Claimant compromised her claim.

This reasoning and authority has recently been applied in the case of *Morris v. MCE Insuance Company Ltd* (unreported, 23 July 2018) before HHJ Gosnell sitting in Leeds County Court on appeal.

**Impecuniosity**

*First instance*

The Claimant pleaded impecuniosity as she must: *Umerji v. Zurich Insurance PLC* [2014] EWCA Civ. 357. The Claimant disclosed her financial records which demonstrated a basic salary of £472 per month which could rise as high as £700 per month with overtime. She was overdrawn to a little over £700, had savings of about £250 and a credit card limit of £500. The pre-accident value of her car was £775. HHJ Saffman found that the Claimant could have raised £900 by using her credit card limit and savings and balance in her current account and that she could have bought a replacement car. The judge also suggested that further sums could have been raised if the Claimant had applied to extend the limit on her credit card or had made approaches to her family for loans.

*On Appeal*

Turner J. found [at §35] that

> … when the hire charges and the capital cost of a replacement vehicle are added together, the sum which the claimant would have needed to raise was far in excess of that upon which the judge based his calculations.

As to the suggestion that she could have borrowed money from her family or increase her credit limit [§36]:

> Neither option in the circumstances of this case was sufficient to bring the claimant outside the parameters of impecuniosity [per Lord Nicholls in *Lagden v. O'Connor* [2004] 1 A.C. 1067 – the inability to pay car hire charges without making sacrifices the claimant could not reasonably be expected to make]. Furthermore, I cannot ignore the fact that by reducing her capital to the bare minimum and increasing her debt, the claimant would have been exposing herself to the risk of a serious financial challenge in the event that even a modest but unexpected financial reverse might have afflicted her before her claim was satisfied. Impecuniosity need not amount to penury.

**Comment**

The case provides helpful clarification as to what is meant by impecuniosity, but is more useful in that it clarifies that where assurances are given to a Claimant that they are not liable to the credit hire company only in the event the claimant's claim fails that the Defendant is still liable to pay those damages. Defendant insurers can still argue that an agreement is voided/voidable by a fraudulent misrepresentation, for example a representation that the claimant would have no personal liability under any circumstances such as was found in the decision of HHJ Luba Q.C. in *Kadir v. Thompson*, Central London County Court, 25th August 2016.

# Articles

## Making A.I. when the sun shines: Big Data and the Criminal Justice System

Daniel Milner

In the eleven months since I began pupillage at 2KBW, the criminal justice system has struggled under a new burden, the weight of digital evidence. Prosecuting authorities have seemed unable to process a superabundance of material recovered from mobile telephones and other personal electronic devices. In some high-profile cases, this has led to prosecutions collapsing, due to disclosure failings, into what has been aptly termed a 'digital crater'.[1]

As a first six pupil assisting in a rape defence, I saw for myself the scale of the problem faced. It is unsurprising, therefore, that organisations are considering using artificial intelligence (AI) to work on large-scale review tasks. Indeed, the Serious Fraud Office has already given the green light to this practice.[2] Given society's increasing reliance upon 'big data' and the apparently unique suitability of AI for understanding it, it is worth considering the creeping influence of these two concepts in other areas of criminal justice.

In the United States' justice system, AI is used to assess risk. In Los Angeles, it assists the police in predicting where crimes will be perpetrated. In New Jersey, it calculates a defendant's likelihood of complying with bail conditions. Troublingly, in some parts of the US, it is even used in sentencing exercises.[3] For example, in Napa County, California, algorithmic risk assessments are used by probation services to determine the appropriateness of non-custodial sentencing options.[4]

Unsurprisingly, concerns abound. First, there is evidence that such tools inadvertently entrench racial bias. In the US, an investigation by ProPublica found that a risk assessment tool, developed by a for-profit company called Northpointe, inaccurately labelled black people almost twice as likely to reoffend as white people.[5] This occurred even though race was not part of the data gathered. By asking participants whether their friends were in gangs and whether any of their family members had been arrested, Jon Fasman observes that "*racial bias can infect an algorithm*", because in "*poor, overpoliced, non-white districts*", more people would answer affirmatively.[6]

Risk assessment algorithms predict the future behaviour of a defendant, based on precedent. Crucially, they "*do not assess the individual human*."[7] Whereas, a sentencing judge, it is hoped, does by bringing their experience and humanity to bear, within the parameters of their judicial

---

[1] Justice Committee, *Disclosure of evidence in criminal cases* (HC 2017–19, 859) para 52.
[2] Peter Caldwell, *Will Artificial Intelligence result in artificial disclosure? - Insight from Peter Caldwell*. (Doughty Street Chambers, 18 April 2018), https://www.doughtystreet.co.uk/news/article/will-artificial-intelligence-result-in-artificial-disclosure, accessed 31st August 2018.
[3] Jon Fasman, *Algorithm blues: The promise and peril of big data justice*, 2018 The Economist Technology Quarterly: Justice, 2nd June 2018, https://www.economist.com/technology-quarterly/2018-05-02/justice, accessed 31st August 2018.
[4] Julia Angwin, Jeff Larson, Surya Mattu and Lauren Kirchner, *Machine Bias* (ProPublica, 23rd May 2016) https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing, accessed 31st August 2018.
[5] *Ibid.*
[6] Fasman, at fn.3 above.
[7] Marion Oswald, Jamie Grace, Sheena Urwin and Geoffrey Barnes, *Algorithmic Risk Assessment Policing Models: Lessons from the Durham HART Model and 'Experimental' Proportionality* (31st August 2017) Information & Communications Technology Law (forthcoming), 19 http://dx.doi.org/10.2139/ssrn.3029345, accessed 31st August 2018.

discretion. Moreover, with sentencing by algorithm, there is a danger that a defendant will be sentenced for the crime he may commit, rather than the crime he has committed.[8]

Algorithms are valuable, so the exact details of how they operate are often proprietary. Methodological opacity is contrary to the principle of open justice. Furthermore, when AI does reach the wrong conclusion, it is unclear where the redress lies. Judges are accountable and appealable. Algorithms are not. In terms of civil liability, the question of 'who to sue' is unresolved.[9]

The UK's use of AI is not yet as extensive as in the US. Christina Blacklaws, President of the Law Society, recently remarked that,

> The question isn't whether algorithms are right or wrong. They are here to stay, rather our endeavour is to understand how best to use this technology for good, to help us with our problems whilst avoiding the creation of new ones.[10]

That sounds pragmatic, but as the pace of technological change is rapid, urgent thought should be given as to where our ethical 'line in the sand' lies.

## Equality and Diversity update

Richard Hutchings

As chambers' lead Equality and Diversity Officer, I am working hard to review and, where necessary, update our processes.

I recently attended the Bar Council's Advanced Equality and Diversity Training Course and picked up some useful ideas.

The course emphasised the three reasons for us all to embrace the vital issue of E&D:

a. social justice—because self-evidently it's 'the right thing to do';

b. regulatory—rule C110 of the BSB handbook (what used to be called our 'code of conduct') places certain E&D regulatory obligations on all members of chambers;

c. the business case—we aspire to recruit and retain the best staff and practitioners, and thus thrive as a chambers. We achieve this by offering equal opportunities and operating a fair environment.

The Management Committee has recently appointed Marion Smullen as chambers' other Equality and Diversity Officer, and Tracey McCarthy has kindly agreed to be our Diversity Data Officer. Over the next few months Tracey will be sending out various monitoring questionnaires—again, a BSB requirement (rC110e-h). I am in the process of reviewing chambers' E&D policies and, most specifically, our Parental Leave policy.

Several of the clerks have signed up for E&D training evenings run by the Bar Council. In the New Year we will be rolling out an E&D training programme for all those involved in recruitment into

[8] Fasman, at fn.3 above.
[9] Artificial Intelligence Committee, *AI in the UK: ready, willing and able?* (HL 2017–19, 100), para 318.
[10] Christina Blacklaws, *The use of algorithms in the justice system in England and Wales*, (London Technology Week 2018, London, 14th June 2018), http://www.lawsociety.org.uk/news/speeches/use-of-algorithms-in-justice-system-england-wales/, accessed 31st Aug 2018.

chambers. We will also be seeking to incorporate a clear E&D mission statement at the forefront of our new website.

Like all chambers, we should constantly be aiming to improve our recruitment practices and foster an inclusive working environment. There is a lot still to be done, but we are making real progress on this hugely important issue. Should anyone wish to discuss any aspect of E&D within chambers, please don't hesitate to get in touch with either Marion or me.

# Chambers cases

See 2kbw.com/home/news for the most up to date news of chambers cases

**Josh Scouller secures acquittal at Central Criminal Court**

Josh Scouller secured the acquittal of a client charged with assault occasioning actual bodily harm at the Central Criminal Court. The defendant had been accused of punching a man in an attack leading to a broken nose after being teased about having "short man syndrome"; the defence contended that he had acted in self-defence.

Josh was instructed by Michael Ackah of Hodge, Jones and Allen.

**William Mousley Q.C. and Barry McElduff's client acquitted of murder and manslaughter**

Following a two-week trial at Winchester Crown Court, David Henwood was acquitted by a jury of murder and manslaughter. It was the prosecution's case that Mr Henwood killed the deceased as part of a drugs robbery gone wrong.

Mr Henwood maintained his innocence throughout. Bill and Barry were able to establish at trial, *inter alia*, that there were others in the area who may have been responsible. The acquittal continues a series of successful defences to murder allegations where both have been instructed.

For more details please see here.

Bill and Barry were instructed by Phillip McCann of Penfold & McPherson Solicitors, Winchester.

## Editorial

Editor: Kaj Scarsbrook

News Editor: James Culverwell

*As always, I invite articles and submissions from members of chambers for the newsletter. They can be of any length and on any subject, within reason! Articles can be emailed to either myself or Tracey, and we are more than happy to discuss ideas for improvement. The continued aim is for 2KBW News to be a valuable resource for members of chambers, clients, and the public alike.*

2 King's Bench Walk, The Chambers of William Mousley Q.C.

020 7353 1746 (London), 023 9283 6880 (Portsmouth)

kscarsbrook@2kbw.com / jculverwell@2kbw.com