



Complex and lengthy criminal trials: a JUSTICE Working Party provides solutions

A JUSTICE Working Party last night (3rd March 2016) recommended three key changes to the current system to reduce the impact of big cases on our criminal justice processes – early engagement of experts; case management by all parties and wholesale adoption of technology. These changes, says the Working Party, will contribute significant reductions to the time and costs involved in complex and lengthy criminal trials.

Complex and lengthy trials (CLTs) constitute a specific and longstanding concern of the criminal justice system. They require vast resources and have only got longer and more unmanageable as advances in technology have given rise to more and more electronic material, which must be reviewed, disclosed and then presented effectively at trial. Despite various reviews and protocols, which identify and offer solutions to the problems associated with CLTs, those problems persist, and the result is undue length, complexity and delay at all stages.

Information provided by the Legal Aid Agency demonstrates that there has been an average of 26 CLT cases per year over the last nine years. Defence costs alone averaged £2m and length in 2014 averaged 1,400 days from the point of representation order (excluding the investigation stage).

Sir David Calvert-Smith, chair of the Working Party observes:

“These cases are not only a drain on police, legal and judicial resources, but cause significant anxiety and uncertainty for victims and suspects of crime who must wait years for an outcome to their case. Real effort is needed to bring CLTs under control and the JUSTICE Working Party offers a substantial contribution to this process.”

Complex and Lengthy Criminal Trials makes important recommendations for each stage of a case – investigation, pre-trial and trial - to reduce the disproportionate impact of CLTs upon our justice system and the parties involved.

At an evening seminar last night hosted by Simmons and Simmons the **Senior Presiding Judge (SPJ), Lord Justice Fulford** described it as a *“powerful report, full of grand ideas to make difficult trials become triable.”*

He observed that:

“There are pressures on the criminal justice system the like of which we have never before experienced – with the relentless rise in longer and complicated cases....Organisations like JUSTICE are meeting these challenges with imagination and courage...I can say with confidence that most of the report’s ideas will be supported by the Judiciary.”

In the Working Party’s view, the singular cause of difficulties in modern CLTs (which we have defined as cases of 60 days trial length or more) is the need to deal with electronic material: reviewing vast

amounts of seized digital material in multiple formats for relevance; identifying the evidence to form the prosecution case; considering whether material is disclosable; and presenting the material at trial. These are the procedures which result in undue length and complexity, and in unacceptable delay. They can lead average cases to become lengthy and complex, and make already complex cases unmanageable.

Building upon existing guidance and the recent Leveson Review of Efficiency in Criminal Proceedings, the solutions lie, we consider, within three broad themes across each stage of a trial:

- First, early engagement of relevant expertise at the investigation stage to ensure that the seizure and search of material is focused and proportionate to the alleged criminal activity and of trial counsel at the pre-trial stage, to ensure that disclosure takes place as early as possible, and that the issues in the trial are identified.
- Second, case management, by senior and independent law enforcement and prosecution agencies at the investigation stage, to ensure that the investigation is focused and progresses as quickly as possible, and by the same trial judge from the start of the pre-trial stage through to the trial, who can assist the parties to narrow the issues and present a clear case for the jury to consider.
- Third, adoption of agile and intuitive technology, built by the criminal justice system to meet its investigation and preparation needs, without compatibility boundaries across police forces, prosecution units or defence firms, which enables all trials to be presented with visual aids rather than reams of paper.

We make practical recommendations throughout the report to aid these three themes – for example, pre-interview electronic disclosure and interview planning to ensure that interviews produce evidence that can be used at trial while giving suspects a real opportunity to put forward a response; and the use of alternative venues for trials where there is no security risk, to reduce the long waiting time for a courtroom. Some of these ideas are ground breaking, as the SPJ identified, in relation to one digital evidence management system, and judges controlling the length of an investigation upon application, which he said “will need to be carefully considered.”

A final, but significant, feature of CLTs has received consideration by the Working Party. It has often been argued that jury trial is a hindrance to the process of CLTs. JUSTICE has long supported the constitutional role of the jury in legitimising the trial process for serious crime. Our review has borne that in mind, but carefully considered the arguments for and against retaining jury trial in CLTs. We conclude, with one dissentient, that there is no reason to assume jurors, given appropriate support, are incapable of trying CLTs. Nor do we accept that alternatives to jury trial are appropriate in these cases.

Director of JUSTICE, Andrea Coomber, said, *“All actors in the criminal justice system - from the government to law enforcement and prosecution agencies to defence lawyers and judiciary - should give these constructive recommendations serious thought. It is clear to us that with some investment in technology, tighter management and a proper atmosphere of cooperation between the parties and the court significant reductions in the cost and time burden of CLTs can be achieved.”*

Notes for editors

1. Now approaching its 60th anniversary, JUSTICE has a long and rich history of using working parties of its membership to effect systematic and vital changes within the legal system. The Ombudsman system and Criminal Injuries Compensation Board, for example, were set up on the recommendation of previous JUSTICE working party reports. Last year we finalised the first contemporary working party report, *Delivering Justice in an Age of Austerity*. This has formed the basis of both Lord Justice Briggs' Civil Courts Structure Review and the HMCTS Reform programme.
2. This latest Working Party, set up and supported by JUSTICE and drawn from its membership, features a wealth of expertise from across the legal profession – including legal, academic, judicial and police experience of complex trials. The Working Party included: Sir David Calvert-Smith, Jodie Blackstock, Andrea Coomber, Douglas Day QC, Anand Doobay, Anthony Edwards, Stephen Gentle, Benjamin Myers QC, HHJ Rebecca Poulet QC, Paul Richardson, Ros Wright QC, Professor Michael Zander QC. Their work was generously supported by Simmons and Simmons LLP.
3. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system – administrative, civil and criminal – in the United Kingdom. For more information about JUSTICE visit www.justice.org.uk.
4. Please direct all queries to Jodie Blackstock, Director of Criminal Justice on jblackstock@justice.org.uk and 0207 7626436.