the barrister

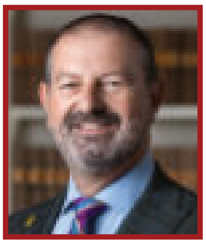
#109 ESSENTIAL READING FOR BARRISTERS
2ND JUNE - 31ST JULY 2026
EST. 1999
PRICE £2.80
TRINITY TERM ISSUE
www.barristermagazine.com
ISSN 1468-926X

Direct Access: A mature model for delivering legal services

Direct access is no longer an adjunct to traditional practice; it is a mature and increasingly central way of delivering specialist legal services. Although the cab rank rule does not apply in the same way to such work, and counsel retains a greater degree of choice as to whether to accept instructions, the model has now been established for over 20 years and is widely understood across the profession.

Direct access, or public access as it was originally known, was introduced in 2004 to allow individuals and organisations to instruct barristers without going through solicitors. Since then, the scheme has developed considerably. The regulatory framework has evolved, training has improved, and practitioners are now able to offer their services directly at much earlier stages of disputes and across a wider range of practice areas.

What was once viewed with some scepticism is now an established and important feature of practice at the Bar.



Kevin Leigh, Barrister, Thomas More Chambers

Relationship with Solicitors

One of the most persistent concerns about direct access has been that it might undermine the relationship between barristers and solicitors. In practice, that concern has proved largely unfounded.

Many lay clients are, in fact, referred by solicitors who recognise that a particular issue would benefit from specialist input delivered in a cost-effective and focused way. In areas such as planning and property law, where disputes can quickly become technical, early involvement of specialist counsel can assist in clarifying the issues and advising on realistic outcomes without the need for a fully managed litigation process at the outset.

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Should a prosecution ever be private?

Private prosecutions are an established cornerstone of the English legal system. Whilst the contemporary model of criminal justice lays emphasis on public prosecutions, with crimes operating between individuals and the State; former medieval regencies saw criminal prosecution as a harm committed against the individual: where "[private] individuals squared off in a state-provided forum".[1] Nonetheless, whilst understandings have shifted, private prosecutions have endured under the POA 1985.[2] Thus, preserving the right of a private individual or legal entity, independent of a public prosecuting authority such as the CPS or SFO, to institute or conduct any criminal proceedings.[3] However, we must assess whether private prosecutions are a successful mechanism to achieving justice, providing relief to state refusal to publicly prosecute. Or, whether they are conversely, exorbitant, inaccessible and susceptible to abuse, with private prosecution best left in the Middle Ages.

The right to engage in private prosecution has received longstanding recognition by the judiciary as a fundamental constitutional right to safeguard "against wrongful refusal or failure by public prosecuting authorities to institute proceedings"[4]. A dissenting Lady Hale in R (on the application of) *Gujra v CPS* went even further, recognising that a refusal to allow private prosecutions, would result in contravention of a state's positive obligations under Article 8 and 3, ECHR and the restriction of accessible justice, affecting those victims of crime who have "difficulty in getting their voices heard or…believed".[5]

Indeed, in a world where the CPS are accused of institutional racism[6] and pursuing only the "most certain of cases", influenced by performance targets,[7] the right to seek justice independent of state interference, malfeasance and inaction is more necessary than ever. To prevent private prosecutions would be to provide no additional remedy or safeguard to these deficiencies within the public system, leaving victims hopeless and rejecting the opportunity for justice and change. Indeed, the private prosecution

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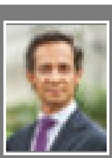


700 barristers celebrated on the 2026 Pro Bono Recognition List

700 barristers across England & Wales are named on the third Pro Bono Recognition List of England and Wales, endorsed by the Lady Chief Justice. We are proud to see a 13% increase in submissions from the Bar since last year.

Advocate were proud to collect submissions on behalf of the Bar again for this year's Recognition List. Supported by the Law Society, the Bar Council, CILEX and all the major pro bono organisations, the Recognition List is a cross-profession initiative that pays tribute to the brilliant work that lawyers do giving up their time and expertise to help people in need of free legal assistance.

The Pro Bono Recognition List recognises barristers and solicitors who have given 25 or more hours of pro bono legal assistance over the previous calendar year. It includes solicitors, barristers, chartered legal executives, trade mark attorneys and patent attorneys and registered foreign and European lawyers, reflecting a commitment to celebrating pro bono contributions across the entire legal community.

This year was the third Recognition List for England and Wales, and saw 5,500 lawyers recognised, 700 of whom are barristers. We are proud to see a 13% increase in submissions from the Bar since last year, which is a testament to all those barristers volunteering their time to help those who would otherwise have nowhere else to turn for advice and representation. Our many congratulations and thanks go to all those on the List for their dedication in making access to justice a reality for everyone.

Endorsed by its patron The Lady Chief Justice of England & Wales, the Baroness Carr of Walton-on-the-Hill, the Recognition List was set up under the sponsorship of the Attorney General's Pro Bono Committee, with the support of the Law Society, Bar Council, and all major pro bono legal organisations. Advocate were pleased to oversee Bar submissions again this year. Commenting on the publication, our Chair of Trustees Sharif A. Shivji KC said:

"I welcome the publication of the third annual Pro Bono Recognition List for England and Wales.

We are delighted to have been involved in the development of the Recognition List and to see it going from strength to strength each year. As the Bar's Pro bono Charity, we collate entries, on behalf of the profession, from across the Bar for inclusion in the Recognition List. The List showcases the selfless work that barristers undertake to support those with no other means of accessing legal assistance.

Every year thousands of pro bono clients benefit from the time and expertise so generously volunteered by members of the Bar. We are especially pleased to see 700 barristers recognised this year alongside their solicitor colleagues

To See the full list of names on the 2026 Pro Bono Recognition List.

https://www.probonorecognitionlist.org.uk/Recognition-List

Government rejects first opportunity to deliver timely justice for victims through setting up rape court instead of reducing jury trials

Leveson's Independent Review of Criminal Courts , Crown Courts, Criminal justice system.

The government has rejected calls to amend the Courts and Tribunals Bill and bring in specialist rape courts rather than curtail the right to jury trial, despite it being a manifesto pledge.

The Bar Council is now urging MPs to bring back the proposals for specialist courts when the Courts and Tribunals Bill continues after the King's Speech.

In its manifesto, Labour said it would establish specialist courts at every Crown Court in England and Wales to fast-track rape cases as part of its strategy to tackle violence against women and girls.

However, the amendment to the Courts and Tribunals Bill that would have introduced these specialist courts has been rejected at committee stage of the Courts and Tribunals Bill.

Courts Minister Sarah Sackman told the Public Bill Committee that Labour's commitment to specialist courts "has not waivered", instead the government has been "putting foundations in place" to later deliver specialist courts. She argued that specialist courts "would not do anything" to make justice timelier for victims.
But a specialist court, unlike the restricted jury trial proposal, has been shown to work. At Preston Crown Court, for example, this approach saw a 16% reduction in waiting time for their case to be listed when applied to domestic abuse cases.

Paul Kohler MP, a member of the Public Bill Committee, speaking in the committee session pointed out that there was "no mention" of restricting jury trials in the Labour party manifesto and that other proposals including specialist courts offer a "better answer" to the now 80,000 high backlog.

Bar Council Chair Kirsty Brimelow KC said: "What's needed is reform that will actually deliver timely justice for victims, complainants and defendants without eroding a deeply rooted constitutional principle that enables democratic participation. Such an erosion is completely unnecessary and also may add further delays.

"The government has an opportunity to use the Courts and Tribunals Bill to reduce delays to those cases in the backlog where there are vulnerable complainants, victims and witnesses. A sexual offences and domestic abuse court will impact on waiting time now and on those cases awaiting resolution. It will do what the government promised and will deliver timely justice. It has already been shown to work.

"At Preston Crown Court, over the last year, a specialist management and listing of domestic abuse cases led to a 16% reduction in waiting time at court. And they achieved this with restrictions on days that the government spending allowed for courts to remain open. Courts now are being invested in and will run at full capacity. This should see an even further reduction in delays.

"If the government truly wanted to focus on delivering justice for victims, it would not be wasting time and resource on restricting the right to jury trial.

Claire Davies KC elected as Bar Council Vice Chair for 2027

Claire Davies KC, criminal silk and Leader of the South Eastern Circuit, has been elected as the Vice Chair of the Bar Council for 2027. She will join Heidi Stonecliffe KC, elected as Chair, and Lucinda Orr, re-elected as Treasurer, alongside Dame Maria Miller, Bar Commissioner for Conduct, as the Bar Council Officer team for 2027.

Claire was called to the Bar by Middle Temple in 1999 and practises in serious and complex criminal law, specialising in allegations of homicide, organised crime, fraud and sexual offences, often in multi-handed trials. She is a member of Farringdon Chambers in London.

In 2016 Claire became a Crown Court Recorder (part-time judge) and in 2022 was authorised to try cases at the Central Criminal Court (Old Bailey). Claire also took silk (became King's Counsel) in 2022.

Claire is a Bencher at Middle Temple where she delivers advocacy and ethics training. She is also a qualified facilitator for vulnerable witness training. She has a particular interest in equality, diversity and inclusion and, as Leader of the South Eastern Circuit (2025-26) she set up a cross-discipline mentoring scheme to support practitioners.

Alongside the Bar Council and Criminal Bar Association, Claire has been heavily involved in the Bar's 'Justice needs juries' campaign, organising court visits for MPs and giving oral evidence to the Public Bill Committee for the Courts and Tribunals Bill.

Commenting on her election, Claire Davies KC said: "It is an honour to be Vice Chair of the Bar Council for 2027.

"It is a critical time for the publicly funded Bar and, now more than ever, the whole Bar must remain united in influencing the decisions that shape our future to continue our international reputation.

"I am committed to continuing the vital work already being undertaken to oppose the curtailment of jury trials. We must ensure we have a justice system representative of the society it serves and one which increases access to justice for all. I welcome the planned initiatives to improve efficiency within our criminal justice system. By embracing the increased use of technology to modernise the way we work we can deliver better outcomes for justice while improving practitioner wellbeing.

"A focus of mine will be retention of practitioners, encouragement of the talent already at the Bar and recruitment into our profession. This is central to our future and that includes ensuring a properly funded public Bar.

"During my career at the Bar, great strides have been made concerning equality, diversity and inclusion, and following the publication of the Harman Review efforts have been made to eliminate bullying. We cannot be complacent. There is more still to be done, and I look forward to continuing the work I have already undertaken in these vital areas.

"I look forward to working with the Bar Council team and Chair to ensure a positive and bright future for all at the Bar."

Claire will join the officer team from 1 January 2027 alongside current Vice Chair Heidi Stonecliffe KC, who was elected unopposed as Chair of the Bar for 2027, and Lucinda Orr (partner at Enyo Law) who was elected unopposed as Treasurer for 2027.

Victims and Courts Act removes restrictions blocking CILEX Lawyers from Crown Prosecutor roles

The Victims and Court Act, has received Royal Assent, removes restrictions blocking CILEX Lawyers from becoming Crown Prosecutors.

The new legislation, which follows a long campaign by CILEX (The Chartered Institute of Legal Executives), opens up senior roles in the Crown Prosecution Service (CPS) to a wider and more diverse range of talent, increasing the pool of lawyers available to deploy on reducing court backlogs.

Currently Crown Prosecutors must hold a general qualification granting a right of audience in relation to any class of proceedings in any of the senior courts or all proceedings in county or magistrates' courts.

Unlike solicitors, Chartered Legal Executives do not automatically hold this due to their specialised route to qualification. Despite CILEX criminal lawyers being fully trained in their field, to progress in the CPS they must gain an additional qualification, granting them authorisation to practice in three separate areas of law, two of which they do not practice in.

This has meant most CILEX Lawyers hit a ceiling when reaching Associated Prosecutor level, unnecessarily limiting the ranks of those suitable for the Crown Prosecutor role.

Clause 9 of the Act removes the need for the general qualification and means that the 111 CILEX members currently working as Associate Prosecutors now have the opportunity to progress further in their careers, while other CILEX criminal lawyers have the option to join the CPS in Crown Prosecutor roles for the first time.

The CPS will no longer need to fund the cross qualification of CILEX employees through the public purse and, given the diverse backgrounds of the CILEX membership, the change will significantly advance equality and diversity in the CPS.

This is the latest in series of legislative and policy changes that have removed barriers and secured equality of opportunity for CILEX members in recent years. In 2023, amendments to the Judicial Appointments Order 2008 opened up more senior judicial roles to CILEX Lawyers, while the passing of the Powers of Attorney Act saw changes permitting CILEX Lawyers to certify copies of Powers of Attorney.

CILEX President Sara Fowler says: "This change will widen the pool of specialist criminal lawyers eligible for senior CPS roles, helping to alleviate shortages and tackle the massive backlogs we are facing in the criminal courts.

"Removal of the general qualification requirement is recognition of the key role CILEX members play in our justice system and their specialist skills and expertise. It will open up career opportunities for CILEX members, encourage recruitment and retention and enable the CPS to attract more lawyers from backgrounds traditionally underrepresented in the legal profession."

BAR STANDARDS BOARD

The Bar Standards Board launches second consultation to improve our enforcement process

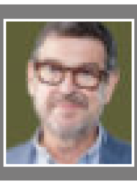
We have today launched a consultation seeking views on our proposed enforcement regulations which will replace Parts 5A to D of the BSB Handbook. The consultation closes on 17 July 2026, and we aim to introduce the new regulations with effect from early 2027. This follows our first consultation on the principles for the new regulations and our full feedback statement dated 2 April 2026.

The regulations are informed by the need to improve fairness, transparency, efficiency and effectiveness in our enforcement system. It also takes forward the adoption of certain recommendations of the Harman Review. The changes will help us and the Bar Tribunals and Adjudication Service (BTAS) to expedite cases, leading to swifter outcomes, including those involving allegations of bullying and harassment. Crucially, they will also provide an assurance of anonymity and support to witnesses involved in cases of a sexual nature.

We are seeking views and welcome feedback from stakeholders on the draft regulations and a small number of additional proposals for change. The key proposals include:

- the new regulations will come into force on or shortly after 1 February 2027 and will apply to all cases, including those already underway.
- publishing the outcomes of all Disciplinary Tribunal hearings, including where the charges against a barrister have been dismissed.
- extending the power to refer for and impose immediate and interim orders so that such orders may be imposed based on interim conditions, rather than interim suspension or disqualification only.
- allowing both parties to request a review of interim undertakings at any time while they are in place, in line with other types of interim orders.
- giving the BSB the right to appeal the decision of a Health Panel (which is currently only afforded to the barrister) and to ensure that both parties are notified of the appeal hearing, as well as the right to be heard and be notified of the outcome.

Steve Haines, Interim Director General, The Bar Standards Board said:
"The purpose of this consultation is to streamline the regulations to ensure they are better organised, simplified, use plain English and reflect best regulatory practice. It is a milestone in our project to reform the handling of enforcement cases. We are seeking views on whether the revised regulations properly give effect to our previously agreed policy positions and whether they support our overall objectives of improving the fairness, transparency, efficiency and effectiveness of the end-to-end enforcement process. We hope to hear from the profession and the public during the consultation."



BSB establishes cross sector group to advise on strengthening standards for rape and serious sexual offence cases

The Bar Standards Board (BSB) has created an expert reference group, made up of 12 organisations and individuals including, Bar Council, the Criminal Bar Association, Rape Crisis, Ministry of Justice RASSO Unit, Crown Prosecution Service, Centre for Women's Justice and End Violence Against Women Coalition, to support the development of specialist standards for barristers acting in rape and serious sexual offence (RASSO) cases.

RASSO cases often involve complex evidence, challenging legal and ethical judgments, and issues that require careful, trauma-informed advocacy. Where advocacy standards are inconsistent or fall short, the consequences can be serious. These can include re-traumatisation, loss of confidence in the justice process, and unsafe outcomes.

Through this work, with input from the group, the BSB will define the specialist knowledge, skills, and attributes needed for effective RASSO advocacy. The work aims to help ensure fair outcomes, protect the interests of those involved, uphold public confidence in the criminal justice system, and support RASSO barristers.

Chris Bones, Chair of the Bar Standards Board, said:
"Barristers working in Rape and serious sexual offences (RASSO) are dealing with some of the most complex and sensitive issues in our criminal justice system. Our aim is to provide clear specialist standards, backed by practical support, so that barristers are well supported to deliver the high-quality advocacy these cases require. That matters to everyone involved in these cases and to public confidence in the criminal justice process."

Katrin Hohl OBE, Co-Chair of the group, Professor of Criminology & Criminal Justice at City St. George's, University of London and Independent Advisor to the UK government on Criminal Justice Responses to Sexual Violence, said:

"Rape and serious sexual offences (RASSO) cases demand specialist knowledge, skills, and attitudes from the legal profession. This is especially so because counsel conduct towards RASSO complainants in the courtroom can have profound impacts on their experience of procedural fairness and mental health. There is also growing evidence that a lack of trauma-informed RASSO practice puts barristers' own mental well-being at risk.

I welcome the Bar Standards Board's decision to develop a specialist RASSO competencies framework that sets RASSO-specific competencies and standards. I am delighted to be co-chairing the advisory board and hope this work will improve courtroom experiences for complainants and counsel alike."

In support of this initiative, **Alex Davies-Jones MP, Minister for Violence Against Women and Girls, said:**

"Rape cases are incredibly traumatising and complex, putting enormous strain not just on victims but also requiring specialist skills and resilience from lawyers.

I'm particularly pleased to see the Bar Standards Board starting this crucial work to better equip barristers to handle such delicate and difficult cases – helping deliver faster and fairer justice for victims.

BAR STANDARDS BOARD

The Bar Standards Board publishes Technology and Innovation at the Bar Research

The BSB has published a report into technology adoption and use at the Bar, highlighting the challenges and opportunities barristers face in adopting technology.

The study finds there is potential for innovation at the Bar. Barristers increasingly recognise and seek out the opportunities of technology, particularly where it enhances efficiency, improves working processes, and strengthens relationships with clients, law firms, and the courts.

Although there are pockets of innovation, the report finds there are significant barriers that limit barristers' ability to adopt and use technologies effectively in practice. These include the structure of the profession, the role of chambers, technology providers' limited marketing to the Bar, and the considerable time and financial investments individual barristers face when adopting new technologies into their practice.

Mark Neale, Director General, The Bar Standards Board, said:

"Technology is developing quickly, and we need to help the profession to adapt to the risks and opportunities that this brings. We have discussed the findings of this report with the Bar Council. Both organisations recognise the need to work together to understand developments in technology at the Bar and to support the safe adoption of new technology.

I am very pleased that the Bar Council has agreed to take steps to establish a joint working group to share information about technology at the Bar and to consider where we can work together in this area."

Henry Fingerhut, Technology & Innovation Policy Manager, The Bar Standards Board said:

"This study is an important insight into how technology is adopted and used at the Bar specifically. As an evidence-based regulator, it is critical we understand the mechanisms and barriers to tech use at the Bar. This is so we can support innovation at the Bar in ways that improve outcomes for clients and in the public interest.

The BSB has a role to play to set high standards for best practice and to help overcome the systemic barriers to effective technology adoption, while ensuring that risks are well managed. Use of technology can help to promote high quality, cost-effective legal services in an increasingly digital world."

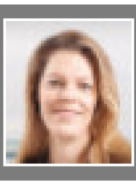
The research shows opportunities and barriers to technology adoption at the individual barrister, chambers, and technology provider levels:

Barristers reported challenges with limited resources for training and integrating technology into practice at all stages, whether academic, vocational, pupillage or at subsequent stages of their career. As a result, barristers often prefer to wait to adopt new technologies until they are well-proven, inhibiting innovation across the profession. The study recommends that the BSB and other organisations take concerted action across the sector to support technology awareness and reduce the uncertainty in adopting new technologies.

Chambers recognise that technology could reduce operating costs in the longer term and often do adopt tools that facilitate practice management. However, the investment is often prohibitive, particularly for smaller chambers lacking the innovation focused roles that larger solicitors' firms increasingly hold.

The research finds that the size and characteristics of the Bar, relative to the solicitors' market, means that little technology on offer is bespoke to the Bar. There is significant untapped opportunity for technology providers to work with the Bar.

There is cautious adoption and usage of artificial intelligence (AI) as an assistant, especially in routine administrative tasks. Barristers anticipate AI to be beneficial to their work but not to replace the important human elements of skill, experience and judgement that define their profession.



Kent courts are 'going in the right direction' despite doubled backlog

Kent's Crown Courts are 'going in the right direction' despite its backlog more than doubling in 10 years, the Leader of the South Eastern Circuit has said.

New analysis by the Law Society of England and Wales found open cases in Maidstone and Canterbury Crown Courts more than doubled from 1,451 in 2016 to 3,046 in 2025.

The analysis also found the average time to complete a case has risen from 597 days in 2016, to 770 days in 2025.

Claire Davies KC is Leader of the South Eastern Circuit and this week was elected to become the Bar Council's Vice Chair for 2027.

In response to the latest Law Society analysis, **Claire Davies KC said:** "Maidstone Crown Court has suffered as a result of not having a full complement of judges for some time – this position has now changed.

"Since the increase in sitting days, Maidstone Crown Court has benefitted as it moved work into both Southwark and Woolwich Crown Courts, which improved the outstanding case load and has been described as highly successful.

"Some 194 trials have been completed, and Maidstone has the lowest outstanding number of cases since June 2024, and lowest outstanding trials since August 2024.

"Canterbury have also been using an additional court room which has helped with their outstanding case load.

"The reality is this all demonstrates that juries are not the issue, but courtroom space is. Kent's future is going in the right direction."

The Bar Council argues that the Ministry of Justice should be focusing its attentions on refurbishing and modernising courts across the board to cut criminal backlogs, rather than pursuing its plans to reduce jury trials.

Our 'Justice needs juries' campaign argues there is no evidence restricting the right to jury trials will reduce the current Crown Court backlog of 80,000 cases.

We need urgent investment to address the inefficiencies in the system so that criminal trials are no longer delayed by crumbling court buildings, or the failure of prisoner transport to bring defendants to court on time.

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This alignment benefits all concerned. The client obtains targeted advice at proportionate cost. The referring solicitor reinforces client trust by directing them to the most appropriate form of assistance. The barrister is able to provide specialist input at an early stage. Direct access, properly understood, complements rather than competes with the work of solicitors.

Equally, there are many cases where the involvement of a solicitor is not only desirable but essential. Issuing proceedings, managing compliance with the Civil Procedure Rules, dealing with disclosure, and maintaining the day-to-day conduct of litigation are functions that are often better suited to solicitors. Direct access works best when each branch of the profession operates within its strengths, and when clients are directed to the model that best suits their needs.

Conducting Litigation

Barristers may conduct litigation where they have obtained the necessary authorisation. However, many practitioners choose not to offer this service, even where they are accredited to do so.

Conducting litigation requires barristers to assume responsibility for case management and compliance functions typically undertaken by solicitors. This includes maintaining a detailed overview of the progress of a case, ensuring that deadlines are met, managing correspondence, and dealing with procedural obligations on an ongoing basis. It is a significantly more continuous and administrative role than the traditional work of advising, drafting, and advocacy.

For many barristers, whose practices are structured around providing specialist legal input at key stages of a dispute, this is not an attractive model. The reasons that draw practitioners to the Bar—focused advisory work and advocacy—do not always sit comfortably with the demands of running a case in the manner required when conducting litigation.

As a result, direct access often operates most effectively where the client remains a litigant in person, supported by counsel as required, or where a solicitor is engaged alongside counsel when the case demands it.

Access to Justice and Funding

Direct access has an important role to play in promoting access to justice. With the reduction of legal aid in many areas, individuals and businesses continue to face disputes for which they require legal advice, often at an early stage and often with limited resources.

Barristers are well placed to provide that advice. Their experience of litigation enables them not only to assess the legal merits of a case, but also to advise on how it is likely to unfold in practice. This combination of legal analysis and practical insight is particularly valuable at the outset of a dispute.

Early engagement can prevent clients from pursuing unmeritorious claims or defences, thereby avoiding unnecessary cost and stress. Equally, it can enable clients with legitimate grievances to pursue them with confidence, where they might otherwise have been deterred by uncertainty or perceived cost.

Funding remains a central issue. Direct access does not remove that difficulty, but it does allow it to be addressed at an early and informed stage. Options such as pro bono assistance, crowdfunding (with appropriate care as to how funds are held and disbursed), reduced fees, or conditional fee arrangements—where permitted within the regulatory and insurance framework—can all be considered.

Importantly, these discussions can take place directly between client and counsel, without the need for multiple layers of instruction. This can make the process more efficient and allow clients to make informed decisions at an earlier stage.

Practical Advantages of Early Involvement

One of the most significant advantages of direct access is the opportunity for early involvement in a case. Where counsel is engaged at the outset, they are often far more familiar with the factual background and evidential landscape than when instructed later through solicitors at discrete stages of litigation.

This familiarity brings practical benefits. Counsel who have worked closely with a client from an early stage are better able to respond quickly as a case develops, without the need to repeatedly revisit the detail. This can lead to greater efficiency and, in many cases, lower overall cost.

Direct access also enables barristers to play a meaningful role in shaping the course of a dispute. This includes advising on pre-action correspondence, drafting letters before action, and engaging in settlement discussions or alternative dispute resolution. Such work will not usually amount to conducting litigation, though the boundary is fact-sensitive and must be approached with care.

In practice, early involvement often assists in narrowing the issues between the parties and promoting resolution at a stage where positions have not yet become entrenched. Even where disputes proceed, the groundwork laid through early advice frequently results in a more focused and coherent case. There is also an important protective function. Litigants in person can be at a disadvantage when dealing with represented opponents, particularly where procedural or tactical points are taken. By advising and supporting the client directly, counsel can help ensure that the dispute is conducted fairly and proportionately, reducing the risk of imbalance or unnecessary escalation.

From the perspective of the court or tribunal, the involvement of counsel can also assist in the efficient presentation of cases, even where the client remains formally a litigant in person.

The Bar's Strategic Opportunity

Direct access also presents a strategic opportunity for the Bar. The legal services market continues to evolve. Solicitor advocacy has expanded, clients are increasingly cost-conscious, and traditional funding models have been reduced in scope.

In that context, the ability to accept instructions directly opens up new sources of work. In many cases, such work is paid for on an up-front basis, providing a degree of financial certainty. More broadly, it allows the Bar to engage directly with a wider range of clients, including individuals and businesses who might not otherwise seek specialist advice.
The Bar's strengths remain clear: specialist knowledge, independence, and advocacy experience. These qualities are particularly valuable to clients seeking realistic and impartial advice at the outset of a dispute, or targeted intervention at critical stages. Direct access allows those strengths to be deployed more flexibly. It enables barristers to assist clients at the beginning of a problem, rather than only once litigation is fully underway. It also allows for more tailored involvement, whether through discrete pieces of advice, drafting, or representation at hearings.

Conclusion

Direct access is now an established and valuable part of practice at the Bar. It enables barristers to engage more directly with clients, to understand cases more fully, and to deliver legal services in a way that is both efficient and proportionate.

It also serves a broader purpose. By providing early, realistic advice and supporting litigants in person, direct access contributes to the effective functioning of the justice system. It can reduce unmeritorious litigation, assist in the resolution of disputes at an earlier stage, and improve the quality of cases that do proceed to court or tribunal.

As one client observed after avoiding costly litigation, following what he described as a "clear and blunt" preliminary discussion, direct access gave him confidence in both the advice and the outcome: "I knew I had made the right choice… I was more than happy with the end result… Overall, I gained peace of mind."

Kevin Leigh, Barrister, Thomas More Chambers

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launched by the Lawrence family in 1994, due to state inaction and apparent insufficient evidence was a historic catalyst for social change and legal reform. Whilst the prosecution failed, the ability of the private prosecution to enforce state accountability for their inaction and omissions, renders it a vital legal mechanism that empowers victims of crime.

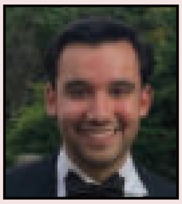
In addition, in R *(Virgin Media) v Zinga*, Lord Thomas sought to emphasise that widespread, retrenchment of state activity has led to the rise in private prosecutions, with statutory authorities consequently unable to pursue meritorious cases due to lack of and a prioritisation of resources.[8] Thus suggesting that private prosecutions are fundamental to the operation of the justice system, picking up the pieces and filling in the gaps left behind by the strained public system. Indeed, with Lane J affirming their particular importance in complex financial or fraud cases, which require long hours and resources.[9] To then accept the obstruction of alternative routes of justice for victims, simply due to limited funding and austerity can never be a satisfying conclusion.

Nevertheless, it can be conceded that the State often bears the financial burden of private prosecutions with costs of bringing private prosecutions recoverable from central funds, unless "there is good reason for not doing so".[10 11] Thus suggesting the very existence of private prosecutions further exacerbates funding difficulties for the public system, with £11 million recovered in costs in 2020 by those who brought private prosecutions through the crown courts.[12] Furthermore, the private prosecution 'model' rightfully earns criticism for its apparent financial imbalance enshrined within POA 1985. Indeed, whilst an acquitted defendant's costs are capped at legal aid rates,[13] private prosecutors are permitted to recover their costs in full. Thus, the legislative position fails to fully embrace the legal principle of the "equality of arms" and ensure a balanced position between the two parties in keeping with Article 6, ECHR. But also fails to recognise the pressure and strain the accused faces when combatting accusations at court. Therefore, it is recognised that private prosecutions suffer from financial asymmetry and add strain on the state. However, this argument does not overrule the sacred and integral existence of private prosecutions, rather suggesting policy and legislative reform to cure these issues.

However, we cannot ignore the unjustified, private prosecutions by the Post Office between 1999 and 2015, against 700 sub-postmasters and the questions this raises over the reliability and regulation of such prosecutions. Indeed, the absence of the legal requirement for private prosecutors to abide by the Full Code Test set out by the CPS, suggests that evidence will not be assessed under an objective criteria and defendants subject to cases lacking evidential basis.[14] A weakness that was able to be exploited by the Post Office, with the prosecution relying on incorrect Horizon IT system data, which was free from adequate external or credible internal oversight.[15] In addition, the Post Office prosecutions revealed the ability of large corporations to use prosecutions as a platform to routinely coerce, threaten and intimidate struggling individuals, only relenting when the accused pled guilty.[16] As emphasised by the Ministry of Justice's statistics, the average costs of a private prosecution are approximately £8,500, suggesting private prosecutions are a legal mechanism only the wealthiest of individuals or corporations would ever contemplate and exploit, to target and intimidate the accused into submission.[17] Raising doubts as to whether private prosecutions really empower, ordinary victims of crime to bring legal actions or purely serve those who look to buy their day in court.

Whilst it is easy to despair at this abuse of process, we must not go too far in the damnation of private prosecutions; recognising that most private prosecutions do not wholly rely on internal investigators and engage external, specialist law firms that establish an evidential basis and verify their sources. Moreover, statutory and regulatory safeguards operate to prevent private prosecutions pursuing some frivolous, malicious, or vexatious purpose or acting improperly. Indeed, private prosecutions must comply with the duty of candour, entailing full disclosure and transparency of all matters and disclosure obligations under Criminal Procedure and Investigations Act 1996. In addition, under POA 1985, s6 (2), the DPP[18] is able to take over and discontinue private prosecutions unless there is a "realistic prospect" of a conviction.[19] However, there is an obvious need for the bolstering of this safeguard, with many private prosecutions rarely coming to the attention of the DPP, due to the absence of a duty placed on the private prosecutor to notify the CPS. Therefore, one concurs with Marshall who states, "the issues arising from the Post Office's prosecutions will not be solved by restricting the right to bring private prosecutions."[20] Instead, a system of stringent reforms must be set in place to regulate private prosecutions as Elvin and De Than suggest, introducing initial pre-trial hearings to act as a filtering mechanism and check and ensuring that the DPP is notified of all private prosecution details.[21]

In conclusion, private prosecutions are a vital and sacred mechanism, remedying the inaction and flaws of the public prosecution system and empowering individuals to seek justice. It would be wrong to now bar victims of crime by eradicating such an established legal tool from the English legal system. Indeed, prosecutions should be able to be private. However, we cannot ignore the risks that private prosecutions pose when power is wielded without checks and guidance. Thus suggesting that legal and policy reform are necessary to guard against future abuse of process, to balance the financial asymmetry between private and public prosecutions when recovering costs, to lessen pressure on the state, and to ultimately enable all to access the courts via private prosecutions.



Damir Kayani is a Law graduate from Fitzwilliam College, University of Cambridge and is currently attending The Inns Of Court College of Advocacy (ICCA). Damir is presently a volunteer with the South Westminster Legal Advice Centre and has an interest in criminal, regulatory work.

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PIBA and the Future of the Personal Injuries Bar

I have recently taken on the role of Chair of the Personal Injuries Bar Association (PIBA), an organisation with a long history of representing and supporting the specialist personal injury Bar.

Sarah Crowther KC, Outer Temple Chambers

I am extremely grateful to my predecessor, Emily Formby KC, who led PIBA with charm, wit and tenacity. She leaves an organisation that is confident in its purpose and engaged with the challenges facing practitioners. I am fortunate to be supported by Martyn McLeish as Vice-Chair and by a committed and experienced Executive Committee.

PIBA is one of the largest civil specialist bar associations, representing around 1,400 barristers practising in personal injury, clinical negligence, inquests and inquiries. Our role is straightforward in principle but demanding in practice: to represent the professional interests of our members and to ensure that the expertise of the specialist Bar informs debate about the direction of civil justice.

Engagement, Reform and Artificial Intelligence

PIBA has been closely involved in consultations on civil justice reform, including the recent Civil Justice Council consultation on the use of artificial intelligence in civil litigation. The increasing deployment of AI by lawyers, litigants and judges is inevitable. Used responsibly, it is likely to bring genuine benefits to practitioners and the justice system alike.

There is, however, a risk of attempting to anticipate technological developments by re-engineering procedures prematurely. PIBA's view is that the principal challenges posed by AI are likely to be practical rather than conceptual—particularly in relation to costs, preparation time and case management—rather than matters requiring wholesale reform of existing ethical frameworks.

PIBA has also continued to intervene in litigation where issues of principle or practice for its members arise. In 2025, it intervened in the Court of Appeal on anonymity for vulnerable personal injury litigants, streamlining access to justice and ensuring the protection of those whose engagement with the litigation process is itself a source of vulnerability.

Training and Expertise for the Specialist Bar

Education and training remain central to PIBA's work. The Association delivers a comprehensive programme designed to support members at every stage of practice, from pupils and junior tenants through to senior practitioners, silks and those contemplating an application for silk.

Our annual lecture is a key fixture in the calendar. The 2026 lecture will take place at Inner Temple Hall on 18 November, delivered by Lord Justice Stuart-Smith—one of the most experienced personal injuries judges of his generation.

The annual PIBA conference also reflects both the intellectual range and the institutional maturity of our specialist Bar. Held most recently at Keble College, Oxford, it brought together senior judges, practitioners and policy-makers. Dame Janet Smith's keynote address offered a powerful reflection on how personal injury law has developed as a specialist discipline since the 1970s, reminding us that specialism itself is a hard-won professional achievement.

Professional Culture and the Path to Silk

PIBA continues to support equality, diversity and inclusion at the personal injury Bar. We strongly support the Bar Council's work on bullying and harassment following the Harman report and are committed to creating a professional culture of zero tolerance, with clear reporting mechanisms and meaningful support for those affected.

One issue that continues to cause particular concern is the sharp decline in the appointment of personal injury practitioners to King's Counsel. Despite evidence that around 15 per cent of silks practise in personal injury, the 2025 appointments round resulted in only one appointment across both personal injury and clinical negligence. This disparity raises serious questions about whether the current process is meeting the needs of the market or the profession.

Silk remains a marker of excellence and seniority. A perception that it is no longer realistically attainable risks damaging morale and retention within a demanding field of practice. PIBA has worked with the Bar Council and continues to engage with the KC Appointments process, alongside the Personal Negligence Bar Association, to address this imbalance. Supporting those considering an application will remain a priority.

Costs, Change and the Junior Bar

Cost control has been a persistent theme in personal injury litigation for many years. Personal injury work is, in many respects, a success story of alternative dispute resolution, with only a small proportion of even the most serious cases proceeding to trial. Practitioners regularly give pragmatic and sensitive advice not to litigate at all.

For junior barristers in particular, however, the constant evolution of costs regimes and procedural reform forms the backdrop to daily practice. Adaptability and resilience are no longer optional qualities. PIBA sees it as a core responsibility to promote and sustain the junior personal injury Bar and to ensure that it continues to thrive.

At its heart, PIBA exists to support a specialist Bar that plays a vital role in the civil justice system. That role—rooted in expertise, judgement and professionalism—remains as important now as it has ever been.

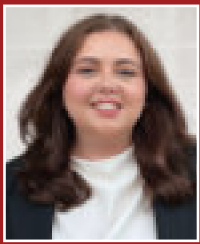
A Call to Engage

The future of the personal injury Bar will not be secured by policy submissions or representation alone. It depends on the active involvement of those who practise in this field and understand, from daily experience, both its strengths and its pressures. PIBA is at its most effective when it reflects the collective voice of the specialist Bar.

I would therefore encourage all barristers who practise in personal injury and clinical negligence work to engage with PIBA—by attending events, contributing to consultations, sharing views on reform and, where possible, becoming involved in its committees and working groups.

PIBA exists to represent the specialist Bar, but it can only do so credibly and robustly if it draws on the experience, expertise and diversity of its members. There is a real opportunity for practitioners to help forge the future of personal injuries work. PIBA remains committed to providing the forum, the advocacy and the leadership—but its strength lies, ultimately, in the engagement of the personal injury Bar itself.

Sarah Crowther KC, Outer Temple Chambers



The Age of Screenshots: Ten Tips for Utilising Digital Evidence in Family Proceedings

Opening a bundle at 6pm on a Friday for a hearing on Monday morning, it is not unusual to be hit with reams of screenshots of texts, social media posts and videos. Some containing useful, relevant information, whilst others … not so much.

By Abigail Clements-Bewley, Pupil Barrister,

Digital communication now sits at the heart of family litigation. Cases frequently turn on who said what, when, and in what tone. Whilst witness statements and oral evidence remain central, an increasing amount of court time is spent interpreting WhatsApp exchanges, analysing Instagram posts, and, on occasion, debating whether a "thumbs up" emoji constituted an agreement.

In this new age, the courts have been forced to grapple with how to proportionately manage this evidence. Guidance, such as the President's Guidance on the use of Covert Recordings, reflects a growing judicial awareness of both the utility and risks of such material.

Under Part 22.1 of the Family Procedure Rules, the court retains wide case management powers to control evidence, including determining:

- The issues on which it requires;
- The nature of the evidence which it requires to decide those issues; and
- The way in which evidence is placed before the court.

The court may also exclude evidence under this provision.

Against that backdrop, screenshots and recordings can be powerful tools, but they are equally capable of undermining a case if deployed carelessly. What follows are ten practical tips for practitioners seeking to adduce digital evidence.

1. Make sure the evidence is relevant

It sounds obvious, but often I will receive screenshots relating to an application, for example, a non-molestation order – which show absolutely no evidence of causing 'alarm or distress'.

Before adducing any digital material, ask: what does this prove? Does it go to an essential element of the legal test? Is there a better source of evidence, such as a police report or third-party document?

Relevance must be the starting point.

2. Limit it to what is necessary

Volume does not necessarily equal more persuasive. If you have reams of examples of the same behaviour, focus on the most recent or most serious incidents of that behaviour.

It is not unusual for a modern-day court bundle to be full of screenshots, but only a handful are often important to the case. The courts are overrun and underfunded. With the recent news of huge cuts to listing dates, including double listing for financial remedy matters, judge's have a limited time to process the huge amount of information which appears in bundles. If you can make their life easier, you are more likely to have a happier judge and a more effective hearing.

3. Ensure its validity

Record times, dates and sources clearly and preserve the original format. Be prepared to disclose this information (or even better, disclose it up front to avoid further argument about it later down the line).

In the age of AI and deepfakes, the metadata of a source is incredibly important in the court's assessment of the validity of the evidence.

The court must be careful when considering the validity of screenshots and videos as they are very easily manipulated. There have even been recorded incidents of parties manufacturing voice evidence to demonstrate an incident of domestic abuse which never occurred. Images and texts can also be easily altered (there are even apps for this!).

If you have this information from your client up front, you reduce the risk of being embarrassed (or worse) later down the line if it comes to light that your client has provided doctored images or recordings.

4. Consider context (and show it)

'A screenshot speaks a thousand words'- or does it? A message or clip may appear compelling in isolation but look very different when placed in their context.

Is that recording which shows the other party swearing and shouting at your client failing to reveal that they are swearing and shouting after your client has punched them in the face? Or is that screenshot which seemingly shows an agreement to settle the finances actually in the context of your client failing to mention they have a million pounds sat in an offshore bank account?

When adducing a covert recording, for example, the President's Guidance is clear that the entire recording and a transcript must be provided where possible before it can be relied upon.

All lawyers should consider whether they have the full context when they receive a screenshot or recording. You do not want to be on the wrong side of the other party revealing the entirety of the evidence in court, only to find out your client has misrepresented the situation. It can backfire spectacularly.

5. Do not over-rely

Consider if your point can be made with other, independent evidence. Equally, is there further evidence to corroborate what is being said?

After that agreement was reached via text, did the parties instruct a solicitor to start drafting an order? Were the police called after that incident? Did a neighbour also hear the respondent behaving in an abusive way? Are there bank statements demonstrating that that new super yacht which the allegedly bankrupt respondent is now flaunting on Instagram was purchased by him?

If there is additional evidence, use it! Do not over rely on screenshots and recordings. It is all too easy for someone to assert that they are missing context, are doctored, or that they have been mis-interpreted.

6. Be mindful of how the evidence reflects on your client

A strong warning – consider whether adducing this evidence actually paints your client in a bad light. Try to take an objective stance on what is being shown. It is all too easy to become convinced of your own client's case when you are wrapped up in litigation, but the end result should always be to consider: how will a judge view this evidence?

A prime example is the covert recording of children. There are huge swathes of statements in the family courts which include covert recordings, often of the other party but also of any children. Whilst there may potentially be a time and a place for this in the most serious of cases- the President's Guidance is clear that parents who record children are likely to be looked upon negatively. The following are key passages from that guidance which should be kept in mind:

> a. Peter Jackson J (as he then was) notes that *'[i]t is almost always likely to be wrong for a recording device to be placed on a child for the purpose of gathering evidence in family proceedings, whether or not the child is aware of its presence'* (page 12).
>
> b. The fact of the surveillance or 'bugging' of the child may have more evidential value in indicating the capability of the parent to understand and promote their child's emotional needs and protect them from harm (page 12).

Similarly, consider how your client obtained the information. Did they steal the other party's phone to take the screenshots of text messages which did not involve them? Have they hacked into their ex-partners private Instagram account? Are there potential *Immerman* considerations for the evidence they have "found"?

It is not always the case that if the answer is yes, they should not be used. But there should be a careful balance between the probative effect of the evidence versus the potential to paint your client negatively.

7. Present the evidence clearly

A simple point, but crucial. Where possible, ensure that the evidence is good quality, legible and in order. Providing a bundle of texts which do not allow the reader to scroll through them in date/time order and requires them to jump around is not going to be as effective.

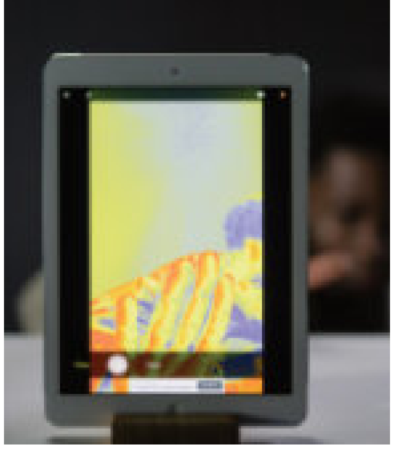
8. Integrate the evidence within a witness statement

Consider how you are going to adduce such evidence. Does it require a separate application? Can it be exhibited to the original application, or a witness statement, or a Form E (or similar)?

Where you have the opportunity to explain why the evidence is relevant and the point which you are using it to demonstrate, it will invariably be more helpful (particularly if the context of the evidence is important).

9. Avoid altering the material

Provide the original, unaltered version of the evidence. You want to avoid any easy opportunity for the evidence to be looked at with suspicion.



10. Anticipate challenge

Finally, approach the evidence with a critical eye. How might this be looked at by your opponent, or the judge, or an expert? Any obvious weaknesses should be addressed head on, rather than being left to emerge when challenged.

Screenshots, videos and social media are now an unavoidable feature in family proceedings. They can hold much persuasive power, but they must be approached with caution. Sticking to the above rules will help you make the most of such evidence and avoid expensive satellite litigation down the line.

Abigail Clements-Bewley
Pupil Barrister, 4PB

"Have brief, will travel" (Literally)

When first getting onto my feet as a second six pupil in June 2023 I was aware of the need to go wherever work was available. No ifs, no buts, it was just part and parcel of junior life at the Bar. When being told where I was being sent to by the clerks, I'd often reply with the phrase which shares the title of this article.

By Adam Singh Hayer, Barrister, Deans Court Chambers

Sometimes however, I think they genuinely tried to see if I would put my money where my mouth was, sending me far and wide across the country to court centres at Torquay, Watford, Ipswich, Newcastle, and Workington. That said, I never complained and happily made sure I got good value out of my 26-30 railcard.

I've never been one to shy away from travelling somewhere new for work and have always approached it with a positive mindset. *"Just say yes and get stuck in as much as you can"* was the advice which I was given many years ago and which I still seem to live by to this day. It perhaps was then no surprise when my clerks pencilled into my diary for me to travel nearly 8,000 miles across the world all the way to the Falkland Islands to do a final hearing, and I duly replied by packing my bags.

Most people are aware of the Falkland Islands, a British Overseas Territory from the conflict in 1982 between the United Kingdom and Argentina over the sovereignty of the islands. Whilst as an overseas territory the islands share similarities with the United Kingdom, they also have their own distinct differences. The islands are self-governing with their own legislative assembly (consisting of a whole eight MLAs) and own individual police force, the Royal Falkland Islands Police. The legal system in the Falklands is a common law jurisdiction like that of England and Wales, a nod to its past as a former colonial outpost during the heyday of the British Empire. Whilst there are solicitors' firms on the island, the size of the population in the capital, Stanley (2,974 when last counted in 2021) means that the demand for counsel is rather limited throughout the year and therefore counsel is brought onto the islands as and when required.

So how do you even get out to the Falkland Islands I imagine you're asking? In my case, it involved getting the Ministry of Defence airbridge from RAF Brize Norton in Oxfordshire and flying across the Atlantic to RAF Mount Pleasant in the Falklands. It's a sixteen-hour flight broken up into two eight-hour legs with a stop midway at Ascension Island.

The flight out there is unlike any you've ever done before. You're boarded onto an RAF Voyager, which is an Airbus A330 which was been converted into an air-to-air refuelling aircraft which can also be converted to carry passengers and cargo. You fly out from the UK alongside members of the armed forces as well as MoD contractors and civilians who live on the island. In this instance, it also meant flying out alongside one of my opposing counsel and their junior too.

I could write an article on my time in Ascension Island alone, but that's perhaps for another time. Situated almost directly under the equator, the island enjoys a lovely tropical climate where it was no less than 27 degrees at either eight in the morning or eleven at night. It therefore seemed slightly cruel to have experienced such great weather at the beginning of February whilst we waited for the plane to be refuelled before being bundled back on for the next eight-hour leg, only to be load on arrival at the Falklands that the local temperature was a mild 4 degrees…

So what is the legal system like in the Falklands and how does it differ to England and Wales? As you might expect from a British Overseas Territory, the legal system on the islands heavily mirrors that of England and Wales, albeit there are some rather big differences. For example, any civil practitioners reading this may be surprised to read that the islands still operate on a pre-Woolf reforms basis. That means there's no Civil Procedure Rules in the same way that we know them. Claimants are still referred to by their previous title of Plaintiffs and claim forms or pleadings are still referred to as "writs".

For family practitioners such as myself, the staple legislation of our practice, the Children Act 1989 is not applicable to the islands. Instead, the islands have their own version, the Children Ordinance 2014 which, whilst heavily influenced and in some instances mirrors the Children Act word for word, differs significantly elsewhere.

The best way I have been able to describe the comparison to some of my colleagues since returning home is its akin to appears as an English barrister in the Family Court in Wales where some aspects of the Children Act have been superseded by Welsh legislation. For example, section 20 of the Children Act in England being replaced in Wales by s section 76 of the Social Services and Well-being (Wales) Act 2014.

Admittedly, it did take me a few days to properly wrap my head around it all whilst on the islands.

As a result of the size of the populations of the islands, the Court itself situated Stanley shares the same building and room as that of the legislative assembly when not in session. The islands have Magistrates made up from members of the public in the same way as England and Wales and also has trials by jury for serious offences too. However, juries in the Falklands consist of seven rather than twelve members, unless the Defendant faces a charge of murder or treason in which case, the jury size is twelve. Unfortunately, I have been unable to ascertain when the last trial for treason on the islands occurred when preparing this article.

Outside of Court, the islands themselves are full of history and nature. There's the obvious attraction of the penguins which inhabit the island and can be seen along the coast in locations such as Yorke Bay or Volunteer Point, and I fear that my constant posting of penguin photos to my family WhatsApp group has me now permanently muted by the other members of my family.

There are also the mountains which make for perfect hiking locations and share their history with the war of 1982 such as Sapper Hill or Wireless Ridge. I was very fortunate to have my instructing solicitor, Laura who lives on the island offer to show me around driving me to visit locations such as Goose Green or San Carlos. Locations which are perhaps better known back here in the UK for their role in the 1982 conflict.

Being so far from home can be a daunting and lonely experience and whilst out there I sought to get involved insofar as I could. The Falkland Islands have their own their own Park runs which also hold the crown for being the mouth southernly park runs in the world. During my time on the islands, I took part in the local half marathon finishing in a respectable time of two hours, six minutes. Whilst the search for my first published case continues, I can at least claim credit for possibly being the first member of Deans Court Chambers to have their name published in the local newspapers, the Penguin News!

The aim of this article is not to brag or gloat about my journey to the Falklands Islands but to highlight and raise awareness of the availability of work in overseas territories. My chambers, Deans Court Chambers has a proud history of work in overseas territories such as the Falklands and St Helena. I am therefore lucky to have followed those before me who have appeared in overseas territories and hope that others my chambers will take up the opportunity to appear in overseas territories too.

For those who do wish to add an international element to their practice, the opportunities are available should you wish and don't mind a "bit" of travelling to their practice. My time in the Falkland Islands has perhaps been the highlight of my career at the Bar and one which I would not hesitate to do again should the opportunity present itself.

Adam Singh Hayer, Deans Court Chambers, Manchester

Why barristers are the tip of the spear in defence of jury trial

I first went to watch jury trials at Liverpool Crown Court after a rudimentary 1980s computer careers test informed me, with the kind of brutal confidence only primitive technology can muster, that I was fit for only two possible futures: the Bar, or stage and screen. Despite having no clue what it really entailed, I chose the first, though I can see the overlap. Criminal advocacy, at its best, is performance with a moral purpose. It is theatre, yes, but theatre with consequences measured in liberty, reputation and sometimes life itself.

By Chris Daw KC, Millennium Chambers

I was hooked immediately. I spent most of my 17-year-old summer sitting in the public gallery in wonder: at the skill of the advocates, at the concentration of the juries, and at the extraordinary outcomes in cases where jurors disbelieved the police and believed defendants who, on paper, did not look especially promising. Many had difficult backgrounds. Some had defences which, at first glance, seemed improbable. Yet the jury listened. Really listened. And I realised, very early, how vital it is that some decisions are made not by the state, not by professionals who inhabit the system every day, but by ordinary citizens with no skin in the game, no axe to grind and no preconceptions about what they are about to decide.

That lesson has never left me. Thirty-three years and hundreds of jury trials later, I have seen the same thing in every kind of case: the tiny, quiet case nobody reports and the huge, headline-making case with cameras outside; allegations of child sexual abuse, murder, serious organised crime, multi-million-pound fraud, money laundering and international drug trafficking on an industrial scale — think cocaine concealed in industrial equipment and wholesale quantities, straight off the ship from South America.

My trials have included a £533 million conspiracy to import high-purity cocaine, a £30 million money-laundering operation, and countless cases of commercial and tax fraud of every kind. I also defended in the Ryan Giggs case, in which a Manchester Crown Court jury could not reach verdicts. A retrial was later abandoned and not guilty verdicts were entered. I acted in the Hillsborough fresh inquests and subsequent criminal proceedings, widely portrayed as a "cover-up" case, where the inquests ran before a jury for over two years and my client in the later criminal trial was cleared on the judge's direction.

Few in the current debate have noted that, by removing the jury, not only does the system change the ultimate decision-maker but it removes an entire layer of protection from the defendant. At present, judges can filter out cases which are unsustainable in law, with juries left to return verdicts on cases only where the judge declares a case to answer. A vital safeguard will be gone.

What all of those cases have in common is this: the jury is not a decorative flourish. It is not a quaint relic. It is the living democratic element in criminal justice. A jury brings not legal expertise but something just as important — collective judgment, common sense, life experience, scepticism, mercy, independence and the ability to test the state's case against the reality of human behaviour. David Lammy's own Lammy Review stressed that trust in impartial decisions rests not only on judicial independence but on the connection between courts and the communities they serve, and it cited research finding very similar jury conviction rates across ethnic groups, concluding that jury verdicts were one stage of the system where Black, Asian and minority ethnic groups did not face persistent disproportionality.

That is why the present attack on jury trial matters so much. At the time of writing, the Courts and Tribunals Bill is in committee stage in the House of Commons. The Bill would remove the defendant's right to elect Crown Court trial for all triable-either-way offences where magistrates accept jurisdiction; remove the need for a defendant's consent before a Crown Court case is sent back down to the magistrates' court; create a new Crown Court Bench Division in which triable-either-way cases likely to attract up to three years' custody would be tried by a judge alone; introduce judge-only trials for certain lengthy and technical fraud cases; and replace the automatic right of appeal from the magistrates' court to the Crown Court with a permission stage and issue-based appeal.

The government's explanation is by now tediously familiar. It says the reforms are necessary to deliver "faster and fairer justice for victims". It points to a Crown Court backlog of around 80,000 cases, with nearly 20,000 waiting over a year, including around 2,000 rape cases. It says this is a pragmatic response to rising demand, that investment alone is not enough, that jury trial will be "reserved" for the most serious cases, and that judges rather than defendants should "triage" where cases are heard — much as "experts" do in other public services. David Lammy told the Commons that juries would remain "the cornerstone" of the system, that only the threshold was changing, and that after the reforms about three quarters of Crown Court trials would still be heard by a jury.

I regard that explanation as lame because it is lame. The jury did not cause this crisis. The jury did not close courtrooms, allow buildings to rot, leave cells broken, fail to provide enough judges and staff, or produce endless delays in transporting prisoners to court. Even Sir Brian Leveson's own overview says the most significant cause of the present mess is chronic underfunding at every step. The Bar Council says bluntly that juries have not caused the crisis and that the language of "modernisation" is a Trojan horse to hack away at a constitutional principle. An open letter to the Prime Minister, signed by a remarkable range of lawyers — including me — points instead to unused courtrooms, PECS failures, crumbling buildings and shortages of staff, judges and counsel. I have said the same thing publicly myself: the current chaos has "nothing to do with the 1000 year-old jury system".

Then there is the small matter of the evidence. The government's own impact assessment says the measures begin to come into force only from the end of March 2028. It estimates that around 5,500 cases which would currently receive a jury trial will instead be kept in the magistrates' courts, and around 4,000 further Crown Court cases will be heard by a judge alone, while about 10,000 cases will still be heard by a jury. The Institute for Government says the reforms would almost halve the number of jury trials while reducing total Crown Court time by less than 10%, and that judge-only trials themselves would save less than 2% of total court time if they are 20% quicker. The Bar Council's written evidence says these are not "low-level" offences, that the change would affect under 2% of cases, and that even on the government's own estimate it will make no difference to the backlog for many years, if at all. That is a ruinous constitutional price for a marginal and delayed managerial gain.

And make no mistake: this is the thin end of the wedge. I have said publicly that once the government gets away with cutting jury trial by 50%, it will be on a "short and greasy slope" to the 95% cut originally contemplated. That is not paranoia. It is how constitutional retreat works. First, jury trial ceases to be a right and becomes a rationed resource. Then it becomes a question of administrative convenience. Then some future minister moves the threshold again. Leveson's own earlier recommendation was to remove the right to elect only for offences carrying less than two years' custody, yet the government has already gone further. Sir Geoffrey Cox put it perfectly in the Commons: once you say three years, why not four or five? Little by little, a hole is driven through the principle itself.

There is also a deeper human point, and this matters every bit as much as the constitutional one. Some decisions simply require the judgment of the whole community. Cases involving allegations of violence, sexual behaviour, coercion, dishonesty or corrupt police conduct are rarely mechanical exercises. They turn on nuance, tone, context, class, culture, language, psychology and credibility. They involve the question not only "what happened?" but "what do we, as a society, make of what happened?"

A single judge may be wise, diligent and fair. Many are. But one mind is still one mind. Twelve citizens bring twelve lives into the room. That plurality is not a weakness in the system; it is the safeguard. And at a time when wider research continues to find ethnic disparities elsewhere in criminal justice outcomes, it is perverse to weaken one part of the system where Lammy found no persistent disproportionality in verdicts.

I have said on LinkedIn that "we must fight for jury trials with everything we have got", and I meant it. I have argued publicly that no human-designed system produces fairer or more respected verdicts than an English jury. I have likened the government's plans to bulldozing Piccadilly Circus to build a bus station, and I stand by the point even if the metaphor is mischievous. Barristers should not be neutral about this. We are not hired merely to process cases through a state machine. We are part of the constitutional architecture of criminal justice. If we will not speak when the right to jury trial is being cut down in the name of efficiency, modernisation and victim-care rhetoric, then we will have failed not only our clients but the system itself.

I still think about that 17-year-old in Liverpool Crown Court, watching jurors lean forward as a witness gave evidence, watching advocates fight over facts that would change somebody's life, watching ordinary people perform their public duty with seriousness and care. What struck me then still strikes me now: juries are not an inconvenience to be managed out of existence. They are one of the few places where the public does not merely watch justice being done, but does it. Once you understand that, the present proposals do not look like reform. They look like surrender.

Barristers need to take a stand on jury trials because, if we do not stand for them now, we may soon find that this ancient, historic and constitutional right has been whittled away to a memory — and that some of the most important decisions in a free society are no longer being made in the name of the public at all. A final thought: can you think of another public institution that commands near-universal respect and confidence amongst the voting public in the way trial by jury does? No, neither can I.

Chris Daw KC, Millennium Chambers

Fiduciary obligations after the recent appellate cases: Scope and consequences

The recent appellate cases on fiduciary obligations are best understood as a renewed insistence on identifying the proper basis for the duty before applying the strict consequences which follow from it. The courts have distinguished conduct which may be unfair, unattractive or poorly disclosed from conduct which engages the specific obligations of loyalty imposed by equity. That distinction is important, because fiduciary law is not merely another route to relief where a relationship has gone badly. It carries stringent duties and, in some cases, severe consequences.

By Christopher McCarthy, Barrister, 42BR Barristers

The starting point remains the formulation of Millett LJ in *Bristol and West Building Society v Mothew* [1998] Ch 1. A fiduciary is a person who has undertaken to act for or on behalf of another in a particular matter, in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation is loyalty. The principal is entitled to the single-minded loyalty of the fiduciary. The incidents of that relationship include a requirement to act in good faith; not to make an unauthorised profit; not to be in a position where their duty and own interest conflict; and not to act for their own benefit, or a third party, without informed consent. That formulation remains key, but the recent cases show the importance of not treating its language of trust and confidence as a substitute for the underlying undertaking, which is loyalty to that other person.

That point was fundamental to *Hopcraft and another v Close Brothers Ltd; Johnson v FirstRand Bank Ltd (London Branch) trading as MotoNovo Finance; Wrench v FirstRand Bank Ltd (London Branch) trading as MotoNovo Finance* [2025] UKSC 33. The Supreme Court emphasised that a fiduciary acts "for and only for" another in the relevant matter. The obligation is not merely to act honestly, fairly, or with reasonable care. It is an obligation, within the scope of the duty, to put aside one's own interests and those of third parties. Trust, confidence, vulnerability and dependency may be present in a fiduciary relationship, but they are not themselves sufficient to create one. The question is whether the alleged fiduciary has undertaken, expressly or by implication, to act with single-minded loyalty in relation to the management of another's property or affairs.

Commercial context will often be decisive. In the motor finance appeals the dealer remained a seller in a three-party transaction, pursuing its own commercial objective. Its role in arranging finance was ancillary to the sale of the car. The court did not accept that the dealer had undertaken to act for the customer to the exclusion of its own interests, even where there was evidence that the dealer had said it would find the best or most suitable finance package. Such a statement may be relevant to a contractual claim, to misrepresentation, or to statutory unfairness, but it does not without more transform an arm's length commercial relationship into one of fiduciary loyalty.

That analysis is likely to matter beyond motor finance. Similar issues arise in energy broker claims, electricity procurement disputes, insurance and finance intermediary cases, and other commission-driven arrangements where an intermediary is said to have found a suitable product for a customer while being remunerated by the supplier. Those facts may be unattractive, there may be a lack of disclosure, and in some cases may support other causes of action, but they do not automatically establish a fiduciary relationship. The court will still ask whether, in relation to the matter in issue, the intermediary undertook to act for the customer and to put aside its own interest.

Hopcraft is also important in respect to bribery and unfairness. In *Johnson*, the claimant succeeded under section 140A of the Consumer Credit Act 1974, but that statutory unfairness did not create a fiduciary duty and did not support a claim in dishonest assistance. Non-disclosure may matter to unfairness, misrepresentation, regulatory obligations, or informed consent where a fiduciary duty already exists. It does not, by itself, create the duty.

Whilst in *Hopcraft* the Supreme Court confirmed the common law tort of bribery, it rejected the proposition that it could be founded on a looser "disinterested duty" falling short of fiduciary loyalty. For bribery, as for the equitable fiduciary claim, the relevant relationship requires a duty of loyalty. A contractual, tortious or public law duty to give disinterested advice or information may not be enough. The reason the threshold question matters so much is that, where a fiduciary duty is established, the consequences of breach remain stringent.

Rukhadze and others v Recovery Partners GP Ltd and another [2025] UKSC 10 confirmed the strictness of the no-profit rule. The Supreme Court rejected an attempt to introduce a "but for" test into the no-profit rule as exists for equitable compensation. The argument was that, if the fiduciary could have made the same profit lawfully, there was no reason to require him to account for it. This approach was rejected. If the profit was "sufficiently connected" to the fiduciary position i.e., the profit owed its existence to a significant extent to the use of fiduciary property or from a conflict with a duty owed by the fiduciary, without fully informed consent, the duty to account for the profit remains.

For advisers, the practical point is that if a profit is "sufficiently connected" to the fiduciary position as a matter of

fact then informed consent may be vital to escape liability. The material facts, the nature of the conflict and the profit to be retained must be disclosed with sufficient clarity. Where that has not happened, the fact that the principal could not itself have made the profit may not be an answer.

The remedial consequences of breach of fiduciary duty is also illustrated by *Stevens v Hotel Portfolio II UK Ltd (In Liquidation) and another* [2025] UKSC 28. HPII sold hotels to Cambulo Madeira for market value. Mr Ruhan, a director of HPII, did not disclose that Mr Stevens and Cambulo Madeira were acting as his nominees in the acquisition. Whilst HPII would not have exploited the development opportunity Mr Ruhan later pursued, the hotels were sold on at a substantial profit which was not disclosed to HPII. Mr Stevens dishonestly assisted Mr Ruhan both in the making of the profit and in its later dissipation. The majority analysed the case in two stages. First, once received, the unauthorised profits were held on constructive trust for HPII, giving it a beneficial interest in the fund. Secondly, when the fund was dissipated, there was a separate breach of trust, through the loss of trust property. The counterfactual was not where HPII would have been if the whole scheme (i.e., the sale of the hotels to a nominee of Mr Ruhan and the redevelopment profit) had never occurred, but where it would have been if, once the redevelopment profit was held on trust, the fund had been preserved. Mr Stevens was held liable for the loss of the trust property.

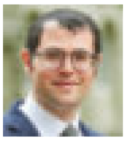
The result is nevertheless striking. HPII had received market value for the sale and would not itself have made the profit. If informed consent had been obtained, Mr Ruhan could have retained the profit. Yet Mr Stevens, who was not himself the fiduciary, was held liable for the full amount. Lord Burrows, dissenting, considered that it was artificial to separate the dissipation from the wider scheme, the majority's approach came close in substance to making a dishonest assistant liable for the fiduciary's profits, although English law does not impose a direct liability on a dishonest assistant to account for those profits as such. He also identified a risk of double recovery. Those objections may be important where claimants seek to recover the value of an unauthorised profit from a non-fiduciary accessory.

Finally, *Mitchell and another v Sheikh Mohamed Bin Issa Al Jaber No 2* [2025] UKSC 43 confirms that fiduciary relationships are not confined to settled categories. They may arise ad hoc where the facts justify them. The point is not that the law is closed to new fiduciary relationships, but that the undertaking, the subject matter of the duty and the loyalty obligation must still be identified with care.

For practitioners, the analysis should begin with the alleged undertaking of loyalty. A pleading should identify the facts relied upon as giving rise to that undertaking, the particular activity for which the duty was owed, the content of the duty, the breach and where relevant the absence of fully informed consent. In dishonest assistance and bribery claims, the existence of an alleged primary fiduciary duty and breach remains critical to obtaining accessory liability.

The spate of recent cases therefore does not diminish fiduciary law but confines the threshold before the relationship can properly be categorised as fiduciary. If there was no undertaking of single-minded loyalty, other causes of action may be available, but fiduciary law is not engaged. If there was such an undertaking, the consequences of breach of duty that was owed remains stringent.

Christopher McCarthy, Barrister, 42BR Barristers



Enforcement Without Scrutiny

By Daniel Kessler, Barrister, 4 Stone Buildings

The taking control of goods regime gives private enforcement agents the power to enter premises, seize property, and demand payment under threat of removal. Yet the system operates largely without scrutiny from courts or lawyers.

This is striking given its scale. Each year approximately 300,000 writs and warrants of control are issued in the High Court and County Court.[1] This makes enforcement by way of taking control of goods the most common method of enforcing a judgment debt.

Most enforcement agents are private individuals, paid only if a writ of control is successfully executed. This creates a powerful incentive to take control of goods regardless of what the debtor says or does. If the debtor does not comply, the enforcement agent may not be paid at all. This arrangement is effective - and cheap - but it is also open to abuse. The system resembles a police force paid per arrest: there would be more arrests of both guilty and innocent.

The analogy is a fair one. Enforcement agents wield powers comparable to those of the police. It is an offence to obstruct a person lawfully acting as an enforcement agent.[2] Enforcement agents can often use reasonable force to enter property, and (once on the property) enforcement agents can use reasonable force to take control of goods they find there.[3] The training of an enforcement agent, however is, more limited than that of a police officer. To qualify as an enforcement agent, one needs only a diploma on the rules of taking control of goods equivalent to a GCSE at Grades A to C.[4]

The absence of scrutiny does not reflect a system that functions perfectly. On the contrary, the enforcement regime contains structural features that create significant risks of abuse.
The reason there is little litigation lies in the circumstances of the debtors themselves. Most debtors facing enforcement action cannot afford to pay their debts. By extension, they cannot afford professional legal representation if something goes wrong. Enforcement agents and agencies then fail to instruct professional legal representation because they face no legal scrutiny. The whole process is conducted without any legal oversight.

A related issue is that the sum of money concerned is likely to be modest. Larger judgment debts are more effectively enforced via charging orders over property or shares; or third-party debt orders over cash held in a bank account. Very few debtors

will have assets of significant value in the form of chattel held at their home or in their office. This means that, even if a debtor felt poorly treated by an enforcement agent, it is likely to be disproportionate to instruct professional legal representation, even if they could afford to do so.

On the practitioner side, disputes arising from the taking control of goods are rarely lucrative. The sums involved are often too small to justify instructing solicitors or counsel, while the legal issues themselves are technically complex and procedurally unusual. Although much of the law governing enforcement agents can be found in the (very long) Schedule 12 to the Tribunals, Courts and Enforcement Act 2007, there are additional provisions to be found in various statutory instruments passed under Sch 12 and other historic legislation like the Courts Act 2003. CPR Parts 83 and 84 concern taking control of goods, but they are parts of the White Book rarely noticed by practitioners. As a result, the area sits in an uncomfortable gap: too specialised for general practitioners, but too low-value to sustain a specialist. With the notable exception of King's Bench Masters, most judges are unfamiliar with the Taking Control of Goods procedure, for want of exposure to the regime.

The Court of Appeal, to its credit, has sought to remedy the problems faced by debtors in two recent landmark decisions.

In ***Bone v Williamson*** **[2024] 1 W.L.R. 3235** an enforcement agent sought to levy the wrong fees. The enforcement agent returned the fees after the debtor brought proceedings against the High Court Enforcement Officer ("HCEO") (previously known as a 'sheriff'). The HCEO denied liability for costs on the grounds that they were not the correct party. Rejecting this argument, the Court of Appeal held that an HCEO is responsible for every aspect of the writ of control, even if it is the enforcement agent who is empowered to take the step. This means that (at least for High Court writs) the HCEO is required to act as a supervisor of the enforcement agent. The failure to do so can lead to their own continuing authorisation being suspended.

In ***Burton v Ministry of Justice*** **[2025] K.B. 66** an enforcement agent wrongly clamped a car used by the claimant to enforce a Magistrates' Court fine. The claimant brought proceedings against the Ministry of Justice, as the ultimate creditor. The Court of Appeal held that a creditor is liable for a claim brought by a debtor for breach of Schedule 12, even if they did not themselves cause or contribute to the loss. This adds a further layer of scrutiny: the creditor must ensure that an enforcement agent seeking to enforce their debt does not abuse their authority. Failure to do so will expose the creditor to liability, at least on a claim brought by a debtor.

The solution may be partial, but it should be effective. While enforcement agents may technically be officers of the court, and hence expected to act with the highest levels of integrity and honesty, this is not the reality of the day-to-day work of an enforcement agent. Since the debtor does not usually provide a genuine layer of scrutiny, it must fall to the HCEO or creditor to supervise their tasks.

Another solution is regulatory. In 2025, the Enforcement Conduct Board (**"ECB"**) became operational. The ECB is set up as a self-regulator of enforcement agents and enforcement agencies. Although it is currently seeking compulsory powers, as matters stand the ECB is dependent on enforcement agencies opting into its standards as a second-tier complaints service. To its credit, the ECB claims that 97% of the private enforcement sector voluntarily subscribes to its standards. This represents an extraordinary diplomatic success.

It is early days for the ECB. It launched its complaint service in January 2025; and between 6 January and 30 September it received 515 complaints. Of these, it appears to have investigated just 100 (c.20%) and upheld approximately half of its completed investigations in whole or in part. It will be easier to assess the effectiveness of the ECB as a regulator in a year's time.

That said,

1. The ECB would be a more effective agency if it made use of powers under regulation 9 of the Certification of Enforcement Agent Regulations 2014 to make a formal complaint about enforcement agents it identifies as unfit to practice. Although the Regulations may have been drafted on the expectation that the complainant be the victim, there is nothing in the Regulations preventing the ECB from submitting a complaint if it considers it proper to do so. The ECB's annual report complains about enforcement agents maintaining their certification despite their dismissal from one agency for gross misconduct. However, it does not appear to be taking any steps to prevent this from happening.

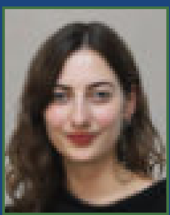
2. A further concern is that the ECB appears primarily focused on regulating enforcement agencies rather than the High Court Enforcement Officers to whom writs of control are formally addressed. This risks overlooking the personal responsibility emphasised by the Court of Appeal in ***Bone v Williamson***. If the legal system treats the HCEO as ultimately responsible for enforcement, a regulatory framework that focuses only on corporate structures may fail to address the individuals who exercise that authority in practice.

3. Finally, the ECB should consider whether it is appropriate for enforcement agents to be paid only upon payment by the debtor. This creates an incentive for enforcement agents to breach the various rules when it becomes apparent that only through misconduct will the enforcement agent themselves be paid. The self-employment model may be convenient for enforcement agencies, but it is at the expense of the debtor community.

Enforcement agents may be described as officers of the court, but without effective supervision, the title risks becoming little more than a formality. Unless the ECB and creditors accept a more active supervisory role, the taking control of goods regime will remain largely beyond scrutiny.

Daniel Kessler practices commercial chancery law at 4 Stone Buildings in Lincoln's Inn. He appeared pro bono as counsel for the appellant in Bone and Burton.

[1] The County Court issued 212,407 warrants of control and there were 59,719 writs of control issued in the High Cour. HMCTS does not record how many warrants of control are issued by the Magistrates' Court.
[2] Paragraph 68(1) of Sch 12 to the Tribunals, Courts and Enforcement Act 2007.
[3] Paragraph 17 of Sch 12.
[4] CPR PD84 paragraph 2.1(e)(i).



Modern slavery victims on trial: three key misunderstandings

Despite the introduction of the Modern Slavery Act over a decade ago, many criminal practitioners have remained unfamiliar with some of the key protections for modern slavery victims. Time and again, when defending modern slavery victims, I have been required to have lengthy legal arguments over basic protections which are clearly set out in the applicable case law and guidance. In many of these cases, proper knowledge of these protections would have saved many vulnerable victims the additional trauma of having to go through these criminal proceedings, sometimes spending long periods on remand. Moreover, thousands of pounds of taxpayer money could have been saved in each case, if police and prosecutors applied their duties correctly and did not pursue prosecutions which were doomed to fail. I have therefore set out 3 of the most common misunderstandings regarding what protections victims enjoy, in the hope that this knowledge becomes better embedded in practice.

By Louise Willocx, Barrister, Doughty Street Chambers

Modern slavery as a source of duties for the state

Many prosecutors and judges still view the modern slavery defence as just any other defence where you just have to go through a few more motions until you can try the defendant. That approach is fundamentally wrong. From the moment that there is a credible suspicion that defendant is a victim of trafficking, very specific duties arise that must be honoured by judges and prosecutors regardless of whether this is raised by the defence.

Ordinarily, a positive reasonable grounds decision from the Single Competent Authority (SCA) will indicate that the credible suspicion threshold has been met, however, in certain cases, the threshold can be met even before a reasonable grounds decision (see *R (TDT) v Secretary of State for the Home Department* [2018] EWCA Civ 1395). In other words, it is no good to only start paying attention to a modern slavery claim once a defendant receives a conclusive grounds decision from the SCA, as is very common practice in criminal cases.

Duty to investigate

Moreover, reviewing the decision to prosecute the victim of trafficking is far from the only positive obligation that arises once the credible suspicion threshold is met. One of the better-known obligations is the obligation to investigate the trafficking which the defendant was subject to. However, all too often, police disclosure regarding their investigation just shows that they immediately closed the investigation as the victim remained silent and refused to point out the perpetrators. This is a common occurrence as victims are usually too afraid of their exploiters to speak.

However, there is clear case law from the ECtHR (*Rantsev v Cyprus and Russia*) that the state is required to investigate the trafficking, regardless of whether the victim cooperates (in *Rantsev* the victim had passed away). In other words, if the police do not conduct a proper investigation, even when the victim remains silent, this is a violation of their duties under Article 4 of the Convention, and something which can be raised in an abuse of process argument or when cross-examining the officer in the case.

Duty to assist victims in their recovery

Furthermore, another much-ignored duty in criminal proceedings is the state's duty under Article 4 to assist victims in their physical, psychological, and social recovery, and to provide appropriate support and treatment for the consequences of past ill-treatment. This duty should be taken into consideration when reviewing the prosecution of a victim, as well as in abuse of process arguments.

The duty also should be taken into account much more frequently in bail applications. I have seen judges refuse bail for modern slavery victims and list their trial sometimes even outside of the custody time limits due to a lack of court availability, dismissing any arguments related to this duty. That approach is wrong. Victims of trafficking are entitled to accommodation for bail purposes through the Modern Slavery Victim Care Contract. This allows them to be housed far away from their exploiters and meets the common concern that they would commit further offences. Judges as well as prosecutors should have this duty in mind when addressing bail risks, as locking up victims for half a year just to allow them to raise the modern slavery defence at trial clearly does not assist their recovery.

Narrow conceptions of coercion

Too many misconceptions remain around the element of coercion. In cases of child victims, the rule is simple: children cannot consent to their own exploitation. Therefore, the test under s.45 simply is whether the child committed the offence as a consequence of being or having been a victim of exploitation and whether a reasonable person in the same situation and having the same relevant characteristics would have committed the offence. Nevertheless, CPS reviews continue to point out that the child consented to committing the offence, and seem to ignore the fact that they have disprove to the criminal standard that the test is not met, which is not an easy task.

Both in cases of children and adults the reality of exploitation remains fundamentally misunderstood as well. Many victims do not recognise themselves as victims. Some victims have developmental disorders (e.g. autism or learning disabilities) and lack the social insight to see their exploitation for what it is. Other victims have low self-esteem and come from difficult backgrounds and will be lured into exploitation by individuals who pretend to be their friend, give them validation, a sense of belonging, and often all kinds of gifts. Keeping a narrow conception of what coercion is in adult cases not only ignores the reality of trafficking, but also the wide legal definition of what "means" can be used in trafficking: not just coercion and threats, but also deception and an abuse of a position of vulnerability.

Disclosure obligations and review standards

Obtaining proper disclosure in modern slavery cases is crucial, as it will show whether the police and the CPS have been complying with their positive obligations to the victim and whether they are receiving a fair trial. An important aspect of this is obtaining disclosure of the CPS' reasons for why they decide to proceed with a prosecution of a modern slavery victim to allow the defence to bring an abuse of process argument. Sadly, despite a clear requirement in the CPS Guidance on Modern Slavery to record their reasons, I have come across instances where both prosecutors and judges have taken the position that these reasons do not need to be disclosed.

Many criminal practitioners remain within their core area of expertise and are less comfortable with public law arguments. However, it is important to understand key judicial review principles as the case law clearly states that abuse of process arguments in modern slavery cases require a review "on grounds corresponding to public law grounds", "including those of rationality and procedural fairness". In public law cases, it has long been established that usually, reasons need to be provided to allow the relevant parties to bring a challenge as to whether a decision was procedurally fair.

Similarly, many prosecutors seem under the impression that as long as the CPS' review decision is not so unreasonable that no reasonable authority could have decided that way, an abuse argument cannot succeed. This shows a shallow understanding of when a decision can be found irrational: for example, when it is based on material mistakes of facts, when unreasonable weight is given to a relevant consideration or when the decision contains inconsistencies. Additionally, if the CPS guidance was not followed as required, that would also give rise to abuse.

As practitioners, we have to make sure that the duty to investigate and to reconsider a prosecution is honoured not just in form but also in substance. By using public law grounds in our abuse arguments, we stop standards from sliding and make sure that victims receive the protections they are due.

Louise Willocx, Barrister, Doughty Street Chambers

Using small claims to solve big problems in IP disputes

Intellectual property claims have their own rules, courts and practices. The small claims track has a special place in IP disputes which may not be obvious to litigants or practitioners, but which can bring decisive advantages for claimants and defendants, whether represented or unrepresented.

By Mark Wilden, 3PB Barristers

Intellectual property litigation is, generally, complex and expensive. CPR Part 63 provides that IP claims must be issued either in the Chancery Division of the High Court or in its specialist list, the Intellectual Property Enterprise Court ("IPEC"). IPEC has no fast or intermediate track but does have a small claims track ("IPEC SCT"), which since July 2023 has been largely managed in Manchester with many hearings remote. IPEC SCT is, like the small claims track of the county court, designed to be usable by litigants in person. However, IPEC SCT has benefits that should not be overlooked by represented litigants and their advisers.

IPEC small claims track

IPEC SCT is an informal forum for simple, low value intellectual property disputes, particularly concerning copyright, trade marks, passing off, unregistered design rights and malicious falsehood claims. Claims are determined by district judges with experience of hearing IP claims. It has a comprehensive online guide written in lay terms.[1]

Allocation to IPEC SCT is governed by CPR r.63.27 and Part 26. Suitability for IPEC SCT is at the court's discretion, and generally covers claims for £10,000 or less where a trial is likely to last no more than a day. Procedure in IPEC SCT is less formal than in the multitrack: interim remedies are not available, disclosure is limited, expert evidence is unlikely to be allowed, and Part 36 does not apply. As in all small claims, the court may adopt any method of proceeding that it considers to be fair. Costs recovery follows the strictly limited basis for all small claims under CPR r.27.14 by which the court may only award assessed costs where a party has "behaved unreasonably" (r.27.14(2)(g)), which is equated in the White Book 2026 §27.14.4 with the wasted costs jurisdiction.

However, IPEC SCT is not lightweight: it can order final injunctions, declarations, delivery up or destruction of infringing items and orders for publication and dissemination of the court's judgment. In many IP claims, where the key issue may be stopping ongoing infringement rather than seeking money, the IPEC SCT can provide most remedies that a claimant could need.

Strategic considerations

IPEC SCT is not suitable for every case. However, many IP disputes are simpler than they may appear. It is not uncommon for the facts to be largely agreed, with the court's task being to determine on argument whether those facts amount to infringement. The key outcome of many claims is to stop acts of infringement before the quantum of damage or lost profit can become significant. In royalties disputes, the real value may not come from the defendant at all but from income streams via third parties such as collecting societies, who will respond to a declaration of ownership of the underlying IP asset. A final injunction after trial may not stop infringement as promptly as interim relief could, but it comes without the risk of the required cross-undertaking to compensate the defendant if liability is not established. And while it is intimidating for a defendant to receive an IPEC or High Court claim, a claim in IPEC SCT for declaratory or injunctive relief, where it is difficult to delay proceedings and where expected costs recovery is virtually nil, must be taken just as seriously.

For a defendant, transfer into IPEC SCT can positively change the dynamic of a whole dispute. Limited costs recovery is an obvious protection, and generally backdates to cover the period before transfer (as per CPR r.27.15): where a claimant has already incurred substantial costs, it can be an early win for a defendant to move to a forum where those costs will not normally be recoverable. In this writer's experience, small claim judgments are rarely reserved, are never published on BAILII or the National Archives, and are very seldom if ever reported, limiting lasting embarrassment to a litigant from any judicial criticism. To give perspective to a defendant's financial position, admitting or losing a small claim and having a money judgment for the general maximum small claim award of £10,000 may be a better outcome than successfully defending a claim in IPEC multitrack, where legal costs can and often do exceed the capped amounts for recovery (per CPR Part 46 Section VII).

Case studies

Three recent cases demonstrate how bringing a claim into the IPEC SCT can work to litigants' advantage. Each of these claims has proceeded to final determination, although in the nature of small claims none has been reported and published judgments are not available except where cited.

Makeality Ltd v City Doggo Ltd and another was a claim issued in IPEC multitrack for trade mark infringement, passing off and joint tortfeasance, and including a claim for additional damages under the Intellectual Property (Enforcement, etc.) Regulations 2006. The defendants challenged the value of the claim in pre-action correspondence and pleaded in their defence that the claim was suitable for IPEC SCT and unlikely to be worth more than £10,000. The defendants applied for transfer to IPEC SCT, which was ordered by HHJ Hacon at the first CMC. The claimant appealed the allocation decision to the Court of Appeal, which refused the appeal and remitted the claim to IPEC SCT ([2025] EWCA Civ 400; [2025] Costs LR 543).

Arnold LJ gave the judgment of the Court of Appeal, with Dingemans and Holroyde LJJ agreeing. The claimant's failure when challenged to produce evidence to support its contention that the financial value of the claim exceeded £10,000 was a problem "entirely of its own making": [43]. The first instance judge's assessment of the complexity of the issues in dispute, and whether it could be tried in one day, was upheld despite the Court of Appeal taking a different view: [50]. The fact that both parties were legally represented did not dictate the court's decision on allocation: [51].

This underlines that IPEC SCT, and the protection it brings to a defendant, can be available even in a claim with numerous legal issues and with legal representation on both sides. Where evidence is raised to indicate that a claim is of low value, a claimant can be expected to substantiate its position with more than mere assertions.

Brice v Universal Music Publishing Limited was a claim concerning the exploitation of a commercially successful pop song. In addition to monetary relief limited to £6,000, the claimant sought a declaration of ownership of copyright in the song and an injunction to restrain exploitation of it. This claim fell within a long-running dispute between the claimant and various entities concerning exploitation of the song over a period of many years. A declaration in this context was desirable for the distribution of worldwide royalties, which is undertaken by collecting societies who were not defendants to the claim.

At the hearing of the defendant's application, heard within six months of issue of the claim, the claim was struck out because it fell within the terms of a settlement agreement entered into by the claimant and a related party to the defendant some years earlier. The merits of the underlying claim did not fall to be examined. The defendant characterised the claim as potentially abusive and sought costs in the region of £30,000 but was awarded fixed costs of under £600.

This demonstrates that IPEC SCT can be used for claims with potentially high value outcomes where the issue in dispute is the ownership of valuable IP. Where a claimant is willing to limit the quantum of their claim, and the procedural tools available, a determination can be sought cheaply under cost recovery protection without which a claim may be too costly to bring at all. IPEC SCT can determine key points of law summarily and relatively quickly, protecting both parties from the need for a trial if the claim or defence has no reasonable prospects of success.

Reed v Clapperboard Studios and Saffron Cherry Productions concerned use of location scouting materials in the production of a television show and was framed as a copyright infringement claim. The claimant, who had used AI to produce the claim documents, sought just under £10,000 in damages, a declaration of ownership of copyright and attribution in future broadcasts of the show.

Within six months of issue of the claim, by reserved judgment handed down two working days after the hearing, IPEC SCT struck out the claim at the defendants' application. At a subsequent hearing it was held that the claim was totally without merit and that the claimant had behaved unreasonably for CPR r.27.14(2)(g) costs purposes: despite issuing the claim in IPEC SCT, in correspondence the claimant had stated that he would seek costs on the indemnity basis, extended disclosure, an interim injunction and an order for further information – none of which is available in IPEC SCT – had "weaponised" ADR, and had accused one of the defendants of dishonesty amounting to contempt of court. In using AI to prepare his documents, he had also cited two case reports which were not authorities for the propositions relied upon. Costs were summarily assessed at over £20,000 between the two defendants.

This shows that IPEC SCT can deal quickly and robustly with meritless claims, including those brought by litigants in person relying on AI, and can compensate defendants where specialist representation is realistically needed to respond to serious substantive and procedural allegations.

Conclusion

IPEC SCT is designed to be accessible to litigants in person, but is not just for them. In the right case, it can be a forum for any litigant to deal with simple IP claims where money is not the real issue in dispute. As AI "helps" litigants more and more, this forum should be taken seriously as a cost effective way to fight back.

Mark Wilden, 3PB Barristers

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[1] *https://www.gov.uk/government/publications/intellectual-property-enterprise-court-a-guide-to-small-claims/guide-to-the-intellectual-property-enterprise-court-small-claims-track*

Jury Trials

I have been told, with the solemnity reserved for those who mistake gravity for wisdom, that the jury system is inefficient. The solution proposed? Remove juries from fraud trials. Let judges decide alone.

By Narita Bahra KC, Leading Financial, Serious Crime & Regulatory Defence Barrister

As the first woman of colour to be ranked as a Tier 1 Financial Crime Silk in the UK, I have spent my career in the very courtrooms where this experiment would unfold. I have defended clients in multi-million-pound fraud cases for almost 30 years. I have watched juries grapple with complex financial evidence. And I can tell you this: when institutions promise to make things more "efficient," someone's rights are usually about to disappear.

What is really at stake is one's right to be judged by twelve ordinary citizens who reflect the full diversity of this country, not by a single wigged professional, however fair-minded they may be.

I grew up without connections to the legal world. State-educated. No family in the law. When I started at 18, inspired by watching *Crown Court* as a child, I noticed something stark: not a single person of colour appeared in those legal dramas. That void did not disappear when I entered the profession; it simply became more sophisticated in its manifestations.

Even now, I am frequently the only woman of colour in the courtroom. The legal profession, despite genuine progress, remains remarkably homogeneous in background and experience. And that's precisely why the jury system matters so profoundly, especially for defendants from minority backgrounds, female and vulnerable defendants.

Removing juries from serious crime and fraud trials means replacing 12 randomly selected citizens drawn from the electoral roll, representing the community's full diversity, with a single individual.

Whilst the UK's judges are increasingly diverse, they remain drawn from a narrow professional class. Most attended similar universities. Many came through the same chambers. Identical professional cultures have shaped them.

A jury might include a shopkeeper who understands cash flow pressures, a single parent who understands financial desperation, and someone from the defendant's own community who understands cultural context. A single judge, however brilliant, brings one perspective, one life experience, one understanding of the world.

For defendants from minority backgrounds, this matters enormously. Research consistently shows unconscious bias affects decision-making. Twelve perspectives, twelve different backgrounds, twelve checks against individual prejudice. Remove that, and you are left with one person's judgment, one person's biases, one person's blind spots.

The notion that removing juries will speed up justice is spectacular fiction. In reality, it achieves precisely the opposite.

Currently, a judge sums up in a day or two, the jury deliberates and delivers a verdict. Done. Under the new system? That same judge must produce a detailed written judgment, which can take months, sometimes years. Every conclusion must be articulated, defended, and footnoted. And unlike a jury's verdict, which is mercifully final, a judge's written reasoning provides infinite grounds for appeal.

I have seen complex fraud trials conclude swiftly with jury verdicts. I have also watched cases drag on for years as judges labour over written judgments and lawyers pursue endless appeals. Scrapping the Jury system will create an industry of delay in the name of efficiency.

Now we come to the breathtaking condescension and nonsense: ordinary people cannot understand fraud.

Having spent my career in financial crime cases from UK frauds to complex cross-border cases involving clients from the UAE, China, and India, I can assure you: fraud is not rocket science. At its heart, every fraud trial asks two simple questions: Did this person act dishonestly? Did they know what they were doing?

These are questions of human nature. Twelve people with mortgages and bank accounts who have navigated their own financial pressures and been lied to in the marketplace are magnificently equipped to spot and identify dishonesty.

We trust juries with murder cases, DNA evidence, and psychiatric testimony. We trust them with rape trials requiring the most difficult credibility assessments. But spreadsheets? Too complicated, apparently. The logic is absurd.

This is what is really being said: you are not clever enough to judge them. The white-collar defendant, typically middle-class, professional, deserves a more

"sophisticated" arbiter. Meanwhile, defendants in other specified crimes will be judged by their peers.

Thereby creating one justice system for some, another for others.

The jury is the one element of our justice system that cannot be gate-kept or professionally shaped. Those twelve random citizens represent something no judge can match: the full breadth of society. Your neighbours. Your community. People who live in the real world.

When you stand in the dock, and any of us could, through misfortune or misunderstanding, you have the right to see people who could be your colleagues, your friends, your family. People who understand what it's like to be afraid, confused, and financially pressured. People who might share your background, your culture, your understanding of the world.

For vulnerable defendants and those from minority backgrounds, this matters profoundly. Twelve perspectives offer twelve different checks against individual prejudice. Remove that, and you are left with one person's judgment, shaped by one person's life experience.

Remove juries from serious crime and fraud trials, and you have removed your voice from an entire category of justice.

Trial by jury should not be viewed simply as a right for the defendant; it is a right for each of *us*. The right to participate in justice. To hold the system accountable. The power to say "no" to the full might of the prosecution, regardless of the defendant's background or the crime alleged.

The proposal to scrap juries in serious crime and fraud trials will not save time; it will create cascading delays. It will not simplify justice; it will make it remote and incomprehensible. It will not improve fairness; it will concentrate power in the hands of those least representative of the communities most affected.

Twelve jurors bring twelve different perspectives, twelve life experiences, twelve ways of understanding human behaviour. A single judge, however brilliant, brings one.

As someone who has navigated a profession that did not always see people like me succeeding, I know how institutions perpetuate themselves when left unchecked. The jury is the one democratic safeguard that cannot be captured by professional culture or unconscious bias. It is utterly essential.

One's right to a jury trial is one's insurance policy against injustice. How can it be too expensive to keep, when the price of losing it will be paid by those with the least power to object?

The day may come when you need it. And on that day, you will want to look up and see not a solitary judge, however wise, but twelve of your fellow citizens. Twelve people who understand what it is like to be human, fallible, and afraid. Twelve people who reflect the diversity of this country, not the homogeneity of the legal profession.

That is not inefficiency. That is justice. And it is worth defending.

Narita Bahra KC | Leading Financial, Serious Crime & Regulatory Defence Barrister

The Strategic Use of Early Neutral Evaluation in ADR Proceedings

By Dr. Andre Alexander, SJD, LLB
Barrister, Solicitor (FJ) (formerly of the Dutch-Brussels & German Bars) Authorised for Legal Practice in England and Wales (RFL - Solicitors Regulation Authority), Chief Registrar, ICDRO - International Commission of Dispute Resolution Online

Introduction

Litigation in 2026 feels very different from litigation twenty years ago. Cases are larger, disclosure is heavier, digital evidence is relentless, quantum has grown and delay has become normalised. As such, even where parties Õwin,Ó the financial and emotional toll can be devastating.

Mediation and arbitration have long provided valuable alternatives, yet they too are feeling the strain. Complex mediations now resemble mini-trials and arbitrations can rival court proceedings in length and cost. Accordingly, the promise of speed and efficiency sometimes dissolves under the weight of modern disputes.

Against this backdrop, Early Neutral Evaluation (ENE) has quietly moved from procedural curiosity to strategic necessity.

ENE offers something that parties rarely receive early in litigation: an authoritative, independent view of the strengths and weaknesses of their case before positions harden and costs escalate. It is not about avoiding adjudication. It is about becoming properly informed before doubling down.

This article examines how ENE operates under the Civil Procedure Rules (CPR), the practical routes to obtaining it, the evolving judicial encouragement of ADR, and why, in strategic terms, ENE is increasingly difficult to ignore.

ENE Under the Civil Procedure Rules

ENE is not an informal innovation. It is explicitly recognised within the CPR.

CPR Part 3 Rule 3.1(2)(p) provides that the court may take steps to further the overriding objective, including:

"hearing an Early Neutral Evaluation with the aim of helping the parties settle the case."

This provision makes clear that ENE is not peripheral to case management. It sits squarely within the court's procedural toolkit.

The High Court reinforced this position in **Telecom Centre (UK) Ltd v Thomas Sanderson Ltd [2020] EWHC 368 (QB).** In that case, the court confirmed that ENE is a structured and legitimate mechanism designed to promote settlement and procedural efficiency. It is not an experimental device. It is an established judicial power.

In essence, ENE has four defining characteristics:

- An independent evaluator provides a preliminary opinion on merits, quantum, or specific issues.
- The process is ordinarily conducted on a without prejudice basis.
- The opinion is non-binding unless the parties expressly agree otherwise.
- Its purpose is evaluative, not determinative.

This last point is critical. ENE does not decide the case. It does not replace trial. It informs strategy.

Unlike mediation, where the neutral facilitates dialogue without expressing views on merits, ENE involves evaluative candour. The evaluator may say plainly: *"On the evidence presently before me, this argument is weak,"* or *"Quantum exposure may be significantly higher than assumed."* That clarity can be transformative.

How to Bring ENE Into Play

If proceedings are governed by the CPR, there are two primary routes to ENE.

1. At the Case Management Stage

The most straightforward path is at a Case Management Conference (CMC). A party may invite the court to direct ENE or include it within proposed directions.

Judges often welcome this approach. It integrates ENE into the broader architecture of case management and avoids unnecessary interlocutory skirmishing. Where both parties recognise potential value, agreement at CMC can make ENE seamless.

2. By Formal Application

If no CMC is imminent, ENE can be sought by Application Notice (Form N244) under CPR Part 23.

The application typically seeks:

- An order under CPR 3.1(2)(p) directing ENE;
- A short stay of proceedings;
- Directions governing scope, timing, and process.

Where appropriate, parties may also request that ENE be conducted by a judge other than the eventual trial judge. This is particularly relevant where the ENE will involve candid without-prejudice material, settlement ranges, or sensitive commercial disclosures.

In practice, specialist lists such as the Commercial Court, the TCC, and

Chancery are familiar with this Òjudicial firewallÓ approach. It preserves the integrity and perceived impartiality of any subsequent trial.

However, judicial allocation remains entirely discretionary. A party may invite the court to appoint a different judge, but there is no entitlement to demand one. The court must balance fairness, judicial resources, and proportionality.

ENE - The Post-Lomax and Post-Churchill Landscape

Two Court of Appeal decisions have significantly shaped the ADR terrain.

In **Lomax v Lomax [2019] EWCA Civ 1467**, the Court of Appeal confirmed that ENE may be ordered even without the parties' consent. This was an important clarification. It reinforced that ENE is a case management power, not merely a consensual exercise.

More recently, **Churchill v Merthyr Tydfil County Borough Council [2023] EWCA Civ 1416** reshaped the broader ADR conversation. The Court of Appeal confirmed that courts may lawfully stay proceedings or order parties to engage in non-court dispute resolution, provided the order is proportionate and does not impair the essence of Article 6 rights.
In practical terms, judicial encouragement of ADR is no longer rhetorical. It is embedded in the procedural culture.

Subsequent CPR amendments have reinforced this trajectory. The overriding objective now expressly promotes ADR engagement. Courts are encouraged to order or facilitate ADR where appropriate. And unreasonable refusal may have costs consequences under CPR Part 44.

In this environment, resisting a proportionate ENE proposal without cogent justification may no longer be neutral territory. It may be strategically risky.

Why ENE Works Strategically

Litigation psychology matters. Clients often approach disputes with understandable conviction. Lawyers, invested in their analysis, may equally develop strong views. As proceedings progress, sunk costs and procedural momentum can entrench positions. ENE interrupts that escalation.

It provides:

- Early merits clarification.
- An independent quantum assessment.
- Identification of evidential weaknesses.
- Narrowing of live issues.
- Recalibration of unrealistic expectations.

In complex commercial cases, ENE may focus on a discrete legal issue capable of resolving the wider dispute. In employment matters, it may assess liability and indicative compensation. In professional negligence claims, it may provide a structured evaluation of causation and loss.

Importantly, ENE does not compel settlement. It empowers informed decision-making.

There is also a reputational dimension. Public trials carry exposure. An early evaluative opinion may create settlement momentum before reputational harm crystallises.

From a resource perspective, ENE can save not only legal fees but management time and strategic distraction.

ENE Beyond the Courts

ENE is not confined to judicial proceedings. Institutional ADR frameworks increasingly offer standalone ENE services.

These models often mirror High Court principles but add procedural flexibility. Evaluators may be senior barristers, retired judges, or subject-matter experts. Submissions are tightly managed. Confidentiality is robust. Timelines are compressed.

Online platforms have further streamlined the process. Digital hearings, document portals, and defined timetables allow cross-border disputes to receive rapid evaluative input without geographic constraint.

One such model is operated by the **International Commission of Dispute Resolution Online (ICDRO).** Under its procedural rules, parties may request ENE by email at any stage of proceedings. The Chief Registrar responds within three days, either accepting the application and fixing costs or declining it.

If accepted, the appointed evaluator issues procedural directions within three days covering:

- Skeleton arguments and page limits;
- Evidential notices;
- Document exchange deadlines;
- Hearing date and duration;
- Form of opinion;
- Return of materials;
- Confidentiality safeguards.

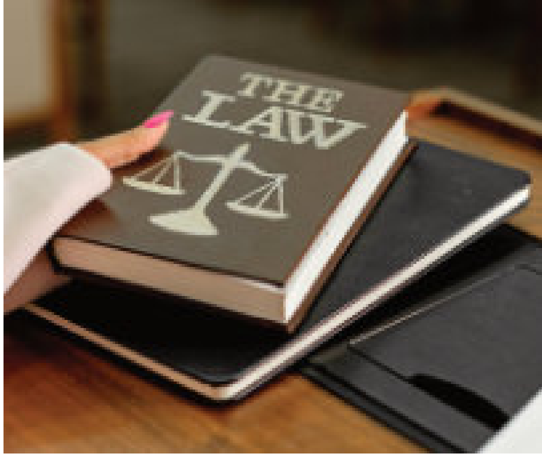
The process is designed to be expeditious and proportionate.

Of course, parties should always review institutional rules carefully to ensure compatibility with ongoing proceedings and cost expectations.

A Human Perspective

At its core, ENE is about realism. Litigation is adversarial. But it need not be blind.

Many disputes escalate because neither side receives credible early feedback.



Each relies on internal conviction. ENE introduces disciplined external assessment. It asks: what is this case truly worth? What is its real weakness? What risk are we actually carrying? That is not a sign of weakness. It is a mark of strategic maturity.

For lawyers, ENE can sharpen analysis and strengthen negotiation posture. For clients, it provides clarity at a point where uncertainty often dominates.

Conclusion

Early Neutral Evaluation is not a substitute for trial. Nor is it a panacea. It is, however, a powerful procedural and strategic instrument within modern dispute resolution and one that offers clarity at a stage where uncertainty often drives cost and entrenches positions unnecessarily.

Judicial endorsement under the CPR, reinforced by **Lomax and Churchill**, has placed ENE firmly within mainstream litigation culture. Costs consequences and ADR-focused case management further increase its relevance, signalling a clear judicial expectation that proportionate resolution mechanisms be seriously explored.

In an era defined by delay, escalating cost, and reputational sensitivity, early, structured evaluation is no longer optional in serious disputes, but is part of responsible litigation management and prudent risk governance.

As such, ENE deserves consideration not as an afterthought, but as a deliberate strategic choice, deployed thoughtfully to inform judgment, protect resources, and support commercially rational outcomes.

Disclaimer

The author is Chief Registrar of ICDRO. Where any statement in this article conflicts with ICDRO's published Rules or policies, the Rules and policies shall prevail.

Dr. Andre Alexander, SJD, LLB
Barrister, Solicitor (Dutch-Brussels Bar, High Court of Fiji)

Beyond the Final Hearing: What International Disputes Practice Is Teaching the Bar

International arbitration and commercial mediation are often treated as specialist worlds, somehow adjacent to the "real" work of the practising Bar. In my view, that is no longer right. What these fields now reveal is where sophisticated dispute practice is heading: towards earlier judgment, sharper commercial understanding, better process design, and advocacy that is measured not only by how hard one fights, but by how intelligently one helps clients reach the right outcome.

By Paul Sills

The dispute starts before proceeding

In my work as an international arbitrator and commercial mediator, I spend much of my time dealing with disputes that are technically complex, commercially sensitive and often cross-border in nature. They arise in sectors as varied as construction, infrastructure, energy, aviation, marine, finance and emerging technology. They may involve multiple contracts, multiple parties, different governing laws, and stakeholders whose interests extend well beyond the pleadings.

Although that may sound far removed from the daily experience of many practising barristers, I do not think it is. On the contrary, I believe international disputes practice is telling us something important about the future of the profession more generally. It is showing us that clients increasingly want more than excellent courtroom performance at the end of a long and expensive fight. They want lawyers who can help them understand risk earlier, shape process more intelligently, preserve what can still be preserved, and recognise when a dispute should be narrowed, paused, mediated, determined, or tried.

That does not diminish the importance of advocacy. It elevates it. But it does require us to think more broadly about what modern advocacy looks like, and about the role barristers can and should play in the life cycle of a dispute.

The old assumption that a dispute begins with proceedings and ends with a hearing is becoming less realistic with every passing year. In commercial life, disputes usually begin much earlier. They start when a board loses trust, when a project begins to drift, when payment chains tighten, when regulatory pressure increases, when a joint venture ceases to share the same vision, or when parties become locked into positions from which they no longer know how to retreat. By the time lawyers are formally instructed, the conflict may already have become cultural, reputational and commercial, as well as legal.

That matters because legal correctness, while essential, is not always enough on its own to solve the client's actual problem.

Arbitration is not just court in another room

One of the most striking features of international arbitration is that it forces counsel to confront this reality. Unlike some domestic litigation, it is often impossible to treat arbitration simply as court practice in another room. The process itself must frequently be designed with care. Questions arise early: should the case be bifurcated? Is emergency relief needed? Would a staged approach save cost? Can a preliminary issue unlock settlement? How should experts be managed? Are there cultural or language factors that will affect witness handling, negotiation dynamics or tribunal management? In large technical disputes, these are not secondary matters. They are central to the quality of the outcome.

The barrister who can only argue the final merits hearing may still be formidable. But the barrister who can also help shape a sensible procedure, identify what truly matters, and strip away everything that does not, will often provide far greater value.

Mediation is advocacy by different means

There remains in some quarters a lingering tendency to treat mediation as a softer discipline than advocacy, or as something to be attempted after the "real work" has been done. I have never thought that was an accurate description of good mediation practice, whether from the mediator's side or counsel's. A well-handled commercial mediation is not an abdication of legal principle. It is advocacy by different means.

The best barristers in mediation are not those who repeat their skeleton arguments in conversational form. They are those who understand that persuasion in mediation is more layered than persuasion in court. It requires careful case analysis, yes, but also judgment about timing, tone, psychology, economics and decision-making structures. It requires an understanding of what the client needs commercially, what the other side may realistically be able to do, what risks are acceptable, and which points are worth pressing because they move the negotiation rather than simply satisfy the advocate's sense of completeness.

Some of the most effective barristers I have seen in mediation have a rare ability to be firm without becoming rigid. They know when to deploy pressure and when to create space. They know that credibility matters more than volume. Above all, they prepare not just the legal case, but the decision-making environment around it. They help clients think clearly before emotion, fatigue and positional instinct take over.

That is a highly sophisticated professional skill. It is not an alternative to advocacy. It is one of its modern expressions.

Commercial fluency matters

My own experience outside pure legal practice has reinforced that view. Before working full-time as a neutral, I spent time in business leadership roles and in financially distressed environments where legal problems were inseparable from governance, cash flow, operational risk and human relationships. That experience has been invaluable. It taught me that many disputes cannot be properly understood unless one appreciates what is happening inside the business itself.

Clients notice very quickly whether their lawyers understand that. They can tell whether counsel has grasped the commercial architecture of the problem or is simply analysing the legal shell around it. In sectors such as construction, energy, transport, aviation, marine and fintech, that distinction can be decisive. A brilliant legal point may exist, but if it is advanced without understanding programme realities, financing structures, regulatory exposure, technical evidence or the pressure points within the counterparty's business, it may achieve far less than expected.

For the Bar, that has an important implication. Technical legal excellence remains non-negotiable. But commercial fluency is increasingly a differentiator. The barrister who understands how projects are funded, how boards behave under stress, how supply chains fail, how insurers react, how lenders think, and how reputational risk distorts legal decision-making is better placed to advise, to negotiate and, if necessary, to decide.

This is one reason why I suspect the strongest future barristers will often be those who combine first-rate legal analysis with deeper sector understanding and broader dispute judgment. The profession has always valued intellectual rigour. It will, I think, increasingly reward practical wisdom as well.

From process choice to dispute strategy

Another lesson international disputes practice has taught me is that the binary choice between "fight" and "settle" is usually too crude. Complex disputes often require a sequence of different processes rather than allegiance to one procedural identity. A matter may need urgent interim relief, followed by an expert process, followed by a mediation, followed by a narrow determination of what remains. On long-term projects, a dispute board or other standing neutral process may be more valuable than either immediate arbitration or entrenched litigation. In shareholder or joint venture conflict, facilitated dialogue may restore enough decision-making functionality to avoid total collapse. In some highly technical disputes, early neutral evaluation may achieve in weeks what adversarial skirmishing fails to achieve in months.

From a client's perspective, this is not procedural experimentation for its own sake. It is intelligent dispute management.

Barristers are particularly well placed to contribute to that conversation because they are trained to identify what is legally material, to distinguish the strong from the weak, and to bring independent judgment to emotionally charged situations. Yet the profession has not always presented itself in that way. Too often we are seen, or sometimes see ourselves, only as specialist fighters at the point of formal contest. There is honour in that role, and it remains indispensable. But it is not the whole picture. Nor is it where all future opportunities lie.

There is, in my view, a real opening for the Bar to think of itself more confidently as a profession of dispute strategists as well as advocates.

What this means for the Bar

That has practical consequences for chambers and for younger practitioners. It suggests that training should not stop at drafting, submissions and oral advocacy, important though those are. It should also include mediation advocacy, negotiation technique, case triage, client handling, commercial awareness, and the management of expert and technical material. It suggests that chambers should value practitioners who build credibility in arbitration, mediation and related processes, rather than treating those paths as peripheral. It suggests too that juniors who want sustainable and interesting careers should look beyond the immediate contest and ask themselves how disputes evolve, how businesses experience conflict, and how process can be used as a tool rather than merely endured as a burden.

For experienced practitioners, there may also be a challenge of mindset. The adversarial tradition at the Bar is a great strength. It produces courage, discipline, clarity and independence. But if carried too far, it can also produce habits that are ill-suited to modern commercial conflict: over-identification with positions, insufficient attention to business realities, and a tendency to regard non-adjudicative processes as somehow second order. The international market is moving in the opposite direction. It prizes flexibility, judgment and effectiveness. It still values forceful advocacy but increasingly expects that advocacy to be deployed in service of the best overall result, not merely the fiercest immediate contest.

That is not a call for barristers to become less robust. It is a call for us to become more versatile.

Across arbitration, mediation and litigation I continue to encounter barristers of remarkable skill who combine analytical precision with commercial sense and professional restraint. They are excellent advocates because they know when to press, when to listen, when to reframe, and when to help a client step back from a ruinously narrow path. They understand that a dispute is not simply a vehicle for legal argument; it is a problem to be solved in the real world.

I suspect that approach will become more, not less, important in the years ahead. Disputes are unlikely to become simpler. They are becoming more international, more technical, more document-heavy, more data-rich and more intertwined with politics, regulation, reputation and operational pressure. At the same time, clients are increasingly intolerant of unnecessary cost and delay. That combination will continue to drive demand for lawyers who bring not only advocacy excellence, but judgment about process, timing and outcome.

For the Bar, that should be seen as an opportunity rather than a threat. The core strengths of the profession remain highly marketable: independence of mind, precision of analysis, persuasive communication, and the discipline to form and express judgment clearly. Those are exactly the qualities needed in arbitration, mediation and other sophisticated forms of dispute resolution. But to remain at the forefront, we may need to broaden how we think about their application. The future may belong not only to those who can win the argument at the end, but to those who can guide the dispute intelligently from the moment it begins.

If international practice teaches anything, it is that the most valuable lawyer is rarely the one who knows only how to fight. It is the one who knows how to help the client choose, and then use, the right process at the right moment, with the right degree of force.

That, to my mind, is not a retreat from the best traditions of the Bar. It is their next development.

Author bio
Paul Sills is an international arbitrator, commercial mediator and barrister based in London. He has more than three decades of experience in complex cross-border disputes and is a member of Arbitra International.

Houston, I have a problem...

To be fair, this is a problem that is commonly encountered by barristers. What is it? The inability to say 'no'. And I am the worst offender.

By Rachel Chan, Barrister, 42BR Barristers

When I looked back through my diary for this article, I found multiple examples of weeks where I had clearly overstretched myself. One such week looked like this:

Monday- Canterbury
Tuesday- Milton Keynes
Wednesday- London
Thursday- Dartford then to Manchester for the Association of Lawyers for Children annual conference
Friday- Manchester to Milton Keynes, to teach advocacy for the Inn
Saturday- Milton Keynes
Sunday- Milton Keynes, then back home.

I then did a little brainstorm of what I actually do other than barristering in the day job and being a mother to 5 children. A summary looked a bit like this:

- Sitting (as a magistrate and as a Deputy District Judge)
- Writing for various texts
- Volunteering for the Inn
- Family Law Bar Association National Committee and being on the Children, Fees and EDI sub-committees as well as being the FLBA representative on the MoJ Child Focused Courts various stakeholders reference groups, Central Family Court and Royal Courts of Justice users groups
- South Eastern Circuit Executive Committee (where I also represent the FLBA), and
- Mentoring

Obviously this summary doesn't give nearly half the picture of what I actually do in real terms, or the hours I put in.

Why do I do so much? The truth is, I just can't say no. Most of the time, I enjoy helping out. Sometimes I help because no one else has volunteered or stepped up. At other times, I feel pressured into saying yes.

I am not alone in having difficulty with saying the word 'no'. But what actually is the problem with saying yes all the time?

The problem with saying yes all the time

1. People become accustomed to you saying yes. You then become top of the list of people to ask, and the go-to person first and foremost. I mean, why bother to go to anyone else when you know 9 times out of 10 x or y will say yes? This then forms a vicious cycle because you have fed into the narrative that you are helpful and given people permission to ask you first. That cycle, once formed, is hard to break.
2. It denies others the opportunity to step up. I organised Chambers' London Legal Walk team for three years. There wasn't a lot to do but involved organising barristers, aka. herding cats, cheerleading and encouraging people to donate and took up a lot of energy. Eventually, it got too much along with everything else I was doing. A former member of Chambers asked why I kept doing it. I expressed my fear that no one else will want to take it on. 'Rubbish', she told me, 'there are lots of others in Chambers and you remaining on as organiser denies others the opportunity to step up. People aren't offering to help because you're not giving them the chance'. Interesting take, I thought. Nonetheless I took her advice, gave up the role and asked if anyone else wanted to do it. Guess what? Others stepped forward. And every year since my stepping down, Chambers has fielded a team of walkers on the London Legal Walk and have continued to raise lots of money for charity.
3. It has a detrimental effect on your well-being and mental health. Constantly spinning plates and juggling the demands of work, together with life, cumulatively takes its toll. There are only so many hours in the day. And time has to come from somewhere to manage all those tasks. Where does it come from? More often than not, it comes from what really should be your downtime, time when you should be relaxing or resting. Sometimes, that time comes at a detriment to your family or social life or other matters you should be attending to. Saying yes all the time can also build resentment over time. People who do so may hate themselves for being unable to say no, or in some cases, harbour a sort of resentment for doing so much or the tasks themselves. Exhaustion leading to burnout is almost inevitable.
4. The constant yeses also means dilution which may mean that the task(s) is/are not completed well or not at all. It can lead to 'ball-dropping'. Despite being so organised, I recently missed a meeting because I thought the day was a Tuesday not a Wednesday. I had never missed a meeting up until that point. Looking back to that week, I was in middle of a difficult trial, was away from home and had far too much on. It would have been much better for me to have simply given my apologies in advance. However, the consequence of not having done so was the panic that I had missed the meeting, the guilt that I had done so and the frantic emailing of apologies and explain why I didn't even know what day of the week it was. How utterly embarrassing! Another recent ball-drop? I missed a meeting because I had diarised it on the wrong day, i.e. the day after the meeting. Conclusion? I am doing too much.

Rescuer/Coach?

A friend once shared the terms 'rescuer' and 'coach' with me, which I had not heard of before. In fact, loads of books and essays have been written about this area. In short, a 'rescuer' is someone who helps others and take pleasure from being able to be helpful while a 'coach' is an enabler, someone who supports, provides scaffolding and helps others to solve their own problems. Someone who constantly says yes, takes on the role of a rescuer. This in turn trains others to depend on the rescuer. So those who constantly say yes, need to learn skills to help them become 'more coach' and 'less rescuer'. This means having the tools in your armoury to support others to perform tasks themselves. Much more information is readily available on the internet for those who want to know more.

To those who still cannot say no, having considered all the above, what is available to help the barrister who has taken on too much?

Here are my own practical tips:

Hard copy diary
Some people use their phones to make notes and for reminders. I prefer to use a hard copy diary so I can annotate what has been cancelled, vacated or relisted. My personal recommendation for a diary is the Mum's Office Big Family Planner which is available online. The left side of the diary belongs to me, the right, with its

columns, my family members. That way, I can see what everyone is doing over a week view.

Colour coding

Colouring pens are my best friends. By way of example, in my diary, black is for work, blue is for personal, red on the right is for expenses. Two ticks on the court name tells me I have sent an attendance note. Green highlighter over the court name tells me I have billed it and the date in brackets after the case name tells me when. Orange highlighter tells me I have been paid. If all attendance notes have been sent or all cases have billed or paid in that week, I have great satisfaction drawing a great big diagonal line across the page in whatever colour highlighter it merits.

Lots of lists

Like others, I rely on a lot of lists. They are presented in a spider diagram. With dates and numbering. And a colour coding system.

Eat that Frog?

Someone once recommended a book to me. It is called Eat that Frog by Brian Tracy. An earlier edition of the book is available for free in PDF online. There are many lots of useful tips in the book but the biggest takeaway is, erm, yup, how to eat a frog.

What is a 'frog'? Tracy explains that this is 'your biggest, most important task, the one you are most likely to procrastinate on if you don't do something about it. It is also the one task that can have the greatest positive impact on your life and results at the moment.'

He goes to explain the rules of frog eating. First, if you have to eat two frogs, eat the ugliest first, i.e. if there are two important tasks ('frogs') in front of you, tackle (i.e. 'eat') the hardest and most important one first. Don't get distracted and finish eating the ugliest frog before you do anything else. The second rule is that 'if you have to eat a live frog at all, it doesn't pay to sit and look at it for very long.'

Identifying and eating your biggest and ugliest frog actually means you clear the path for other tasks to be done and minimise procrastination, which mainly occurs because you don't want to eat the biggest and ugliest frog!

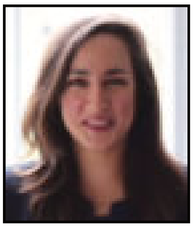
The four D's of time management:
This is also known as the Eisenhower Matrix, named after President Eisenhower. Delete- not urgent and not important. Delete all non-essential tasks and learn to say no! Defer/delay- important but not urgent. These are tasks that can await another day Delegate- urgent but not important. Get someone else with a better skill set to do it!

Do- both urgent and important. Actually do the task and get eating!

This week at the International Advocacy Training Conference, I, together with another barrister, was challenged to say no to 10 separate things by the end of the year. Given the acknowledgement I am doing too much, I say, challenge accepted!!

Credits-
Mum's office- https://www.mumsoffice.co.uk/
Eat that Frog- Brian Tracy, Berrett-Koehler Publishers 2017

Rachel Chan, Barrister, 42BR Barristers



AI and fraud: new frontiers for civil practitioners?

Following the case of R. (on the application of Ayinde) v Haringey LBC [2025] EWHC 1383 (Admin), many lawyers have focused on the reputational threat posed by AI and hallucinated cases in particular. The emphasis has been on applying caution in the use and deployment of AI in personal practice. However, the commercially attuned practitioner will recognise the opportunities created by AI not least from the rise of AI enabled fraud.

By Sara Ibrahim, Barrister, Gatehouse Chambers

A narrow focus on the pitfalls of AI would be a mistake for barristers who will otherwise not be alive to the use of technology by bad actors engaged in fraudulent schemes. Malevolent use of AI should be anticipated to become increasingly widespread with Cifas reporting more than 444,000 cases recorded on the National Fraud Database in 2025: a record high. Cifas identified the use of AI and generative technologies as a factor in this rise.

Fraud

The development of AI has means that generative tech can create fake documents and impersonate people or organisations at speed. More sophisticated criminals can have multiple targets in a number of jurisdictions. These tactics involve personalising attacks so that the intended victims are much more likely to be deceived.

There are a number of stratagems being used by fraudsters that should be flagged. One of the most recognisable is the use of deepfake videos. They use images, videos, and sound recordings to impersonate individuals. This has included videos disseminated on social media of celebrities and politicians making statements or acting in a manner that is entirely fabricated. In a commercial context, this has included the targeting of financial teams using deepfake technology to impersonate CEOs and CFOs. Arup, the engineering firm, was targeted in 2024 and persuaded to send $25 million to criminals after employees mistakenly believed they had been instructed to do so in a video call with management. The magnitude of the problem will increase as technology becomes more effective and easier to access. In a similar vein, voice cloning has become popular with anyone a target from senior executives to retail banking customers.

Synthetic identity fraud is a widespread tool for fraudsters where fake identities are created from real and AI generated

information. These synthesised identities are then used to apply for loans or open bank accounts. The Deloitte Centre for Financial Services expects fraud from synthetic identities to generate around $2.3 billion (US) in losses by 2030. The corollary of this is that financial services will become hungry for biometric data which can spot the fakes. Unless this is carefully safeguarded and processed, there can be additional issues of privacy and breach of data protection principles.

AI enhanced fraud is 4.5 times more profitable than traditional cybercrime according to INTERPOL. It therefore represents a systemic economic threat and will require more innovative tools to trace.

Focus on financial crime

The financial services sector has always been a target for fraud. In view of the scale of the challenge and the financial incentives for fraudsters, the initial emphasis has been on fraud prevention.

The offence of a failure to prevent fraud was introduced by section 199 Economic Crime and Corporate Transparency Act 2023 and 2026 is its first full year of enforceability. This offence makes large organisations potentially criminal liable where an employee, agent, subsidiary or other 'associated person' commits a fraud intending to benefit the organisation. The offences covered include those under the Fraud Act (2006) such as false representations and abuse of position as well as fraudulent trading under the Companies Act (2006). A potential defence is available where an organisation can establish that it had reasonable fraud prevention measures in place at the time the fraud was committed. It remains to be seen what the level of appropriate measures could be in instances where fraud has occurred.

Counter fraud

AI will be central to compliance and fraud detection as the volume of fraudulent attacks will render human only oversight ineffectual. The right AI tools will be better at detecting AI created content than people. The UK government 'AI Guide with a focus on Counter Fraud' guidance specifically contemplates using AI to combat fraud.

The FCA awarded Palantir a contract in March of this year to investigate the regulator's internal intelligence data which is used to investigate fraud and money laundering. Under a 12 week proof of concept deal, Palantir will have access to the FCA's full data set spanning reports of suspected fraud from the public to highly sensitive case files. This reflects other deals with the UK public sector involving the NHS and the police. It is also anticipated that Palantir will have access to the anti-money laundering data held by law firms when anti-money laundering supervision passes to the FCA.

If successful, the trial could super charge the FCA's ability to identify fraud in the financial sector. This initiative sits alongside the FCA's Mills Review launched in January 2026 reviewing how the FCA will use existing regulatory frameworks to shape retail financial services for consumers to 2030 and beyond.

The insurance industry is another key sector that is facing a surge of AI generated fraud and is using enhanced technology to identify these claims. Admiral, a key insurance player, said it detected a 71% rise in fraudulent insurance claims in 2025 amounting to around £86.8 million. Examples they provided included customers photoshopping damage onto their vehicles or using stock images from stock photo libraries to evidence their claims seemingly driven by AI use.

Relevance to lawyers

Will AI ever be liable?

Law is predicated on the assumption that humans are legally responsible. Most actions in civil fraud in this jurisdiction require an assessment of the perpetrators state of mind. To establish a claim for deceit, the court will need to consider whether a false representation has been made and that it was dishonestly made. This is a concept imbedded in the Fraud Act (2006) which requires a 'person' to dishonestly make the representation. It should be reasonably contemplated that if AI becomes sufficiently advanced 'human oversight' may become increasingly slight. Where an AI is running complex functions that cannot be audited on a task by task basis, can a person rely on the accuracy of the AI's representations?

There could well be cases where the person making a representation believes them to be true and a good arguable case could be made that it was reasonable to believe the representation was accurate. Where does this leave a claimant in circumstances where the AI could have acted fraudulently? AI firm Anthropic have identified in testing of their systems that the AI is sometimes willing to engage in harmful actions such as blackmail if it 'feels' threatened. Highly developed large language models (such as ChatGPT or Claude) are increasingly designed to have high levels of agency. In such circumstances, the common law may have to fill the current 'gap' in the absence of specific AI regulation. Lawyers may have to be creative in their arguments as to where liability resides.

Use of experts and AI tracing tools

Lawyers should be increasingly aware of the need to work with experts to properly identify cases of fraud and how AI may have been utilised to further fraudulent means. Although the focus of government and regulators is on preventing fraud, the current reality is that despite these efforts, fraud has increased.

Complex cross border fraud requires AI tools that properly capture the extent of any fraudulent activity and identify criminal activity in a timely way. This can be of significant assistance when seeking a freezing order and precisely identifying the assets, including where they are located. Similarly use for AI can be found in the context of search orders, and imaging orders. Imaging orders are a key tool in the arsenal of litigators where there is risk of concealment and destruction of evidence. When the electronic material is examined, it is important that an appropriately qualified independent expert can marshal technology assisted review including visual search.

Conclusion

Barristers should be aware of the implications of AI outside of the confines of hallucinated cases. At pace, AI is reshaping the commercial landscape and significantly increasing the risk of fraud and dissipation of assets. Whilst the emphasis on the prevention of fraud is commendable, the financial incentives for fraudsters mean that AI related fraud is likely to grow in the future.

Clients will be reassured by those who can think creatively about existing legal frameworks and apply them to these new types of problem. Further, AI fluency will ensure there is effective communication between legal and expert teams so the tools for civil fraud litigators are used appropriately and in a timely way. The use of penal orders in freezing and search orders necessitates precision in the drafting of such orders and complexity of the underlying electronic data does not detract from this obligation.

Nonetheless the opportunities for lawyers who wish to embrace the benefits of the emerging AI landscape will be substantial. Those who can combine AI fluency with creative thinking will be best placed to serve clients and potentially drive changes in the law.

Sara Ibrahim, Barrister, Gatehouse Chambers

Create your own opportunities: An unconventional journey to the bar

Most people imagine the road to the Bar as a straight, carefully signposted path, A-levels, a traditional university experience, mini pupillages arranged through well connected networks and a seamless transition into vocational training. My route looked nothing like that. I left school at seventeen with no clear plan, no professional contacts or understanding of how the legal world worked. What I did have was resilience and a determination to build something meaningful from limited resources.

By Shayda Darwish

Today I stand as a four times scholar with an offer to begin the Bar Vocational Studies course at my dream university, City St Georges University of London. My journey has been shaped not by privilege or predictability, but by creating opportunities where none were offered. This is the story of how I got here.

Leaving school at 17: The First Detour

When I left school, I didn't step into a curated gap year or a structured internship. I stepped into full time work. For six years, I worked in hospitality managing my father's restaurant. At the time, I didn't realise that these experiences were shaping the skills I would one day rely on as an advocate, leadership, conflict resolution, communication under pressure and the ability to read people.

Working long shifts while watching my peers move through university was difficult. But those years taught me something invaluable. Opportunity is rarely handed to you, you build it, piece by piece, through discipline and persistence.

That mindset became the foundation of everything that followed.

A Chance Encounter With the Criminal Courts

My first real encounter with the law was almost accidental. I discovered hearings were open to the public and sat in on a trial at Canterbury Crown Court. I expected formality and distance. Instead, I found humanity, tension and the reality of justice unfolding in real time.

Watching barristers navigate evidence, challenge inconsistencies and advocate for their clients sparked something in me. It wasn't just the intellectual challenge it was the human dimension. The stakes were real, liberty, reputation, family life. I left with a clarity I had never felt before.

But wanting something and knowing how to get there are very different. I had no roadmap, mentors or legal background. So, I did what I had always done: created my own opportunities. I emailed the court asking if I would be able to shadow a judge. Two hours later, HHJ Simon Taylor KC agreed. I observed eight hearings and learned about his journey to the bar, one not so dissimilar to my own, planting a seed of interest that never stopped growing.

My Father's Civil Dispute: Advocacy Before I Knew the Word

My first experience of advocacy came long before I studied law. At twenty-one, my father, a non-English speaker and Iraqi war survivor became involved in a civil dispute involving debts left by previous business owners. With no representation or understanding of the system, I stepped in.

I had no training or guidance and no idea what submissions were supposed to look like. But I researched, prepared evidence, structured arguments and represented him before the tribunal.

We won.

That experience changed me. It showed me advocacy is not reserved for those with formal qualifications. It is the ability to communicate clearly, think critically under pressure and stand between someone vulnerable and a system they cannot navigate alone.

It was the first moment I realised the Bar was not just a career I admired, it was a career I could pursue.

Wrongful Arrest: When Justice Fails

Not long after, a close friend was wrongly arrested. I witnessed firsthand how easily the system can fail those without knowledge or support. I recognised disclosure issues, procedural errors and inconsistencies in the evidence. I helped them articulate these concerns to their solicitor, which contributed to a case review and the withdrawal of multiple charges.

This experience was transformative. It exposed me to the emotional toll of criminal proceedings and the fragility of due process. It also reinforced my belief that justice is not self-executing, it requires advocates who are willing to scrutinise, challenge, and persist.

These early experiences, my father's case and my friend's wrongful arrest were not academic exercises. They were lived realities that shaped my understanding of justice long before I stepped into a law degree.

Building a Legal Foundation: Studying While Working Full Time

When I finally enrolled with The Open University, I did so while working full time. Balancing employment, volunteering, and academic study required discipline, time management and self-motivation qualities essential for the Bar.

I achieved distinctions across modules, not because the path was easy, but because I had learned how to work with focus and resilience. Studying independently taught me to take responsibility for my own development, seek out opportunities proactively, and maintain high standards even when exhausted.

This period taught me that success is not about having the perfect circumstances, it is about making progress despite imperfect ones.

Creating My Own Legal Experience

Without a traditional university network, I had to build my own. I spent months emailing chambers, judges, solicitors, and organisations. Many never replied. Some politely declined. But persistence paid off.

Judicial Marshalling

I secured marshalling placements with judges across criminal and family courts. I observed serious trials, evidential rulings, sentencing exercises and the realities of how judges manage multiple cases simultaneously. I learned how advocates adapt quickly under pressure and maintain clarity even when the unexpected happens.

Mini-Pupillages

I completed mini-pupillages in criminal and family law, observing everything from fact-finding hearings to coercive control and attempted murder trials. I saw how disclosure failures, evidence gaps and inadequate representation can shape or derail a case.

Youth Justice and Witness Service Volunteering

Working with young offenders and vulnerable witnesses taught me how to communicate with empathy, patience, and clarity. It showed me how easily people become overwhelmed by unfamiliarity and how vital it is for advocates to be both firm and humane.

Legal Writing and Research

I published articles on wrongful convictions, cognitive bias and jury decision-making and submitted written evidence to a UK Parliamentary Committee. These experiences sharpened my analytical skills and deepened my commitment to justice reform.

Every placement, voluntary role and article was something I sought out and secured through persistence. I built my own legal education outside the classroom.

Scholarships: Recognition of a Non-Traditional Path

My journey has been recognised through four major scholarships, City Law School Scholarship for Academic Excellence, Inner Temple Pass and the COMBAR Schemes and the Inner Temple Exhibition Scholarship. These awards are not just financial support they are validation that non-traditional routes are not barriers to success. They demonstrate that resilience, initiative and lived experience are valued.

Receiving an offer to study the Bar Vocational Studies course at my dream university was a moment of profound pride. It represented not just academic achievement, but the culmination of years of self-driven effort.

What My Unconventional Route Taught Me

My path to the Bar has not been linear, but it has been rich in lessons that will shape me as an advocate.

1. Resilience is built, not inherited. Working full time while studying taught me to persist through exhaustion, setbacks, and uncertainty.
2. Opportunity is created, not given. Every placement, every experience, every step forward came from taking initiative.
3. Lived experience is a strength. Supporting my father and friend gave me insight into the human impact of legal processes.
4. The Bar needs diverse routes. Clients come from every background. Advocates should too.
5. Justice is not abstract — it is personal.

My motivation comes from real people, real stories and real consequences.

Where I Am Today

Today, I am preparing for the big move to London to begin the BVS with a clear sense of purpose, while also anxiously awaiting the outcome of my pupillage interviews at my top criminal chambers. The demands of the Bar are undeniable, but I also know I have already lived through challenges that have prepared me for this path.

I am entering the profession not because it was expected of me, but because I carved out the opportunity myself. Every step of my journey has reinforced my belief that justice matters, advocacy matters and representation matters.

The Power of Creating Your Own Opportunities

My story is not one of privilege or perfect timing. It is a story of persistence, self-belief and willingness to build opportunities where none existed. Leaving school at seventeen did not close doors — it forced me to learn how to open them myself.
If there is one message, I hope others take from my journey:

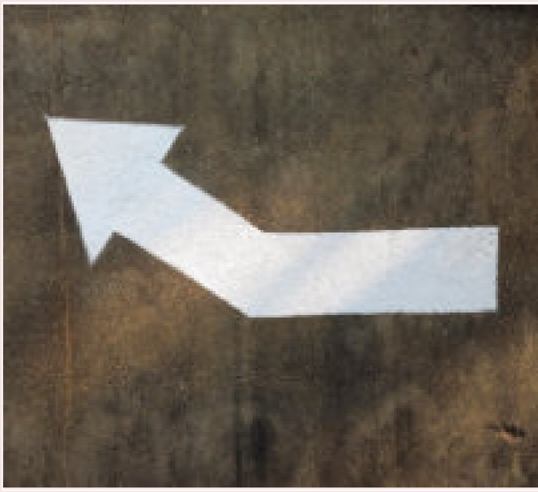
Your path does not need to look like anyone else's. You can build your own route, create your own opportunities and still reach your goals, not despite your unconventional background, but because of it.

Dedication

This journey has never been mine alone. I owe a profound debt of gratitude to the people who opened doors and believed in my potential long before I had the confidence to believe in it myself.

To Judge Duckett, Recorder Williams, Judge Smith, and Recorder Hellens and Judge Taylor, thank you for allowing me into your courtrooms and for showing me, the discipline, humanity and clarity that true judicial leadership requires. Your willingness to let a young aspiring advocate observe your work gave me insight I could never have gained from textbooks alone.

To Meghan Daniels of Pump Court Chambers and Ethan Dighton of Six Pump Court Chambers, thank you for welcoming me into the world of



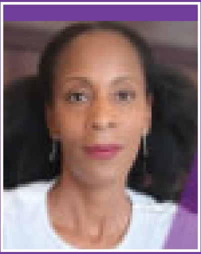
advocacy with generosity and honesty. Your guidance helped me understand not only the craft of advocacy, but the responsibility that comes with it.

To Heidi Stonecliffe KC, from the moment I walked into my scholarship interview, you became a role model to me. Thank you for sharing your journey with such honesty and for giving so generously, your time to guide me, often far beyond what was expected. Your belief in me, especially at times when I needed it most, has meant more than I can fully express. I will always be grateful to have found your support at the Criminal Bar, and I will carry your guidance with me throughout the rest of my journey. I know, too, that both of our fathers would be incredibly proud of the paths we are forging, and that shared understanding makes your support all the more meaningful.

And above all, to my father my greatest support, constant source of strength, and the person who sacrificed the most so I could pursue this dream. You closed your business to support my goals, funded my studies, carried the weight of our family so I could focus on building a future and guided me through every setback and success. Nothing I achieve at the Bar will ever be separate from your courage and your belief in me.

This journey is dedicated to all of you. Your faith in me helped me create opportunities where none existed carrying me to the place I stand today.

Shayda Darwish *is an aspiring criminal barrister and Inner Temple Exhibition Scholar currently preparing to complete Bar Vocational Studies at City St George's, University of London*



Jury Decision-Making and the Trial Advocate: What the Research Shows

I have spent more than 30 years involved in courtroom advocacy, as a criminal barrister and advocacy trainer. For most of that time, I regarded advocacy as both an art and a skill: something which, like any other skill, must be practised and refined. By Sonia Simms, Barrister, Founder of Advocacy Tutor.com

By Sonia Simms, Barrister, Founder of Advocacy Tutor

When asked, "How do I get better?", my answer used to be fairly standard: read the best advocacy textbooks, watch experienced advocates in court, borrow what is useful, practise, seek feedback, and critique your own performances honestly. What I did not suggest, and what I now think is invaluable, is this: pay attention to academic research. It can be enormously instructive.

Over the last few years I have drawn increasingly on academic work to inform my approach to courtroom advocacy. That research has deepened my understanding of how jurors actually make sense of evidence and how their pre-existing attitudes may affect the verdict.

This article considers two strands of research. The first is the story model of juror decision-making developed by Nancy Pennington and Reid Hastie. The second is a 2025 study by Kacey May Barnett, Russell Woodfield and Rachel A Conlon on juror decision-making in a coercive control case.

1. The Story Model: jurors decide cases by constructing a story

The best-known psychological account of jury decision-making is the story model, developed by Nancy Pennington and Reid Hastie.[1] The model was first set out in *A Cognitive Theory of Juror Decision Making: The Story Model*, and then tested empirically in *Explaining the Evidence: Tests of the Story Model for Juror Decision Making.*[2]

The central idea is that jurors try to make sense of a case by constructing a story about what happened. When the evidence is not presented chronologically, when there are gaps in the evidence, or when there are inconsistencies between witnesses or internally, jurors are likely to organise the material for themselves and work out how the different pieces of evidence fit together.

In doing so, jurors draw not only on the evidence, but also on their own knowledge, experience, and assumptions about how people behave. They are, in effect, trying to answer three questions: *what happened, how did it happen, and why did it happen?*

Pennington and Hastie describe the process in three stages. First, the juror hears and sees the evidence and draws inferences from it. That produces one or more possible accounts of events, which the model calls "stories". Secondly, the juror learns the possible verdicts from the judge's legal directions. Thirdly, the juror compares the account of events he or she finds most convincing with the judge's directions in mind and decides which verdict best fits that account. On this model, the juror is likely to prefer the case that best explains the evidence.

Pennington and Hastie identify features that affect this, including coverage and coherence. Coverage means the extent to which the story accounts for the evidence. Coherence means, in broad terms, that the story is internally consistent, plausible, and sufficiently complete. A story that explains more of the evidence, and does so in a way that makes sense, is more likely to be accepted.

In *Explaining the Evidence*, Pennington and Hastie published the results of a series of experiments designed to test the model empirically. One of those experiments is particularly instructive for advocates because it shows, in a practical way, that the organisation of evidence can affect the outcome of the verdict.

The researchers used two mock criminal cases. One was a murder case in which the overall body of evidence tended to point towards guilt. The other was a hit-and-run case in which the overall body of evidence tended to point towards innocence. In each case, participants were asked to act as jurors. They read an abbreviated courtroom transcript containing a short case summary and testimony from four witnesses.

The evidence dealt with four issues in the case: motive, opportunity, the defendant's character, and the witness's relationship to the defendant. Three of the witnesses gave evidence tending in one direction, while a fourth gave an inconsistent account tending the other way. So, in the murder case, three witnesses broadly supported guilt while one witness gave evidence tending towards innocence. In the hit-and-run case, the pattern was reversed.

The researchers also varied the apparent credibility of the inconsistent witness. In some versions, that witness had a relationship with the defendant which suggested possible bias. In others, the witness appeared more independent. In a further version, no real credibility information was given at all.

The crucial manipulation, however, was the order in which the evidence was presented. In one condition, the evidence was presented in "story order". Another words, the evidence was organised witness by witness, so that each witness's testimony formed a more complete narrative account. In the other condition, the evidence was presented in "issue order", with material grouped by topic, such as motive or opportunity, rather than in a narrative sequence. The same information was being conveyed, but in a more fragmented form. Participants were then asked to indicate how likely it was that the defendant was guilty, and they also rated their confidence in that conclusion and their view of the strength of the evidence.

The results supported the story model. Participants who received the evidence in story order were more likely to decide in line with the overall direction of the evidence and were more confident in their conclusions.

The effect remained even where no specific credibility information was given about the witnesses. This suggests that the difference was not simply being caused by whether a witness seemed biased or trustworthy. The organisation of the evidence itself had an effect on the verdict.

The researchers also found that participants who heard the evidence in story order tended to remember it in story form, whereas those who heard it in issue order tended to remember it in issue-based clusters. The total amount remembered did not materially differ. The difference lay in how the material was organised in the juror's mind. Where the evidence was easier to assemble into a coherent account, jurors were more likely to find, in accordance with that account.

Advocates know, instinctively and from experience, that a logical, persuasive and well-developed case theory is crucial. The story model helps explain why. A case theory gives jurors a way of understanding the evidence and a route to the verdict your client seeks. It tells them what happened, how it happened, and why it happened.

But the case theory has to be rooted firmly in the evidence. It has to draw the various strands together, deal with gaps and inconsistencies, and make the human conduct in issue intelligible. If it does that, the advocate makes the jury's task easier, reduces the cognitive effort needed to organise the evidence into a coherent account, and lessens the risk of jurors filling the gaps for themselves or drawing the wrong inference.

2. Juror attitudes in coercive control cases

A second study looks at juror decision-making in the context of coercive control. In 2025, Kacey May Barnett, Russell Woodfield and Rachel A Conlon published *Juror Characteristics and Decision Making in a Developed Coercive Control Case.*[3]

The study examined whether age, attitudes towards coercive control, and psychopathic personality traits influenced verdicts in a mock coercive control trial.

It involved 135 participants from the general public in the United Kingdom. Participants completed an online study consisting of elements of a mock coercive control trial together with three questionnaires: the Coercive Control subsection of the Modern Adolescent Dating Violence Attitudes Scale, the Psychopathic Personality Traits Scale—Revised, and the Juror Decision Scale.

The mock trial materials included prosecution and defence accounts of the relationship and the alleged controlling behaviour. Participants were then asked to return a Guilty or Not Guilty verdict and to complete the Juror Decision Scale, which measured complainant believability, defendant believability, and overall decision confidence.

The prosecution case alleged a pattern of controlling behaviour over the course of a relationship. The complainant's account included financial restriction, monitoring of communications, control over clothing, restriction of movement, food restriction, interference with medical treatment, confiscation of her phone, deletion of contacts, and isolation from family and friends.

The defence account framed the same conduct quite differently: as care, protectiveness, practical help, concern about money, concern about online attention, and a wish to prevent unnecessary worry.

The participants were asked to evaluate two competing accounts of the same relationship and decide whether the conduct amounted to criminal coercive control.

The principal finding was that attitudes towards coercive control were the only significant predictor of a Not Guilty verdict. Participants with higher scores on the coercive control attitudes scale, indicating more accepting attitudes towards controlling behaviour, were more likely to return a Not Guilty verdict. Those who returned Not Guilty verdicts also scored higher for defendant believability and were less confident overall in their decisions than those who returned Guilty verdicts.

The study also found significant positive correlations between attitudes towards coercive control and all four subscales of the psychopathic personality traits measure. However, psychopathic personality traits did not independently predict verdict outcome. Age did not significantly predict verdict outcome either.

For advocates, the findings suggest that jurors may approach a coercive control case with assumptions that minimise, normalise, or misunderstand the behaviour in issue. Pre-existing attitudes may affect whether a pattern of conduct is recognised as abusive or interpreted in a more benign light. In other words, jurors may not start from a shared understanding of what coercive control looks like.

That gives rise to an obvious problem for the prosecution. There is a real risk that jurors may minimise individual incidents or fail to appreciate their cumulative significance. A jury that does not understand coercive control is less likely to recognise it on the facts. The advocate's task, therefore, is to educate the jury.

Expert evidence may assist in that process. It can help the jury understand patterns of behaviour, the cumulative significance of conduct over time, and the psychological impact of prolonged domination within a relationship. That may be particularly important where some jurors have encountered similar behaviour in their own lives, whether as victims, perpetrators, or observers, and have come to regard it as ordinary relationship behaviour. If such conduct has been normalised, minimised or written off as part and parcel of intimate life, the jury may need help to recognise it for what it is.

There is now a substantial body of academic research on courtroom advocacy, persuasion, witness handling, jury decision-making and forensic communication. It should form part and parcel of every advocate's continuing development.

Sonia Simms, Barrister, Founder of Advocacy Tutor

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[1] Nancy Pennington and Reid Hastie, 'A Cognitive Theory of Juror Decision Making: The Story Model' (1991) 13 Cardozo Law Review 519.
[2] Nancy Pennington and Reid Hastie, 'Explaining the Evidence: Tests of the Story Model for Juror Decision Making' (1992) 62(2) Journal of Personality and Social Psychology 189.
[3] Kacey May Barnett, Russell Woodfield and Rachel A Conlon, 'Juror Characteristics and Decision Making in a Developed Coercive Control Case' (2025) 15(6) Behavioral Sciences 803

Approaching Artificial Intelligence at The Bar: Some notes of caution

By Rachel Segal, Barrister, St. John's Chambers.

Let's begin with some sage observations from the President of the King's Bench Division, Dame Victoria Sharpe, in the Divisional Court last summer:

"Artificial intelligence is a powerful technology. It can be a useful tool in litigation, both civil and criminal. It is used for example to assist in the management of large disclosure exercises in the Business and Property Courts. A recent report into disclosure in cases of fraud before the criminal courts has recommended the creation of a cross-agency protocol covering the ethical and appropriate use of artificial intelligence in the analysis and disclosure of investigative material.1 Artificial intelligence is likely to have a continuing and important role in the conduct of litigation in the future.

This comes with an important proviso however. Artificial intelligence is a tool that carries with it risks as well as opportunities. Its use must take place therefore with an appropriate degree of oversight, and within a regulatory framework that ensures compliance with well-established professional and ethical standards if public confidence in the administration of justice is to be maintained. As Dias J said when referring the case of Al-Haroun to this court, the administration of justice depends upon the court being able to rely without question on the integrity of those who appear before it and on their professionalism in only making submissions which can properly be supported."

(Dame Victoria Sharpe *R (on the Application of Ayinde) v The London Borough of Haringey and Al-Haroun v Qatar National Bank QPSC & QNB Capital LLC.*

Artificial Intelligence (AI) has in recent years been on one hand presented as technology that threatens to put lawyers out of business, and on the other promoted as a means of increasing billing, saving time in research, disclosure and generation of materials and legal outputs in both contentious and non-contentious work. AI is a branch of computer science that is developing very rapidly in its commercial application and scope, and it continues to "learn" from itself and metamorphose at pace. For that reason, most guidance around the responsible use of AI cannot reasonably be expected to keep up-to-date.

For barristers, engagement with AI varies across a spectrum from wholesale adoption (including proactive promotion of its use within some chambers) to "wouldn't touch it with a bargepole" mentality. There is no doubt that AI has the capability to assist in a variety of essential everyday tasks for those of us at the Bar and, in theory, there is no problem with using AI to identify applicable legislation, or introduce us to resources likely to assist our research, or jogging one's memory as to the authority that is on the tip of your tongue, or producing a template document. In light of our various professional and/or legal obligations, in practice it's important to be aware of the potential risks and pitfalls that AI can pose. This article considers the application of AI for the purpose of barristers' research for the purpose of citing supporting authorities in court documents.

There is currently little official guidance for the Bar and the Judiciary in respect of the use of AI. The best known is the Artificial Intelligence Guidance for Judicial Office Holders, published on 31st October 2025.[1]

The Bar Council's IT Panel, in consultation with the Bar Council's Ethics Committee and Regulation Panel, has published updated guidance regarding the use of Generative AI software based on LLMs. While, as the document itself makes clear, it does not constitute "guidance" for the purposes of I6.4 of the Bar Standards Board Handbook, it is a very helpful and measured document, and is expressly intended for all barristers and chambers. That (currently) 11-page document ought to be recommended reading for those barristers thinking about or already using AI in their practice because it provides just enough information to understand the nature of LLMs/Generative AI to understand the challenges (and benefits) it can bring.

It helps to be aware of what AI is and what it is not, what it can and can't do. In this context, by AI I refer to the most commonly used genres: large language models ("LLMs") and generative AI both of which can search for and collate documents and data likely to be relevant to the search string input by a human. Generative AI creates new outputs which might include images, video, code, or text but are still based on existing data. Both are designed to predict rather than verify content so the accuracy and reliability of what they return or produce is not guaranteed. Their "intelligence" is derived from the model's training data which can come from infinite sources, including the information users add or upload.

Contrary to popular assumption, LLMs and Generative AI tools do not analyse or interpret information but they do collate, they have no concern for concepts like truth or accuracy but they do fabricate or "hallucinate" information (including authorities and citations), and their algorithms and processes for extracting training data make them prone to bias and error. As a result, hallucinations are an inherent problem in LLMs and Generative AI and are a feature openly recognised by AI tools and platforms. If you ask Open or Closed AI platforms why they hallucinate information, they will explain that they operate by predicting likely next words from training data and can lead to them generating statements that sound entirely plausible but are simply not correct. Their anthropomorphic behaviour in chat functions arises from precisely the same mechanism.

In 2025, our attention was drawn to the conjoined cases of *Ayinde and Al-Haroun*, some of the facts of which are perhaps less extraordinary than we might like to imagine. In essence, the cases were conjoined having been referred to the Divisional Court under the Hamid jurisdiction (here concerned especially with the court's power to enforce lawyers' duties to the court). Both cases involved, inter alia, the use of non-existent authorities, misrepresentation of statutory provisions, and citation of authorities to support propositions that the minority of extant (as distinct from purely fabricated) authorities simply did not support.

In brief summary, this led to consideration of whether the threshold had been met for contempt of court with significant professional disciplinary consequences for some of the lawyers involved.

The problem is of course not confined to the Bar. In a recent Scottish employment tribunal case, the judge found himself under scrutiny for having to make a series of corrections to his lengthy written judgment, after it was noted to contain a number of misquotations. One such misquotation was said to have come from a judgment of the Employment Appeal Tribunal from 2020 which did not in fact include the words attributed to it. It then transpired that there were other errors, including apparently fabricated "quotations" from other authorities. The strong suspicion in the national press and in legal commentary was that the errors had arisen from the unchecked use of information retrieved by AI.

Whatever really happened in those cases, it is worth standing back for a moment to acknowledge that regardless of the means by which authorities come to our attention, no barrister should be relying on an authority or statutory provision that they have not themselves read in full, and in proper context. Everyone at the Bar knows the central importance of our overriding Core Duty to the court in the administration of injustice including refraining from knowingly or recklessly misleading or attempting to mislead the court. Outcome oC1 of the Bar Standards Board Handbook reminds us that the court should be able to rely on information provided to it by those conducting litigation and by advocates who appear before it. In respect of the accuracy and reliability of submissions we make orally and in writing, the buck stops with us.

So the message here is simple: if you are tempted to use AI tools to retrieve quotations, citations, or general principles, always check the original authorities and/or provisions before citing or relying on them.

Postscript: A disclaimer and three relevant developments that are recent or on the horizon:
Disclaimer: For want of word count, this article has not discussed the UKGDPR, legal professional privilege or confidentiality ramifications of Generative AI but in addition to risk of hallucinations they are all important considerations, especially for those who feel comfortable uploading contracts, expert reports, witness evidence or medical records onto AI platforms to generate speedy chronologies or other documentation. It is essential, for example, that barristers choosing to use AI in that way satisfy themselves that whatever (presumably) closed AI platform they are using is suitably secure and don't use all input data as training data that can be deployed elsewhere. That a platform or tool is "Closed AI" does not mean that it is secure or that the data input will remain confidential.

Developments:
-The Civil Justice Council has established a working group on the use of AI in civil proceedings.

-Of relevance to Part 35 experts and those working with medicolegal experts in particular, the Medicolegal Knowledge Partnership (MLKP) has recently launched its Guidance on the responsible use of Generative Artificial Intelligence (AI) and Large Language Models (LLMs) for clinical negligence expert witnesses.

-We await amendments and/or additions to the Civil Procedure Rules as to the use of LLMs and/or declarations as to the same, most obviously in relation to the provisions of Part 35 and the associated Practice Direction governing expert evidence, but also in respect of documents verified by a statement of truth and in relation to declarations as to the nature and extent of AI use.

Since this article was written, the BSB has launched its Guidance on the use of Artificial Intelligence and Other Technologies (valid from 18 May 2026) which outlines general ethical considerations, competent use of technology, considerations before adopting a new technology, procedures for management and use of technology, duties, obligations and responsibilities each time you use AI and when others use it.

This can be found at: https://www.barstandardsboard.org.uk/static/5e1baa5c-614c-4105-afae9a9ccdf8d97b/c0d1ed62-fcad-4a68-8ab810de5fa9b116/Artificial-Intelligence-Guidance-May-2026.pdf

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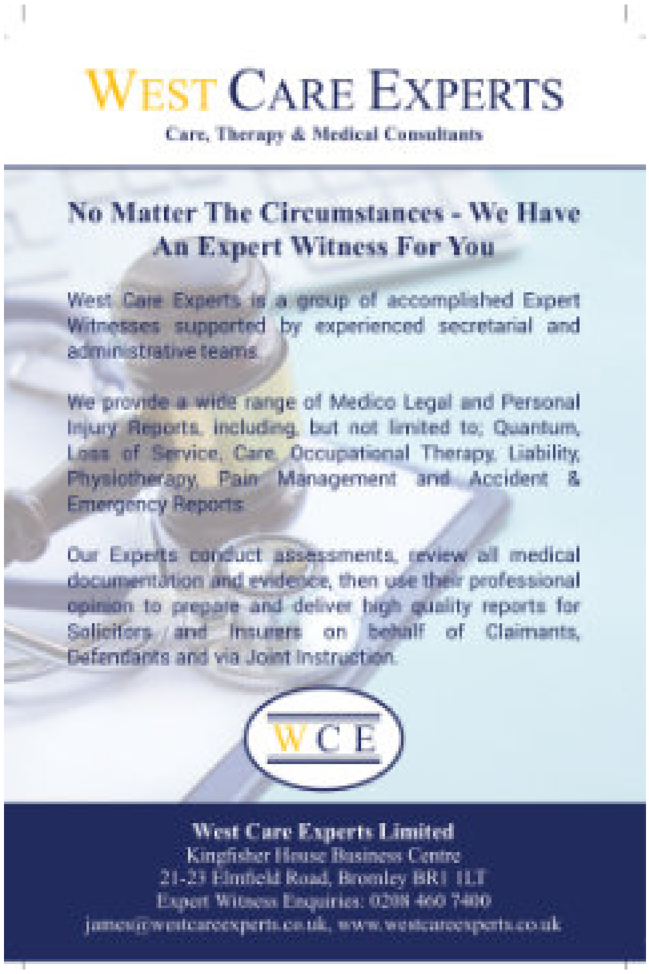
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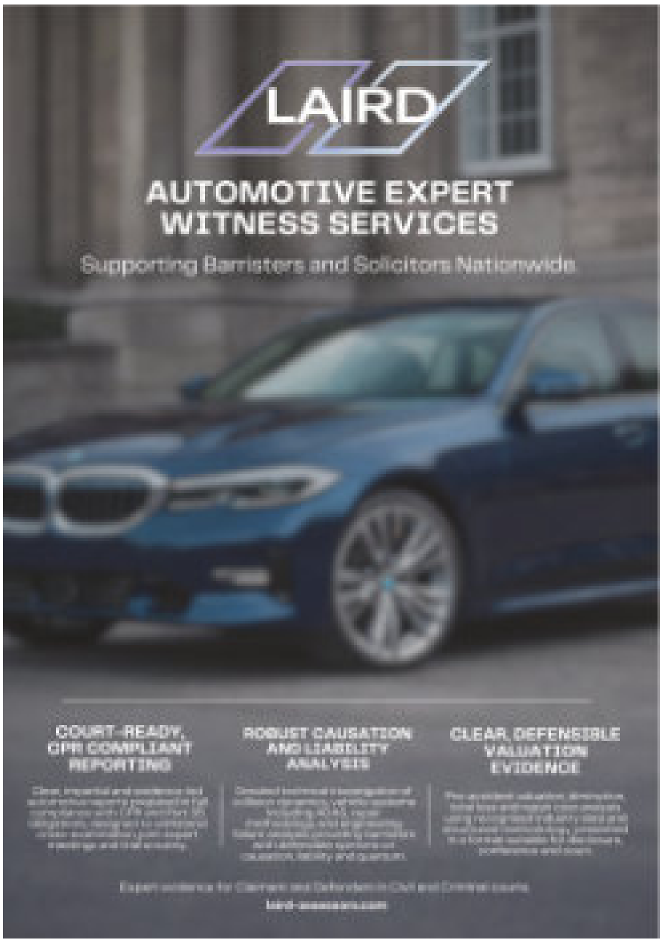
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•Upper and lower limb disorders
•Whiplash Injuries
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