

Sussex Law Society – Crime Update, November 2019

Better Case Management forms - Credit for a guilty plea

Crown Court judges are routinely refusing to apply the full 33% credit at the PTPH stage where guilty pleas have not been indicated in the lower court. This is the case even where full admissions have been made in interview and where there has been no opportunity for a defendant to enter or formally indicate a plea at the first hearing in the Magistrates' Court (so any indictable only offence). The rationale seems to be that a guilty plea can, and should, be indicated on the Better Case Management Form ("BCM").

In *R v Ahmed Yasin* [2019] EWCA Crim 1729, the Court of Appeal refused an appeal on the ground that (amongst others), the defendant should have received full credit for a guilty plea entered at the crown court where no indication had been sought at the first hearing. The Court held that responsibility for completing the form and indicating a guilty plea *"clearly rests with the parties and their legal representatives [and] ... is not a matter for which the Magistrates' Court can be held responsible."*

Restraining Orders – Contact with children

Defence advocates regularly find themselves negotiating the duration and terms of proposed restraining orders in both the Magistrates' and crown courts, particularly in cases of a domestic nature where there is a long history between the defendant and complainant and, often, children are involved.

In *R v Osman Awan* [2019] EWCA Crim 1456, the Court of Appeal amended a restraining order to allow for indirect contact via named intermediaries to facilitate contact with children. The original order had provided for indirect contact only via a solicitor. It was noted that there were no ongoing civil or family proceedings and so neither party had a solicitor. It was further noted that to instruct a solicitor would cause the appellant considerable expense and disproportionately interfered with his right to a family life. The Court of Appeal held that it was common sense to allow this alternative and the crown court should not have made the order in the first place without the prosecution having consulted the complainant.

The judgement contains a helpful reminder that decisions as to the appropriate terms and duration of restraining orders should not be made with undue haste and the four principles set out in *Khellaf* [2017] 1 Cr.App.R (S) 1 should be addressed.

Sentencing Guidelines

There are new Sentencing Guidelines for various different types of Arson and Criminal Damage offences, including the racially and religiously aggravated forms of the offences, effective from 1 October 2019.

Private Prosecutions

Perhaps as a result of cuts to funding and limited resources of the CPS and Police, private prosecutions appear to be on the rise.

The Private Prosecutor's Association has published the first edition of the Code for Private Prosecutors; essential reading for those bringing any type of private criminal proceedings as well as for those instructed to act on their behalf. The Code complements the CPS Code for Prosecutors and focuses on areas presenting particular challenges for private prosecutors. Close attention should be

paid to the guidance on the mechanics of investigating and commencing a private prosecution and its' interplay with the costs regime, which is not straightforward.

In *Holloway v Harrow Crown Court and Others* [2019] EWHC 1731 (Admin) we are reminded of the Code's most important message: Private prosecutors and their agents must act (and be seen to act) fairly and with integrity at all times. A private prosecutor is a minister of justice and has a duty to undertake an independent and objective analysis of the evidence before commencing proceedings. A failure to do so is an improper act, which can have serious costs consequences.