



Scottish Justice Newsletter – March 2019

Welcome to the March 2019 edition of the Scottish Justice. Included in this edition are an update on Membership of the SJA, changes in the Executive of the Scottish Justices Association, and an introduction from the new chairman Gordon Hunter, A short report regarding ‘Digital Justice’, which was attended by four members of the Executive, a report regarding a working party in reasonable adjustments in the Criminal Justice system regarding defendants with mental health conditions and/or learning disabilities, a note on JP Expenses and Allowances, and a short article related to research on “Extraneous factors in judicial decisions”.

Any communication to the Scottish Justice can be sent to our email address

editor@scottishjustices.org

Current Membership of the SJA

Our most recent membership totals are as follows:-

G&S - 20

SSD&G – 66

TC&F – 45

NS – 46

GH&I – 34

L&B – 30

This gives a total membership of 241.

Changes in SJA Executive

At the recent AGM in November 2019 Tom Finnigan retired as Chair, and Gordon Hunter was voted on as Chair. Grace MacLeod was elected Vice Chair (Gordon Hunter having stepped up). Other office holders remain as detailed in the Annual Report.

The Executive has two new members, Mandy Shand (Tayside, Central and Fife) and Sue Cook, a co-opted member from Lothian and Borders.

Introduction and Welcome from Gordon Hunter

I became a qualified Justice of the Peace in South Strathclyde Dumfries and Galloway in 2010. I normally sit at Stranraer and Dumfries JP Courts I have been a member of the Justice Appraisal Committee since 2011, (now known as the JP Appraisal & Training Committee).

I represented the SJA at the Commonwealth Magistrates and Justices Association of which I am an individual member, in Guyana and Tanzania and would hope to do so again. Speaking personally I would emphasise to all JP's that it is now more than ever a vital time for the wider judicial system to fully embrace the JP's role, which has a long and honoured past. However it cannot be allowed to reduce in importance any further. I will continue to campaign for the appointments of JP's, and indeed the proper funding and training for all JP's.

During my tenure as Chair of the SJA I feel it is vitally important that we capture the importance of technology in the administration of the SJA to encourage a much more inclusive membership across all areas of Scotland. To achieve this a working party has already been formed to gather information and examine possible ways forward, particularly in relation to specific methods of communication.

It is obvious, in recent years, that there has been a decline in JP Court cases overall and the number of JPs is slowly declining. With the advent of various other forms of diversion ever increasing. I will be making it my goal to ensure that there is a strong and independent JP role within the overall judiciary system and that all JP's are fully supported by the SJA to remain impartial, honest and competent.

I am looking forward to working as Chair of the association. I can be contacted via your own local SJA representative, via the Scottish Justice email above, or via the SJA web page at <http://www.scottishjustices.org/contact>

Gordon Hunter

Digital Justice

Four members of the SJA Executive took part in a conference organised by Holyrood (Connect), entitled Digital Justice Scotland 2018. Over a hundred delegates attended representing the Scottish Government, Police Scotland, The Scottish Courts and Tribunal Service and various other organisations from across both the public and private sectors. The conference was chaired by former First Minister Henry McLeish.

The programme comprised a series of presentations and workshops where we heard of some of the current initiatives being developed both in Scotland and further afield to take advantage of what modern technology can offer to the justice system. We are all familiar with CCTV monitoring wherever we go. We know of experiments being carried out where police are equipped with body worn cameras and electronic notebooks but in some countries the results of tracking the digital footprint left by offenders is taken a lot further.

We heard how in Chicago digital information centres have been established to influence the deployment of police patrols across the city. This had resulted in a dramatic fall in gun crime. In New York State facial recognition systems had helped to resolve over 7,000 ID theft fraud cases in the last 18 months. In the Netherlands 1.6 million people had registered to participate in citizens' alert organisations where information was passed electronically to the police who can then respond in real time. In Argentina experiments are on-going in the use of more sophisticated methods of monitoring offenders as an alternative to sending them to prison.

It has been clearly recognised in the United States that the success of these approaches depends very much on gaining public support and on building confidence. However increased digital activity can be intrusive to the lives of the public at large and so in many cities Privacy and Ethics Committees have been set up to approve the introduction of new monitoring systems.

The basic message from the conference was that in order for society to derive maximum benefit, at some point it will be vital that all these individual initiatives and technologies converge in order to ensure that the speed of justice is accelerated and that the experience of victims, witnesses and their families is greatly improved.

Attendance at the conference was free of charge to members of the judiciary and public service employees.

Brian Wood

Working Party – Adjustments in Criminal Justice System for people with mental health conditions and/or learning disabilities.

On 11th January 2019, in Glasgow. SJA Chair, Gordon Hunter, participated as a member of a working party inquiry into reasonable adjustments in the criminal justice system in conjunction with the Equality and Human Rights Commission. The Commission is carrying out a statutory inquiry in England, Wales and Scotland into the provision of reasonable adjustments in the criminal justice system for people with mental health conditions and/or learning disabilities, using powers under the Equality Act 2006.

Also represented on the working party were, Apex Scotland, Scottish Commission for learning Disability, Faculty of Advocates, Law Society of Scotland, Glasgow Bar Association, Social Work Scotland, SACRO, Scottish Offenders with Learning Disabilities and a number of Universities and other interest groups.

The terms of reference:

1. The inquiry will examine the procedural and practical adjustments that are required to ensure that people with mental health conditions, learning disabilities, acquired brain injury and neuro-diverse conditions can participate equally and effectively in criminal proceedings against them in (a) England and Wales, and (b) Scotland.
2. The inquiry will look at the experience of disabled defendants/accused at the pre-trial stage of the criminal justice system and specifically:

- (a) what procedural and physical adjustments, and forms of support, are required to ensure disabled people are able to participate effectively in the process and ensure reasonable adjustments required for trial are identified;
- (b) whether these adjustments are being made in practice, and if not, why not; and (c) the impact of court modernisation, including virtual processes and video-link, on disabled defendants/accused.

3. The experience of defendants/accused with mental health conditions, learning disabilities, neuro-diverse conditions and acquired brain injury will be considered insofar as these individuals meet the definition of disability set out in s.6(1) of the Equality Act 2010.

4. The focus of this enquiry is the pre-trial stage of the criminal justice system. We may consider aspects of the investigative stage, such as police interview, where the evidence indicates this is necessary to understand barriers to the provision of reasonable adjustments at the pre-trial stage, including diversion.

5. The Inquiry's focus is on the position in the calendar year 2017-2018 but it may examine earlier evidence where relevant.

6. The enquiry will consider proposals for future reform where relevant, including UK and Scottish Government proposals to modernise the court system and review criminal procedure rules.

7. The inquiry will make recommendations as appropriate.

It is intended to publish the final inquiry report in December 2019

Gordon Hunter

JP Expenses and Allowances

The SJA Executive Committee are aware that a number of our members are dismayed at the SCTS decision to require receipts in support of meal reimbursement claims. In many Sheriffdoms these have been regarded simply as allowances and paid in full provided that some expenditure has been incurred. The SJA has pointed out to SCTS that this policy is contrary to that used for Magistrates in England & Wales, and indeed in Scotland Jurors and Crown Witnesses are not required to submit receipts with subsistence allowance claims. SCTS are however maintaining their policy and for the time being any subsistence claims should be accompanied by receipts. It should be pointed out for clarity however that when a JP brings in their own meal they can claim for the items consumed provided these are highlighted on a till roll from the shop where purchased.

The SCTS have confirmed that they are currently undertaking a full review of JP Expenses and Allowances and plan to publish a consultative document on this on the Judicial Hub in the near future. The SJA Executive Committee believe it would be appropriate to see the full revised draft policy document before making a formal response. This is therefore an issue that we do expect further activity upon in forthcoming weeks. Members should be aware however that the SJA will represent their best interests at all times.

Dennis Barr

Food for Thought?

In February of this year a respected (English) High Court judge* was alleged to have fallen asleep ‘momentarily’ during a hearing. While such instances are rare, they are not unknown (E.g. Grunstein and Banerjee 2007), but it also highlights a potential difficulty for judges, in that while the standard view of judging is that of an impartial, ideally infallible logic driven assessor of evidence, there is also the view that judges are human beings, of necessity subject to the usual demands of human frailty.

This view, sometimes described as ‘Legal Realism’ is associated with the phrase “Justice is what the judge ate for breakfast”, usually credited to the American judge Jerome Frank.

Frank stated :-

“Out of my own experience as a trial lawyer, I can testify that a trial judge, because of overeating at lunch, may be somnolent in the afternoon court-session that he fails to hear an important item of testimony and so disregards it when deciding the case” (Courts on Trial’ p162)

In 2011 Danzinger et al published research which followed eight judges over a 10-month period, over which they heard a total of 1,112 parole hearings.

The authors assessed the likelihood of parole being granted, and matched each hearing against the time of day.

The ‘success rate’ started at about 65% at the start of each day, *falling to near zero* at the end of the morning. Immediately after lunch the success rate rose again to 65%, and over time *fell back towards zero* towards the end of the day.

This was a huge difference, and while other papers critiqued the original findings (e.g. Glöckner 2016 argued that at least some of the effect could be an artefact of the order in which the cases were heard,) there remains a consensus that decision making was nonetheless affected by the physiological state of the judges.

There is little doubt that such factors as varying blood glucose levels (Orquin and Kurzban 2016) and hunger (Anderberg et al 2015) radically affect behaviour in many other areas of human performance. However there seems comparatively little crossover from these types of studies in other areas of academic interest (physiology, psychology) to the reality of judging.

Danzinger et al make some suggestion as to how to mitigate this effect, which include taking a break to eat a meal, short rest breaks, and being aware of glucose control.

Perhaps most salient might be the observation that merely being aware of this effect might be the best counter to arbitrary judicial decision-making. Each judge might be in the best position to assess their own performance.

This short article is offered in the light of this.

*The judge in question was ‘given advice’.

Disclaimer:-

Nothing in this article represents the views of the Scottish Justices Association.

References:-

Frank J (1949) *Courts on Trial*, Princeton University press

Grunstein R and Banerjee, D “The Case of “Judge Nodd” and other Sleeping Judges—Media, Society, and Judicial Sleepiness”, *Sleep*, (2007) Vol 30, Issue 5, Pages 625–632

Danzinger, S, Levav, J and Avnaim-Pesso, L (2011) “Extraneous factors in judicial decisions”, *Proc Natl Acad Sci U.S.A.*, 108(17):6889-92

Orquin, JL and Kurzban R, A meta-analysis of blood glucose effects on human decision making, *Psychol Bull*, 2016 May;142(5):546-67

Anderberg R , Hansson C, Fenander M, Richard J Dickson S, Nissbrandt, H, Berquist F and Skibika K, The Stomach-Derived Hormone Ghrelin Increases Impulsive Behavior, *Neuropsychopharmacology*, 2016 Apr; 41(5): 1199–1209

David Ferguson