Is the criminal justice system delivering value for money?

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Corporate Crime analysis: Responding to the National Audit Office's (NAO) report on efficiency in the criminal justice system, Edward Henry, barrister at QEB Hollis Whiteman Chambers, warns that the administration of justice—particularly criminal justice—is not a business and can never be run on narrow cost-centred imperatives.

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Value for money still lacking in criminal justice system, LNB News 01/03/2016 187

The criminal justice system, despite having improved case management since 2010, is still not delivering sufficient value for money, the NAO has found. In a report on the efficiency of the system, the regulator found, among other things, delays and aborted hearings created extra work, wasted resources and undermined confidence in the system.

Why has the NAO produced this report?

The NAO has a statutory responsibility to scrutinise public spending for Parliament. This report 'examines what the opportunities are to improve the efficiency of proceedings in the criminal justice system in England and Wales', building on the Leveson Review of January 2015. It aims to provide an 'evidence-based assessment of the areas of inefficiency and to try to quantify these where possible'.

What are the key findings of the report?

The NAO claims that the criminal justice system is not currently delivering value for money. The headline facts are that only 33% of crown court trials are effective on the day that they are listed, so around two-thirds of criminal trials do not proceed on the day they were originally scheduled. A total of £21.5m is spent by the Crown Prosecution Service (CPS) on cases that don't go to trial and there's been a 34% increase in the backlog of cases since March 2013. The report states that 'delays and aborted hearings create extra work, waste scarce resources and undermine confidence in the system'—a finding with which no one will disagree.

Do you think the findings are reflective of the challenges faced in practice?

I would agree that 'delays are getting worse against a backdrop of continuing financial pressure'. However, the NAO's conclusion that the criminal justice system does not offer value for money is one that I question. The cuts in public funding and the huge reduction in fees and remuneration are not directly referred to in this report. While the NAO's perspective is necessarily driven by the 'bottom line', the administration of justice—particularly criminal justice—is not a business and can never be run on such narrow cost-centred imperatives. The perception of conveyor belt, conviction driven justice is a real danger.

The NAO points out that if the 61,473 'either way' cases heard in the crown court in 2014/15 had been disposed summarily in the magistrates' court, court running costs would have fallen by £45.1m—but how is this to be achieved without abrogating the defendant's right to jury trial? (As an aside, the NAO mentions that post-conviction committals to the crown court for sentence are available if the sentencing falls outside the magistrates' powers.)

There is an obligation on the defence to do all it can, legitimately, to resist this trend, whenever it arises, whatever the source, be it judicial, prosecutorial or ministerial. That said, there are statistics that cause real concern as to case management and accountability. For example, the Legal Aid Agency spent more than £93m funding defence counsel in cases that did not go to trial—excluding guilty pleas—this must include discontinuances, reflecting poor charging decisions, an inveterate problem that still persists.

What recommendations have been made, and how effective do you believe they will be in improving efficiency?

The NAO wants a congruent objective across all participants in the system and greater co-operation. The Criminal Justice Board, which oversees it, has been allocated an almost metaphysical task: to define what 'good' looks like for the criminal justice system as a whole. But what constitutes a 'good' result, given the competing tensions and different aims of the parties involved? I am afraid it is at once at risk of being too prescriptive, or alternatively hopelessly vague and non-specific. Generalities, slogans and buzz-words do not provide solutions. Isn't it obvious that a police officer, the CPS, some list officers, and maybe not a few judges, might be inclined to think that their lives would be a lot easier if more defendants pleaded guilty? Wouldn't a list officer be delighted by a surge in cracked-trials, given the backlog, during a particularly crowded court diary?

How do the recommendations sit with Sir Brian Leveson's Review of Efficiency in Criminal Proceedings (dated January 2015) and the ongoing Better Case Management (BCM) initiative?

The Leveson Review prompted the BCM initiative—viz a renewed emphasis on a uniform national early guilty plea scheme, with the risk of the conviction conveyor belt I have already referred to, and better management of document-heavy cases. BCM maintains that it will shorten time-scales, and reduce the number of interim hearings, but I am completely unconvinced by this and have found precisely the opposite. Some courts are micro-managing cases, of normal complexity, with repeated mentions, for no satisfactory reason. Ironically, the NAO mentions that problem cases arise because of serious undetected errors arising at an early stage.

I believe that the Leveson Review was a missed opportunity and that the more radical proposals of Lord Justice Auld back in 2001 of a Unified Criminal Court, ought to have been implemented. Had it been introduced, the Unified Criminal Court would have long ago advanced the aims of the Criminal Procedure Rules 2015, SI 2015/1490, BCM, and the 'paperless court'. The right court would have taken charge of a case at the earliest opportunity, with a unified criminal code of procedure and a common IT and administrative system.

More fundamentally, Justice Auld saw that professional standards were inextricably linked to resources, whereas the 'mood music' of recent years has been relentlessly discordant on this issue. Auld identified four prerequisites:

- there had to be a strong, independent and adequately resourced prosecutor in control of the case from the point of charge
- it was an essential that there would be an experienced defence lawyer, motivated and adequately paid for pre-trial preparation on the other side
- the defence had to have ready access to clients in custody
- finally, a better system than at present of communicating and transmitting material between all involved in the criminal justice process and with the court had to be introduced

In the last 15 years, the first two of those four objectives have been progressively degraded. The CPS and the defence have been undermined in consequences. As for the last two, these are now interlinked—the paperless court will founder if defendants on remand are not afforded access to computers so that they can participate. It remains to be seen if these vitally important innovations will succeed. There can be no digital case if the defendant is denied access to it.

Edward Henry is a leading specialist defence junior whose practice encompasses all forms of serious crime, business crime and regulatory matters. He also advises on professional negligence and liability in the context of criminal claims. Edward is widely regarded for his expertise in matters involving experts and disclosure and has been instructed to act in over 40 murder trials, cases of terrorism, serious sexual assault, drugs, money laundering, immigration fraud, people trafficking and firearms.

Interviewed by Kate Beaumont.

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