

SKILLS LOGBOOK

Name [REDACTED]

| Skills Element | Learning Outcome |
|--|---|
| Managing Litigation Work | Assembly Skills |
| <p>Evidence Provided:</p> <ul style="list-style-type: none"> • Application to Vacate Trial dated 13 January 2023 • Letter to [REDACTED] dated 22 June 2023 <p>Locate and interview witnesses</p> <ul style="list-style-type: none"> • Attendance note tel call witness 24 March 2023 • Attendance note whatsapp video call with witness and interpreter 14 April 2023 • Email out witness 14 April arrangements for trial 2023 • Instructions [REDACTED] dated 6 February 2023 | <p>Page in Portfolio</p> <p>217</p> <p>227</p> <p>231</p> <p>233</p> <p>235</p> <p>236</p> |
| <p>How does this meet the outcome?</p> <p>Application to vacate trial dated 13 January 2023</p> <p>Identify the relevant law and procedural rules</p> <ul style="list-style-type: none"> • 24.C.30 – 32 Part VI Trial, Criminal Practice Direction 2015. <p>I applied to vacate the trial date in matter in which I had been instructed 4 days before the listed trial. Up until then the defendant had represented himself. Several issues had been identified which meant that the trial could not be effective on the date listed.</p> <p>In compliance with the procedural rules, I applied in writing to the court as soon as practicable and served this on the court and prosecution. Prior to service on the court, I wrote to the Prosecution to seek their views/agreement or objection.</p> <p>Within the application, I set out full and accurate information including the reasons for the application, a chronology of the case and an assessment of the interests of justice test.</p> | |

Letter to HMP Lindholme dated 22 June 2023**Identify the relevant law and procedural rules**

- **Automatic release provisions as set out at Section 244ZA Criminal Justice Act 2003**
- **Principle of non-retroactivity of criminal law – Article 7 ECHR**
- **Section 130 of the Police, Crime, Sentencing and Courts Act 2022**
- **Court of Appeal Authority, R v Jeffries (Adam Arthur) [2022] EWCA Crim 1503)**

I was instructed to write to [REDACTED] to seek the review of a prisoner's conditional release date. The sentence imposed was 8½ years which amounts to 102 months. The date indicated for [REDACTED] conditional release is 68 months from the date of sentence which amounts to two thirds of the sentence.

It was our submission that [REDACTED] conditional release date should be 51 months from the date of sentence (half the sentence) which would be [REDACTED]

The letter acknowledged recent amendments to the automatic release provisions for offenders sentenced to determinate sentences and set out the law that defines the criteria for offences that fall under the changes. Our submission was that one of the criteria did not apply in the prisoner's case.

To support our assertion, we referenced comments by the sentencing judge who extended the disqualification term by half of the sentence to reflect the time the prison would be in prison. Therefore, the Judge sentenced the defendant on our interpretation of the law.

I also referenced a recent Court of Appeal Authority, R v Jeffries (Adam Arthur) [2022] EWCA Crim 1503) which, whilst not considering the point in our case directly, contained relevant comment regarding the sentencing in respect of the same offence. The Judges comments and interpretation of the law supported our argument.

All relevant law and sentencing comments were printed and sent with the letter which was sent hard copy to the prison.

Locate and interview witnesses

I had identified a potential defence witness in my case where the defendant had been charged with driving whilst over the prescribed limit. Client's defence was that at the time of driving he was not over the limit. After the incident he had commenced drinking alcohol. The witness was living with the defendant at the time of the incident and would remember the client arriving home.

I arranged to speak with the witness over whatsapp video call – see initial call attendance note of 24 March. It became evident that the witnesses command of English was extremely limited and as such he was unable to answer a lot of my questions. I was also unsure whether the information I had recorded was accurate.

I therefore arranged a further call over Teams with an [REDACTED] linguist present to assist with interpreting. I had arranged for the interpreter using a interpreting service that I had used for some years.

The witness was unable to link to the Teams meeting and so I promptly set up a group video call on whatsapp. We were then able to communicate freely.

It was clear that the evidence of the witness would be extremely helpful to the defendant at trial and so I sought his attendance. The witness had previously advised me that he didn't want to have to travel from [REDACTED] because of the travel costs and losing a day's salary. Between my earlier call and the meeting with the interpreter I had explored with the client regarding funding and they had agreed to pay whatever the cost to get the witness to the trial. Hence I was able to confirm that all his expenses would be paid in full.

At trial, the witness was entirely credible in his evidence and was perhaps a key element in securing an acquittal.

Locate and Instruct Expert witnesses in accordance with relevant criminal procedure rules

Instructions [REDACTED] dated 6 February 2023

The instructions demonstrate that I have thought carefully about what information should be supplied and good practice by asking open questions of the expert to allow them the scope to form their own unbiased opinion. In the instructions, I have reminded the expert of their duty to the court and their obligations under the Criminal Procedure Rules and Practice Directions.

Practical considerations including the date for service of the report and requirement for the expert to attend trial have also been incorporated.

Opportunity for further development, (if any)

None identified

**Completion date:
1 December 2023**

Signed (applicant)

[REDACTED]

Date:

[REDACTED]

SKILLS LOGBOOK

Name [REDACTED]

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|--|--|
| Skills Element Managing Litigation Work | Learning Outcome Instructing Advocates |
| Evidence Provided: <ul style="list-style-type: none"> • Instructions to Counsel dated 10 March 2023 • Email thread with Counsel's clerk to confirm fee estimate. • Screenshot 10 March 2023 – conversation with client seeking agreement to instruction of Counsel | Page in Portfolio 249 246 254 |
| <p>How does this meet the outcome?</p> <p>It is necessary to instruct Counsel in various capacities, most commonly we instruct Counsel to represent our clients at court. On other occasions we may seek views from barristers who specialise in a niche area of law.</p> <p>Instructions to Counsel dated 10 March 2023</p> <p>We were instructed to act on behalf of a client defending statutory noise nuisance proceedings under the Environment Act 1990.</p> <p>Our client is a large logistics company who operate from a site owned/managed by [REDACTED] who are joint charged with the offence. The complainant alleges that [REDACTED] and/or [REDACTED] are responsible for statutory noise nuisance emanating from the site and have failed to abate the noise pursuant to Offences under S79(1)(g)EPA and S82(6) EPA.</p> <p>During the course of the proceedings, solicitors for the second defendant, wrote to us to warn our client to abate the nuisance, failing which they would have no alternative but to enforce the covenants in the lease which may including seeking an injunction. We were given 14 days to respond.</p> <p>In order to respond to the letter, we required advice on the lease, an in particular a clause obliging our client not to carry out on or from the property any activity which may become a nuisance, annoyance or inconvenience to the occupiers of any premises in the neighbourhood. Our client's contention with this was that the landlord was fully aware that they would be operating throughout the night. Furthermore, the landlord had not disclosed the presence of residential barges in the area.</p> <p>We sought a specialist chancery barrister to provide advice on our client's position in the light of the lease and the law. The advice sought fell outside our knowledge and experience and the expertise of the barrister instructed in the noise nuisance proceedings.</p> | |

We made it clear in the instructions that advise in relation to the Magistrates' court proceedings was not sought and that advice should be limited solely to steps that can be taken to assist our client in the context of the threat of enforcement of the covenant.

Given that counsel instructed in the noise nuisance proceedings was a barrister at No 5 Chambers in Birmingham, it was practicable to instruct counsel from the same chambers to allow informal discussions to take place.

In order to obtain my client's instructions in respect of this work, I sought an estimate of counsel's fee from his clerk in the first instance.

Following receipt of the fee estimate, I contacted the client to confirm and obtain agreement to instruct the chancery lawyer. See screenshot from case management system.

The bar standards board sets the mandatory standards that all barristers are required to meet.

The ten core duties are:

- Core Duty 1: You must observe your duty to the court in the administration of justice.
- Core Duty 2: You must act in the best interests of each client.
- Core Duty 3: You must act with honesty and integrity.
- Core Duty 4: You must maintain your independence.
- Core Duty 5: You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession.
- Core Duty 6: You must keep the affairs of each client confidential.
- Core Duty 7: You must provide a competent standard of work and service to each client.
- Core Duty 8: You must not discriminate unlawfully against any person.
- Core Duty 9: You must be open and co-operative with your regulators.
- Core Duty 10: You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Opportunity for further development, (if any)

Completion date: XXXXXXXXXX

Signed (applicant)

Date:

SKILLS LOGBOOK

Name



| Skills Element | Learning Outcome |
|---|---|
| Managing Litigation Work | Experts Instructing Other Professionals |
| <p data-bbox="193 564 796 593">Evidence Provided:</p> <p data-bbox="193 640 796 669">Experts</p> <p data-bbox="193 712 796 741">Instructions to expert dated 24 October 2023</p> <p data-bbox="193 784 796 813">Part 19 Criminal Procedure Rules 2020</p> <p data-bbox="193 855 796 920">Criminal Practice Directions 2015 (CPD V Evidence 19A)</p> <p data-bbox="193 963 796 992">Instructing Other Professionals</p> <p data-bbox="193 1034 796 1064">Email to CPS dated 13 January 2023</p> <p data-bbox="193 1106 796 1171">Letter to West Yorkshire Police Prosecuting Team dated 11 January 2022</p> | <p data-bbox="798 564 1398 593">Page in Portfolio</p> <p data-bbox="798 712 1398 741">263</p> <p data-bbox="798 1025 1398 1055">535</p> <p data-bbox="798 1095 1398 1124">537</p> |
| <p data-bbox="193 1276 1398 1305">How does this meet the outcome?</p> <p data-bbox="193 1348 1398 1377">See attached instructions to expert dated 24 October 2023</p> <p data-bbox="193 1420 1398 1668">The instructions include the case background including circumstances, procedural position and the specific areas on which we required opinion. I have included the relevant procedural rules to be followed when preparing the report and requirements. In this case, the insurer client had agreed funding for the initial stage of the case only. Subject to a positive report and an assessment that the case had reasonable prospects of success, funding to trial would be re-considered. I chose to omit that information to the expert as this could have been interpreted as seeking to undermine the expert's independence and impartiality.</p> <p data-bbox="193 1711 1398 1809">An expert may be instructed in order to challenge the prosecution case or to strengthen the defence case. Expert opinion evidence is sought where needed to provide the court with information outside the court's own knowledge and experience.</p> <p data-bbox="193 1852 1398 2022">In publicly funded cases, a proper case has to be made for the instruction of an expert before funding will be granted by seeking prior authority from the Legal Aid Agency. Therefore, one of the first preparation decisions to be made is whether an expert is needed and, if so, in what discipline and for what purpose. In order to make these decisions it is necessary to have a clear understanding of the live issues in the case and what an expert can be instructed to do.</p> | |

The factors to be considered include whether the proposed evidence will assist the court in its task, whether the witness has the necessary knowledge and experience, whether the witness is impartial in his or her presentation and assessment of evidence and whether there is a reliable body of knowledge, data or experience so that the expert's evidence can be tested.

I have experience of instructing experts across a wide field of expertise. Sometimes expert opinion is invited in an advisory capacity at an early stage, to consider the merits of providing formal instructions.

Where experts are instructed to provide formal evidence in the course of proceedings, they must prepare a written report which is then served on the prosecuting authority and court. Typically, in criminal cases, the prosecuting authority will then be expected to provide a response to the defence report. Thereafter the experts from both sides will be directed to hold a joint discussion and produce a joint statement of areas of agreement and disagreement. The expert will be required to provide oral evidence in accord with their report and be subjected to cross-examination.

I have set out below a summary of the different areas of expertise I have sought in my practice to date.

Digital forensics

(Incorporating computer forensics, cyber forensics, digital evidence recovery and internet forensics)

the examination of digital devices for the purpose of finding and recovering data that can be used as evidence in criminal proceedings.

Digital experts use specialist techniques to examine digital storage media and devices.

Such experts are often called upon in respect of cases involving the possession of indecent images of children, prohibited images of children and extreme pornography. Establishing how the images came to be on the device, what search terms were used and who may be responsible are areas within the experts' expertise.

Cell Site analysis

Used to determine the location of a mobile phone by determining which cells a mobile has connected to. This can be pivotal in placing defendants at the scene of a crime.

CCTV Analysis

I have instructed experts to analyse footage where enhanced imagery is sought or where we require the footage to be broken down into still images.

I instructed an expert to examine CCTV evidence and produce footage as a series of enhanced stills in a one-punch manslaughter case (pre DAC Beachcroft Solicitors). The footage was difficult to decipher due to poor quality. The expert was able to "clean" the footage and provide still images of each frame. It became clear that in the moments before the defendant drew his arm back to

punch the victim, the victim had attempted to assault the defendant first. We were able to advance self-defence. The defendant was acquitted.

Mobile phone analysis

I have instructed mobile phone analysis specialists on several occasions where mobile phone usage has featured in driving offence matters. For example, where there is an allegation that a driver was using a hand held device whilst driver, to text or use chat features.

As mobile phone communication has become more sophisticated, analysis is required to cover a broad spectrum of platforms including not only calls and SMS messages but also alternative communications systems including whatsapp, imessage, facebook messenger, signal and telegram. Usually a forensic examination – not only looking for the information readily available – but also looking for hidden or encrypted backups or fragments that remain after deletion.

Forensic Biology

Experts who can distinguish body fluid stains resulting from direct deposition from those resulting from secondary transfer or smearing. Often called upon to evaluate disputed accounts of events from suspects/defendants in cases of alleged rape and sexual offences.

DNA Profiling

DNA profiling provides the link of an individual to an incident. This has become a key element of forensic evidence in criminal cases and has led to many unsolved historical cases being resolved. Such expertise is vital in cases where identification is in issue.

In a previous role (over 5 years ago) I represented a defendant in a historical rape allegation where the defendant's DNA was captured following a minor road traffic incident. His profile was then matched on the PNC to DNA linked to two rapes in mid 1980s. It was a fundamental part of the defence case preparation to instruct an independent expert in this field to consider the DNA evidence in order to advise the client.

Alcohol and Drink Driving

An expert will be relied on to provide alcohol technical defence reports including BAC (blood alcohol concentration) calculations and assessments of the viability of spiked drink and hip flask defences. Also providing independent analysis of blood or urine samples where required.

See portfolio case

Forensic Collision experts

As a large percentage of my work is road traffic law related, I am very experienced in the instruction of forensic collision experts to conduct locus investigations, vehicle examinations and reconstruction investigations and prepare reports. Typically, in motoring offence cases, such evidence can be key to unlocking an understanding of the collision mechanics and the causes of such incidents.

The expert will examine all the physical collision data at the scene as well as electronic data such as telematics and CCTV to report on the circumstances of the collision. Then, using accepted

scientific methods in the fields of physics and maths will reconstruct the events leading up to the impact. Such information is vital to consider whether a driver is criminally liable.

These experts may specialise in certain fields of collision reconstruction.

By way of example, I have instructed [REDACTED] of [REDACTED] and [REDACTED] [REDACTED] has a particular expertise in vehicle-pedestrian collision and vehicle-motorcycle collisions. He has published a number of peer-reviewed papers on the subject of the calculation of the closing speed in a collision on the basis of the crush damage between the vehicles.

I have also instructed [REDACTED] of [REDACTED] on many occasions. [REDACTED] is a specialist on the human factors associated with the road user environment including dynamics such as visual capability and cognitive load, pedal error events and the effects of blinding sun on drivers. I have instructed him several times in respect of cases involving the dynamic of looming threshold.

Dog bite and Dog behaviour experts

An expert will usually be required in dangerous dog-related matters under the Dangerous Dogs Act 1991. Where there is an allegation that a dog has bitten someone in a public place or if a dog has been seized under the Dangerous Dogs Act, an expert can provide a dog behaviour assessment and will investigate alleged bites.

In 2021 I instructed an expert to analyse an alleged bite to a human's leg and conduct bite analysis by inspecting the dog and preparing bite casts. We further instructed him to report on the dog's behaviour.

Psychiatric and Psychology Experts

I have instructed psychiatrists in cases where we have explored whether a defendant's suspected mental illness has caused or influenced criminal behaviour. A psychiatric assessment is required in cases where there is a fitness to plead issue. This is a key factor in a trial as it determines whether the defendant has a full awareness of the trial proceedings and can provide an informed plea.

A psychiatric report is also required in circumstances where we may be submitting to the court that the defendant's actions were influenced by mental health issues and as such provides mitigation.

I instructed a psychiatrist to meet with my client and prepare a report in advance of a sentence hearing. The defendant had been found guilty of manslaughter and causing serious injury by dangerous driving after she had deliberately crashed head on into an oncoming vehicle to take her own life.

Pathologists

The role of a pathologist is to determine – by means of post-mortem examinations – the cause of death and the circumstances surrounding the incident which led to the death.

I have instructed pathologists in cases where the cause of death may be in dispute or where a second opinion is required for inquest purposes.

I have also instructed pathologists to provide injury causation reports.

I represented a defendant charged with causing serious injury by dangerous driving, the allegation being that he deliberately drove his taxi into a pedestrian following a fare dispute. The pathologist was instructed to comment on the victim's recorded injury (or rather lack of injury) and to provide an opinion on whether the scenario put forward by the complainant was credible.

Registers and Databases

I am familiar with the available registers and databases through which an appropriate expert may be identified and located. At DAC Beachcroft, we had an internal experts' register on the intranet from which we were expected to check for a suitable expert in the first instance.

The UK Register of Expert witnesses is a valuable tool and I have used this to find several experts.

Having worked in criminal defence practice for 14 years, I have the benefit of having worked with experts across a wide area of specialisms and thus am able to instruct experts with whom I have worked with and are therefore tried and tested. I am also able to draw from the experience of colleagues.

The relevant procedural rules to ensure that an expert is properly instructed

The relevant procedural rules governing the instruction of experts is found at Part 19 of the Criminal Procedure Rules 2020 and the relevant practice directions at 19A, 19B and 19C

For any practitioner reviewing expert evidence, the starting point is Part 19 of the CrimPR read in conjunction with the relevant Practice Direction at 19A to C. It is also worth taking time to reflect on the overriding principles of expert evidence as rehearsed by Gage LJ in *R v Lorraine Harris* [2005] EWCA Crim 1980 at [271]:

- Expert evidence presented to the court should be and seen to be the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.
- An expert witness should prepare independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise. An expert witness in the High Court should never assume the role of advocate.
- An expert witness should state the facts or assumption on which his opinion is based. He should not omit to consider material facts which detract from his concluded opinions.
- An expert should make it clear when a particular question or issue falls outside his expertise.
- If an expert's opinion is not properly researched because he considers that insufficient data is available then this must be stated with an indication that the opinion is no more than a provisional one.
- If after exchange of reports an expert witness changes his view on material matters, such change of view should be communicated to the other side without delay and when appropriate to the court.

Further guidance was provided in the commentary in *R v Alex Julian Pabon* [2018] EWCA Crim 420:

When instructing experts, lawyers should always be very careful to ascertain the extent of the witness's expertise and engage an expert of a suitable calibre, however difficult that might be. There should be thorough research and continual assurance on those they seek to instruct. Both instructing party and expert have an equal role to play. They must ensure that the expert is fully aware of his obligations to the court under the Criminal Procedural Rules and not merely rely on his own assurance that he has signed the necessary declarations as to his conduct and duty. It is the expert's duty, under Part 19 of those rules, to let the Court know if any questions (during cross examination or otherwise) would require answers which would be outside their area of expertise.

Experts should not ask others to write some of their report and then pass it off as their own. It emerged during the Appeal that a colleague of Mr. Rowe's had drafted sections of his report, a fact which Mr. Rowe did not disclose.

When in receipt of an expert report, the first step should be to check that the expert has complied with the relevant formalities as set out in the CrPR. This is a good exercise to provide an indication on whether the expert is familiar with the relevant guidance and is sufficiently diligent.

Next, it is crucial to examine the expert's methodology against existing independent data which is capable of being independently reviewed. If no independent review is possible, it could be argued that the evidence cannot be adequately tested and this may give rise to an argument against its admissibility.

Checklist as to how to prepare for instructing or challenging an expert witness:

- Ensure the expert witness and you are familiar with Part 19 of the CrimPR and the relevant Practice Direction.
- Reflect on the overriding principles of expert evidence as rehearsed by Gage LJ in *R v Lorraine Harris* [2005] EWCA Crim 1980 at [271] and the Court of Appeal's recent commentary in *R v Alex Julian Pabon* [2018] EWCA Crim 420.
- Make sure the expert has complied with the relevant formalities, as set out in the CrimPR.
- Ensure the expert has signed a declaration of understanding in respect of their duties to the court (as per CPD V Evidence 19B)
- Ensure the expert is candid in disclosing any potential skeletons in the closet – CPR amendment of 1 April 2019 requires disclosure of information that is likely to undermine the reliability or credibility of their expert's evidence. The responsible expert would be well advised to make their own enquiries.
- Request that the expert sets out their methodology, for instance the existence of independent statistical or empirical data which is capable of being independently reviewed. It is a matter of logic that if no independent review is possible, the evidence cannot be adequately tested and there will be a viable argument against its admissibility.
- As a minimum, confirm the expert has provided;
 1. A Self-Certificate
 2. A Declaration
 3. An index of material accessed during the preparation of the report.

Understand the substantive law relating to expert evidence and the ways in which such evidence can be challenged.

Several high-profile appeals and a number of inquiry and other reports have in the past identified serious failings and shortcomings in the use of expert evidence and potential ways of improving its reliability.

The following could provide reasons for challenging expert evidence:

- a) the opinion is based on a hypothesis which has not been subjected to sufficient scrutiny (including, where appropriate, experimental or other testing), or which has failed to stand up to scrutiny;
- b) the opinion is based on an unjustifiable assumption;
- c) the opinion is based on flawed data;
- d) the opinion relies on an examination, technique, method or process which was not properly carried out or applied, or was not appropriate for use in the particular case;
- e) the opinion relies on an inference or conclusion which has not been properly reached.

Instructing Other Professionals

Communicate with the relevant prosecuting agency

Email out CPS 13 January 2023

The email was sent to the prosecuting authority shortly after our instruction. In the email, I have addressed various issues including:

- seeking agreement (or otherwise) to a defence application to vacate the trial hearing
- Requesting disclosure of evidence not included in the initial prosecution bundle
- Confirmation of whether the prosecution had received an expert report served by the defendant on the court

The email is straightforward and seeking to address the issues arising. The tone is courteous and polite whilst direct.

Letter to West Yorkshire Police Prosecution Team dated 11 January 2022

I wrote to the Prosecuting Authority in respect of a case in which my client was charged with an offence of careless driving. The circumstances that gave rise to the offence involved two distinct but linked incidents involving another driver. In the first incident, my client accepted that she would be found criminally liable of the offence of careless driving. However, liability in respect of the second incident was disputed.

The prosecution papers were ambiguous in respect of the scope of the prosecution case. Clarity was sought to enable us to advise the client on plea. The papers suggested that the offence was being put on the basis of both incidents but this was not entirely clear. Should the prosecution

case be that the defendant drove carelessly in respect of both incidents, we would consider the tendering of a guilty plea but on a limited basis.

Furthermore we had not been informed on whether the other driver had been charged with any offence. Other information sought related to injuries and damage caused as this would potentially impact on sentence.

The letter clearly set out the background to the case, the request for information and further evidence. Whilst such further evidence would typically not be disclosed until after the preliminary hearing and following a not guilty plea, I rationalised on the grounds of better case management, court capacity and the delay in the case to date to seek to persuade the prosecution to cooperate with us.

The prosecution responded within 48 hours and confirmed the information requested. This enabled us to consider strategy ahead of the hearing and advise the client accordingly. The prosecution were unable to provide us with the requested CCTV in advance of the first hearing but undertook to obtain this to be available to us at the hearing.

Communication with Legal Advisors of a Co-Defendant

Due to the primary nature of my work being the defence of road traffic offences, cases involving co-defendants have been extremely limited and, whilst I have corresponded with the legal advisers of co-defendants over the years, I do not have any evidence available to produce on this.

Opportunity for further development, (if any)

Completion date:

10 November 2023

Signed (applicant)



Date:

