

## Casey closed?

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By **Jennie Kreser, Mike Jones**

We put victims' commissioner Louise Casey on trial for crimes against our readers' blood pressure. On the defence, Jennie Kreser and on the prosecution, Michael Jones

### FOR

Louise Casey has suggested the removal of the right to jury trial for minor offences such as small shop theft – and the predictable howl from my brothers and sisters in the legal profession is as predictable as it is in my view misplaced.

Des Hudson, chief executive of the Law Society, has already weighed in with the view that any conviction for an offence of dishonesty can have significant personal effects on the accused, such as increased insurance premiums, the loss of good character and even travel restrictions, and, consequently, the right to trial by one's peers is sacrosanct.

Are those effects not present as a result of a conviction in the magistrates' court? Is a conviction there somehow of a lesser significance? Is justice in a magistrates' court not real justice? As far as I am aware, legal representation is still available in front of my bench – at least it was last time I looked which was this very morning!

So why are the rights of the individual somehow lessened by trial in that forum rather than before a judge and jury? As a magistrate I find that attitude extremely patronising and one I thought we had expunged from even the most arrogant and reactionary of the junior Bar. I am sad to see it from the head of my own professional body.

### Playing fair

In my experience, elections in these circumstances are often made where a defence case is pretty weak and the advocate feels he stands a better chance of a 'not guilty' verdict before 12 individuals unfamiliar with the court process and how to listen and deal with evidence. And they're often proved right. But that's not because magistrates 'always convict' or 'are on the side of the prosecution'. It is because we are trained to understand the evidence and to listen and weigh up what we have heard in a fair, honest and structured way.

Is it really sensible that someone accused of stealing £5 of meat from the local supermarket should have the ABSOLUTE right to go to the Crown Court when the magistrates are perfectly capable of dealing with it? We have limited the right to jury trial in criminal damage cases by value successfully already. Is doing the same with small-scale theft really that problematical?

**Jennie Kreser is a partner at Silverman Sherliker and a magistrate. She writes in a personal capacity**

## AGAINST

Louise Casey is right that victims and witnesses support services are under resourced. However, much of what she then goes on to say from her self-proclaimed position as an 'informed outsider' fails to recognise the fundamental tenets of our criminal justice system.

Principally, I am referring to the presumption of innocence and to the location of the burden of proof lying squarely upon the shoulders of the prosecution. Ms Casey should remember that should the prosecution fail to prove its case beyond a reasonable doubt, and therefore fail to discharge their burden, then a defendant must be acquitted. She seems to assume that defendant equals guilty and fails to recognise that many who do are acquitted after trial. In fact, I didn't notice the word "acquittal" at any point of her report.

The victims' commissioner seems to be suggesting that trials are expensive and unnecessary flourishes that merely delay the inevitable conviction. Perhaps she views the burden of proof to have been reversed, with a defendant guilty until proven otherwise.

The vast majority of defendants do plead guilty. And while I agree that a large number of Crown Court trials crack on the first day, a significant number of those defendants who indicated either 'not guilty' or 'no plea' at the magistrates' court who then went on to plead guilty often do so to charges which were not put before the magistrates' court at the first hearing. Sentencing reflects the point at which a guilty plea is entered and the credit for an early guilty plea ebbs away as time passes.

I do not accept the implication that a large number of trivial cases find their way in to the Crown Court at the election of defendants. Still less do I accept the assertion that defence solicitors "find it in their interests as they are being funded by legal aid for case preparation" with all that implies.

The right to elect to take your trial before a jury of your peers when the consequences of conviction could be loss of liberty, good character, employment or profession is a fundamental feature of the society in which we all live. To remove that right for some defendants in attempt to supposedly "rebalance" the system in favour of victims and witnesses is a step too far.

During their careers most criminal lawyers have represented defendants who never dreamed they would ever find themselves accused of a crime which they didn't commit and who have to thank a jury for deciding that the prosecution was not able to prove its case.

It does not matter if they were accused of theft of a million pounds or theft of a mars bar: the consequences of being branded a criminal when one is not are equally devastating and to remove the right to jury trial would risk throwing out the baby with the bathwater.

### **Mike Jones is chair of the Criminal Law Solicitors' Association**

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