

LAG

annual lecture

Keir Starmer QC used the 2013 LAG lecture to make a robust defence of human rights legislation and its role in protecting victims. The former Director of Public Prosecutions (DPP), who was awarded a knighthood for services to law and criminal justice in the New Year Honours list, talked about his 'most difficult case' during his time in the post and the challenge of dealing with the rise in use of social media.

The Human Rights Act: a charter for victims not villains

In one of his first public appearances since stepping down as DPP in November 2013, Keir Starmer QC rejected characterisations of the much-maligned Human Rights Act as a 'villains' charter'. 'If you plot what the Human Rights Act has done for defendants, against what it has done for victims, there's no comparison', he told the audience of around 100 lawyers and campaigners. Gains in victims' rights have far exceeded those of defendants, he said. He described the Act as 'carefully crafted' and said it would be a mistake to amend it.

Before the Human Rights Act, victims' rights had no 'traction', said Starmer. 'If you wanted to force the police to investigate a serious offence, you couldn't go to common law. The common law never imposed that obligation on the police. The Human Rights Act did that, and so there was this traction that wasn't previously there.'

Starmer said victims should no longer be treated as 'bystanders' by the criminal justice system. He described the introduction in June 2013 by the Crown Prosecution Service (CPS) of a victims' review, as 'one of the most significant victim initiatives ever launched' by the service. Part of the review's strength is its simplicity. 'Anybody whose case is not charged, or if your case is charged and then discontinued, you, the victim, have a right to review. You don't need a lawyer; you don't need a form; you don't need to identify a ground on which you're asking for a review. You simply ask for a review.



Keir Starmer QC discusses human rights, assisted suicide and social media in LAG's annual lecture.

It's about as straightforward as it's possible to be.' Previously, the only option for victims or bereaved families wanting to challenge a CPS decision was by judicial review, a route which is 'costly and slow and beyond the reach of many citizens'.

Before becoming DPP, Starmer had been best known as a defence and human rights barrister but, during questions, he denied that he had gone 'from the trenches of the defence into the prosecution in one leap'. His involvement in victims' rights long pre-dated his 2008

appointment, he said.

'Ever since the Human Rights Act came in, I was very often acting for victims who felt that the state had not properly responded to what had gone wrong in their case. Therefore, I was spending a good deal of my time challenging the police and the prosecution to do their job properly.' Moving to the CPS 'wasn't actually such a dramatic step as has been made out', he said. (Shortly after the LAG lecture, Starmer was announced as head of a Labour Party taskforce into creating a 'victims' law'.)

One of the first cases across Starmer's desk when he became DPP resulted from the suicide of university student Daniel James in 2008, who killed himself after becoming paraplegic when a rugby scrum collapsed. Although there was 'more than enough' evidence to prosecute James's parents for assisting their son's suicide, Starmer ruled against prosecution on public interest grounds.

Later, following the House of Lords ruling in the Debbie Purdy case, where she sought to clarify whether or not her husband risked prosecution if he helped her travel to a clinic abroad to die, Starmer issued guidelines setting out his approach to assisted-suicide prosecutions: 'That was the first time in legal history the courts had required the DPP to produce an offence-specific policy. It was quite a significant ruling', he said.

Since their introduction in 2010, and contrary to some predictions, the guidelines had worked well, he added. Of the 85 assisted suicide cases since then, there had been decisions not to prosecute in 64; 11 cases were withdrawn by police; nine were still under consideration; and there had been just one prosecution. Those guidelines 'preserve the contract between society and the enforcement of criminal law, and allow for rigorous prosecutions where necessary, but acts of compassion and mercy where appropriate'.

He had gone on to issue similar

The McLibel case

Keir Starmer QC advised the two unrepresented McLibel defendants pro bono during what was to become the longest running case in British legal history. McDonald's took libel action against environmental activists Helen Steel and David Morris over a leaflet which was critical of the company.

'London Greenpeace, which was the small anarchist group that produced the leaflet, had at the time I think 19 individuals. I kept saying "members" but every time I said that they kept correcting me, because you don't have "members" of an anarchist group. Among that 19, McDonald's had put a team of infiltrators in, a private company. McDonald's had then put a second team of infiltrators in, because they didn't trust the first set of infiltrators. Then we learned there were undercover [police] officers. I think Dave [Morris] and Helen [Steel] were the only legitimate members of the group ...'

guidance in other areas of law, including domestic violence and rape, and to cover offensive messages sent by social media.

Responding to the rise of social media

such as Twitter and Facebook had been one of the challenges of Starmer's time as DPP. 'In one idle moment, I worked out that in theory at least, if there was no discretion exercised, there could be more prosecutions for grossly offensive social media messages than any other criminal offence.'

He had, therefore, issued guidance that prosecutions should only be brought where a communication 'goes beyond what could conceivably be tolerable or acceptable in an open and diverse society which upholds and respects freedom of expression'. He cited one such case where a young man had been prosecuted and imprisoned after leaving a message on the Facebook tribute page for the murdered five-year-old April Jones, that was 'so offensive that no media outlet has ever repeated any part of it'.

During questions, Starmer dismissed as 'completely wrong' earlier media reports that he had personally intervened in the 'Twitter joke' case to ensure that the CPS contested Paul Chambers' appeal. Far from insisting that the CPS resist the appeal, Starmer had asked his staff to contact Chambers' legal team to see if the case could be settled.

The first time Starmer became aware of the case was when it reached the Divisional Court, after Chambers had already been convicted in both the magistrates' court and Crown Court for sending a jokey tweet about blowing up Robin Hood airport if it failed to re-open in time for his flight a week later.

However, Starmer was subsequently advised that the case wasn't the DPP's to settle. 'The legal advice I got was this is a case-stated appeal, which is technically an appeal against the Crown Court decision. So the case was between Paul Chambers and the judge in the Crown Court who had convicted him. I was politely told, therefore, "You can't settle it. You are not the defendant. The findings are fact by the judge." So that was the end of that.' Persistent reports that he had stopped settlement to somehow 'save face' were, he said, ridiculous.

Starmer's tenure as DPP attracted its share of media controversy. However, his initial decision not to prosecute PC Simon Harwood over the death of newspaper vendor Ian Tomlinson was unpopular even among CPS colleagues, he said. It was the only time on his watch that 'people who I know and respect' urged him to go ahead with a prosecution on public interest grounds, even though there wasn't at that stage enough



Alison Hannah, a former LAG director, poses a question to Keir Starmer QC.



Fiona Bawdon and the former DPP discuss the issues raised in his lecture.

evidence to support it. 'People in the end didn't argue that we hadn't got the right test evidentially, but they simply said, "Well, you should have prosecuted [Harwood] anyway".'

Although the decision not to prosecute Harwood had been 'hard to explain and unaccepted by many people', it had been the right one, he insisted.

Tomlinson died during the 2009 G-20 protests after being struck and then pushed over by Harwood. The first pathologist in this case, Freddy Patel, concluded that Tomlinson had died of natural causes, but this finding was challenged when a second post-mortem was carried out. Starmer recalled the moment he discovered that Patel had

disposed of a crucial fluid sample taken from Tomlinson's body, which would be essential for confirming the cause of death. 'I said to him, "I'm going to have to analyse this", and he said, "You can't." I said, "Why not?" and he said, "I've thrown it away." I said, "Well, I know you throw most of it away, but you'll have kept a sample, and we only need a sample because we need to know what the composition is." He said, "No. I chucked it all away." Before any other pathologist or expert ever saw the body, he'd thrown the entire sample away.'

Starmer said later that during this conversation with the now-discredited pathologist, 'I had my head in my hands'.

On police prosecutions

During questions after the lecture, Leslie Thomas, barrister at Garden Court Chambers, who represented family members at the inquest into the death of Mark Duggan, shot dead by police in 2011 (which was ongoing at the time of the lecture), and also represented the mother of Azelle Rodney, shot dead by police in 2005, asked what the CPS could do to improve conviction rates of errant police officers.

Starmer said the reason most police shooting cases fail is because it is a subjective test in self-defence cases. 'So long as the police officer genuinely thinks that he or she is under threat, that is a complete defence, even if it's unreasonable. Even if other people would not themselves have felt they were under threat in the same circumstances. The only question is, is [the officer's belief] genuine?'

Any changes to the law of self-defence would need to be part of a 'very, very big debate', and Starmer rejected the notion of different tests for different categories of people. 'If you're going to change the law of self-defence, you've got to change it for everybody. You can have the same test for householders, and they come down the stairs and subjectively think something's happening, but turns out not to be the case.'

Text by Fiona Bawdon
Photographs by Robert Aberman



From left: Poonam Bhari, LAG's chairperson; Steve Hynes, LAG's director; and Fiona Bawdon, who chaired the event, with Keir Starmer QC.

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