

My Experience Instructing in My First Trial

As a recent law graduate keen to work in the criminal law field, I was thrilled when I was recently presented with the exciting opportunity of instructing in my very first trial in [Downing Centre District Court](#).

Instructing lawyers have a very important role in trial proceedings. While they usually do not perform any advocacy work in court (this is generally left to the barrister or senior lawyer) they are expected to liaise with the client and the barrister, make sure that the client has an in-depth understanding of what is going on in the trial, take extensive notes of all conferences and court proceedings, and maintain a list of exhibits that are presented during the trial.

Though I've spent the past 6 and a half years studying the ins and outs of law at university, there is only so much that you can learn out of a textbook, and there is simply no substitute for practical experience.

Sadly, most law graduates enter the field with few practical skills, and some law firms are hesitant to let new lawyers gain courtroom experience. This effectively means that they are thrown in the deep end when they start representing clients in court.

I was lucky enough to be given the opportunity to get a grasp on courtroom procedures early on, and this first experience has taught me valuable skills and knowledge which will no doubt prove useful in my legal career.

I have shared some of the things that I have learned from this experience below.

1. Be Prepared

As an instructing criminal defence lawyer, you are expected to have a thorough knowledge of all the evidence in the case because the barrister could ask you important questions at a moment's notice inside the courtroom.

All the evidence in the case will be compiled in a brief, and as an instructing lawyer you are responsible for organising the brief for both yourself and the barrister. It's important to organise and index the brief properly so that you can quickly navigate it to pull out any documents in the middle of the trial or in conference.

Instructing lawyers will also be responsible for chasing up any missing witness statements or documents. My experience taught me that the police and DPP often take their time in getting back to you with documents, so you must keep at them to make sure that all evidence is received in advance of the trial.

You'll need to read the brief several times over and make notes of any key points in witness statements and other evidence.

I found that this serves two purposes – firstly, it really helps you familiarise yourself with the evidence at hand, and secondly – and most importantly – it can help you flag any issues which should be raised with the barrister.

An in-depth knowledge of the brief allows you to identify any possible defences or factors that may support your case at an early stage – and conversely, it will help you predict how the prosecution is going to run their case, and any arguments that they will raise.

2. Do Your Research

Trials involve a lot of research, both legal and other – you may be required to look up relevant case law, statistics or other information which might help you prove a particular

point. You may need to research a particular profession or trade, or make enquiries with bodies like the bureau of meteorology about weather, or attend the scene of the alleged crime to photograph and videotape, or attend to urgent subpoenas, or a range of other matters. Usually, the senior lawyers and barrister will let you know of the research and preparatory work which they require.

In my particular case, the barrister asked me to research therapeutic massage practices. I spent time accessing medical journals to try to find any information that could help our case, and communicated my findings to the barrister.

Our case also involved an application to exclude [tendency evidence](#), which is evidence about a person's character, reputation or conduct that can be used to prove that they had a tendency to act in a particular way or have a particular state of mind.

Usually, this kind of evidence is not allowed to be admitted, however in our case the prosecution made an application to have this evidence admitted, arguing that there were striking similarities which could help prove that our client had a particular state of mind in the present case. The prosecution also argued that admitting the evidence would not unfairly prejudice our client and prevent him from having a fair trial.

I had the invaluable benefit of being able to consult highly experienced lawyers at the practice for advice and insight throughout my involvement with the case.

We naturally opposed the application in our case, and the barrister handed up some previous judgments which supported our case. I took the time to read these judgments to make sure that I understood what the law said. It was a steep learning curve.

For new lawyers, instructing is a great learning experience – doing this type of research can help you the intricacies of

certain areas of criminal and evidence law.

3. Make Sure the Client Understands What is Going On

It's no secret that lawyers can get caught up in difficult to understand legal jargon when explaining matters to clients.

After all, lawyers are used to dealing with other legal professionals in a variety of situations. They may therefore make the mistake of assuming that a layperson fully understands basic legal terms and procedures.

Of course, the danger in making these assumptions is that clients may be left in the dark about what is going on in their case. The likelihood of this occurring is increased where a client has limited English skills, or where they have mental health issues or drug and alcohol problems.

In very serious cases, a client may even end up unintentionally breaking the law, which can give rise to serious consequences. For instance, if a lawyer does not fully explain that a client is required to attend court on a particular day, the court may issue a warrant for their arrest.

Or, if a lawyer does not ensure that a client understands all of their bail conditions, the client may end up [breaching their bail](#). If this occurs, the court may decide whether it wants to take no action for the breach, vary the bail conditions, impose more conditions, or, in serious cases, refuse bail altogether and order that the person be placed in custody.

While this did not happen in the case I was working on, this example illustrates the importance of making sure that a client understands everything that is going on in the courtroom. It is vitally important to make sure that the client understand every aspect of the case, and gives informed instructions and makes informed decisions.

In the trial that I was instructing on, our client was from a non-English speaking background, and even with the assistance of an interpreter it was sometimes apparent that things that the barrister was saying were going over his head.

For instance, when the barrister was trying to explain complicated laws about evidence and sentencing procedures, our client was visibly confused and would ask questions about things which had just been explained to him. I learnt that part of my role was to pull up the barrister when this was occurring.

I quickly realised the value of explaining legal terminology in plain English, which made our client more responsive and willing to answer our questions. I also made sure to ask whether he understood what had been said, to explain to me what had been said just to make sure, and encouraged him to ask us any questions if he was unsure about anything.

4. Consult Your Superiors

If any questions arise while instructing, it's also important to consult your more experienced colleagues for their advice and opinion about the best way forward.

Unfortunately, many law firms do not have an open-door policy and may criticise young lawyers for asking questions early on in their career. I am very grateful to work in an environment where discussion and learning is encouraged, and it is always good to know that I can raise any concerns or questions with any of the lawyers on our team.

During this case, I worked closely with our Principal [Ugur Nedim](#), as well as our experienced Senior Lawyer [Jimmy Singh](#), both of whom have a wealth of experience representing clients in extremely complex and serious criminal trials.

I was able to ask their advice about issues such as the admissibility of tendency evidence, procedural matters, and

the best ways to communicate with our client.

Their support helped me effectively assist our client and the barrister during the trial.

5. Understanding, Explaining and Respecting a Client's Options

Besides making sure that your client understands complex legal principles and procedures, I learned that it's very important to make sure that he or she is fully informed of all their options and the case against them before they make any decisions – particularly when they are deciding whether to plead guilty or not guilty.

I also learned the importance of feeling comfortable to consult the senior lawyers at the firm for advice about complex law and procedure, and that a team environment is by far the most conducive to providing clients with the best advice and strongest legal representation.

At the end of the day, your client has a right to choose whether they want to [plead guilty or not guilty](#), and as their legal representative, you must respect that decision. This means that even if there is a strong case against them, you should continue fighting for them until the very end if they maintain their innocence and wish to plead not guilty.

This is not to say that you shouldn't advise your client of the risks of proceeding to trial. Rather, I learned that your job as their lawyer is to make sure that they understand the strengths and weaknesses of the case against them, any legal arguments that can be put forth to win their case and the prospects of succeeding based on these arguments. You should also identify and explain grounds on which their evidence can be challenged.

As your client's legal representative, you should also carefully explain any rulings that the court has made and how

those rulings may affect the case. For instance, the judge may decide to have certain evidence admitted which may damage your case, or alternatively they may rule that certain evidence will not be heard by the jury, which can give you an upper hand in winning the case.

Before your client decides upon a plea, whether guilty or not guilty, you should explain all of their options so that they can make a fully informed decision.

For instance, in some cases you can negotiate with the prosecution to have one or more of the charges downgraded provided that you enter a plea of guilty to the lesser charge. If there are multiple charges, you can try to have several charges 'attached' to the main charge, so that the sentencing judge will take the other charges into account when sentencing your client for the most serious ('principal') offence. This can help your client achieve a more lenient penalty.

Your client should also be made aware of their right to appeal, the prospects of success on appeal, and the fact that they will normally lose their right to appeal against any conviction if they plead guilty to the charges.

Finally, you should make sure that your client is aware of the impact that an adverse finding may have on their future life.

While it may sometimes appear that there is a strong case against your client, I learned that it's important that your client understands that you have not lost hope for them, and that you will fight until the very end if they wish to proceed with the trial. This, sadly, is a point that is forgotten by many lawyers who may encourage or coerce a person to plead guilty based on the evidence against them.

Instructing in a trial is an incredibly interesting and enjoyable experience which can teach you so much about the law, court procedures, evidence and client (and colleague) communication.

It challenges you to think outside the box, to develop a relationship of trust and confidence with your client, and to do everything possible to secure the best possible outcome for your client.

Most importantly, it gives you a fantastic insight into life as a criminal defence lawyer and the kind of workload to expect in practice.