

In a recent interview, the Lord Justice General, Lord Carloway, discusses the conduct of criminal trials in cases involving allegations of a sexual nature. I can readily agree with many of his comments. Cross examination should have a clear objective, be focused and not simply a trawl back through all of the evidence.

Of course, a witness should not be insulted or harassed and a judge is fully entitled to stop that happening. I support the proposal that a complainer has the right to be heard when the defence seeks her medical records. All well and good but there also seems to be an underlying suggestion that, nowadays, counsel regularly or generally cross examine in an inappropriate manner.

That may happen on occasions but it most definitely is not the norm. Many lines of questioning must, in any event, be authorised in advance by the judge. Judges do not grant that permission easily and must be shown why that questioning is necessary and proportionate.

Nor am I aware of any evidence that judges allow questions during a trial which are irrelevant and designed to upset and insult the witness. If, however, that is the case and judges are not doing their job properly then I assume Lord Carloway himself can deal with that issue.

Defending and cross examining in such trials is not easy. The advocate is an officer of the court but is not an intermediary. His or her role in an adversarial system is to properly and robustly represent the interests of the accused and to do that fearlessly.

That requires the advocate to conduct the trial without constantly looking over their shoulder and worrying about their own position. I agree with Lord Carloway that the fear of having the advocate's own performance criticised in an Anderson appeal has not helped in that regard, although the remedy for that is to some extent in the Appeal Court's own hands. What will only make the situation worse, however, is the added fear of judicial criticism. Senior judges are entitled to criticise poor advocacy but care needs to be taken that the fear of being so criticised does not result in, for example, cross examination being conducted in a less robust and comprehensive manner that the legitimate interests of the accused demands. That is certainly not in the interests of justice.

Advocates in these cases do a difficult and at times unpleasant job and, in my opinion, generally do it as it should be done. That should be recognised and encouraged.

That is not to be in any way complacent. Maintaining the rule of law demands that every accused, no matter how unpopular, receives a fair trial but that in turn requires high quality, skilled and effective advocacy. Indeed, you cannot have the former without the latter.

The Faculty of Advocates is committed to making sure that all that happens. That is why every advocate goes through a period of rigorous training before being called, why we are introducing a quality assurance scheme to regularly assess every practising advocate, why we are updating our continuous professional development scheme, why we have researched good practice in other jurisdictions in relation to examining children and vulnerable witnesses and why we are providing specialist training in that area.

As we as a Faculty strive to maintain the highest standards, judges, too, in my opinion have a part to play. If any judge has a concern about how an advocate has conducted a case there is no reason why that can't be raised and discussed with the advocate in question or a senior experienced counsel.

For my own part I would welcome such an approach and, if there clearly is a problem, having the opportunity to advise and assist the advocate involved. That is why the Faculty intends to introduce a quality assistance panel made up of counsel experienced in the assessment of advocacy skills who will provide constructive support and advise to any advocate who wishes or needs to improve his or her skills.

Ultimately, we are all in this together, judges and counsel alike. We all want to maintain high standards and, in so doing, ensure that the interests of justice are being well served. By all means let there be criticism where that is well founded but support and encouragement are equally important.