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**HPLS Solicitor Advocate:
Ensuring Effective Legal Representation**

By Julie Hourigan-Ruse

Introduction

I'm here to talk to you about our Solicitor Advocate, a position we created within the Homeless Persons' Legal Service¹ in 2008. His name is Jeremy and he does a very special job representing people who are homeless or at risk of homelessness and who have been charged with a minor criminal offence.

You may wonder why I am here talking about the HPLS Solicitor Advocate. Well, that is because he is in Sydney in a local court somewhere defending at least one client (but maybe two or three different clients) who are homeless.

I think the best way to describe what Jeremy does is to start by telling you about some of his 200 clients and how he has helped them.

First, I want to tell you about Sandra.

Case Study: Sandra

In the six years before Sandra came to our service, her life was in utter chaos. She was suffering from drug-induced psychoses and had been admitted to hospital on a number of occasions. She also had bouts of severe depression and anxiety that landed her in hospital. She had spent time in prison and had been admitted to a drug rehabilitation service, but was discharged because of her erratic and hostile behaviour.

¹ The Homeless Persons' Legal Service is a joint initiative of the Public Interest Advocacy Centre (PIAC) and the Public Interest Law Clearing House. PIAC receives core funding for HPLS from the NSW Attorney General, through the Public Purpose Fund.

Homeless and struggling to cope with her addictions, Sandra kept a roof over her head by couch surfing with friends. But conflict quickly arose, and became physical, leading to Sandra being charged with two counts of assault, and one count of breaching an Apprehended Violence Order. Statements taken from the victims of the assault clearly indicated Sandra was suffering from some kind of mental disturbance at the time of the assaults.

Sandra was released on bail. While she was visiting a women's service, she approached the HPLS clinic for help with her charges. The HPLS solicitors at the clinic immediately referred her to Jeremy.

Jeremy met with Sandra and they spoke about her mental state over the past few years and during the time she was couch surfing. As it was apparent that Sandra was currently unwell and was also unwell when she committed the offences, Jeremy advised Sandra that she could make an application under section 33 of the *NSW Mental Health (Forensic Provisions) Act 1990*.

This is a diversionary mechanism to get people who would be better served by treatment out of the criminal justice. In NSW a person who was suffering from a mental illness when they committed an offence may make an application to the magistrate to have the charges dismissed. A similar provision is available for offenders who are considered by the magistrate to be a mentally ill person during the course of proceedings.

For Sandra, the decision to make an application under section 33 was both vindicated and made more difficult by the continuing deterioration in her mental state.

Over the next year, as Jeremy attended court 15 times for Sandra, she continued to commit offences, leading to further charges of shoplifting, assault, and destroy or damage property. Sandra would ring Jeremy saying she'd just been released on bail after being charged again. Jeremy would visit her wherever she happened to be and take new instructions.

On top of this, Sandra was twice admitted to hospital as an involuntary patient, meaning she could not appear in court so Jeremy needed to seek an adjournment from the magistrate.

In addition to keeping track of Sandra's whereabouts, Jeremy had to appear at several different local courts to have the new matters adjourned and ask that the new charges be transferred so they could all be heard together in one place at one time.

Meanwhile Jeremy also had to prepare for the section 33 hearing. Letters were sent and phone calls made to various hospitals, community mental health providers, psychiatrists and rehab services in an effort to obtain access to Sandra's records. He had to negotiate the waiver of fees, and organise for a grant of Legal Aid to pay for psychiatric reports. In some cases it took months and numerous follow up letters before Jeremy could get access to Sandra's records.

But on the last court date before the hearing of the section 33 application, Sandra disappeared. She simply did not turn up to court. Jeremy had no idea where she was and she couldn't be contacted by mobile phone.

Fortunately, the magistrate was willing to give Sandra one last chance to attend court before a warrant was issued for her arrest, and adjourned the matter.

The race was now on for Jeremy to locate his client. He jumped on a train and knocked on the door of the hostel where Sandra was staying. When she didn't answer, Jeremy wrote to Sandra, but received no reply. He then wrote to the local community mental health service to ask them to pass on his letter if they saw her.

Having finally been located, Sandra was able to turn up with Jeremy for the hearing of the section 33 application. The application was successful and the charges against her were dismissed and an individually tailored treatment plan ordered by the court. The magistrate made a community treatment order requiring Sandra to attend her local community health provider and accept medication as prescribed by her treating psychiatrist.

Solicitor Advocate's proactive role

I tell you this story because I think it is a very good example of just how complex the personal and legal issues can be for our homeless clients, even where the original circumstances of the criminal offence are relatively straightforward.

According to research from the Australian Institute of Criminology one in three homeless detainees of police reported having been previously admitted to a psychiatric hospital – twice the rate of detainees who did not report being homeless. Homeless detainees were also more likely to report recent and frequent use, and dependence, on illicit drugs or alcohol.²

Sandra's story also demonstrates the lengths that the HPLS Solicitor Advocate needs to go to in order to prevent events spiralling out of control. Jeremy's approach is proactive. He goes to where the client is, whether it's to a boarding house, an HPLS host agency or an outreach centre.

This differs from the models adopted by Legal Aid NSW and the Aboriginal Legal Services. These legal services follow the traditional model of the client coming to the organisation to seek assistance, usually on the day of their first court appearance. Only a very short period of time is allocated to receive instructions. Clients are usually represented by a different solicitor at each court appearance. And it is usually the client who provides the information to the particular solicitor on duty as the case progresses.

For people who are homeless this model of legal representation is very difficult to access. I have had many clients say they would rather represent themselves. Now this is not about bashing Legal Aid. There is no argument that Legal Aid services a huge client base with limited resources. Homeless people often lead chaotic lives. It is a constant battle to find safe accommodation or a meal. They may need to find a clinic to get their medication. Mental health or drug dependence issues may intervene. In these

² Australian Institute of Criminology, "Homelessness, drug use and offending". *Crime Facts Info*, No 168, 2008.

<<http://www.aic.gov.au/publications/current%20series/cfi/161-180/cfi168.aspx>> at 27 August 2010.

circumstances, remembering to attend court is not the main priority for HPLS's clients. The unfriendly and often stressful environment of the local court further discourages homeless clients from attending.

It is safe to assume that it would have been very difficult for Sandra to keep track of her local court proceedings. She would be just one person in a very long court list, which the duty solicitors would have to work their way through. Without the support of Jeremy it's likely that Sandra's disappearance would not have been investigated and that an arrest warrant would have been issued. She might have ended up in custody for extended periods, awaiting trial, and she may not have had the benefit of a section 33 application.

But perhaps the most important thing for Sandra, was having one solicitor handle her case from start to finish, a solicitor she trusted and knew she could ring when she was in trouble again, a solicitor who kept track of – or tried to keep track of! – her movements. And it's not far-fetched to say that on occasion Jeremy may have been the only person in the world who would know, or sought to find out, whether Sandra was alive or dead.

Case study: Sharon

I also want to tell you about Sharon.

Jeremy first met with Sharon in the cells of a local court, following a referral from a specialist homeless service.

She was in custody because she had breached an Apprehended Personal Violence Order (APVO).

The APVO had been put in place following an unprovoked attack on her neighbour. This had led to a charge of assault occasioning actual bodily harm. Jeremy learnt that in the days following her arrest Sharon had been charged with assaulting a police officer and a corrective services officer.

Sharon had previously been diagnosed with schizophrenia and had been on medication for her mental illness for many years. Despite recent events and a long history of drug

abuse and minor criminal offences, Sharon's life had stabilised to some extent. She had secured a tenancy in public housing and had brought her heroin addiction under control through the methadone program.

This stability was shattered by a change to Sharon's medication following an involuntary admission to a psychiatric unit following allegations of another assault. Sharon told staff at the psychiatric unit that the new medication was not as effective, but no further change was made.

When Sharon was discharged she was given no medication to take with her, simply a referral to her local community health provider. Sadly, nobody should have been surprised when two days after being discharged she was again charged with assault. Sharon told Jeremy that she had not taken any prescribed medication between the time she was discharged from the psychiatric unit and the assault, although she had taken illegal drugs.

Now in custody, Sharon was at significant risk of losing her public housing tenancy, one of the key factors keeping Sharon's life relatively stable.

On several occasions Jeremy travelled out to the remand centre where Sharon was being held. On the advice of Jeremy, Sharon instructed that an application be made under section 32 of the *Mental Health (Forensic Provisions) Act*. Again, Jeremy spent many hours trying to get access to Sharon's records. In addition Jeremy liaised with a local community health provider and a welfare agency in the preparation of a detailed plan outlining the various functions to be undertaken by a number of providers in relation to supporting Sharon.

Matters were made more complicated by Sharon's request that she be moved to a public housing unit in a different area so as to avoid coming into contact with the victim of the assault. Sharon's proposed new address brought her within the catchment area of a different community mental health provider and this transition needed to be reflected in the treatment plan, thus adding another layer of complexity to its development.

The magistrate was quick to concede that Sharon had a diagnosis that was captured by section 32 and that it was appropriate for the court to use the section in Sharon's case. However, the magistrate was not satisfied that there was a single coherent plan relating to Sharon's mental health treatment. He made it very clear that Sharon would not be released unless he was sure that Sharon would not re-offend.

He also said that it was not enough for Jeremy to merely inform him that Sharon had secured a new public housing tenancy. He said he required evidence of a specific residential address for Sharon.

As a result, Jeremy wrote to the proposed new community mental health provider, outlining in some detail exactly what was required of the treatment plan. This was a somewhat delicate task as Jeremy did not want to presume to enter upon the creation of such a plan. Yet as Sharon's solicitor, he knew exactly what the Magistrate needed to see in such a plan before he would consider releasing Sharon.

Jeremy also wrote to NSW Housing asking it to waive its agency protocol in relation to non-disclosure of its tenants' addresses. The Department agreed to this in the circumstances.

A few days before the final court date, Jeremy attended a case conference at the prison where Sharon was being held on remand. It was attended by most of the Sharon's proposed service providers who reviewed the details of the treatment plan. The resulting plan involved the input of six separate support services.

Some three months after Sharon was placed in custody, the magistrate exercised his discretion under section 32 and dismissed the charges against her on condition that she comply with the treatment plan prepared. Sharon was released from custody and she moved into her new flat.

Working with other agencies

It's clear this was a good outcome for Sharon, and I think one of the main reasons for this is how closely Jeremy worked with the relevant mental health providers,

caseworkers and government authorities. This is a distinguishing feature of the HPLS Solicitor Advocate.

Research has indicated that homeless offenders are likely to be treated more harshly by the courts than other offenders. This may simply be because they cannot provide an appropriate address to the court. This can lead to the refusal of bail, non-custodial penalties, or parole.³ As we saw with Sharon, the magistrate was very interested to know her actual address. It was Jeremy's liaison with the housing authority which prevented this from becoming an issue.

In many cases the first contact and knowledge of a particular client's needs for legal assistance is through the client's caseworker. There have been many occasions when the Solicitor Advocate has been contacted by a caseworker about a client who needs on-the-spot representation in court and the only person that can give coherent instructions is the caseworker.

Caseworkers, community mental health centres, emergency accommodation services, and other services for homeless people form a major source of referral of clients to Jeremy. And they are also a major source of valuable information about the client. Their knowledge of the client's history and circumstances assists Jeremy in preparing his submissions on sentencing or sections 32 or 33 applications.

Critically, they can also tell Jeremy where his client might be if they don't turn up at court. It's not unusual for Jeremy to walk over to the back of the Art Gallery of NSW where many homeless people shelter to receive instructions from a client, following a tipoff from a crisis shelter regarding a client's whereabouts.

Focussing on the underlying issues

³ Scottish Executive Justice Department, *Criminal justice accommodation services* (2001) Review & consultation paper Edinburgh: Scottish Executive Justice Department <<http://www.scotland.gov.uk/consultations/justice/cjar.pdf>> at 27 August 2010; Willis M, *Ex-Prisoners, SAAP, Housing and Homelessness in Australia: Final Report* (2004) Australian Institute of Criminology <http://www.facsia.gov.au/sa/housing/pubs/homelessness/saap_er_publications/exprisoners/Documents/sec_5.htm> at 27 August 2010

Another important point to draw from Sharon's case is Jeremy's focus on maintaining Sharon's tenancy. As a solicitor with expertise in working with homeless people, Jeremy will look beyond solving his client's immediate legal issue. He knows that the circumstances surrounding the commission and charging of offences by homeless people and people at risk of homelessness are likely to be the result of – or to result in – homelessness.

Certainly there is a correlation between homeless and recidivism.⁴ Studies have shown that some people may become homeless due to criminal behaviour leading to incarceration and difficulties in maintaining a tenancy. Other people may be homeless for a range of different reasons and then find themselves being drawn into offending behaviour as a result of their homeless situation.

Think about the most basic things you do every day at home without even thinking about it: go to the toilet, use a knife, drink alcohol, swearing. If you are homeless, not only are you more visible to police, these simple actions could be illegal: urinating in public – offensive behaviour; having a knife – dangerous weapon; swearing in public – offensive language.

It follows that whatever action Jeremy takes as a lawyer, he must always have one eye on how the client's homelessness has contributed to the charges and also on how the criminal proceedings will entrench the situation.

Accessibility & consistency

Another distinguishing feature of the type of work Jeremy does as a Solicitor Advocate for homeless people is to be available to his clients. We saw this with Sandra, who would ring Jeremy up whenever she had been charged with a new offence. Building up a relationship of trust is vital to successful representation.

⁴ Baldry, E., McDonnell, D., Maplestone, P. & Peeters, M. (2003). *Ex-prisoners and Accommodation: what bearing do different forms of housing have on social integration?*, Australian Housing and Urban Research Institute (AHURI), Canberra
<www.ahuri.edu.au/publications/download/70068_fr>at 27 August 2010.

Jeremy has many clients who are extremely anxious about their cases and need to be re-assured about how matters are proceeding. Often their need to be in constant contact with Jeremy is a manifestation of a mental health issue or cognitive impairment. The client may be suffering from paranoia or may not remember they have already spoken to Jeremy. Rather than viewing this kind of interaction with his clients as taking him away from his core work, for Jeremy this is *part* of his core work.

From the point of view of Jeremy's clients, this means they have the one lawyer all the way through, to advise them on their legal issues, to meet them at court, be with them and represent them in the courtroom, to keep track of their matter and answer their questions.

Jeremy's ability to have carriage of his clients' cases from start to finish is critical to its success.

Conclusion

The Solicitor Advocate role was established to overcome some of the barriers homeless people face accessing legal services, including: a lack of knowledge of how to navigate the legal system; the need for longer appointment times to obtain instructions; and the capacity to address multiple and complex inter-related legal and non-legal issues, such as mental health or addiction issues.

The model we have established for the delivery of legal advice and representation for homeless people charged with a criminal offence is an excellent means of offering the kind of legal service the clients of HPLS need. It works for clients because they get a focussed and targeted legal service.

For people who are homeless or at risk of homelessness, a quick and efficient fix of their legal problem is not enough. In fact a quick and efficient fix is an unlikely outcome given the complexity of the clients' lives.

This is a model that can and should be adopted by others as it enables the client to be better integrated into the legal process rather than being just an isolated object of the

exercise. The model very much responds to the particular impacts of homelessness on clients with minor criminal matters, being flexible in relation to client contact and undertaking extensive outreach and case management to ensure the best outcomes for the client.