

# Handling ethical dilemmas at the Young Bar

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# Introduction to Ethics resources, and the BSB Handbook

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# Scenario 1: Potential incapacity by reason of drink/drugs (Charlotte Reynolds)



- You arrive at court and meet your client, Ms Smith, for the first time.
- You smell alcohol on her breath and consider that she has been drinking.
- It is 10am and she is due to be giving evidence.
- You speak to her and advise that it is your opinion that you seek an adjournment on her behalf in order that she can sober up.
- She denies being drunk and instructs you to proceed with her case.
- Although she seems to understand what you are telling her, you do not consider it is in her best interests to proceed with the case.
- What can you tell the court?

## Scenario 2: Potential incapacity by reason of lack of mental capacity (Charlotte Reynolds)



- You arrive at court and meet your client, Mr Jones, for the first time.
- Your papers mention that he has a history of mental health issues but no concerns as to capacity had previously been raised.
- After speaking to him for a few minutes you are concerned that he might not be able to give proper instructions by reason of lack of mental capacity.
- You discuss your concerns with your instructing solicitor who agrees with you that Mr Jones' mental health appears to have deteriorated.
- You tell Mr Jones that your advice is to make an application to the court for expert evidence to consider his litigation capacity.
- He forbids you to do so.

# Scenario 3- Absconding and returning instructions (Danny Robinson KC)



You are instructed to defend a financial controller for a local council (“D1”) charged with fraud by false representation. The false representations are said to be a number of invoices which, the prosecution allege, your client created using a fictitious company’s name. Your client then authorised payment of the invoices, and the money was sent to the company’s bank account, to which his deputy at the council was the sole named signatory. The deputy (“D2”) has also been charged.

Your client gave a no comment interview, but he provided a signed defence statement in which he asserted that D2 is solely responsible for the fraud. He also provided your solicitor with the password to his personal email account, from which he sent a number of emails to the OIC and D2 as the case was being investigated. He is on bail.

During the trial the prosecution serves further documents which prove that your client created the fictitious company. Your client alleges that the new documents are forgeries, created either by the OIC or D2.

## Scenario 3, continued



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The next morning he produces copies of emails from the OIC to his email account which appear to show that the OIC has known about the “new” evidence for some time, and that he has real doubts about their authenticity. He instructs you to cross-examine the OIC using the emails. You cross-examine the officer, producing the emails. He says he has never seen them before.

The trial is adjourned overnight. The next morning your client fails to attend court, and later that day it transpires that he has left the jurisdiction. He does not respond to your solicitor’s emails and phone calls.

While all this has been going on, your solicitor has checked your client’s email account, using the password provided. It transpires that the emails from the OIC that you deployed in cross-examination were not sent to your client’s email account after all, and after looking at the email account yourself you conclude that they are forgeries.

## Scenario 4- Social media use (Danny Robinson KC)



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You are instructed to defend a man charged with rape. He has a large online presence, with hundreds of thousands of followers on YouTube and X. As the trial approaches he releases a video in which he reveals that he has instructed you to defend him, and that your success rate defending serious sexual offences is “second to none” (he may have got that quote from your clerk), and he has no doubt he will be found not guilty. The issue is consent.

At the trial, the jury convict your client, and the judge remands him in custody pending sentence. Your client is very unhappy, and before he is taken away he indicates to you that he would like to appeal his conviction. During the trial you had a paralegal from your solicitors with you, and after you leave the cells she posts on X and LinkedIn that she is amazed by the jury’s verdict, which doesn’t reflect the evidence, and that the conviction will definitely be appealed. She adds that the judge was so old that he hadn’t heard of the defendant, and that anyone who had seen his videos on YouTube would know that he couldn’t possibly be guilty. The paralegal, a barrister who has applied for a pupillage in Chambers, only has a few hundred followers, but the next day her posts are reposted by the defendant’s accounts, reaching an audience of almost a million people. Your clerks are inundated with calls from media outlets asking you to comment.

## Scenario 5 (Francis Fitzgibbon KC)



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You have been instructed for the defence in a very serious case, which would carry a long term imprisonment if your client is convicted. You have come into the trial after it started due to previous counsel withdrawing for professional reasons.

Your client instructs you to make serious allegations of dishonesty against a number of prosecution witnesses. The allegations appear gratuitous and unnecessary for the defence case. You advise that it would be against your client's interests to put them because they would trigger a probably successful application to introduce evidence of bad character. The defence case can properly be run without attacking the character of prosecution witnesses.

Your client accepts the advice, reluctantly but nonetheless. You cross-examine the first witness without making the allegations. Your client, however, becomes extremely angry and complains that you have not followed their instructions and says you are actively working against them and dismisses you from the case. You have already come to suspect that the client may be suffering from a mental illness or disorder but they have refused to see a psychiatrist. You tell the client there will be a cooling-off period. The following day the client apologizes and says they wish to retain you. However following similar cross-examination of another witness the complaint is renewed and you are again told that you have been dismissed from the case. You offer a cooling off period but it is rejected.





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# Thank you