Social exclusion and poverty

Key points

- A disproportionate number of those appearing before courts and tribunals are from socially excluded backgrounds.
- This may lead to problems in accessing the limited professional advice which is available, and affect the way individuals present and understand evidence, and how they respond to cross-examination or questions from the bench.
- A lack of educational attainment and poverty are intrinsically linked, and both will be relevant in many spheres where there is judicial intervention.

Social exclusion

1. There is evidence that a disproportionate number of persons drawn into the justice system are from what may be described as socially excluded backgrounds. At the same time, those who operate that system – judges and lawyers – are rarely from such backgrounds. It is necessary therefore to attempt to bridge any knowledge and understanding gaps between judges and those who appear before them.

The concept of social exclusion

2. The term ‘social exclusion’ refers to a situation of economic or social disadvantage. It incorporates, but is broader than, concepts like poverty or deprivation, and includes disadvantage which arises from discrimination, ill health or lack of education, as well as that which arises from a lack of material resources.

3. An understanding of social exclusion is relevant to the administration of justice because many individuals drawn into all aspects of the justice system will come from socially excluded backgrounds. The obvious areas are in the criminal and family courts and in tribunals, particularly but not exclusively those dealing with social welfare law. To understand the circumstances which have led to each individual case it is necessary to have some understanding of how processes of social exclusion operate.

4. Importantly the social exclusion experienced by those who come before us may affect the way that people respond to authority figures, as well as how they present and understand evidence.

5. In the criminal sphere, sentences may create or exacerbate social exclusion for offenders. The sentences may be necessary and justified, but it is important to understand the full implications, which may include the addition of fines to existing debt and the real risk of the socially excluded person engaging in further criminal activity to ‘solve’ the problem.

6. There is no legal definition of social exclusion. A range of definitions is used by academics and politicians, according to their disciplinary and ideological perspectives. However, there are a number of core features which most definitions share. However, for practical purposes, an individual who is unable to participate in key activities in society is socially excluded.
7. Key activities might include:
   a. consumption – being able to purchase goods and services which are customary in that society;
   b. production – being able to contribute to society, whether through paid or unpaid work;
   c. social interaction – having access to emotional support, being able to socialise with friends, having avenues for cultural expression;
   d. political engagement – experiencing a degree of individual autonomy, being able to take collective action, having a say in local or national decision-making.

8. Social exclusion is a matter of degree, rather than a dichotomy between ‘us’ and ‘them’.

9. Complex chains of cause and effect lead to social exclusion. The causes operate at many levels: individual personality, family background, neighbourhood or peer group effects, the local economy and services, national policy and economic systems, and international and global trends.

10. Given the breadth of the term social exclusion, it is difficult to quantify how many people in the UK are affected, but recent research\(^1\) has indicated that 18 million people cannot afford adequate housing conditions, and 12 million are too poor to engage in common social activities thought necessary by the majority, essentially the ability to visit family or friends in hospital, to celebrate important events such as family birthdays and to have a hobby.

11. Experiencing exclusion in one respect is associated with an increased likelihood of experiencing exclusion in other respects, either simultaneously or at some point in the future.

12. There is no evidence of a fixed ‘stock’ of socially excluded individuals, cut off from mainstream society over the long term (sometimes referred to as an ‘underclass’). Rather, individuals move from being more to less excluded, and vice versa, over time.

13. Risk factors include having had a disadvantaged childhood, having low or no educational qualifications, being in poor health, living on a low income, having inadequate housing and being a member of a group that is discriminated against.

**Some facts**

14. Relative income poverty is growing. This classification is based upon people being unable to reach an acceptable standard of living as defined by the general public\(^2\). Survey evidence shows that the number of people falling below the minimum standards of the day has doubled since 1983\(^3\).

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1. *The Impoverishment of the UK* (March 2013)

2. JRF (Joseph Rowntree Foundation) Inspiring Social Change (June 2013)

3. 1983 Breadline Britain
15. The poorest 10% of the population receive more than one-fifth of their gross household income from means tested benefits. This benefit-reliant group comprises 8.3 million people in 3.8 million households, including 3 million children.4

16. Despite the impression given in some press coverage on the topic, means-tested subsistence benefit rates are low. Weekly Job Seekers Allowance is £56.80 for those under 25 and £71.70 for others. Employment and Support Allowance (paid to those not able to work through ill health) ranges from £101.15 to £106.50 depending upon the severity of the disability. Although those in receipt of subsistence means-tested benefits will not be funding their basic housing costs (Housing Benefit will be available to cover rent payments up to a capped limit, and for home owners mortgage interest is payable up to a cap of £100,000) other costs associated with heat and light remain, and fuel costs including these have more than doubled (risen by 234%) since 20005.

17. Council tax used to be covered by benefit for those on means-tested benefits and those who have low income, for example many pensioners. However, recent welfare reform has made the payment of this something of a post code lottery and many will now be expected to contribute to or cover this expense.

18. Around 13 million people in the UK were living in households below the low-income threshold of 60% median income. This is around a fifth (22%) of the population6.

19. At 30%, disabled adults are twice as likely to live in low-income households as non-disabled adults. (Refer to the section on disability for further information as to these aspects.)

Health

20. Health inequalities associated with class, income or deprivation are pervasive and can be found in all aspects of health, from infant death to the risk of mental ill-health. The limited information on progress over time (infant death, low birth weight) shows no sign that they are shrinking.

Characteristics of social exclusion

21. In order to understand social exclusion within the justice system it is important to be aware of the wider context of people’s lives and the ways that different aspects may impact on their experience of the legal process. The next sections try to highlight some characteristics of socially excluded lives and consider their potential impact. However it is important not to perceive socially excluded populations as a homogenous ‘underclass’ with a wholly alternative set of norms, values and behaviours from those of mainstream society. Whilst some commentators attempt to paint this picture, there is no persuasive evidence for it.

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4 JR Financial research publication ibid
5 The impoverishment of the UK (March 2013) (ibid)
6 ‘Squeezed Britain’ The Resolution Foundation (2013)
Low income

22. The realities and practicalities of life on a low income for extended periods can be very hard. Attempting to ‘make ends meet’ through a combination of the benefit system and low paid inflexible and informal work is challenging. Reliance on benefit creates great pressures especially when moving into and out of employment. For some, so-called ‘poverty traps’ make the move into work a very difficult one to take; for others, late payments or over payments of benefit (which may not be perceived as overpayments at the time, but are later claimed back) create financial pressures with severe knock-on effects.

a. Certain elements that have risen faster than overall average costs – childcare, social rents, public transport food and energy – are particularly applicable to those on low incomes.

b. Many people on low incomes, whether in the formal or informal labour market, are paid by the hour and do not receive the full range of employment benefits even if they are entitled to them.

c. Lack of flexibility in their work creates problems maintaining their income while dealing with emergencies, whether relating to children, illness or a court or tribunal hearing.

d. One practical problem of a court or tribunal hearing is the anxiety as to whether they have something appropriate to wear; about 5.5 million adults go without essential clothing, a definition which includes, as well as a winter coat and shoes, clothing appropriate for a job interview.

Financial exclusion

23. This hits hardest when there is a shortfall of income to meet one-off costs for emergencies\(^7\).

a. 16.5 million people cannot pay unexpected costs of £500.

b. 14 million cannot save £20 per month for ‘rainy days’.

c. 12 million cannot afford household insurance. Many struggle to open bank accounts or secure loans at reasonable interest.

d. 21%, some 18 million people, borrowed in the year to March 2013 to pay day-to-day living expenses. For this people are often reliant on very high-interest lenders on the high-street or via loan sharks or pay-day loans; the majority of these are rolled over from month to month despite massive APRs and penalty clauses as recent press coverage and Parliamentary interest has highlighted.

Separated parents

24. For many the child support system is an additional source of difficulty. This brings them into contact with the tribunal system to appeal the decisions of the Agency\(^8\) that

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\(^7\) The Impoverishment of the UK (March 2013) (ibid)

\(^8\) The original Child Support Agency has been ‘rebranded’ twice due to perceived public difficulties with its performance
decides both upon the amount of maintenance and enforcement which has been characterised by a lack of fitness for purpose; the error rate and bureaucracy have created both practical financial and emotional problems for parents since its inception in 1991.

**Lack of choice and control**

25. Socially excluded people may have constant contact with state bureaucracy. Housing officers, DWP officers, community workers, social workers, health visitors, probation officers and advice workers are amongst the many people who some socially excluded individuals come across on a weekly or even daily basis, on top of what we may expect in our own lives by way of contact with teachers, the police and others. Some of these relationships can be positive but there is also a fear factor for many.

26. This may affect views on authority figures such as judges. Additionally the elements of choice and personal control, taken for granted by people with resources, are missing.

27. Socially excluded people may be reliant on this array of individuals who evaluate, adjudicate upon and consequently sanction (or censure) many aspects of their lives. They are also used to having important decisions about their lives made by others.

28. This lack of personal autonomy is a feature of social exclusion that those outside it may struggle to understand. It may lead to a lack of independence of thought which can be construed as apathy or a lack of ability, but this position needs to be looked at in context.

29. A failure to attend a hearing, for example, may be due to a chaotic lifestyle but it may also be linked to the fact that many important decisions in that person’s life, such as entitlement to benefit or contact with children through Social Services, are made without their active input, and they may lack what, as judges, we feel is the natural wish to come along and put their case.

**Family life**

30. Whilst less settled family lives are widespread across society, they are more frequently found and often more extreme amongst socially excluded populations.

31. Within the prison population, for example, there is a significant over-representation of those who were in care (now referred to as ‘looked after children’).

32. Their entry into the care system will have followed problems or trauma within the family unit. Common reasons for admission to care include illness or death of the caring parent, abuse, either of the child directly or domestic violence within the family leading to an unstable or dangerous environment, and drug or alcohol problems which create a chaotic lifestyle for dependent children. Care, whilst securing a safe environment may mean separation from siblings or the wider family.

33. These difficult early issues may resonate throughout life.

34. These matters, alongside the strains of managing on a low income, and the lack of control over one’s life, may contribute to the greater levels of stress and depression which is found among socially excluded people.
Education

35. The lack of a good education is a characteristic strongly associated with social exclusion; a large proportion of the UK population continues to have very low literacy levels.

a. According to the Literacy Trust: ‘One in six people in the UK struggle to read and write.’ This feeds into very low education levels, particularly amongst the prison population in comparison to the general population.

b. Newspapers such as The Sun are aimed at a reading age of around eight. Tackling and understanding documents in legal proceedings, however hard we try to use plain and simple English, will be a problem for many.

36. As well as the significant effect that lack of educational qualifications has on the ability to get decently paid work and to manage in a society that requires certain levels of functional literacy, this may be one of the factors that contributes to low self-esteem, which has been shown to have a major impact on the choice, effectiveness and persistence of people’s behaviours across a range of settings, and has been shown to be a particular problem amongst many people who might be described as socially excluded.

Discrimination

37. In many instances, a major aspect of people’s exclusion may be due to, or exacerbated by, discrimination on the grounds of ethnicity, religion, language, disability or sexuality. These issues are covered elsewhere in this Bench Book.

Social exclusion and the justice system

38. Although it is beyond the scope of this book to determine why, or the extent to which, these factors bring individuals into contact with the justice system, their implications for the actual process are substantial.

39. It is necessary to understand that the social and educational norms, as well as the rules and formalities of the legal process in connection with aspects of language, dress, communication, procedure and behaviour may not be understood or shared by everyone; knowledge and skills should not be assumed. Sensitivity is required to both avoid unconscious prejudice and allow the individual the best opportunity to make their case.

a. For those in hourly-paid employment, time out to attend a tribunal or court – especially if there are delays – may be particularly stressful, as people may be concerned about missing necessary work, thus exacerbating their financial situation. They may need to pick their children up from school yet be unable to pay for or rely on help from others; the networks which might be assumed by many of us on the basis of our own experience are often absent where people are socially excluded.

b. Judges and the legal process may be seen as just another in the long list of authority figures getting involved with someone’s life, and there may be a fundamental mistrust. This can have many implications, but could result in
frustration leading to anger for some individuals. Judges need to understand that this response may not be borne out of a lack of respect for the law, but out of the helplessness stemming from lack of choice and control.

c. Research has shown that many people find courts or tribunals to be intimidating places and this can be exacerbated by issues such as dress. This may be especially so for people who may lack confidence in a formal environment. Attempts to put people at ease are an important part of allowing them to express themselves, and as such part of a fair hearing. Whilst many tribunals adopt a significantly less formal approach to courts, the actual environment may be unknown to the person appearing, and the thought of a legal setting of any sort may engender worry about the event and therefore similar anxiety.

d. People on a low income, or whose social network does not include professionals, are less likely than those in a more privileged position to gain access to timely, high quality legal advice and representation. This will affect the presentation of their case in court. This is likely to be an increasingly pressing issue for the justice system as a whole when the impact of the recent legal aid reforms is known.

e. Where paper work has been provided that should have been seen prior to or during a hearing it cannot be assumed that the individual defendant or litigant is able to understand it, even if English appears to be their first language. It is hard for lawyers to understand the limited literacy levels of the majority, but the vocabulary and syntax in newspapers such as The Sun, and increasingly government authorised websites are pitched to reflect the average, deemed to be a reading age of about eight to nine. Bearing this in mind it is easy to see that legal documents, even where care has been taken to avoid ‘legalese’, may be complicated; they may also be daunting to read simply by virtue of their importance.

40. **Problems of understanding may not be confined to the written word.**

  a. Explanations or comments from lawyers and judges, especially if using legalistic language, may not be properly understood. Individuals may not be used to expressing themselves publicly or with strangers, and may struggle to get their point across. All of this may lead to miscommunication, discussion at cross purposes, frustration and annoyance for all involved, judges included. It is so important that everything said is understood on all sides that time taken to check understanding is rarely wasted. Reflective listening, the summarising by the judge of what they have understood, is a useful strategy.

  b. People may come to a court or tribunal not really understanding why they are there. In some tribunals, even where it is their own appeal, they may only have a hazy understanding of what the case is about, particularly if they have been advised to appeal by an organisation that they consulted at an early stage for advice, but which has not been able to follow the case through to a conclusion, a common situation following cuts in funding.
Decisions of the court or tribunal

41. Within the courts there are clearly cases where it is necessary or desirable for individuals who have been convicted of a crime to be sent to prison and excluded from society. Sentencing may have other objectives, such as punishment, deterrence or redress for the injured party. Whatever the intention, it is important to consider the impact sentencing may have on the social exclusion of the offender and on others.

42. In tribunal cases, in particular those which restrict access to welfare benefits or to funded housing there is similar impact; although discretion in the judge may be restricted, the potential social exclusionary impact of a decision may need to be considered in relation to aspects of the hearing which bear upon Article 6 rights.

Custodial sentences

43. For those with already precarious employment and/or low educational qualifications, a custodial sentence can reduce the chance of subsequent legal employment to almost zero.

44. Private or social housing tenancies may be terminated, creating a risk of a period of homelessness on release from prison.

45. Any supportive relationships or social networks the offender had in the community at large may break down and be replaced by connections among the prison population (sometimes referred to as negative social capital).

46. Lone parents are over-represented among those at risk of social exclusion; custodial sentences for this group are likely to have significant adverse impacts on the children, whatever alternative arrangements are made for their care.

Community sentences and treatment orders

47. Non-custodial sentences can also have a negative impact on the chances of retaining employment. Again, this impact is likely to be magnified by a lack of educational qualifications or an already disrupted work history.

48. In addition, people at risk of social exclusion often have complex and even chaotic lives, as a result of juggling the demands of living on a low income and negotiating with a range of different service providers and authorities. This can make it more difficult to keep appointments or attend regularly.

Financial penalties/overpayments of benefit

49. Self-evidently, the impact of a £100 fine is greater for someone whose weekly income is £60 than for someone whose weekly income is £600. The majority of people on low incomes have no savings or access to cheap credit, neither are they likely to be assisted by friends or family.

50. Attempting to pay fines, legal costs, compensation or overpayments from limited resources can result in problematic levels of debt, a failure to meet other financial commitments such as rent (resulting in a risk of homelessness), utility bills (with the attendant risk of disconnection), or child support payments (increasing child poverty).
51. Payment may also create pressure to acquire resources by illegal means. Financial hardship is likely to affect not only the offender but also any children or other dependants.

**Possession orders**

52. Where possession orders for residential accommodation are made, the risk of subsequent homelessness, loss of assets and potential impact on children should be taken into account.

53. Timing may also be important, to give maximum opportunity for other arrangements to be made, or to take account of other impending events in the individual’s life (e.g. childbirth).

54. The impact of any decision on the property owner should also, of course, be taken into account.

**Public views**

55. Research has indicated that the majority of people share similar fundamental views about justice and consider that those who have committed an offence or erroneously received state funding should be punished, or required to repay money wrongfully received. However, this belief in the justice system depends on a perception of having been fairly treated. As discussed in the previous section, this requires that the process is perceived to be fair and transparent. It also requires that the person feels they have been judged fairly and that the decision is proportionate.

**Conclusions**

56. There may be a predisposition to feel unfairly treated and misunderstood among some people at risk of social exclusion, since this is often their experience of dealings with authority in the past. Judges may be in a position to prevent this perception by active listening and attention to problems during the hearing, and by explaining their decisions fully and carefully, in terms which are easily understood and which show that they have taken into account all the circumstances; a failure to do these things may serve only to further entrench alienation from authority.

57. The argument in this section has not been that people at risk of social exclusion should be treated more favourably than others, but that, in relation to procedural aspects in all cases, and, where legally possible in relation to discretionary matters, judges should take into account the likely impact on an individual’s life chances and the effect upon the lives of any dependants both immediately and in the longer term.