Into the heart of darkness

For those of you who have been reading my column over the past number of years, you will be aware that I tend not to touch upon matters of a criminal nature. This is for no other reason than I do not consider myself sufficiently qualified to make comment on such matters. I do not do criminal law but I do admire those who do. It is often a very difficult area of law to practice given the subject matter and the consequences.

This to my mind was reflected with the introduction last month of a significant piece of legislation in the form of the Sexual Offences (Jersey) Law 2018. Given its ambition and importance, I felt that I had no alternative but to make mention of it.

As the States of Jersey were informed, the law is intended *"to meet the needs and expectations of the police, prosecutors, modern Jersey society and international standards."*

We were also told that this legislation was required because albeit Jersey provided extensive protection against sexual offending, certain offences are regarded as being "archaic" in that they are limited (by way of example) to behaviour towards one gender or rely on terminology that is no longer appropriate in the modern world. It is interesting how "terminology" infects all areas of life in 2018. In addition, certain offences had inappropriate maximum sentences. Then finally there is the question of "consent."

The draft law codifies and replaces the majority of sexual offences that are being committed in Jersey.

I do not propose going into the detail of the law for the purpose of this particular article. However be assured that that this is a significant piece of legislation particularly given the current climate in which we practice and exist. I am sure that this law will assist the Court, practitioners and other professionals in dealing with these types of cases which are often the most contentious in society. You only have to read the press, local or international, to see that.

While on the subject of criminal matters, I did read a very sad case involving a defendant who pleaded guilty to stealing approximately £30,000 from with the Royal British Legion Poppy Appeal.

The defendant was previously of good character. Upon being "found out", he had demonstrated remorse and had cooperated with the authorities. I understand that the defendant had also carried out much community and voluntary work. The work he had done for the British Legion itself both before and after the offending was commented upon. The personal impact that his actions had upon him had affected his life in every way. Notwithstanding the Court considered that it had no alternative but to incarcerate him.

The Court has an established policy of imposing custodial sentences for offences of dishonesty involving breaches of trust unless exceptional circumstances arise. The reason for this is as follows:

"The cases seem invariably to involve offenders of excellent previous character, who co-operate fully with the police, who employ not especially sophisticated modus operandi, who intend to make restoration (and sometimes do wholly or in part), who plead guilty, who evince a more or less inadequate personality, either generally or in response to the configuration of problems which have led to the offence, who have

lost employment, professional status and prospects as a result of the offence, who have suffered severe damage to family life, suffered general remorse and, who as often as not, suffer in some particular personal way that makes a general emotional appeal. Unsurprisingly, the Courts have felt unable to treat these circumstances as exceptional; they are, in the context of the cases, in fact, common place."

The commentary provides a salutary lesson and warning for those in positions of trust not be tempted to the dark side for any reason.

I am sorry to darken your hopefully bright summer addressing these particular subjects but these are matters that lawyers have to deal with on a day to day basis and which impact so significantly on society.