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News from the South Eastern Circuit

THE CIRCUITEER

INSIDE THIS ISSUE

JUSTICE – Mental health

A working party of JUSTICE members and invited experts met to consider the issue of Mental Health and Fair Trial.

by Jodie Blackstock

p4

Keble Advanced Advocacy Course

by Bibi Badejo

p7

WOMEN AT THE BAR

p11

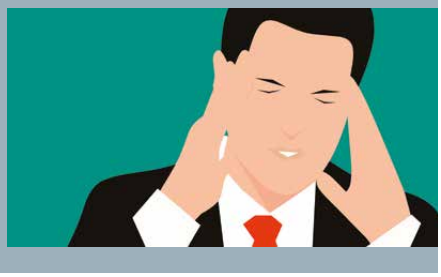
by Sally Hobson

WELLBEING

by Kerim Fuad QC

p13

Particularly in these unsettled times, the wellbeing of all those involved at the Bar is of increased importance.




Karim Khalil QC

EDITOR'S COLUMN

Now we know – football isn't *"coming home"* ... anyone with a moderately realistic view of the 'beautiful game' (however ugly it is) would have known it and betted against it: but our summer of sunshine led us to dream and hope 'against all the odds' that something might turn out better than we thought.

So it is with our system of public Justice – time and again promises are made and excitement is generated ... to believe that we can effect real changes for the better only for those hopes to be plunged into the despair of 'real politic' and the ugly truth. Most politicians don't care. They never will ... unless one of them is truly hoist on the limp petard of public funding.

The period of 'action' since April was a time of unusual determination amongst so many practitioners in the publicly funded Bar. The final vote has left us facing some of the same despairing emotions that accompanied the result of the Brexit referendum – seldom has there been such a palpable sense of disappointment and division across the profession with many individuals wondering whether it is worth the fight ... indeed, some have already decided that it is not and have left to find other careers or simply taken early retirement. I have no doubt that this is a very serious time for us all.

The Judiciary are our partners – they too are confronted by unprecedented failings in the system; collapsing premises; financial pressures and ever-increasing work-loads as they are unable to recruit people of sufficient calibre in sufficient numbers. Never have applications to the High Court been in such short supply – it is a truly remarkable situation.

Nonetheless, there are many who work tirelessly on our behalves to keep the dreams alive – they deserve significant credit when they succeed, in any small measure (and there is plenty to celebrate within this edition). The initiatives on Wellness at the Bar have been hugely successful – bringing together those with a real interest in their own welfare and the welfare of colleagues. Many Judges have attended and spoken frankly about their experiences. It is having a profound effect on those who attend and is providing an interesting springboard for Bar-Judicial discussions on many topics of common interest. I commend these meetings to all.

Whether traditional chambers structures are 'fit for purpose' is attracting more attention than ever before: the recent publication of a book on the topic has served to underline how complicated the management of our profession has become. Meanwhile, most are abiding by the adage to 'Stay Calm and Carry On' – after all, that is what we do.

I hope that everyone has a decent break over the summer, even though we no longer have a period of Court closure to match the closing of Parliament (perhaps our Wellness teams can revisit that?!).

Good luck also to those who are joining Team sKKyDrystone on the Prudential London100 cycle – we will again be raising funds for Opportunity International but there are many excellent charities that will benefit from the time that over 26,000 cyclists will give on Sunday 29th July ... you can't miss it, as the whole of central London is closed to traffic, so please don't grumble but put a paw into your diminished pocket and make a donation to any charity of your choosing. As our Circuit Leader has said on so many occasions, doing a good turn a day helps someone more in need than yourself and makes you feel better – what's not to like about that?!

https://uk.virginmoneygiving.com/fundraiser-display/showROFundraiserPage?pageId=951025

My thanks as always to the indefatigable Aaron Dolan; Sam Sullivan for brightening up the edition; and Adam Morgan for his editing skills.

Karim Khalil QC

Drystone Chambers
Editor *The Circuiteer*

If you wish to contribute any material to the next issue of The Circuiteer, please contact: Karim.KhalilQC@drystone.com

LEADER'S REPORT

by Kerim Fuad QC, LEADER OF THE SOUTH EASTERN CIRCUIT


Kerim Fuad QC

It has certainly been a busy and challenging few months for the Circuit, in particular criminal practitioners, but I am incredibly proud of how SEC members have stayed united in their protests and participated in good-tempered debate and the ensuing ballots in huge numbers. We all respect democracy.

As Angela Rafferty QC, Chair of the CBA, so rightly pointed out, the outcome of the most recent vote was neither a defeat nor a victory but just a step forward in the process. We will carry on the fight to show the government why it is just, reasonable and necessary to pay the Bar more after the past decades of decimation of fees. And to reiterate that, if not, more of the junior Bar will leave this wonderful profession making it harder to seek quality representation and recruit quality judges, to represent all our diverse communities to serve the public in the way they deserve.

The value of the independent bar to robustly prosecute for victims and complainants, and to robustly defend those accused, has never been more vital to a decent and fair society.

We must continue to identify anomalies and unfairly low payments over particular cases so we can argue for remedy. For example, we must ensure that the review of increasingly large volumes of mobile phone data (calls, texts, what's apps, instant messages, snapchat etc) are paid for, and we must ensure that properly set out evidence-based claims for Wasted Preparation and Special Preparation are both processed and paid promptly.

We must also improve our working conditions. To this end, I have been promised a pilot scheme for the introduction of ID cards, allowing speedy entrance into courts with no bag check. And I will keep arguing for:

- functioning canteens for all court users in each court centre,
- proper access to the list officer for clerks and barristers,
- properly taking account of dates to avoid when fixing cases,
- reasonable and known (before the day/ week starts) trial sitting times so carers of young children or elderly parents can have certainty arranging cover,
- more phone hearings and far fewer mentions and PTRs, which waste so much of our time that we could be spending on other cases and which cost us heavily then and there with having to pay for increasingly expensive train fares.

It is important that we keep cementing the courtesy between the Bench and Bar, and maintaining an excellent relationship, as our interests are so often aligned, particularly when it comes to wellbeing.

I will continue to fight for your right to respect, whether that be in terms of payment, the way you are treated by security guards or the facilities available to you at courts, and to fight for the Criminal Justice System which we all value so highly. I have no doubt that you will continue to do so too.

Kerim Fuad QC

Church Court Chambers
Leader of the SEC

JUSTICE – Mental health

"It was scary because I just see this man and two women sitting on a great big bench and I was in a glass box and there were all these others looking. A man then came over and said he was my solicitor but he was different from the one the night before. I thought to myself, 'What is going on?"

An offender with learning disabilities talking about her experience in court[1]

During 2017, a working party of JUSTICE members and invited experts met to consider the issue of Mental Health and Fair Trial. Chaired by Sir David Latham, and generously supported by Linklaters LLP the report of that work was published in November and JUSTICE has since been working steadily to seek the implementation of its 52 recommendations.[2]

Society has increasingly recognised the problems presented by those who are mentally ill. But *Mental Health and Fair Trial* deliberately refrained from restricting its consideration to those who fall within any particular definition of illness or capacity. The Working Party recognised early on that vulnerability arises from many causes; but the effects are the same. Namely, the need for measures to ensure that the criminal justice system does not produce injustice by failing to recognise those who need help to understand and navigate it, and by failing to provide appropriate mechanisms to achieve this.

The Working Party reviewed how vulnerability is identified at each stage of the process – from street to disposal – and, if identified, how that vulnerability is responded to. There are still fundamental problems with the criminal justice system's response to vulnerability and too few people receive reasonable adjustments to enable them to effectively participate in their defence. But that is not to say that practitioners in the criminal justice system are not aware of the problem. The Working Party was impressed by the efforts being made to create an integrated criminal justice and mental health sector, through the programme of Liaison and Diversion. As Lord Bradley envisioned with his 2009 report,[3] done properly, this has the potential to radically improve the treatment and experience of vulnerable people coming into contact with the criminal justice process.

There are also examples across the country of policing, court and health services working together to respond

[1] See Prison Reform Trust and Rethink Mental Illness website Mental Health, Autism & Learning Disabilities in the Criminal Courts, http://www.mhldcc.org.uk/

[2] The report is available on JUSTICE https://2bquk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2017/11/JUSTICE-Mental-Health-and-Fair-Trial-Report-2.pdf

[3] The Bradley Report, Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system (2009), available at http://webarchive.nationalarchives.gov.uk/20130123195930/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_098694

appropriately to vulnerability, and training proposals for advocates to better question people with vulnerability during trial. Amendments to the PACE Codes and CPS guidance are also underway. Significant change to the legal tests of fitness to plead or stand trial and defence of insanity were proposed by the Law Commission some years ago but have never been properly considered. We think that the majority of the comprehensive and persuasive recommendations that the Commission makes must be put onto the statute book as soon as possible.

Nevertheless, too many criminal justice actors, all along its pathway, are unfamiliar with the range of mental health conditions and learning disabilities that can create vulnerability, nor what to do about them. As such, the Working Party recommended core training on the consequences of vulnerability and the procedures that should be followed where this is suspected to be present. It made a critical distinction between diagnosing vulnerability – which we do not believe police officers or legal professionals are ever capable of doing – and recognising that vulnerability needs to be assessed and correctly responded to. Diagnosis is the role of suitably qualified medical professionals who are co-or closely-located with police stations and courts and can conduct proper assessments. Such assessments will more accurately determine whether the person has any vulnerabilities that need to be addressed and whether they have the capacity to follow the process at each stage. Those who attended the CBA conference in May, 'The Vulnerable in the Criminal Justice System,' will have received something of what this training could entail.

Once identified, the Working Party considered that far more support should be available to vulnerable people. Mandatory legal representation should be provided during police custody and intermediaries during police and court stages where this will enable the defendant to understand and communicate. We agree that all advocates must be trained in appropriate questioning and communication with vulnerable defendants, but in some cases this will be insufficient, especially to enable a defendant to fully follow their trial. Greater provision of trained support assistants is required during the police station stage (which would be a re-named appropriate adult role – for what does "an appropriate adult" really mean?). The Working Party also considered that this role should be introduced at the trial stage, to reduce the anxiety and distress criminal proceedings cause for those who are vulnerable.

New roles are also needed in the legal profession to ensure that vulnerability is correctly responded to. The Working Party proposed the creation of a specialist mental health prosecutor for each CPS area who will decide whether charges should be brought in cases that raise vulnerability and will be responsible for the conduct of any case that proceeds to court. It also proposed that there be a dedicated district judge in each youth and magistrates' court and judge in the Crown Court to administer a protocol for cases where there is vulnerability. Such a protocol must ensure that assessment and adjustments are made to enable the defendant to participate in a fair process, or be diverted if this is the appropriate outcome, so that the right procedure is followed in every case and vulnerability is not missed or, worse, ignored.

The Working Party concluded that further, detailed consideration should be given to the creation of a mental health diversion or advisory panel and its place within the system, in view of its potential to assist specialist prosecutors with their charging decisions and sentencers with finding workable disposals. Diversion is a credible and appropriate outcome for some vulnerable individuals. The decision as to whether it is in the public interest to prosecute must take into account the person's mental capacity to both understand their conduct and the proceedings that will follow. It must also consider whether a medically focussed approach could provide a legitimate alternative. In this respect we depart from the General Comment of the UN Committee for the Rights of Disabled Persons. We think that to criminalise in these circumstances would discriminate against people with disabilities and deny them a fair trial.

In summary, the Working Party made recommendations across the following areas:

1. The investigative stage – Mental health experts, not police officers, should be identifying people with vulnerability as a result of mental ill health or learning disability and those identified should have access to proper support.
2. Decision as to charge or prosecution – A specialist prosecutor should be appointed for each Crown Prosecution Service area who must make the charging decision in cases of vulnerability, assisted by up-to-date guidance and assessments.
3. Pre-trial and trial hearings – Trial processes can be bewildering and incomprehensible for those with mental ill health and learning disabilities. Magistrates' courts, youth courts and the Crown Court should have a dedicated mental health judge with enhanced case management powers and responsibility for a case progression protocol.
4. Legal capacity tests – A capacity based test of fitness to plead and fitness to stand trial, placed on a statutory footing should be available in all courts and the "insanity" defence should be amended to a defence of 'not criminally responsible by reason of a recognised medical condition'.
5. Disposal and sentencing – A Sentencing Guideline on mental health and vulnerability should be created and a broader range of disposals made available to sentencers to meet the needs of the case.

Since publication of our report, the Crown Prosecution Service is amending its guidance and we are discussing our other recommendations for the CPS. The Sentencing Council has committed to producing a general mental health guideline, has met to discuss the content and is starting to put this together. The Criminal Procedure Rule Committee has placed the report on its annual agenda and is considering what further guidance can be drafted in the rules, practice directions and court forms to ensure reasonable adjustments are made where appropriate. The PACE Codes of Practice on police detention have been amended to highlight vulnerability and the National Appropriate Adult Network is updating its guidance and training. We have attended meetings with the Met Police on improving operating practices and with intermediaries on articulating their role more clearly. We have also attended the Law Society Mental Health and Criminal Law Committees to discuss guidance and training for solicitors.

For advocates working in the criminal justice system, training on questioning vulnerable witnesses has been available for some time. The Working Party suggests training and guidance must go further. Knowing how to spot vulnerability, get an assessment and understand the varying and complex capacity of clients is essential to defending their interests fairly and effectively.

Jodie Blackstock

Legal Director, JUSTICE

Sir Desmond de Silva (1939-2018)

The South Eastern Circuit is sad to report the death of Sir George Desmond Lorenz de Silva PC QC KStJ, aged 78, following heart surgery. Described by his Head of Chambers as a distinguished lawyer, wonderful raconteur and a delightful man, Sir Desmond was one of the most successful criminal Silks in England.

Born in 1939 in Kandy, Sri Lanka (then Ceylon) to a family of eminent lawyers and politicians, Sir Desmond was called to the Bar in the Middle Temple in London in 1964, and appointed Queen's Counsel in 1984. Former Head of Argent Chambers and door tenant of Goldsmiths Chambers, he was one of the most high-profile criminal QCs in England, defending clients from John Terry, the former Chelsea and England footballer, to Charlie Brockett, convicted fraudster and friend of Prince Charles, to Raila Odinga, who would go on to be the prime minister of Kenya.

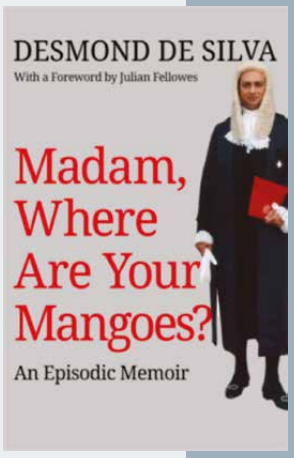
Sir Desmond's legal expertise included war crimes, crimes against humanity, espionage, treason, drugs, terrorism, human rights, white-collar fraud and sports law. In the UK, he was probably best known for his defence of various celebrities, in particular sporting stars such as Lawrence Dallaglio, Ron Atkinson and Hans Segers, the Wimbledon goalkeeper charged (along with John Fashanu and Bruce Grobbelaar) in a match-fixing case.

Amongst many other considerable achievements, in 2002, he was appointed by the UN Secretary-General Kofi Annan to be Deputy Prosecutor for the Special Court for Sierra Leone, at the level of an Assistant Secretary-General. Annan later promoted him to the post of Chief Prosecutor at the higher level of Under Secretary-General in 2005. Sir Desmond brought about the arrest of Charles Taylor, former President of Liberia, who was convicted of war crimes at the Hague in 2011.

In 1980 de Silva, a staunch Conservative, stood in a by-election for Farringdon Without – a ward in the City of London. In a contest with four candidates he received 60 per cent of the vote and remained a councilman for 15 years, retiring in 1995 when the demands of his practice outside London prevented him from attending committee meetings.

In 1987 he married Princess Katarina of Yugoslavia, the great-great-great granddaughter of Queen Victoria. They had a daughter, Victoria, and although they divorced in 2010, they remained amicable.

In 2002 he flew back from his duties in Sierra Leone to attend the opening by the Queen of the Memorial Gates in Constitution Hill commemorating the contribution made by the soldiers of Empire in two world wars – a project in which he had been intimately involved.



He also gave more than 30 years of support to St John Ambulance and for many years served as vice president of St John, London District. In 1995 he was appointed a Knight of the Order of St John. He was knighted in 2007 for services to international law, and sworn of the Privy Council in 2011, when he headed the inquiry into alleged links between the security services and assassinations in Ulster during the Troubles.

An entertaining and generous man with a great love for the finer things in life, de Silva was particularly fond of Armagnac and (as he recounted in his memoirs published in September 2017 as *Madam, Where Are Your Mangoes?*), he once threatened to sue a newspaper for reporting that he spent £400 a week on his favourite tipple. It was, he explained, an "outrageous slur that damages my reputation. I spend much more."!

A great man who will be greatly missed.

Sir Desmond de Silva, born December 13 1939, died June 2 2018

Keble Advanced Advocacy Course

"What have you just done?" I asked myself, not for the first time in the past few weeks. I had arrived late in the evening and was waiting for the porter to open the large sturdy wooden gate that would lead the way to Keble College. The following day I was to start the 25th South Eastern Circuit Bar Mess Foundation Advanced International Advocacy Course at Keble College, Oxford, also known as the Keble Course.

One may wonder why (a) I was so apprehensive and (b) if I felt so strongly why was I going ahead with it? Again, what have you just done?

My fear stemmed from ignorance. I first heard of the Keble Course during the New Practitioners' Advocacy and Ethics Course years before. Described as the most demanding and intensive advocacy course in the UK I decided there was no way I would voluntarily engage in such an ordeal. The thought of exposing myself to an even more rigorous process of advocacy training and risk embarrassing myself in front of eminent silks and esteemed judges was unthinkable. The Keble Course was firmly on my 'Not to do' list.

But of course, I did attend. The recent change of the CPD rules played a role as I now had to consider what area I wanted to develop before engaging in activities in which I could earn CPD points. My chosen area was advocacy and I wanted to be proactive in my development. In my experience there are few accurate measures upon which you can rely on in order to gauge how well you are doing as an advocate. Your tribunal will not tell you about missteps you have made such as asking that one question too many. Your instructing solicitor will probably be too polite to mention your 'interesting' gesticulations. Your opponent cannot and will not advise you on how you could tweak your submissions to make them more persuasive. As a pupil I was encouraged to adopt what I liked when I observed more experienced and skilled advocates in action. However, my own ability to reflect on my performances was limited for a variety of reasons, including not actually being able to identify what it is that I was not doing so well and then understanding why it did not work. Moreover, that exploration in itself exposed a level of vulnerability that I did not really want others to comment on. Those I did trust to provide honest yet tactful feedback were rarely in court to see my performances. However, feedback was not forthcoming.

When I became aware of the dates for the 2017 Keble Course I began to consider it. The course is taught by senior juniors, silks and judges who have been invited to train the advocates. This time instead of being scared of being vulnerable in front of those people I began to see the invaluable opportunity of being taught by the best and have them take the time to look at my advocacy and offer advice and guidance especially tailored to my skill set.

Another factor that caused a shift in my thinking about the Keble course was speaking with a colleague who had completed the course a few years before. She is an impressive and effective advocate and I wanted to be described in the same way. So while the thought of doing the course frightened me, my wish to improve my advocacy began to outweigh it and I started to reflect on my premature and hasty dismissal of the course.

The Course

At the same time as applying for the course I applied for a scholarship. The Inns of Court offer funding for up to five of their members practising as Barristers in publicly funded work, towards the cost of attending the Advanced Advocacy Course. I was incredibly fortunate and was offered the funding to cover the full fee for the course as well as the cost of my South Eastern Circuit membership this year.

This incredibly well organised course is divided into two streams; criminal and civil. I chose to do the civil course but as a family law practitioner specialising in care proceedings there is a clear benefit in participating in either, as the skills developed are applicable and beneficial. I would encourage practitioners of all fields of law to participate.

In addition to the main case, we were also provided materials for appellate advocacy exercises, interpreter case files and an expert case study in either finance or medicine.

We were given a very clear timetable and instructions on what we needed to prepare in advance of the course and for each session. Prior to starting the Advanced Advocacy Course, we were advised to use approximately four days preparing. The bundles are not particularly large and the content is not difficult but there is a significant amount of detail to assimilate and analyse. How preparation is done is a matter for each individual but it is worth completely familiarising yourself with the materials in order to get the most out of the course.

The participants were divided into groups of approximately six or seven and then further divided into Claimant/Prosecution and Defendants for the duration of the course. Each group was allocated a Group Tutor and for each exercise they were joined by another two faculty members who rotated throughout the week and reviewed us using the Hampel method. Over the week there were approximately seven exercises that we participated in and received feedback from. The final exercise at the end of the course is a trial and you work with a partner and divide the advocacy tasks between you.

Before each advocacy exercise there was a presentation followed by a demonstration. After undertaking our assignments, we were immediately reviewed by two faculty members in the room. The assignments were recorded and following the room review we then went to watch part of the performance with the third faculty member and received a further review from them.

For those not unfamiliar with the Hampel Method, it is the most effective method of teaching advocacy skills. Following the performance, each participant is reviewed in the room and is given feedback on what could be done to improve that performance. Specific quotes are given so we could understand exactly what needed to be improved and an explanation of why that particular approach did not work so well. We were then given very helpful and practical advice on how to resolve this issue before the trainer demonstrated how to apply this guidance.

I found the demonstrations especially impressive as the trainers had limited time to spot what was not quite working and then formulate the submissions or questions in order to show you how it should be done. That said, we were trained by the very best; it is my understanding that each faculty member was selected and invited to train on the Advanced Advocacy Course. The majority of faculty members were Queen's or Supreme Court Counsel or Judges from around the world and included The Hob Justice Ann Ainslie-Wallace, the Chair of the Australian Advocacy Institute (a position formally held by Professor the Honourable George Hampel QC, the creator of the said Hampel method).

Following the review and demonstration, each participant then had a second review by the third faculty member who had not watched the live performance but instead reviewed the video recording in another room. This is further opportunity to deal with another area which could be improved on but also address any stylistic issues. I admit recoiling and then cringing when watching myself on screen but this soon dissipated, as video reviews are such an efficient method of appraisal. When I watched myself, I noticed how I stood, how I sounded, what my eye contact with witnesses or my tribunal was like, and some odd mannerisms that I will not mention here and hope you will never know. Importantly, I could also see what I did do well. By observing myself I saw the changes I needed to make and stopped the distracting habit that undermined my performance immediately. By watching with a reviewer, it was again another opportunity to have tailored advice in order to improve.

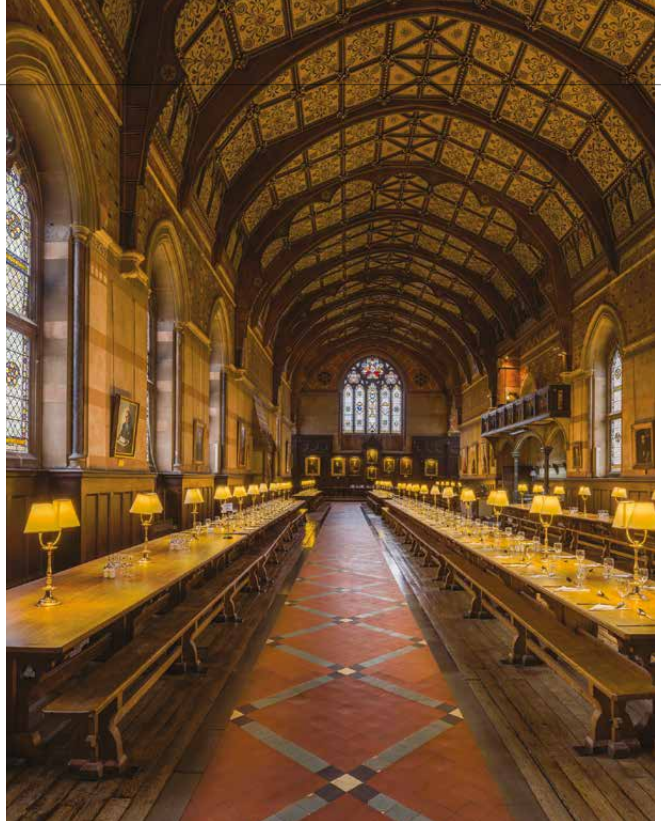
The final part of the Hampel method is for the participant to have a second attempt at the exercise, incorporating the advice given. Due to the fact you are reviewed by two people in the room and a third reviewing your performance on video you amass a wide range of bespoke guidance which you can use to make the necessarily adjustments in your working life. The improvement of each advocate on every single assignment was evident.

I had been worried about being judged by my peers and very experienced trainers and also embarrassing myself but I needn't have worried. My group was especially supportive and we all benefited from watching and hearing the constructive comments in respect of each of us. We were joined by international participants from as far away as Jamaica and the United States, it was a real pleasure to work with and learn from them. My partner for the trial, Patrick from Jacksonville, Florida, delivered devastating cross examination and showed me how it was supposed to be done. Short questions, one fact per questions and complete control of the witness; it was a real privilege to watch and see how he, and others, had developed over the course of the week.

Our group tutor Ed Pepperall QC was always warm and encouraging. The feedback from faculty members was consistently gracious and delivered in a way that allowed me to absorb, assimilate and apply it.

You are also provided with an opportunity to engage in vocal coaching. This was an eye-opening experience as I had not previously appreciated the impact of not breathing correctly. I was advised on this and how to stand and project my voice properly so that everyone in the court could hear what I was saying clearly. This complemented everything we learned and combined with the excellent general advice; bespoke guidance for each of us; observing the performance and feedback of our group members; and, regularly practising these tips meant that the advocates conducting the trials at the end of the week were very different from the advocates who had started on 29th August 2017. Our advocacy abilities were all significantly transformed.

This is not to say it was easy or comfortable all the time. I found the expert case study the most difficult. We were helpfully given a talk on the differences and had time to have conferences with our experts before witness handling. Despite that when it came to the first exercise I knew the doctors were speaking in English but in my head I could not understand half of the words they were saying when they answered my questions. They knew more than I did about the subject and were throwing answers back at me in a way that made me feel completely disempowered. It was a complete disaster. That said, I am pleased this experience happened in the much safer environment of the Keble Course and not in court. I also had the excellent coaching and contrastive feedback from Sarah Clarke QC, Darryl Allen QC, Naomi Ellenbogen QC and David Nolan SC and my second attempt was a very noticeable improvement from my first and I regained my confidence.



It wasn't just work, work, work. There is a very friendly atmosphere and all participants and faculty members alike, attend the nearby The Lamb & Flag to unwind in the evening.

You have an opportunity to speak with faculty members and ask them how they approach their cases, what advice they had been given and found to be invaluable. What steps they take to make them so eloquent. I had a great discussion with Grant Brady SC (Senior Counsel), who is a criminal practitioner in Australia. He pointed out that often the first time we said our submissions or cross examination aloud for the first time was in court. The practice run must be earlier. You must practise what you say aloud first so that you can make necessary edits and adjustments. It sounded time consuming to me and I was slightly resistant but I tried it in preparation for the end of week trial. Unwisely I chose to do this publicly instead of in my room. Don't do that. Does it work? Absolutely. I was more confident in my delivery, it sounded much smoother and I was not thrown off in my submissions during judicial intervention because I knew what I wanted to say. So although I wasn't trained specifically by all faculty members I did reap the benefits of being able to talk with them out of hours. Having said that, of course, you don't have to talk about law or advocacy at all. Everyone is very sociable.

When I stood outside the Main Gate and Porter's Lodge at the beginning of the week I did not know what to expect. I knew it was going to be hard and expected it to be brutal and traumatising but it was far from it. It was more than an advocacy course in the sense that it has provided me with a fresh basis upon which I can continue to build my career. I would thoroughly recommend the Keble Advanced Advocacy Course regardless of the quality of the advocate as there is so much to be gained by anyone who participates.

Bibi Badejo

Four Brick Court

Ramiz Gürsoy

(1961-2018)

The South Eastern Circuit is terribly sad to report the passing of Ramiz Gürsoy after a short battle with cancer. He died in Cyprus on 22nd April 2018 in only his 58th year.

Ramiz was called to the Bar in 1991 and built up a fine reputation as a hugely charismatic, mainly defence, advocate. He was a tenant at Red Lion Chambers and enjoyed travel and sport, especially sailing, as well as farming.

His funeral took place on 25th April at the Ismail Safa Mosque in Nicosia and was attended by many friends and family, as well as President of Northern Cyprus, Mustafa Akıncı, and his wife Meral Akıncı, the 3rd President Derviş Eroğlu, Finance Minister Serdar Denktaş, Minister of the Interior Ayşegül Baybars, and friends from the worlds of sport, politics, law and business.

Ramiz enriched the lives of all around him with his humour and passion for life and for people. He never allowed a dull moment into his life and would always bring cheer to even the bleakest of cases. He had a deep-rooted belief in humanity and was one of the kindest people you could meet: always thoughtful towards others and a great friend to many. Many comments were received from friends and colleagues, which all mentioned his professionalism and intelligence, as well as his decency, warmth, kind heart and big smile – he was definitely one of the good guys and his character and friendship are missed daily.

Kerim Fuad QC, Leader of the SEC, said:

"I have known Ramiz (his close friends called him Ramo) since I was 6 years old. I never once saw him in a dull moment. His face was so full of fun and his long eyelashes almost waved at you. He lived his life to the full with enormous energy and compassion for people. He was charming and never took life too seriously, except for his profession. He injected sparkling humour in and out of court. He was dual qualified in Turkey and the UK and was completely bi-lingual. His parents, Tulin and Ali, and all his family and friends were rightly so proud of him and all he had achieved.".

Max Hill QC, his Head of Chambers, described Ramiz as having "enormous charm, abundant good humour and a great sense of fun. He was universally liked as a lovely, kind and decent man. He was warm and generous and a gentleman in every sense of the word.".

Another of his colleagues, Jenni Dempster QC, paid tribute to Ramiz thus:

"He was one of those people that you were just glad you knew. Consistently charming. Universally loved. And a truly wicked sense of humour. He had an ability to lighten the mood in the darkest of times. He enriched the lives of his friends every single day. He was someone who others gravitated towards. His personality was magnetic. 5 mins with him in the bar mess at Snaresbrook and your worst day in court was quickly forgotten. Nights out with him were legendary. His loyalty, generosity and love of life were well known and highly infectious. He was one of the few whose appeal was universal. Clients rated him. His colleagues adored him. Judges who had never met him nor encountered his inimitable style in court were swiftly won over. He was a truly remarkable man. A one-off. He has left a hole in our hearts which will never be filled. We miss you Ramiz. We will never forget you.".

The SEC passes its condolences to Ramiz's family and very many friends.

THE BAR AND THE BENCH

Supporting One Another

A little known fact is that Shepherd's Bush has a lot to offer on wellbeing. Over a cup of tea one evening I discussed with HHJ Simon Davis how the bar and bench could support each other on wellbeing. My current leader, Christine Agnew Q.C. and I travel regularly to court from Shepherd's Bush discussing our case and how we can make life better for those involved in the Criminal Justice System. Often we work over lunch and then we discuss on the way home how we have not yet achieved quite what we might have wished for on wellbeing during our working day but we are conscious that we are trying.

Wellbeing is a work in progress for all of us, one which we should be required to consider daily, like a mantra in order to achieve regular improvements. Another way we can seek to change or improve our wellbeing is by attending events which provide us with some support for the variety of difficulties barristers face, The South Eastern Circuit has thus been the first to organise joint events to support both the Bar and Bench on this important topic.

HHJ Simon Davis and HHJ John Denniss from Isleworth Crown Court, were the first two judges to come and speak to the bar in February 2017 in Inner Temple about this important topic. Chatham House rules apply so I won't rehearse what has been said by Judges thus far, but suffice it to say that the bench being made up of impressive advocates are impressive speakers on this topic.

Feedback from the events has been extremely positive and has encouraged us to continue these events. Our aim is to try to invite Judges willing to speak and support these events from different court centres.. The perspective of Judges is a different one to the Bar and all those judges who have spoken have been generous with their words of wisdom and advice on wellbeing.

The second event in April 2018 took place at Lincoln's Inn and was supported by Judges from Wood Green. HHJ Noel Lucas Q.C., HHJ John Dodd Q.C, HHJ Kaly Kaul Q.C. and HHJ Greg Perrins. Each spoke about wellbeing and on this second occasion Lee Moore also spoke to the bar about Secondary and Vicarious trauma and a self-care plan for barristers. The audience had doubled in size no doubt due to the impressive list of judicial speakers. Under the leadership of the resident Judge it was clear that Judges at Wood Green were willing to help the bar on listing where possible, lunchtime catering at court if ordered in the morning and even a willingness to deal with mentions by telephone at a time convenient to counsel (provided it was not due to an order having been breached).

What have I taken away personally from the events. I have found a shared recognition that barristers and judges are all human and subject to human frailties is worthwhile in itself. Each event may only plant one seed but that seed may cause change in an important respect resulting in a small improvement for audience members and their wellbeing. The necessity to make my working environment as aesthetically pleasing as possible. This is a challenge in a public building but it is possible with the addition of a small orchid in the room we are using for several months to work in at court. Reminding myself the 'great outdoors' is a source of inspiration and a good stress reliever means I am trying to spend time gardening.

Our next event on 17 July 2017 at Middle Temple, is with Judges from St Albans and Luton. HHJ Nigel Lithman QC, HHJ Stephen Warner, HHJ Barbara Mensah, HHJ Marie Catterson have kindly agreed to be our judicial speakers and a clinical psychologist will speak about the "Stiff Upper Lip". This event also promises to be an uplifting evening which will be followed at this glorious time of year with drinks in Middle Temple garden; weather permitting. Please come – it might provide you with some small seed of change and it will undoubtedly mean you are nourishing your need to improve your wellbeing.

My heartfelt thanks go to Aaron Dolan for his slick and superb organisational skills and the Inns who provide unstinting support and a reduced cost to the circuit for running these events. Thanks too to all our judicial and professional speakers who provide the content for the events to take place and the audience who by attending are willing to try and support our efforts to improve wellbeing for the bar and bench. Keeping this important topic in our working lives at the forefront of our minds and in full sun is a step in the right direction.

Valerie Charbit

Red Lion Chambers
SEC Recorder

WOMEN AT THE BAR (Crim.)

By, An Adult Female Human Being at the Bar

Etymology: woman (n.) "adult female human," late Old English *wimman, wiman* (plural *wimmen*), literally "woman-man," alteration of *wifman* (plural *wifmen*) "woman, female servant" (8c.), a compound of *wif* "woman" (see wife) + *man* "human being" (in Old English used in reference to both sexes; see man (n.)).

Condoms are known to have been in use for over 15,000 years. Early Japanese condoms were made out of horn or tortoiseshell. It's not clear who invented the condom; whether it was a woman who wanted to enjoy sex without becoming pregnant, or a man who wanted to have sex without impregnating a woman. Perhaps it doesn't really matter who thought of it, but it was a brilliant idea. Why do I start this article with some random condom facts? Two reasons; first, everyone loves a good condom story around the supper table and second, because inventing the condom was one of the first things that, probably inadvertently, liberated women.

I am, as an adult female human being, the same as a man except for a bit of biological artistry and some more significant differences in the processing, chemistry, structure, and activity of my brain.

I don't think of myself first and foremost as a woman. This probably stems from a childhood spent in the midst of Sherwood Forest. It was, with the benefit of hindsight, perfect preparation for life at the Bar. I was number three in a line-up of four daughters (yes, they kept trying for that elusive boy). In the small village where we lived, when not in school or being shipped over the Atlantic to spend the summer with our 'Professional Gambler Grandparents', we would cycle with the other village savages to the forest, popping into 'Ye Olde Village Shoppe' on the way to pick up supplies of fizzy drinks, crisps and sweets. Our main objective, to re-enact the adventures of Robin Hood and his Band of Merry Men beginning quite successfully for a time, by taking from the rich shopkeeper and donating the spoils to our poor selves. And then the shopkeeper got wise (n.b. I plead *doli incapax* on our joint behalves).

None of us were defined by our gender; we ran, climbed, fought, ate, swam and played together in a feral idyll; going home only because we were hungry or because it was getting dark. We made weapons out of branches and launched attacks from the hollowed-out recesses of those ancient oaks. I don't remember any of us ever volunteering to be Maid Marion.

The battles continued at home. Visiting my parents on Father's Day just gone, my father informed me, post arrival, of a large trench down the side of the house. "*Do you know why that's there, Sally?*" he asked. "*Errrr, no*", I replied, slightly concerned for my mother's wellbeing. "*I've pulled 11 tennis balls out of the soak-away*" he told me. "*Well done*", I replied, "*Are they still usable?*" My father proceeded to cross-examine me, "*Do you know how those balls could possibly have got into a soak-away that was attached to the garage roof?*" Of course, I knew.

It was possible to launch a deadly missile (aka a platform wedge shoe) from one end of the upstairs landing (Number 1's bedroom) to the other. The only escape routes when spontaneous armed conflicts began, were either to dive into the bathroom and bolt the door (necessitating a stay of several hours before it was safe to come out), or to climb out of a window and jump down onto the garage roof where there was a ready supply of tennis balls in the drain pipe, to be used in counter-attack should the enemy follow you out of the window or attempt an assault from below. Those life-saving balls had very slowly made their way down the drain pipe and into the soak-away. The result, a readymade garden pond every time the heavens chose to open. I could see, just as I saw on his face all those years ago when investigating the cause of a hole in a wall, a smashed window or a broken door, that my father was not a happy man. He knew cross-examination was as futile as it ever had been. I had been trained, by my siblings and peers, to withstand torture.

My brain switched immediately into survival mode: snitches get stitches. "We did play a lot of tennis when we were younger", I told my father, and then wondered whether the bodies of Numbers 1, 2 and 4 would fit into the trench or whether I should put on my wellies and start digging.

My physical warrior training over, I went off to university to become a warrior of a different kind; a warrior of words, a barrister. It wasn't my first choice of career. I wanted to travel to exotic places and meet interesting people. I've done the latter. As to the former, well, does Luton count?

It may not come as a surprise having read the above, that I don't like the 'genderisation' of most things (loos being one of the exceptions). I refuse to attend or be a part of any organisation that has the word 'Woman' in the title. I don't see why it is necessary to have societies that exclude by virtue of an inclusive word within their title. That is not to say that I don't think it is important to recognise the importance of women at the Bar. I do, and it is, for we are still relative newcomers to the profession. For me, sexual equality is about making sure that women are able to work just as well as men in the same environment.

The Bar of England and Wales was established in the 13th century, some little time after the first condoms were ever used. In 1922, Ivy Williams became the first woman to be called to the Bar of England and Wales, very quickly followed that same year by Helena Normanton, who became the first woman in practice. We were 53 years behind the USA, who had their first female lawyer in 1869. Between then and 1922, women all over the world (USA Germany, New Zealand, Uruguay, the Philippines, Sweden, India and Romania, to name but a few) were becoming lawyers. Those women, and many others, made it possible by their campaigns, negotiations and actions for others to follow in their footsteps. They fought and won the battle against sexism. But it is baffling to try and understand why they had to fight for so long and so hard. Why did some men (and some women) want to retain this oppressive society? Why, in a country where you could be born a Princess and become Queen by virtue of birth and without choice, qualification or hard work, could you not choose to work hard and become a Barrister? It's truly baffling.

I'm not going to dwell on who was to blame. When I began my pupillage, women were not allowed to wear trousers. "*Why not?*" I asked my erstwhile pupil master. "*I don't know, that is just the way it is and it says it in the code of conduct.*" We discussed appropriate clothing and he recommended a good tailor who could provide a female version of striped trousers. We have, fortunately, moved forward and are at the beginning of an era where, I think, women at the Bar feel more comfortable about being women barristers. Neither our gender or the clothing we wear define our capabilities as advocates. We are no longer a novelty and we don't feel the need to be more masculine at work. We don't need to be ashamed of having our periods (yes, I've said the 'P' word), or being pregnant or going through the menopause. It's what happens to women because of our biological make up. It remains a fact though, that at the Bar, women are still playing catch up. Recognition has to be given to that and because women have been oppressed for so long, some positive discrimination is required to redress the balance. Women have had to and continue to fight for equality and although the fight is not over, it is less of a battle. And I am sorry to all you men out there who bemoan the fact that you are experiencing prejudice because you are male and are a victim of positive prejudice. It's not fair is it?

I recently walked into a robing room to hear four men sitting around a table complaining about how hard it is to combine life at the Bar with dropping off and picking up children. I went to the ladies' loo (which had a note on the door that has been there for months – "*Lock broken do not use*") and had a really good belly laugh. That really is equality.

Sally Hobson

Drystone Chambers

WELLBEING

It seems to me that, particularly in these unsettled times, the wellbeing of all those involved at the Bar is of increased importance. Indeed, it was one of the issues which I raised on my election as Leader all those months ago, and the South Eastern Circuit has been striving to put into place initiatives which will support you in this regard. But it is vitally important that you also make sure that you do whatever you can to look after your health and wellbeing.

What is the SEC doing?

Sitting Hours Protocol

In 2017, the SEC worked with the Bar Council to agree the Sitting Hours Protocol (set out at the end of this article*), which was intended to clarify that, in general, court sitting hours (including video link and phone hearings) should take place between 10am and 4.30pm. Unfortunately, the Protocol was never officially adopted because of the overlap between it and the planned pilot of Flexible Operating Hours. But that doesn't mean it has disappeared for good, nor that its principles are no longer right. If you are involved in a case where these principles are not being adhered to, please let me know and I will do my best to explain the point of the Protocol to the relevant parties.

Quality of Working Life Questionnaire

Last year, the SEC and the CBA jointly commissioned a questionnaire to investigate the work-related quality of life of members of the Bar (as well as asking for views on the FOH pilot). The results backed up the anecdotal evidence which I have seen and heard over recent times.

Most shockingly, respondents reported significantly lower levels of overall Quality of Working Life, lower satisfaction with home-work balance, working conditions, and higher levels of stress at work compared to a benchmark sample of UK NHS staff. It was noted that the overall quality of working life score for this sample was one of the lowest of all previous QoWL surveys, and the stress at work scores were the highest.

While the questionnaire itself doesn't solve any wellbeing issues, it does give us strong independent evidence to show to the Ministry of Justice in our ongoing debates about investment in, and changes to, the criminal justice system.

Wellbeing seminars

On 20th February, the SEC hosted an event aimed at providing members of the Bar with strategies to cope with difficulties or crises that affect barristers' professional lives with stress or burnout. Our guest speakers, HHJ Simon Davis and HHJ John Denniss, generously shared their own personal experiences and a moving and relevant discussion ensued. All those who attended felt that it had been a very worthwhile experience but it was a shame that more were not able to make it.

Another event, brilliantly organised by the SEC and Lincoln's Inn Social and Wellbeing Group, was held on 11th April, at which several Wood Green judges spoke about wellbeing from their perspective. In addition, Lee Moore talked about Vicarious and Secondary Trauma. It was another excellent evening, with a great turn-out this time. Hopefully the word is now spreading that the SEC takes the wellbeing of its members and the judiciary very seriously and that you should do so too.

At the time of writing, the most recent wellbeing seminar was scheduled for 17th July at Middle Temple: I strongly encourage you to attend such events if at all possible. I do understand the irony of trying to improve your wellbeing by attending an event which eats into your non-work time, but it will be time well spent, I can assure you.

These are also examples of how the SEC is working hard to improve relations between the Bar and the Bench. In so many areas, their interests are aligned and by listening to each other and working together, we can make life better for each other. Another SEC initiative has been to encourage SEC Officers and Bar Mess Chairs or Representatives to visit Judges for lunch, coffee or just a chat to build stronger ties between the judiciary and the Circuit and to listen to each other and discuss issues which might be affecting both. In fact, one of our Bar Mess Chairs now serves cake and tea at their meetings to further enhance that relationship – just a thought!

HMCTS reforms

Based on many years of my own experience at the criminal bar, as well as the experiences of others working in the criminal justice system, I have tried hard to come up with practical changes which could be made to make your lives easier and thereby improve your wellbeing. At my recent meeting with Ms Acland-Hood, Chief Executive of HMCTS, she agreed that ID cards, canteens at all court centres, non-trial hearings held by phone/email/TV link, accommodation of advocates' dates to avoid and better access to prisons for "legals" were all sensible suggestions which should be acted upon. I have no intention of letting this lie and will keep making my proposals until I see them materialise. For more detail, see my SEC Article from January – http://southeastcircuit.org.uk/images/uploads/SEC_Reform_Release_17.01.18.pdf

As with the Sitting Hours Protocol, it is vital that these changes are effected nationally to ensure that "rogue courts" do not play by their own rules. Let me know who is doing well and who might need a gentle reminder.

Thank you

While I am personally extremely supportive of the work of the SEC in this area, it is often others who do the day-to-day organising, preparing and running of events. I am hugely indebted to Valerie Charbit in particular who has spearheaded these initiatives, together with Aaron Dolan who has made them a reality.

I am also grateful to all of you at every level who organise and participate in events, whether that be Bar Mess drinks, seminars in Chambers or anything else. By working together, we can change things. No-one can do it alone.

What can you do?

Look after yourself

Within the constraints of your ever-increasing workload, please make the time to start new good habits which will help you in the long run. Many of these tips may sound obvious, but it is by making small changes to your day-to-day lives that you can keep yourself physically and mentally well.

Eat well – fresh, nutritious food fuels your body and your mind, and maintaining stable blood sugar levels helps you to cope with stress. There is no such thing as "bad" food though so don't feel guilty about occasional treats – remember, everything in moderation! Eating with friends or colleagues rather than while working at your desk also gives you the chance to socialise with others, a critical part of wellbeing.

Exercise – as well as the physical health benefits, exercise is linked to lower rates of depression and anxiety. Now that the snow has melted, try to exercise outside if possible to benefit from the Vitamin D and the good feeling of being in the open air. Physical exercise can also alleviate problems associated with our work, such as back problems from too much time spent at a desk, and with sleep issues. If possible, integrate some exercise into your daily routine eg. getting off the train or bus one stop early and walking or using the stairs rather than a lift

Sleep – another piece of advice which is hard to take on board when you are over-worked, I know, but it is well-established that good quality and sufficient sleep is vitally important. If possible, avoid caffeine, smoking or alcohol in the 2-3 hours before bedtime. Keep screens out of the bedroom and try not to look at them for 1½ hours before going to sleep. Write things down if you are anxious or have lots on your mind.

Stay hydrated – dehydration exacerbates fatigue, causes headaches and irritability and prevents your brain functioning at its best. But very few of us drink enough water, and it is particularly hard in court centres which no longer have canteens. Try to keep a re-usable bottle with you all the time and refill when possible (then you can help fight the problem of plastic waste too!). For the avoidance of doubt, alcohol doesn't count.

Stay connected – however much work you have, and I do know that you have a lot, find time to stay connected with other people – take classes, volunteer, do group exercise, spend time with friends and family, participate in your Bar Mess or the SEC! And if necessary, talk to a professional (such as your GP or a counsellor; use the resources available to you, such as the Bar Council's "Wellbeing at the Bar" initiative or the CBA's confidential support Helpline).

Have a look at my article "Five ways to wellbeing" from last July for more ideas – http://southeastcircuit.org.uk/images/uploads/SEC_KFQC_Five_ways_to_wellbeing.pdf

Respond to stress positively

For many of us, pressure is helpful for health and performance – it galvanises us into action and enables us to perform at a top level. But although we may be good at dealing with short-term or acute stress, we struggle more with prolonged or chronic stress. In other words, it is not stress itself which is the problem, but chronic stress.

You may well recognise common responses to chronic stress, such as clamming up or lashing out at others, reacting too quickly to situations and therefore making poor decisions, losing focus and feeling overwhelmed by competing priorities. However, one of the most dangerous characteristics of chronic stress is that it changes the way we think – we become more narrow and rigid in our thinking and fail to notice other perspectives. Some mental shortcuts can be helpful in some situations but become less so when they become fixed, for example:

- focusing on the "worst case scenario";
- thinking that people's actions or comments are a personal reaction to you;
- assuming that you already know what others are thinking – or expecting others to know how you are feeling without letting them know;
- expecting perfection (from others or yourself) and considering it a total failure if that perfection is not achieved.

None of these reactions are wrong in themselves, but they can become counterproductive if they start to take over, encouraging unhelpful behaviours. If you notice this happening, ask yourself:

- is there is another way of looking at the situation?
- is that thought helpful to your long-term objective? and
- what do you choose to do next?

It is important to remember, especially in stressful situations, that you always have a choice how to respond – not necessarily with your thoughts or emotions but with your actions. You might not be able to control all elements of your situation, but if you can identify small but achievable changes, you will feel more in control and see some payoff, however minor. People tend to overestimate the need for big changes and underestimate the power of behavioural "marginal gains".

By resisting the temptation to react quickly and, instead, consciously choosing your response, you are likely to come up with a more positive reaction which may well then lead to a better outcome and help you to avoid the vicious cycle of chronic stress.

Tell me about it!

Let me know about unreasonable or unacceptable experiences in your professional life, especially if they affect your wellbeing – I can only help if you tell me about it, preferably in an objective and factual email. I can't guarantee to solve everything, but I will always take up the case of anyone who has been wrongly treated at work.

And if you have ideas which could help improve the wellbeing of yourself or others at the Bar, then please let me know about them too, and I will do my best to put your suggestions into practice.

Kerim Fuad QC

Church Court Chambers
Leader of the SEC

Bar Council Protocol for Court Sitting Hours

1. Introduction

1.1 The Bar Council invites the adoption of a new Court Sitting Hours' Protocol for all hearings in the High Court, County Courts, Crown Courts, Magistrates' Courts and Tribunals.

2. Background

2.1 A tendency has developed to list cases increasingly early or late in the court day without reference to the majority of court users, particularly in the criminal and family courts. This has widespread implications for the professional practices of barristers, as well as their ability to manage appropriately their professional duties, own wellbeing, and any caring and personal commitments that they may have.

2.3 Bar Council and Bar Standards Board research has identified variable sitting times (at the unexpected behest of the court) to be a key factor contributing to the pressures upon barristers with caring responsibilities, particularly women, and therefore a significant barrier to retention after childbirth.[1] This is one of the reasons why the profession (though roughly 50:50 at the outset) is estimated only to become 44% female in about 30 years' time.[2]

2.4 It is beyond argument that the Bar should continue to recruit and retain the best and brightest lawyers solely on merit and regardless of their gender, ethnic background, age, sexual orientation or disability. Where there are any barriers and obstacles still in place that artificially act to distort that equal recruitment and retention, we must act to remove them to ensure that there is genuine equality of opportunity and that our legal system and judiciary is capable of better corresponding to the community it represents.

2.5 In 2016, during a workshop at the Annual Bar Conference on *"Generating a diverse profession: Learning from domestic and international experience"*,[3] delegates considered and approved the concept of the Bar Council developing a similar protocol to the restricted sitting hours model in the Australian courts, in order to mitigate this barrier to retention.

2.5 In December 2016 the Bar Council's Equality, Diversity & Social Mobility ("EDSM") Committee mandated itself to working towards a court sitting hours' protocol. Similarly, some Specialist Bar Associations ("SBAs") and Circuits have been considering this issue too.

2.6 This protocol is not a direct response to HMCTS's planned 'Flexible Operating Hours' (FOH) pilots. Nonetheless, FOH will run counter to our attempts to improve the retention of women at the Bar. Our grounds, reasons and the evidence base for this assertion, are set out in the letter from the Chairman of the Bar to the Chief Executive of HMCTS dated 10 May 2017.

2.7 We recognise that the Bar is a profession and not a fixed-hours job, and that our professional standards are such that we can react as flexibly as possible to issues as they arise in court. We suggest, however, that the time has now come to adopt a sitting hours' standard for the profession, that is both appropriate and practical whilst still permitting flexibility where demonstrably necessary. It is obvious that barristers must also work on their cases outside the courtroom. Regular and reasonable court sitting hours will assist in ensuring that court hearings run as smoothly and efficiently as possible. We suggest that such hours will better enable us to discharge our duty both to the Court and to our clients.

2.8 Informal feedback, particularly again in response to the proposed FOH pilots, indicates that other professional court users (including solicitors, judges, court staff and other public servants) have similar concerns about extended court sitting hours. We anticipate, therefore, a broadly favourable response and support for this protocol from those working within the courts to which it is intended to apply.

3. Status

3.1 It is intended that this protocol signals to the profession, the judiciary and the Ministry of Justice the sitting hours that the Bar considers necessary to provide reasonable working conditions for all concerned and to improve the retention rate of carers, and therefore in particular women, at the Bar. We intend that this protocol encourages all concerned to resist demands on the court process to sit extended court hours.

3.2 The Protocol

This Protocol recognises that advocates must undertake a great deal of work outside the courtroom and outside court sitting hours in order that hearings run as smoothly and efficiently as possible.

It also recognises that justice must be delivered efficiently and effectively and within a reasonable period of time and that a degree of flexibility is required from those professionally engaged in this process.

Making provision for clear general court sitting hours provides certainty and fairness for all court users. It also underscores the Bar Council's principal aim of ensuring that all barristers can discharge their professional duties to their clients and the court, whilst at the same time properly balancing their work commitments and personal caring responsibilities. In addition, it seeks to ensure that all barristers can enjoy genuine equality of opportunity whatever their practice area, retention of barristers for a successful career and progression into Silk and the judiciary, and that our legal system and judiciary is capable of responding better to the community it represents.

The Bar Council accepts that on a case by case basis Counsel instructed will place the best interests of the client before their own, notwithstanding that this protocol may not have been applied.

The terms of the Protocol are that –

1. Subject to the paragraphs below, as a general principle no court or tribunal shall sit before 10am or beyond 4.30pm and telephone and video link hearings shall also be conducted within these hours.

2. Counsel who accept a brief to appear in cases of genuine urgency (for example: without notice applications for freezing or restraint of assets, or preventing the removal of children from the jurisdiction in emergencies) may be expected to attend court outside those hours for such urgent applications.

3. If a judge considers, in the interests of justice, that the court may need to sit extended hours in a case on a particular day, the parties and their representatives shall be notified by the court at the earliest possible time of a proposal to do so (wherever possible with at least 24 hours' notice). Before making a decision to do so, the court or tribunal will consider the family or other caring responsibilities of counsel and other court users.

4. In long cases or other cases where there are special needs such as relating to witness availability, so that a hearing timetable is necessary or appropriate, the timetable shall be agreed well in advance of the hearing and shall take into account the family or other caring responsibilities of counsel and other court users.

5. This Protocol is not intended to alter or prevent well-established alternative court sitting procedures ordered at a pre-trial hearing to apply to any particular trial, such as Maxwell hours in the Crown Court.

6. This Protocol shall apply to cases in the Business and Property Courts as it applies generally; however, in such matters it is recognised that account may need to be taken of particular pressures to sit longer hours arising from the nature of the dispute and/or the wishes of the parties to sit outside these hours and it may be appropriate for a court to decide to sit outside these hours if it is in the interests of justice to do so (for example for the efficient disposition of the hearing, including the maintenance of any agreed timetable).

[1] See, for example, *Snapshot – the experience of self-employed women at the Bar* published by the Bar Council in 2015, and *Women at the Bar* published by the Bar Standards Board in 2016

[2] See the Bar Council report *Momentum Measures: Creating a diverse profession* Summary of Findings

[3] Organised by the Equality, Diversity & Social Mobility Committee and the Association of Women Barristers.