

EXTENDED OPERATING HOURS: A RISK ASSESSMENT

The North Eastern Circuit Women's Forum

**Report on proposed HMCTS
Extended Operating Hours**

23 July 2020



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INTRODUCTION

On 6 July 2020, the North Eastern Circuit (NEC) held the inaugural meeting of its Women's Forum.

Most participants had by that stage been at home for several months, many struggling to balance remote hearings with home schooling – a situation which has prompted a reflection on the prospects for a future at the Bar.

The Government had recently announced its plans for Extended Operating Hours (EOH). Indeed, members reported that some courts had already started to sit extended hours without there having been any consultation. To describe the mood of that meeting as strong would be an understatement. It was decided that the very first role of the Forum would be to consult the whole of Circuit as to their views on EOH.

A survey was circulated a week later, and within two days, almost 70% of Circuit had responded. In addition, we received dozens of emails and case studies. Every single piece of correspondence we received expressed the fears of individual practitioners, for themselves and for their families, if EOH were to be introduced without any safeguards. We thank everyone who took the time to write to us. I would also like to thank Wendy Showell Nicholas for her valuable insights.

Commissioning this survey and report within a two-week period has been frenetic; if the speed at which this report has been prepared has led to any errors or lack of eloquence, then the responsibility for that is mine.

Although we represent members of the NEC, we are acutely aware that EOH will have the same or greater impact on our solicitor colleagues, who often have the additional element of night-time attendance and being on call. Additionally, we appreciate that many others including court staff, professional and lay witnesses and juries are affected by changes to court sitting times; for example, many face the same challenges relating to childcare as are detailed in this report.

This report has been a genuine team effort, with contributions from many women across Circuit. Production of a report and survey in the timescale has been an enormous achievement, and I am very grateful to all who assisted.

KAMA MELLY QC 23 JULY 2020

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SUMMARY

1. The backlog of cases which now exists across jurisdictions overwhelmingly pre-dates the Covid-19 pandemic. It has been proposed that this backlog be tackled in part by the introduction of Extended Operating Hours for court business (EOH). This proposal has been considered by the newly created NEC Women's Forum.
2. The views of Circuit members have been canvassed (i) by way of a digital survey and (ii) through an open request for views and case studies. The views expressed by Circuit members are contained in Appendix 1 of this report (in anonymised form). The full results of the survey are contained in Appendix 5.
3. In brief, the results of the survey echo the findings of previous reports in respect of EOH prepared by organisations that represent the Bar.
4. The survey was completed by almost 70% of members of the NEC. Over 85% of respondents are opposed to a temporary increase in sitting hours.
5. While there is hostility to EOH in principle and the broad proposals that have been announced, views have had to be canvassed at a time when the detail of the proposals is still unknown.
6. The survey results and case studies indicate that EOH has the potential to have a significant detrimental impact on the wellbeing of members of Circuit and their families, and on the quality of work produced by counsel.
7. Further, and perhaps of even greater long term significance, is the clear evidence of the impact of EOH on the diversity of our Circuit and, in time, our Judiciary.
8. The evidence presents an overwhelming picture: EOH, introduced without safeguards, will impact on women to a far greater extent than men. The

obvious consequence is the further attrition of women in a profession that is already grappling with an alarmingly low rate of retention of women.

9. Policymakers considering the introduction of EOH must understand the complex nature of self-employed practice at the Bar in order to appreciate the discriminatory way in which EOH, without safeguards, will in reality operate.

WORK UNDERTAKEN FOR THIS REPORT

10. The North Eastern Circuit is made up of 950 practitioners. Practitioners predominantly work from the 29 sets of independent chambers on Circuit, with 18 members being employed outside of chambers.
11. 39% of the members of Circuit are women. Limited quantitative data is available, but it is clear from a review of the dates of call (where known) that the distribution across age is disproportionate, with a greater number of more junior or younger women being members of Circuit, and the number of women reducing as they become more senior.
12. This reflects the national attrition rate, as women progress through their careers. The retention of women is already a difficult issue for the Bar.
13. Approximately half of practitioners across Circuit undertake criminal work. The other 50% are split approximately evenly between civil, family, and other areas, including Court of Protection, Regulatory, Chancery and Commercial.¹
14. The inaugural meeting of the NEC Women's Forum took place on 6 July 2020. At that meeting, significant concern was raised about the prospect of

¹ These figures should be treated with caution. The demarcations between practice areas are not clear, as many practitioners particularly in the junior years undertake a multi-disciplinary practice, and there are significant areas of overlap.

EOH being introduced. The first step was to conduct a wider survey. It received 678 responses. We received 22 case studies and emails.

15. It is intended that the views of practitioners on the North Eastern Circuit, as expressed in this report, will be given detailed and proper consideration before any plan is finally adopted and put in motion.

PRESENT AND PREVIOUS EOH PROPOSALS AND RESPONSES

16. On 1 July 2020, HM Courts and Tribunals Service published a recovery plan *Covid-19: Overview of HMCTS response*².

17. It was noted that radical steps were required, and therefore it was proposed that options be explored for extended operating hours (EOH) to increase capacity. The plan detailed '*building blocks to recovery*', including the introduction in July of extended operating hours of courts to increase the number of sittings. It is then envisaged that the use of EOH be expanded in the autumn. On 9 July, HMCTS CEO Ms Acland-Hood confirmed that there are presently judicial-led working groups for each jurisdiction working through the 'plans for extended operating hours'.

18. The Civil Working Group is chaired by HHJ Godsmark QC. The outline proposal is for **evening sittings** from 16.30 until 20.00, limited to 2-3 days per week, in order to clear small claims, and for **Saturday listings** from 10.00 until 16.00 to clear fast track trials. There may be some swapping between those two time slots depending upon the time estimates of individual claims. This will be in addition to increased regular hours working.

19. The Criminal Working Group has produced outline proposals for a morning session and an afternoon session i.e. running two trials concurrently from every available Crown Court room suitable for jury trials by operating two

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/896779/HMCTS368_recovery_-_COVID-19-Overview_of_HMCTS_response_A4L_v3.pdf

lists³. We are aware that some groups have proposed a further system to accommodate those who need to work 'normal' hours. The two concurrent trials are expected to be listed as follows:

- OPTION A
morning session 09.00 – 13.00
afternoon session (different trial) 14.00 – 18.00

- OPTION B
morning session 09.30 – 13.00
afternoon session (different trial) 13.30 – 16.30/17.00

20. This is not the first time that HMCTS have tried to extend operating hours. A consultation took place in 2017, with a pilot planned for implementation in criminal courts between February and August 2018, and the publication of results planned for winter 2018. Following extensive objections, however, that scheme was not implemented.

21. During the 2017 consultation, HM Courts and Tribunals Service prepared a *Flexible Operating Hours Equalities Statement* in which it was recorded *'that legal practitioner representative bodies had expressed a number of concerns primarily about the impact on work life balance and diversity in the legal sector.'*⁴

22. The Equalities Statement highlighted that those with caring responsibilities may be both directly and indirectly affected. Examples are provided of unconscious bias⁵.

³ Criminal Bar Association 'Monday Message', 13 July 2020.

⁴ <https://insidehmcts.blog.gov.uk/wp-content/uploads/sites/171/2017/08/Flexible-Operating-Hours-Pilot-Equality-Statement-1.2.pdf>

⁵ A bar clerk might assign a case listed in a Flexible Operating Hours court to a male barrister (without caring reasonability) because a female barrister has childcare commitments which conflict with the time the case is listed. This could lead to the male barrister being able to take on work for normal courts and Flexible Operating Hours courts and the female barrister suffering loss of earnings as they can only take on work from the normal court".

23. It was recognised within the report that issues in relation to scheduling and listing practice required careful consideration: *‘(Local Implementation Teams) will be asked to consider if it is feasible to provide court users with a choice of the time of day their hearing is listed; and in several pilots particular parts of the day will be focused on particular types of hearing, which will address the difficulties of uncertainty associated with any hearing being able to be listed at any time’*.⁶

24. In November 2018, HMCTS published the *Flexible Operating Hours Pilots: Prospectus for Civil and Family Court Pilots*.⁷

25. While we fully recognise the need to find a way to clear the backlog of cases, the concerns raised about EOH during prior consultations remain and must be considered. Indeed, many of the serious issues raised in previous consultation have in fact been exacerbated by the Covid-19 pandemic. For example, in both the 2017 and 2018 consultations, issues of wellbeing and a lack of appropriate childcare were raised. Neither wellbeing nor childcare provision have been improved by Covid-19. To the contrary, they have both been significantly adversely affected.

26. The evidence clearly reveals a picture of deteriorating wellbeing and significantly worse childcare provision.

SURVEY RESULTS

27. The full results of the survey are contained in Appendix 5.

28. Overall, the survey reveals overwhelmingly strong feeling against the EOH proposals.

⁶ Page 7 of report

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756624/HMCTS_Flexible_Operating_Hours_-_Prospectus.pdf

- **85.33% do not support a temporary increase in sitting hours on weekdays**
- **91.28% do not support a temporary additional weekend sitting**

29. Of **600** responses, 6.67% answered 'other' in response to the question about an increase in weekday sitting hours. That said, consideration of the free text comments entered by those respondents reveals a largely negative response to the proposals.

'A formal extension of the sitting hours would have a catastrophic impact'

30. Respondents were asked about the likely impact of EOH upon them. The resulting statistics are stark:

- **79.79% of respondents said earlier starts would have a very or fairly negative impact on them**
- **88.42% of respondents said later finishes would have a very or fairly negative impact on them, with 85.72% saying a longer afternoon session (e.g. 13.00 – 16.00) would have a very or fairly negative impact on them**
- **63.65% said it was likely that EOH would cause them to re-consider their practice. Another 14.74% said they didn't know**
- **Over half of respondents (55.26%) said it would lead them to consider leaving the Bar**
- **61.97% said they would consider reducing the days/hours they work**
- **Before Covid-19, 70.39% said they never or rarely thought of giving up the Bar**

31. Only 11.74% of respondents felt they would be able to continue their practice without significant difficulty if EOH are implemented. When respondents were asked what factors affected their conclusions about their ability to continue in practice, 57.74% cited caring responsibilities:

- **86.02% of respondents do not know of any local childcare providers that would allow them to work EOH**
- **70% do not have access to other, informal childcare that would allow them to work EOH**

32. Childcare provision is worse than before Covid-19 (when previous EOH consultations were carried out), with some providers operating less hours, with greater restrictions, or not at all:

- **47.13% of respondents did not know when their pre-Covid childcare arrangements would be available again; 7.28% thought they would never be available and 29.89% expected it to be more than 3 months before they would be available**
- **48.14% of respondents indicated that children returning to school in September would be doing so with restrictions/changed times; 20.34% did not know whether their children would be able to return**

33. In addition to issues of childcare, respondents referred to the already significant number of hours worked outside of Court hours:

- **90.65% of respondents were working 3 early mornings/evenings per week prior to the Covid-19 pandemic; 65.57% were working 5 or more**

- **88.01% of respondents were working 3 hours or more at weekends prior to the Covid-19 pandemic; 65.35% were working 5 hours or more**

34. In addition to the above figures, 5.74% replied 'other' to the question about additional weekday working and 6.57% replied 'other' to the question about weekend working. The vast majority of these responses show respondents are already working significant hours outside of 'office hours'. **More than half of those commenting stated they work more than 10 hours each weekend.**

35. The wellbeing of the Bar has been highlighted recently, with practitioners facing increasing levels of work and stress:

- **88% of respondents cited the impact of EOH on their wellbeing as a feature in their views on their ability to continue practising**

'As significant time often needs to be spent before a listed hearing (speaking with opposition, taking instructions etc) and possibly afterwards/at the end of the Court day, a 9am listing means an 8am arrival and a 6pm finish means a 6.30pm finish. Travel time each way means no prospect of seeing young children and when are other/ongoing cases and prep supposed to be dealt with? Is it proposed we don't sleep or we save that for the only remaining day of the weekend?'

36. The questions in relation to working life revealed a significant degree of frustration about how the nature of our work appears to be misunderstood by those suggesting EOH:

'There appears to be a fundamental failure to understand that because the Bar is not in a building between the hours of 9am and 5pm they are not working.'

'I work all over circuit whilst being based in Leeds. I am frequently in Newcastle, Sheffield, Manchester and Grimsby. To be in Newcastle for a 09:00 start would require taking a train 05:52. Staying in Grimsby until 18:00 would mean not returning home until after 19:30. This would completely destroy my work life balance and I would either need to cut back on the amount of work that I do, and take the income hit that would come with that, or stop working in more remote court centres.'

'Working hours have become longer. I am a family barrister. This Monday I had an advocates' meeting at 8am. Last night I had an advocates' meeting 6pm-7.15pm. Email traffic has hugely increased. It is harder to maintain boundaries between work and personal time, with the expectation of constant availability.'

'It is unreasonable to expect barristers to work unpredictable, irregular and unsocial hours: this is not a regular shift rota type of job (at a single location for a single employer, with predictable shift patterns of work), and I cannot source childcare support around irregular court times.'

'I have recently had hearings that have lasted until 8pm and I don't believe we're as effective as everyone in it was exhausted.'

37. The Bar traditionally trains, supports, educates, and administers itself on a voluntary basis. The survey also revealed that EOH would have a significant impact on the capacity of the Bar to continue to do so. This extends to membership of Bar Council and Chambers' committees, speaking to law students, the training of future barristers, as well as providing training for police officers and social workers.

- **80.23% of respondents said they would not be able to continue these types of extracurricular activities**

RESPONSE ON BEHALF OF CIRCUIT

38. There are 950 Circuit members⁸. Of those 950, 61% are men and 39% are women, with a much higher percentage of women in the younger call groups.

39. The approximate breakdown by practice area is as follows (although, per footnote 1, these are not robust figures):

- Crime: 43%
- Civil: 17%
- Family: 22%
- Other (regulatory, chancery, commercial etc) 18%

40. The survey demonstrates strongly held views on the North Eastern Circuit against EOH. 88% of respondents felt that EOH would be detrimental to their wellbeing.

41. The EOH proposals, as they stand, have the potential to significantly elongate the working day into unsocial hours, and as such would present a substantial risk to the personal health and wellbeing of many members of the Bar and their families.

42. The survey confirms what is already known:

- a) The existing work demands on the profession, and the effect of these upon practitioners, increasingly recognised in recent years (which has prompted the development and provision of resources by the Bar Council and the circuits, such as <https://www.wellbeingatthebar.org.uk> and the Circuit 'wellbeing helpline');

⁸ Enquiries with the Circuit office confirmed that there are members who actively practise who are not members of Circuit; but that it was thought that 'there cannot be more than about 50 barristers based on the NEC who practise and are not members of Circuit, though it is hard to be precise.'

- b) The responses garnered in the 2017 Survey of Barristers' Working Lives⁹;
- c) The concerns already raised by the Bar Council in relation to the changing working patterns of the Bar;
- d) The reality of practice on Circuit and its demands.

43. The fact that the demands of this profession can have an adverse impact upon the health and welfare of practitioners was, for years, barely acknowledged. The Bar Council has made great strides in trying to change that, as have the Circuits, including our own. Against that background, it would be disappointing to say the least for EOH to be imposed without any proper consideration of the likely impact upon counsel. We are core participants in the judicial system; we are responsible for the conduct of cases within it.

44. In 2017, the Bar Council published *Barristers' Working Lives* (BWL). This was the third survey into life at the Bar (the previous ones having been conducted in 2011 and 2013). The Executive Summary of that report is contained in Appendix 2.

45. In relation to working hours, the responses to BWL demonstrated that nearly 50% of all barristers, across the profession, worked over 50 hours a week and, of those barristers, 22% of them worked over 60. This was particularly notable in criminal and family work. In crime, 57% of practitioners worked over 50 hours a week, and of those, 27% worked over 60 hours. Of those working hours, the survey found that a significant proportion of them were unpaid. Anecdotal accounts on Circuit would suggest these are reflective of modern practice.

⁹ <https://www.barcouncil.org.uk/uploads/assets/694001c1-7e81-4f21-8709602e7d9238ee/working-lives-2017.pdf>

46. That survey contained personal, first-hand accounts. Three years later in 2020, our own Circuit survey reveals similar experiences and concerns. Reading them together, it is clear that the problem is ongoing, and not temporary; and the EOH proposals will only exacerbate an existing problem.

47. In publishing the 2017 Bar Council report, Andrew Walker QC (then Chair of the Bar) wrote as follows:-

'...The fact that many saw their workload, stress and work-life balance deteriorate further is a worrying trend. It shows that we must all maintain our efforts across the Bar to support those who are finding practice ever more difficult to sustain, both financially and in terms of maintaining and enjoying a healthy and fulfilling life both at work and at home...'

[emphasis added]

The 24/7 Factor

48. Other stressors have been identified, and these are particularly acute with more remote working and increased email traffic. In January 2019, Richard Atkins QC (then Chair of the Bar) identified the 24/7, 365 day a year culture that has developed. The rise of 'out of hours' emails, as well as the expectation that barristers were 'on parade 24 hours a day, seven days a week' was 'not good for wellbeing, nor for diversity at the bar', he said (interview in *The Times*, January 2019). This accords with the anecdotal experience of Circuit members: one practitioner, for example, in a recent murder case lasting over 6 weeks, received over 100 'out of hours' emails, including those sent by their opponent and the judge's clerk, on behalf of the judge.

Travel

49. Most practitioners on Circuit travel over a large geographical area. Two hours travel time each way is not unusual.

Work beyond the hearing itself

50. There remains a persisting misunderstanding in respect of (i) work which is undertaken in the court building but outside of a court hearing, and (ii) work which is done outside of the building.
51. In every discipline of work the advocate is required to be at the court a significant amount of time before the hearing. This is invariably necessary to enable the hearing to proceed at the appointed time without delays.
52. This time is required for a variety of reasons, including but not limited to: consulting the professional client; taking instructions from the lay client; negotiating with your opponent advocate; preparing a court order and so on.
53. This time is required both before and after the hearing itself. In a contested hearing it is anecdotally normal to require at least 3 hours in the building in total for work outside of the hearing.
54. A small but additional factor is that in many courts on Circuit, allowing 30 minutes to even be ready to start work would be considered cutting it fine. Queueing to enter the building, passing through security, robing, queueing to use the computer to log in to the case are just some of the ways further time is built into a barrister's day.
55. It is difficult to see how general proposals for EOH accommodate that reality.

IMPACT ON WELLBEING

56. The matters set out above will come as no surprise to any practitioner. Weekend and late night working has always been a feature of the life at the Bar, but has become more acute as the demands of practice grow.
57. Invariably, 'out of hours' working is necessary to properly prepare both current and future cases; to ensure compliance with court directions; and to

prepare for the following week and the next case. This is the reality for hard-working and conscientious practitioners. Equally, most recognise, at some level, that it comes at some cost to their own wellbeing and that of those around them. These include the sacrifice of:

- Time with family
- Time with friends
- Social interaction
- Personal interests
- Activities
- Holidays

58. These are all stressors, and they all negatively impact, in the long run, on an individual's ability to cope with stress. It is recognised that this in turn negatively impacts on their health and their wellbeing, whether physically and/or mentally. Ultimately, this will affect not only their performance as professionals, but their personal life and health as well. This is well recognised and is self-evident. These issues have been highlighted by the Bar Council repeatedly. It is unrealistic to expect that practitioners and their families will not be adversely affected by the EOH proposals, when most are already working way beyond 'office hours'.

59. The concerns articulated in 2017, and thereafter, persist, in relation to work/life balance, family life, and working hours.

60. A common theme emerges, namely the effect of further demands on practitioners who are, as we have shown, already struggling to cope with the increasing demands of practice.

61. Of note in the Circuit survey was that:-

- **63.65% say EOH will likely cause them to re-consider their practice**

- **55.26%** said it would lead them to consider leaving the Bar
- **61.97%** say they would consider reducing days/hours
- **Before Covid-19, 70.39%** said they never or rarely thought of giving up the Bar

62. This is not a hypothetical concern about a distant possibility of people leaving the Bar. We already stand on the brink of an exodus from the profession. The statement of the Bar Council on 20 July 2020 was that ***‘A recent survey by the Bar Council noted that 38% of criminal barristers and 29% of publicly funded barristers are uncertain whether they will even renew their practising certificate in 2021’.***

63. Wendy Showell Nicholas MA, PG Dip.Psych, MBACP delivers training for the NEC on wellbeing and has done so for hundreds of barristers. She also delivers individual support for many members of Circuit. She told us that *‘longer hours is a barrier to good mental health. The harrowing nature and number of cases taken on by barristers requires better work life balance and stress management skills and this impedes those. That added to the sheer amount of work done at home anyway, cannot do anything but negatively impact on the ability to maintain work/life separation, manage stress and make good decisions and perform optimally.’*

64. The catastrophic effect of an individual who has worked hard to get to the Bar cannot be underestimated. The effect will be felt by family, friends and colleagues, who will live with the consequences of that decision, in relation to debt, mental wellbeing and more.

65. At present, the EOH proposals appear not to take any account of the impact on practitioners and the reality of the working life of the Bar. On behalf of the NEC, we express our grave concern regarding their introduction without further consultation.

THE PARTICULAR IMPACT OF EOH ON WOMEN

66. In order to understand the significance of EOH on the retention of women at the Bar, it is necessary to fully appreciate the scale of the retention problem that exists already.
67. Women make up nearly 40% of the Bar and Circuit. These are concentrated in the younger years of qualifying. It is easy to look at such numbers and conclude that all that is required is time – that as more women enter they will reach the top of the profession and time alone will allow diversity at the top of the profession and therefore in the judiciary.
68. The figures reveal this to be false argument. **Women have made up around 50% of those called to the Bar since 2000.** Yet nationally only 29% of self-employed barristers over 15 years call are women, and only 13% are QCs.
69. These figures are no better in the North East. There are 22 sets of chambers on Circuit, 4 of which have premises in both the North Eastern and Northern Circuits. In total there are 48 Silks who practice is based solely on the NEC. Of these, 42 are male and 6 are female – a percentage split of 87.5% to 12.5%.
70. There are a number of challenges inherent in the life of being a self-employed practitioner that already push women to make the decision to leave.
71. Factors such as the absence of maternity pay, holiday pay, sick pay or pension and the lack of guaranteed income are often at play.
72. Returning to work after a significant career break can be a difficult experience in any profession; but when returning to work at the Bar it is also necessary to rebuild a commercial practice. There is no guarantee of

earnings when the decision is made to return. Many solicitors build up professional relationships with other counsel during a maternity leave period, and many women face an uncertain professional and financial future when they return to work.

73. In the criminal sphere, women work disproportionately in cases involving sexual offences. For a number of reasons which are set out in Appendix 3, this is relevant to the question of retention of female practitioners.

74. Recognising the scale of the issue of retention of women, it is clear that the primary factors relate to the balance between the stresses of work versus income and women's predominant role as primary child carer. These concerns have been repeated in every study we have considered.

75. This study has not sought to investigate why women had previously left the Bar, but the Western Circuit's Women's Forum report into Extended Sitting 2018/2019 stated:

'Almost two thirds of those who left the Bar on the Western Circuit over a 6-year period were women, whereas almost all of the men who left became judges or retired. The vast majority of women who left did not become judges or retire but left mid-career.'

'Most of the women who left cited the difficulty of balancing work and family commitments as a factor in their decision. 55% of respondents said they could not balance their home and work lives in a satisfactory manner. This imbalance is likely to involve childcare and there is sound anecdotal evidence and material from focus groups to show that being a primary carer for children is a difficult role to combine with a career at the Bar.'

76. It is important to note that there are particular difficulties at the Bar which are not faced in many other jobs. Counsel are briefed in a case, normally prior to the date of the hearing being known. It follows that a professional relationship and sometimes commitment has been formed before the barrister knows when the case will in fact be heard.
77. In that way, any comparison with jobs such as medical professionals who work set shift patterns is unfair. It is of course possible to design a family life around a parent working extended hours; but is wholly impractical for a family to have to adapt to a constantly changing shift pattern of work over which we have no control.
78. The Bar does not operate on fixed working hours or fixed court days. For most, the Bar includes extensive and variable travel, including last-minute changes to venue. Unexpected events occurring in live and dynamic contested hearings, with revised time estimates and fluctuating income, are all part and parcel of life at the Bar.
79. In many cases unexpected events or evidence arise regularly. Barristers are - and are expected to be - flexible. Cancelling holidays at the last minute is far from exceptional; letting down family and friends is commonplace. The Bar understands what is expected of it. If a witness needs to stay late to finish their evidence, for example, then the majority of the Bar do everything they can to accommodate that need, even at personal cost to them and their family.
80. In these ways, the daily life of a barrister is unpredictable and demanding for the individual, and for their family. Barristers choose to accept this life, but expecting us to accept such an increased level of demand, to the detriment of every aspect of our lives, in the way that is currently proposed, is unfair and unrealistic.

81. The availability and cost of childcare will be further considered below; but beyond this, the emotional toll of EOH on the parent and the child should not be underestimated.

82. Anecdotally, the decision of women to leave the Bar comes about because having returned to practice for a period after maternity leave they find that it does not work for them. It is hard to see how the additional emotional pressure of EOH will not exacerbate an already significant issue.

83. The survey and case studies indicate that there is a cohort of women at the Bar, in particular, who express in very raw terms how any further attempt to make them even more flexible is likely to lead them to simply leave the Bar instead.

'I have had to change practice area since becoming a mum, I considered leaving the Bar but want to try to keep my career. If EOH comes in it will be the final straw and I will have to give up a career that I love and have worked very hard for.'

'I constantly feel I am failing at work & as a Mother. Although I am not in reality it feels that way. My anxiety levels are at a 7 or 8 out of 10 as standard. Additional stress (an unhappy Judge when I've done my best) or an event at my child's school (sports day / parents evening) makes me feel panic & tearful. I feel at times like a shell of myself because the job has taken over me. As an example, my wardrobe is full of black suits with 2 T shirts & 1 pair of jeans - no frills no choices because it saves time & it's just about getting by.'

84. Wendy Showell Nicholas told us: *'I am currently seeing female barristers every week who simply are not able to manage work and home. Not because of ability but because the impact of Covid has made it impossible. Actually physically impossible. Many talented women will be lost from the Bar.'*

ANALYSIS OF CHILDCARE PROVISION

85. One of the most important factors from the survey was the total absence of childcare to accommodate the EOH proposals.
86. Recognising that women are usually the primary carer, it is necessary to engage with the issue of the limits of available childcare. A failure to properly consider what options women barristers have for childcare would be failing to appreciate the most fundamental factors that will prevent women with young children being able to carry out their job.
87. Formal childcare provision can come in a variety of forms, with the most familiar being Registered Childminders, Day Nurseries and 'wrap around care'¹⁰.
88. It is highly unusual to find childminders operating before 07.30 or after 18.00, and many operate significantly shorter hours. Day Nurseries generally operate Monday to Friday between 07.30 and 18.00.¹¹ Wrap around care is rarely offered prior to 08.00 or after 18.00.
89. The only childcare likely to be able to provide greater flexibility or more personalised arrangements is a private nanny. However, the overall cost of such provision with the associated employee expense is simply beyond the reach of the vast majority of the Bar.

¹⁰ a term used to collectively refer to breakfast and after-school clubs. They provide additional care to primary school age children at either end of the school day. Some are operated by the school, others by external providers

¹¹ The Bar Council has made efforts to support the Profession by establishing schemes with day nurseries. On the North Eastern Circuit there is one childcare provider enrolled in such a scheme. Tiny Tree Nursery in Leeds offers a 10% reduction in fees for Bar Council members. They currently do not offer extended opening hours, but the scheme as advertised envisaged them opening for Barrister parents until 7pm and they have indicated that they would do so if there were sufficient demand (when spoken to on 17th July 2020). However, it should be noted that this nursery is located in Leeds. It is therefore only of benefit to those who live in and/or practice exclusively in Leeds. The nursery is 1.5 miles from the Combined Court Centre in Leeds. The North Eastern Circuit extends to Newcastle in the north and Sheffield at the south.

90. The Childcare Survey 2019¹² reported that childcare costs have continued to rise.
91. Barrister earnings are hugely variable dependent upon practice area. Earnings for those doing publicly funded work are considerably lower than other areas of work, and rates of payment have been subject to long term reductions. Women are significantly overrepresented in publicly funded work.
92. The case studies indicate that many barrister parents already use nursery provision from 08.00 opening to 18.00 closing.
93. Most nurseries are open year round and charge for full time attendance, offering no reduction for holidays. Based on these figures the average cost of full-time nursery attendance is between £12,500 and £13,100 a year **per child**¹³.
94. The affordability of childcare is analysed in more detail in Appendix 4.
95. Many breakfast and after-school clubs have been suspended due to Covid-19, and do not plan to re-open in September. This is due to the difficulties which arise in mixing children outside the “bubbles” in which they are required to remain for the school day. Further, many schools are refusing to allow children to attend other settings at either end of the school day.

¹² Coram Childcare Survey 2019, Lester Coleman and Joshua Cottel – based on surveys from local authorities in England, Scotland & Wales. Coram was formerly known as the Family & Childcare Trust.

¹³ Cost of nursery per year in Yorkshire & Humber: £12,444.00; Cost of nursery per year in North East: £13,132.50. Data taken from childcare.co.uk on 17 July 2020 based upon live average rates from their childcare provider advertisers.

'We have just received a letter from my son's headteacher - the reason for the drop off of breakfast and after school clubs is because primary school children are going to be confined to bubbles (their year groups) and clubs would involve bubbles mixing which is against advice being handed down.'

'4's school has no breakfast club and due to COVID is not allowing pick-ups or drop offs from ANY Childcare provider or nursery'

96. Most schools have staggered start and end times in response to Covid-19. This will continue in September (as confirmed by almost half the respondents to the survey). This means that for some parents, the school day now starts later or ends earlier.

'Schools will return in September and due to the pandemic they will be operating strict staggered drop off times - these are non-negotiable as the school anticipates children will still be kept in 'bubbles'. The school day is also now shorter than it once was, given the number of pupils they have to now shepherd in and out.'

97. Those with multiple children also identify the complexity of multiple drop off and pick-ups, where children attend different schools or childcare settings:

'In September, (4) will start school. He will be attending a different school to his sister (9). (1) attends at nursery... For clarity, 1's nursery is roughly half a mile from home. 9's school is a 20 minute drive in traffic in the opposite direction to Leeds which means when I drop her I have roughly an hour's travel time to get to Leeds for Court because I am battling 30 minutes back the way I came then hitting the M621 at 8am. 4's school is a quarter of a mile from home but in the opposite direction to 9's school and doesn't start until 08:50.'

98. Many parents rely on extra-curricular activities to provide childcare. Again, due to the guidance that children must remain in bubbles, and to restrict social contact, these activities have been stopped (or take place remotely). Many parents cite using the time their children are engaged in extra-curricular activities as an opportunity to do further preparation work:

'On some nights, both children have extra-curricular activities, which my husband and I share the task of taking them. I will use this opportunity to work for the hour they are doing their activities.'

99. At least 48.14% of survey respondents with children returning to school will be affected by the type of changes detailed above (over 20% did not know at that time if and how their children would return to school).

100. The survey found that 47.13% of respondents did not know when their childcare arrangements would return to what they were before Covid-19, making planning for any changes to work patterns even more difficult.

101. Where family members may previously have been relied upon to provide childcare, either on a regular basis or as additional support, this is in many cases no longer possible due to those family members being vulnerable to Covid-19. Although restrictions are relaxing and formal 'shielding' is due to come to an end, there will be many of those vulnerable family members who for obvious reasons will be reluctant or unwilling to resume caring duties whilst ever Covid-19 remains in general circulation, and barrister parents will have understandable and legitimate concerns about putting those family members at risk.

102. For a variety of reasons, a large proportion of women barristers are partnered to other barristers. A number of the case studies also demonstrate that for many barristers, their partners already work out of the home at unsocial hours and at weekends

103. Of those with a partner, 54.19% of respondents said that their partner was a key worker or would be affected by EOH.

104. EOH will have a greater impact on these families for obvious reasons. Based on previous experience of such families at the Bar it is normally the primary carer - almost invariably a woman - who gives up work when a family decides that they can no longer manage with both parents working.

'On arriving home, I cook tea for the family. I ensure that any homework and reading is done with the children and I am the one who baths and puts them to bed.'

105. Given that the respondents to our survey talk frequently about the rush to get to court in the morning and to collect children on time at the end of the day, it is clear that barristers' children are some of the first to arrive and last to leave their childcare settings.

106. Most preschool and primary school children need to be in bed by 19.30 at the latest, and often earlier. The extension of court hours means that many young children would simply not see their parents in the evening.

107. Many people in the case studies detailed that in order to maintain their current practice it is already necessary to work over the weekend. This further eats into time which would otherwise be spent with children.

108. The case studies highlight that for most parents, even without extended hours, the time spent with children is too short and needs to be focussed on supporting with homework.

109. Just as there needs to be understanding that the job of a barrister is longer than the court day, the job of any parent is not limited to care of very young children.

110. Supporting homework, getting sports kits ready, organising uniform and so on are daily jobs for most women in between court and working again in the evening.

'When I do arrive home, sometimes as late as 7pm, depending on which court I've been in, I then often have only one hour with my 10 year old to make her supper, eat it and get her to bed. Piano practice and homework often suffer and is completed without my input or support. I then spent a few minutes with my older children who are teenagers and as emerging adults have their own ongoing challenges and needs. I then do any chores that need doing, wash sports kit and deal with any school admin or forms that need attention before prepping for the next day. Often I don't get to sit down to start my work until 10pm.'

111. Many Fee Paid Judges are also practitioners and members of the NEC. HMCTS and the Senior Judiciary are considering their deployment as part of the Recovery plan for each jurisdiction. Many of these judges have caring responsibilities, which will make working extended hours extremely difficult, if not impossible, to achieve.

ANALYSIS

112. The starting point of our response is that there is no available childcare that shadows the proposed EOH .

- **86.02% of respondents do not know of any local childcare providers that would allow them to work EOH**

- **70% do not have access to other, informal childcare that would allow them to work EOH**

113. These results are supported by the Childcare Survey 2019, which found that only one in four local authorities have enough childcare available for parents working outside normal office hours.

114. Even if such childcare could be obtained, it would be necessary to commit to that childcare provider for the provision of such services substantially in advance. This is a real concern: childcare providers usually have waiting lists, and parents have to plan childcare many months in advance. Women would have to commit to that childcare cost, even though there would be no guarantee that such hours would be required.

115. This increased cost of childcare, even if it is found, is likely to be prohibitively expensive.

116. Geographical issues pose another significant hurdle. Childcare often works best when it is close to the regular place of work. Barristers rarely work in only one court centre and frequently have significant commuting time.

'There was one occasion where I had to attend Nottingham Crown Court for a trial. My husband was working away and I was caught in traffic on the M1. I was 45 minutes late to pick my daughter up. The childminder very kindly stayed open (she could not do anything else in the circumstances). I was distraught and my daughter although safe; upset.'

117. Barristers can expect to work, at the very least, anywhere across Circuit, and often further afield. It is already the case that barristers frequently use

the full extent of whatever childcare is available. There is no capacity for any further provision.

118. Many women, by virtue of being primary carers, have to refuse work at distant courts. For example, a barrister with a preschool age child relying on childcare would not be able to be at court in sufficient time using local childcare, even under existing court hours.

119. The introduction of EOH would mean further restrictions on practice being placed on primary carers. The reality is that this group is almost wholly women.

120. In our view, this amounts to a working practice that discriminates against the protected characteristic of sex.

121. The proposal to introduce EOH is made apparently without any assessment of the provision of childcare.

122. Furthermore, despite recognition previously by the Government of this serious implication of EOH, there appears to be no consideration of any system whereby the needs of primary carers are taken into account in the listing of cases. No Equalities Impact Statement has been published in respect of the current proposals.

123. We are aware that some bodies have proposed a system whereby primary carer counsel could select the 'normal' sitting hours whilst others would be listed in early or late shifts.

124. Such a system would have to overcome the properly held concern that, even with a guarantee that a primary carer would be given access to the 'normal' sitting times, the reality of the situation in court would be that, by way of example, a defendant would be offered an earlier trial date with a different (and probably male) barrister.

125. To overcome such immediate and onward discrimination, it must be ensured that a woman's practice is not disadvantaged, in terms of access to work and career progression, by their only accepting work in traditional hours.

CONCLUSION

126. The history of women at the Bar has been brief. In 2019 we celebrated the first centenary of women being allowed to qualify. In fact, it took many decades after those first pioneers for there to be anything like a significant number of female barristers.

127. The Bar has lost significant numbers of those women barristers - not because they lacked legal acumen, or tenacity, or dedication, but because of their biology. The devastating impact on the individual and their family of that loss has been detailed above. It is a great loss, too, to our justice system and the society it serves.

128. The loss of such talent has an inevitable knock-on effect on the make-up of the judiciary. The failure to retain women at the senior level of the Bar produces a less diverse pool from which the judiciary are drawn.

129. The proposal to introduce EOH assumes room for manoeuvre which simply does not exist. The foreseeable consequence of the introduction of EOH is the loss of yet more female talent from the Bar. The importance of retaining the remaining cohort of women barristers cannot be overstated. When EOH are being considered, the policymakers must have the issues raised in this report at the forefront of their minds.

130. If the reality presented in this report is overlooked, the progress made by women in this profession will be pushed back half a century.

APPENDIX 1:

Practitioner testimonials

Counsel A *Female, criminal practitioner, 34 years' call*

I had to seriously restrict my practice in order to cover child care. That was my choice, but that was in the “bad old days” before any allowance was made for the fact that people did have personal and family lives. Many of my contemporaries couldn't balance criminal work and family life and simply gave up. That is one of the reasons, in my view, that there are so few senior women doing crime. I can foresee that if these proposals come into effect then there will be a further loss to the Criminal Bar of, predominantly, female practitioners. In simple terms trying getting a child to school in Leeds and getting to Sheffield for 9, or picking a child up from nursery/school if you finish at 6 in Sheffield or Bradford or York etc... you can't do it. As ever when tensions arise between personal and professional, people will rightly pick their families and the profession will be the poorer for it.

Counsel B *Female, criminal practitioner, 22 years' call*

If Extended Operating Hours are introduced, I will be unable to spend any time with my children. It is difficult enough with the normal hours. I will have to employ a nanny/childcare to watch my son. This is an additional expense which I cannot afford. The current hours/pre-Covid hours were just enough to enable me to prep and do all the admin around the court day. That will be impossible if the hours are extended. In terms of wellbeing - it will have a negative impact. EOH, as a single parent, will mean I will have to properly reconsider working full time if I am to have any work/life balance.

Counsel C *Female, criminal practitioner, 11 years' call*

I have three children. They are 9, 4 and 1 respectively.

In September, (4) will start school. He will be attending a different school to his sister (9). (1) attends at nursery.

Nursery is open from 7am to 6pm.

9's school has a breakfast club which she attends and she can be dropped from 07:30am. She must be picked up at 3:15pm.

4's school has no breakfast club and due to COVID is not allowing pick ups or drop offs from ANY Child care provider or nursery. His start time is 08:50 and his pick up time is 3:30pm.

For clarity, 1's nursery is roughly half a mile from home. 9's school is a 20 minute drive in traffic in the opposite direction to Leeds which means when I drop her I have roughly an hour's travel time to get to Leeds for Court because I am battling 30 minutes back the way I came then hitting the M621 at 8am. 4's school is a quarter of a mile from home but in the opposite direction to 9's school and doesn't start until 08:50.

Frankly, it will be a miracle if I am able to get to Court by 09:30 most days from September.

And that's before I get to afternoons. Normally, 9 attends after school clubs until I am able to collect her. These are all no longer running due to COVID. Her school is at least a 15 minute journey from 4's school, usually more in traffic.

Their father works in the hospitality sector, which requires him to work outside of "normal hours" including weekends.

On a Saturday for example, I have the children at all times.

Other sources of care include my former mother and father in law, who are 73 and 75 respectively and who are shielding due to health concerns. They are obviously unable to assist with childcare at this time.

My own parents live over an hour away. My Mum works in public health and currently runs a COVID testing centre. Therefore she and my Dad are considered at high risk of exposure to COVID.

I have quite literally no idea how I am going to manage my children's education in September around normal working hours. But I will because that it was we as working

women (and of course some men but the burden falls largely on women) do and always have done.

But it is simply an impossibility for me to work extended sitting hours to include weekends. Nor should I have to. My children have as much right to a healthy relationship with their mother as anything else.

Child care provision is not open to cover extended opening times.

If extended hours are imposed then I will be unable to return to the Criminal Bar, it really is as simple as that.

Counsel D ***Female, civil & criminal practitioner, 3 years' call***

Being one of the very junior members who has a child, I feel I will be impacted significantly by EOH. I already sacrifice a lot of family time for this career which I was happy to do because I love the job. In reality I don't think there is any more time I could sacrifice to accommodate extra court hours. I already work until the early hours of the morning absent EOH. The only day I take off is a Saturday, in order to spend time with my daughter and even then I may have to eat into that time occasionally. So for example, on a usual working week I would take my daughter to childminder at 8am and collect her at 5:30 after a day in court (being junior this often involves travel - so there may be days when I have time in chambers). We would then make tea for 6:30 I would have an hour with her and put her to bed at 7:30-8pm and then I would start or finish my preparation for the next day. I usually use Friday evenings to consult my papers for the following week and try and use all Sunday for any written advices I may have, and usually depending on the amount of work I have, I may need to work Saturday evening as well to complete the work. I really do not know where the extra prep time would fit in.

Also as you can appreciate, whilst I know there will be little force from a chambers perspective, the reality is there will be little choice whether to take the cases in the extended hours as inevitably this may lead to a sacrifice in practice, therefore as a very junior member I will probably take the cases rather than risk my practice. Even without the extended hours there's little choice in what day/times our cases are listed

and that is part and parcel of the career therefore there will naturally be little choice in doing cases in the extended hours.

Whilst I am not a single parent, my husband has his own company and there is very little wriggle room for his hours of work either so we will be left in a position of one us of potentially sacrificing our careers or trying to take it in turns for childcare which will mean there will be very little time for each other (which as you may appreciate is already a problem in this profession). Childcare is then a further issue as my childminder finishes at 5:30 (she may occasionally work till 6 although she doesn't like too) and whilst I have family in a nearby town who may be able to occasionally have my daughter, this then adds on to journey times eating away at any little bit of extra time I would have.

I obviously will be very reluctant to leave the profession as I love my job and will of course try and make things work but if this was to be an indefinite period of EOH I am not sure I could sustain working that much not least because of family time and work life balance, but also wellbeing.

Further, as many other members of the bar, it is not just about the paid work, but the unpaid work and pro bono. I do a lot of mentoring for aspiring barristers who are seeking to come to the profession and this would have to stop with EOH, as I am sure most other members will also cut the free work they do, as this will simply not be viable.

I suspect I am not alone, even without children in the equation the limited time for preparation will be applicable to all members of the bar.

Counsel E *Female, criminal practitioner, 15 years' call*

A typical week:

I usually spend at least one full day at the weekend preparing cases, which obviously impacts on family time. On the other day, I spend time ensuring that the food shopping, housework and laundry are done for the week ahead. I ensure that any extra curricular activities are organised and catered for, including birthday presents that need to be bought and wrapped.

Throughout the week, I get up at 5am. I continue preparing work for that day. I wake the children up at 7am (my husband has already left for work). I provide breakfast and get the children ready for school. They are aged 5 and 8 years.

Both children attend morning club before school, which does not open before 7.45am. This has made travel to more distant areas on circuit extremely difficult and has resulted in my practice concentrating on my local area.

It then takes an hour to drive to my nearest court centre (due to rush hour traffic).

My practice is relatively trial heavy and therefore I tend to spend full days in court. If I do not have a week of trials, then the day is usually filled with shorter hearings and conferences.

The latest I can collect my children is 5.45pm, which is obviously extremely stressful when the court is still sitting beyond 4.30pm.

I collect the children on my way home from work, as my husband works long hours in a physical role. On arriving home, I cook tea for the family. I ensure that any homework and reading is done with the children and I am the one who bathes and puts them to bed.

On some nights, both children have extra curricular activities, which my husband and I share the task of taking them. I will use this opportunity to work for the hour they are doing their activities.

I ensure that uniform and breakfast is laid out for the following morning, all before I sit down and start work to prepare for the following day in court. This is often not until after 9pm. I will usually work for at least 2 hours, but sometimes a late brief or an issue that has arisen in the day means that I work into the early hours of the morning.

As a working mother, I am already extremely stretched in my ability to achieve any work/life balance. I estimate that on an average week I work more than 65 hours.

Should extended court sitting hours come into effect, I would have no option than to leave the bar. There is no childcare in my area which begins before 7.45am. Equally there is no service that offers collection from school, care after school and then transportation to extra curricular activities. We do not have support from family in terms of child care.

A history of lamentable legal aid rates of pay means that I am not in a financial position to pay for a nanny.

Counsel F *Female, criminal practitioner, 21 years' call*

I am a single parent, my mother helps out an awful lot with collecting my son from school. My mother is retired but through necessity has had to work part time - typically anti-social hours.

I take my son to school - there is no way around that at all. His drop-off time is around 8.55am not before. Schools will return in September and due to the pandemic they will be operating strict staggered drop off times - these are non-negotiable as the school anticipates children will still be kept in 'bubbles'. The school day is also now short than it once was, given the number of pupils they have to now shepherd in and out.

I collect my son from my mother's at around 6pm - I then spend a little time with him and given his young age he is usually in bed by around 7.30pm (and then spends the usually next hour or so not going to sleep).

I will be able to start work by around 9/9.15pm but I often decide to have a breather before I start work; just to decompress.

Work often starts closer to 10pm - I will work for as long as necessary, to do what I need to do 1am finishes are my usual - I have even, on occasions, stretched to almost 4.30am.

I will do what is necessary, as I always have, simply because I would expect anyone who had my future in their hands to afford me the same care and dedication.

There is simply no time at the beginning of the day or the end of the day squeeze in more work. An earlier start and/or a later finish will frustrate my ability to work at the bar.

Life at the bar is a rewarding dysfunctional state of working hard and playing hard, and when you have few responsibilities there is something exciting and a bit indulgent about squeezing every last ounce out of yourself. This state can be no longer maintained when you are a parent, especially a single parent.

Counsel G ***Female, family practitioner, 8 years' call***

In a nutshell - if extended working hours are introduced I will have to carefully consider whether I have a future at the Bar.

As the mother of a child with Cystic Fibrosis I came to the Bar to have some flexibility in my working hours to ensure that I could meet all of my son's care needs on a day to day basis and attend hospital appointments regularly. My son's condition in itself is very difficult to live with physically and emotionally for my son and for us as a family. It is a chronic, life threatening condition which is high maintenance in terms of medications, treatments and physiotherapy all of which need to be managed throughout any given day. Life with Cystic Fibrosis is stressful and my son requires a lot of support.

The profession as it stands - without the addition of extended court hours is - as every Barrister knows - very stressful. We have for some considerable time now, not only taken on the job of advocates - which we spent many years training to do - but we have been plugging the holes left by the under resourcing of the courts and the judicial system, with very poor remuneration due to public funding cuts. This has all taken a toll on the individuals who work in the profession both physically and mentally.

I am not prepared to work extended hours at further expense to my health or my family's wellbeing. It is completely laughable that on the one hand we hear so much about wellbeing at the Bar only for the suggestion of extended court hours to be put forward! Hypocrisy at its finest I think! We are human beings not machines!

In every other profession there is a recognition that individuals have family lives and childcare needs, to such a degree that employers look to assist individuals with their work arrangements not work against them. Why is the Bar going in the opposite direction in this day and age? This is the 21st century and it needs to catch up.

We are advocates and we are not there to shore up a dysfunctional system that is failing everyone who passes through it.

Counsel H ***Female, 5 years' call***

I am married with one child. My husband works all over the country. His work can be during the day, at night or weekends. He is also expected to work away and is on a monthly rota for this.

My daughter attends our local school. Currently the school operating hours for key worker children are 8:30am to 3:30pm.

We employ a childminder - or did before Covid 19. Our child minder operates weekly working hours of 7:30am to 6pm. She does not work weekends.

I say that we did employ her up until recently...due to Covid 19 our childminder is currently not doing the school drop off and pick up.

This has meant that currently we have no child care before or after school. The position for September is unclear. Due to the area that we live in childminders are few and far between and it is highly unlikely that we will be able to employ a different childminder.

I mention the above as I am currently struggling as it is to manage court hearings and ensure that my daughter is picked up from school and cared for.

It is a daily nightmare trying to organise who is going to pick her up and whether the pick up is clashing with court hearings.

Yesterday I had a 2pm sentence before the Crown Court. It was a sentence that I wanted to attend in person due to the risk of immediate custody to the Defendant (I was defending). Given the timing of the hearing I was unable to attend in person and

ensure that I would be able to pick my daughter up from school given the travel time involved. This meant that my client was sent to prison with me being over the video link. I felt as though I had let my client down by not being there for him in person; but I had no other choice.

The EOH questionnaire asks whether we would be prepared to attend in person or over a link for extended court hours-even over the link as can be seen above has considerable problems attached to it.

Given my level of call the trials that I run are usually shorter in length. It is highly likely that the trials therefore chosen to be conducted on a Saturday could disproportionately affect my cases.

As it stands (prior to Covid-19) I would drop my daughter off at the childminders at 7:30am and then race down the motorway to which ever court I was supposed to be in that day.

When conducting trials, unless they are at my local court, I am always anxious about the prospect of not being able to make it back by 6pm for the pick up.

There was one occasion where I had to attend Nottingham Crown Court for a trial. My husband was working away and I was caught in traffic on the M1. I was 45 minutes late to pick my daughter up. The childminder very kindly stayed open (she could not do anything else in the circumstances). I was distraught and my daughter although safe; upset.

Were EOH to be brought in-the juggling act is likely to become too much to handle. As it is my husband lost his last job as he asked for flexible working to enable him to help me with the school run. EOH would not only mean that in reality there would be a large number of my own cases that I would have to return but this would put added pressure on my relationship with my husband and daughter-I fear that it could also put undue pressure on my husband to attempt to obtain flexible working arrangements again-and the possible risk to his employment that this could result in.

Prior to Covid-19 it was the norm for me to return home after collecting my daughter and put the laptop straight back on. I never work very well late at night and our routine would be for me to complete my prep as quickly as I could and then to spend time with the family.

With EOH I would not even get that small amount of evening time with my husband and daughter. The pressure would be all on my husband-that's if he wasn't working an evening shift or working away.

My daughter can be a handful when tired and to place all of the pressure onto my husband during the evenings. Were I to be attending court, this is likely to result in a deterioration in his mental health and my own.

I have already had to start looking at alternatives to life at the Bar given the current downturn in work due to Covid. I am a transferred solicitor and all I know is Crime - I do not want to leave the Bar, I do not want to attempt to transfer to a different area of law and I certainly don't want to become an employee again. However, were EOH to come into force I fear that I would lose out on work (as there is only so much that I would be able to cover out of hours). My finances would be affected as well as everything else.

Having transferred to the Bar I am now the main earner for our family. We cannot rely on my husband's wage alone and were I to take a drop in my earnings; again we would struggle.

To be honest everything that has been happening recently with the downturn in work, later listings, child care problems are all issues that have sent my mental health spiralling out of control and I find myself becoming quite emotional as I type this.

It has always felt that it is still the female that has to make sacrifices when there are issues with child care. I don't want to make sacrifices to my career - I don't want to have to go part time so that my daughter is collected from school. I want to be able to push myself to the next level in my career and be the very best that I can be at the

Bar. However, I fear that what I want may have to come second place if EOH comes in and the levels of work do not return to pre-Covid levels.

Counsel I ***Female, family practitioner, 18 years' call***

Whilst I could start hearings earlier in the day - even as early as 7.30am or 8am - because of childcare issues I'm simply not in a position to work evenings or weekends, and wouldn't be able to take on any cases listed at those times.

Counsel J ***Female, family practitioner, 15 years' call***

I am emphatically against the proposal that court hours should be extended, whether in respect of early morning, evening sittings or weekends.

Such proposals indicate a total lack of understanding of what life is like for a member of the Bar from the standpoints of working practices, family life & social life.

From a practice point of view how are members of the Bar supposed to prepare cases fully & properly if they are obliged/ expected to be in Court late into the evenings & at weekends? Working such hours that are proposed can only have a terribly adverse effect on family life; & although the notion of a member of the Bar having any social life is low in the list of priorities from a mental health & wellbeing aspect one can only assume that the proposals would be deleterious.

It appears to me that as ever the Bar is being conned by the emphasis on the idea that working the proposed hours would assist the young Bar which is suffering particularly during the Pandemic. This is a publicity stunt on the part of the powers that be to make it appear that they are trying to assist the young Bar when the reality is that as ever they are wanting to achieve justice on the cheap.

It should be noted that as the Judiciary & court staff are concerned, any participation in the extended hours scheme will be voluntary although court staff will receive overtime payments & of course the Judges will be paid in any event.

I have no doubt that, notwithstanding any comments & views that may be tendered to the contrary, the proposals will become fact & in that event at the very least any

publicly funded work which is carried out during the extended hours should be paid at an enhanced rate.

Counsel K ***Female, criminal & family practitioner, 13 years' call***

I am lucky enough to have a husband in a fairly flexible job but in spite of the fact that he tends to work shorter hours than me over all, as you might expect from my legally-aided practice, his income is substantially greater than mine and therefore he can't necessarily offer wrap-around care for the sake of my practice if we are to continue to meet our financial obligations.

For me personally, if the courts were operating a system with either early or late shifts in the day, it would just about be manageable, as long as there was clearly no expectation that counsel would sit in both shifts on any given day. However, the problem for me, which would make things completely impossible, is if the court began to sit in that manner but then judges decided to try and use both shifts in any given day in order to press on with a trial. My caring commitments would render that impossible and even if I could manage it with additional support (which would need to be paid for), it would mean that I would essentially have no work-life balance (given that I already undertake my reading and preparatory work such as drafting in the evenings after the children are in bed and at weekends). If the courts were to sit at the weekend, in addition to the prep that I have to do, it would make it impossible to carry on with this job and have any kind of family life.

Counsel L ***Male, civil practitioner, 9 years' call***

The impact that the EOH scheme will have upon members of the bar who are carers, or who have childcare responsibilities, and the damage that it will cause to diversity at the bar should speak for itself (though I am not necessarily optimistic anyone will listen).

I just wanted to point out another more practical factor which I haven't seen mentioned and I feel is worth taking into account.

I can probably count on one hand the number of civil trials I have conducted in which, at some point during the day, it was not necessary for myself or my opponent to take

instructions from my instructing solicitor, or an insurer, due to issues which arose during the course of the trial. In Industrial Disease cases, it is not uncommon for one advocate to represent the interests of several different insurance firms, and for there to be as many as 6 different Defendants to a claim.

In addition to the more fundamental need to obtain instructions to settle, minor issues (for example 'when was this document filed with the court and by what means?') often arise which can only be resolved by speaking with the instructing solicitor by telephone.

Obtaining instructions from professional clients and insurers is no easy feat during normal office hours. Unless representatives from each solicitor involved in a claim, as well as insurers, are willing and able to make themselves available during the proposed extended hours, it will be impossible to obtain instructions in any case that, for example, is heard on a Saturday.

Whilst this will, in my view, render it impractical to conduct most Fast-Track or Multi-Track trials out-of-hours or on Saturdays, it does also apply to Small Claims. It has been some time since I was involved in a trial on the small claims track but I can remember many instances where a lay client's account would alter significantly during the short pre-trial conference and it was not at all uncommon to be forced to take instructions from my professional client, who would liaise with the insurer, by telephone, in order to settle or otherwise resolve the proceedings.

As usual, EOH feels like a proposal which has been drawn up by someone with no real understanding of the *practicalities* of the trial process, and certainly someone who has never attempted to take urgent instructions from a professional client by telephone at 3.30pm on a Friday, in the 15 minutes afforded by a Judge.

It is particularly disheartening to see the government riding roughshod over the sterling efforts which have been made to diversify our profession in service of proposals which appear to lack any evidential basis and are likely to prove impractical in the fullness of time.

Counsel M

Female, family practitioner, 22 years' call

I am in the fortunate position that I have a supportive partner who can pick up childcare responsibilities as required, my children are now teenagers, and most of my work is privately paid, very little of it is briefed last minute. It is not the case that extended hours are unfeasible for me on a practical level, or that I won't be properly remunerated for the additional work. Therefore, in me, you have an example of a barrister who would appear to be little affected on the face of it. My primary concern, therefore, is for my colleagues who would be much worse affected.

However, in that context I think it is important to tell you what my working life looks like and how extended working hours would really affect me, because if I am in the group of the apparently least affected, and it is going to be much worse for others, it is important to show that the reality is not so straightforward, and frankly is unsustainable.

As you know, I am a member of the North Eastern Circuit and have practised on circuit for more than 20 years. I live in Yorkshire. However I am currently a member of chambers in London, and my practise has been geographically wide for many years now. I can tell you that in March this year, despite the lockdown, I had cases off circuit in London, Liverpool, Bristol, Prestatyn, Manchester, and Milton Keynes. Had we not been dealing with some of those hearings remotely they would have been nearly impossible for me to get to without staying away overnight on several occasions. In fact I did travel to London, Bristol, Manchester and Liverpool in the first 2 weeks of March and stayed overnight in London. None of this is unusual for me.

I just about manage this level of travel by using public transport and using the time to respond to emails etc on the train. When travelling to London this involves a 5:47 am train. Sometimes I don't get home until 11pm. There are some places I cannot physically get to by 9:00 a.m. to meet a client at 9:30. I do not feel that it is safe for me to drive for 3 hours or so in the morning after 3-4 hours sleep, spend the whole day in court and then drive 3-4 hours home. Driving to court also means 6 or 7 hours dead time when I cannot work. I am concerned about using public transport at the moment because of Covid, my daughter and my father in law are clinically vulnerable, and if I

cannot work remotely this would mean me losing several hours commuting time each week that I would normally use to work, or staying away overnight more frequently.

The work that I do involves many hours of intense preparation, particularly financial remedy cases. In reality this preparation is done in the evenings and at weekends. Even if I book preparation time into my diary, this is not enough, as the reality is that daytimes are hijacked by incessant phone calls and emails. My family are already used to me working evenings and weekends. I do my best to fit this around what my children are doing. However, when my work is at a particularly high pitch, they find this really difficult, and I find it exhausting. My son started high school last year and needed additional emotional support, particularly as my father was terminally ill, and I could not be there to give it to him when needed. He ended up developing separation anxiety and having panic attacks at school such that he needed therapeutic support. When my father was at the end of his life I travelled to London on the Friday evening to see him over the weekend before he died, returned on the Saturday night to spend Sunday working all day until late into the night, went to court on the Monday, worked late into the night, and then got up at 5am to travel to Lincoln for court on the Tuesday. My mother called me to tell me he had died whilst I was on my way to court, and I conducted my hearing in Lincoln, went home and prepped for my cases the rest of the week. I did not have a single day's leave until one of my cases collapsed a few weeks later.

I am not prepared to go to court at the weekend in any circumstances. It is not sustainable for me or my family. I already work at the weekend, but my children need me to at least be here at home, and I need to have the flexibility to arrange my weekend work around their activities – for example working early in the morning before they get up or while they are out visiting friends. I would lose this flexibility if courts were open at the weekend. It would impact on them, and my husband who has to pick up the slack, but also on my own physical and mental wellbeing. I need recovery time from my working week and particularly all of the travel I already do, I need to spend time with my family and friends and I need to be able to take exercise and make sure I eat healthily, all of which are very difficult during the week. Frankly, I cannot do my job properly without this recovery time.

In many instances I cannot realistically start court any earlier in the morning than I do because of the distances involved. Earlier starts would be likely to involve me staying away from home in a hotel more often. This is not a break. Last autumn there was one week when I had cases in Manchester and Mansfield and arrived at my hotel in Mansfield at midnight, only to get up at 4am and finish prepping for my trial – 4 hours work before even leaving for court.

My view is that earlier starts and later finishes are only really feasible for me if working remotely, and if counsel has some say in whether they can accommodate this. We all have cases from time to time which run over and we sit late. Generally the court works with counsel and only does so where counsel can accommodate it. For counsel with children in nursery closing at 6pm this is often not feasible.

The thing I object to most is counsel being obliged or pressured to take on earlier or later sittings or weekend work, and being placed under pressure to explain why this would be difficult for them, to have to make submissions about their own personal circumstances. Other people have much more difficult circumstances than me, and much more complicated home arrangements, perhaps an ex-partner who is difficult about being flexible regarding the children, and to have extended hours imposed will drive those people from the bar, good people who are already working long hours in a vital public service.

Thank you for all that you are doing to try to resist the extended working hours, it is vitally important for our profession, for our physical and emotional wellbeing and our family lives, and also for our clients who need counsel who have had time to properly prepare.

Counsel N *Male, civil practitioner, 26 years' call*

I am a member of the NEC based in Sheffield. I live a long way from Sheffield (South Lincolnshire) and regularly travel to S. Yorkshire where most of my work happens.

I already have early starts and late finishes because of where I live. What is happening locally is that the primary school my son goes to will not have the same level of wrap around care before and after school as before lockdown. When term

begins in September there will be no breakfast club at all, and a limited number of spaces in the after school club until 5pm only. The pre-lockdown provider of after school care was available until 6pm.

My wife works 4 days per week and so were heavily reliant on school clubs generally. I don't think government is seeing the bigger picture and how families are going to be stretched by other factors.

I think the benefits of EHS will be small and nibble at the edges of the backlog. Government of all badges has a poor record of reducing delay and the scheme is just a Trojan horse.

[Postscript] Just some additional detail which I hope helps. We have just received a letter from my son's headteacher - the reason for the drop off of breakfast and after school clubs is because primary school children are going to be confined to bubbles (their year groups) and clubs would involve bubbles mixing which is against advice being handed down.

Counsel O ***Female, Family practitioner, 2 years' call***

I, like many other women at the Bar, am a mother.

The proposed changes in working hours will have a devastating impact on anyone who is juggling this demanding career with caring for children.

I have 4 children ranging from 20 to 10 years old. One of my children is at university an hour and a half away. Since she started there last year I have found time, pre Covid, to visit her once. One of my children has newly diagnosed health needs. I am regularly unable to attend his medical appointments with his father due to my workload.

My day usually starts at 6am, unless I have so much work to get through that I need to be up earlier. I generally prefer to work late into the night so I am not disturbed. School day mornings are invariably a little busy and rushed. My two younger children

go to school 5 miles away. I am part of a lift share and take 5 children to school at 7.30am three days a week and collect 5 children at 5.30pm 3 days a week.

Having dropped the children at school I then drive regularly for up to 2 hours to court. I generally arrive just in time and will often be in court all day. If the day is done by 4pm I can usually just make it back to school in time for pick up. Sometimes that is not possible and I have to try and reorganise lifts or book a taxi for my children to get home and let themselves in. My children hate this. I have no family nearby and no additional help with my children other than what school can offer by way of after-school clubs. These end at 5.30pm.

When I do arrive home, sometimes as late as 7pm, depending on which court I've been in, I then often have only one hour with my 10 year old to make her supper, eat it and get her to bed. Piano practice and homework often suffer and is completed without my input or support. I then spend a few minutes with my older children who are teenagers and as emerging adults have their own ongoing challenges and needs. I then do any chores that need doing, wash sports kit and deal with any school admin or forms that need attention before prepping for the next day. Often I don't get to sit down to start my work until 10pm.

Sometimes the papers for the next day will not have come through until 5pm the afternoon before. I may be expected to read a lever arch file, at times there have been two, draft a case summary and a draft order. I often go to bed at 2am. There have been times when it has been 3am or even 4am. I will nevertheless be up at 6am to start again. I worry about my tiredness levels and the fact that I often have to drive to court on very little sleep. I take the train when I can but some courts take longer to reach by train due to changing trains and waiting times. My family has often expressed their concern about me driving when I am working so hard and I am so tired. This job demands that you are alert, on time, confident, calm, quick thinking and well prepared.

I regularly do 19 hour days, sometimes 3 or 4 times a week. I take Saturdays off unless I have a final hearing to prepare for and the previous week has been too busy to accommodate any prep time. I work on Sundays. At times my working patterns and my stress levels negatively impact my relationship, my children and my health. I

have developed chronic IBS since joining the Bar. Despite the hours that I work I cannot afford a nanny. The hours that I need support with at the start and the end of the school day are not hours that a nanny would work unless you employed them full time and this is not something that I could hope to finance.

I am the main carer for my 4 children. My former husband has our children one night a week and alternate weekends.

When I started on my feet as a Barrister in 2018 I was in court 5 days a week. It became obvious very quickly that I could not sustain this and meet all of the other demands that I have. Everything suffered. I now try and limit my week to 4 days in court. This is still often a struggle. The day I am not in court I often need to catch up on my sleep or on household chores. I would like to use it to prep and to try and get ahead or even keep up but often that it is simply not possible. I have to constantly manage my diary to ensure that I can meet the demands of my case load and build in enough time to prepare.

Despite all of these pressures of juggling childcare, well-being, chores, relationships and punishing hours I still mostly enjoy my career at the Bar. I also already sometimes wonder if I can keep it going and for how long. On my first day as a pupil another barrister asked me if I had children. When I said that I had 4 they told me that I wouldn't be able to sustain a career at the Bar. That was before these proposals.

I am already at maximum capacity. Any further demands in terms of time or workload would mean that I would have to reconsider my career choice. I am both a mother and a barrister. These changes are hugely detrimental to anyone performing both roles.

Losing women barristers as a result of the proposed changes will have a significant and detrimental impact; they bring their own unique contribution both to their clients and to the Bar. Men who undertake these caring roles will also suffer. Any increase in hours, expectation and/or workload can only result in a deterioration in the performance of both roles. It will impact well-being and what little family life there is

now to such an extent that for me, and I suspect for many others, this career would no longer be a viable, sustainable or desirable option.

Counsel P ***Male, Family Practitioner, 9 years' call***

It is already usual to be working most evenings/mornings to ensure that work is prepared to the appropriate standard. There can be times when work eases for a short period but there are also more frequent times when work pressure increases and even with evening and morning work it is easy to fall behind with your workload. The above is in addition to the work completed over the weekend (which I try very hard to limit to Sunday evenings but even then this cannot always be guaranteed).

The addition of extended hours sitting would wipe out any time which I have to spend with my family and would have a catastrophic impact on people's wellbeing and how they would view a career at the bar. I know that I, for one, would be giving serious consideration to a change of career. I suspect I would not be the only one. And this is from someone who has some child care responsibilities but is not the primary carer for our 4 year old daughter

Counsel Q ***Female, junior tenant***

Here's what a typical working week would look like:

Any average day would see:

- Travel - 4.5 hours
- Attendance at court - minimum 4 hours
- Additional work (incl. prep/advocates meetings/cons) – 3-4 hours

Average week would see 5-8 hearings listed, with 3-4 of those likely to go ahead. At least one full working day (being a 9 hour day) of prep is required for every 2-3 days in court to keep on top of the workload, so for a week where you had four or more days in court, I'd need to take two days in order to prep. During a week with five days in court, both weekend days would be used as prep. So an average week would be six working days, with one day off.

Counsel R ***Female, 7 years' call***

I am a single parent of two primary school aged children. My weeks (prior to the Covid-19 pandemic) were organised by, as much as I could, relying on breakfast and after school clubs. Where I started late or finished early enough, I would drop off and collect later/earlier to spend time with them, knowing that the work would have to be done later. Regardless of when I was able to collect them, I would work 5-6 nights a week, often past midnight. There is a dangerous misapprehension that if a barrister is not in court, they are not working. I am not entirely sure how non-lawyers think cases are prepared, or documentation written. We already use our evenings and weekends to do the work that is necessary to enable hearings to be effective. I have already had to reduce my number of days in court, as it is not possible for me to care for two children and prepare my cases (never mind look after my own mental health and wellbeing). If EOH are implemented, I will have to reduce this further, and possibly reconsider my entire career. It is soul-destroying that despite many schemes to encourage a more diverse Bar and to encourage women to join and remain at the Bar, steps are now proposed to make that frankly impossible.

Counsel S ***Female, family practitioner, 3 years' call***

In connection with the above [a question on the survey], I wanted to let you know what that would mean for me. On three occasions just this week, I have been late to collect my four year old child from school, despite making the Judge aware at the outset that I needed to leave by a certain time. These were remote hearings, attended from home and so I was close to school.

The situation with childcare at the moment is only going to get worse on the basis that the school term finishes this Friday, with no out of school provision as that remains closed. I am very limited in family members that I can call upon as most are shielding. The situation is very difficult now, even with remote hearings. I have a number of lengthy face to face hearings in the imminent future. My husband is changing his shifts (he is a detective in an IOC team) to accommodate increased child care but he cannot always simply leave a job, in the way that we cannot simply leave a hearing.

Increased working hours would simply place me in an impossible position and make it unlikely that I would be able to undertake lengthy hearings.

The situation with working remotely has already had a profound impact upon my wellbeing and in turn on that of my family and I feel that to add increased working hours would simply make the situation impossible.

Counsel T ***Female, family practitioner, 18 years' call***

I am particularly concerned about the proposed extended working hours. As Head of the Family Team in my Chambers and a mother of two children both under 8 years old I am constantly juggling the demands of a very busy career with the ability to be available physically and emotionally for my children. My husband works full time and we share the caring responsibilities for our children. I am ambitious and want to succeed in my career but the prospect of missing out on my children's childhood to the extent that there would be days on end that they would be cared for by others fills me with dread and makes me question whether their emotional wellbeing (and mine) is worth compromising for a job, albeit a job that I love.

There are over thirty five members of my team that are currently working and the majority of them have school aged children or are carers for relatives. The large proportion are female. The new proposals would be hugely discriminatory. It would preclude the majority of the team from being able to work the proposed hours and juggle their ability to care for their children. The proposed changes demonstrates a total disregard for these caring responsibilities. This does not even begin to consider children with SENs or relatives with additional needs. In my view the proposal is unachievable and will end up with the wellbeing of members of both the Bar and solicitors being compromised to the extent that there will be a mass exodus from the profession.

I currently (pre lockdown) get up at 6.30am, work for half an hour and then get the children up and ready to arrive at school around 8am. I travel to work and I spend the day in court and Chambers returning home about 6 /6.30pm to see the children for an hour before they go to bed. (I am totally reliant on others to collect my children after school) (If I am working out of Leeds I often get home as the children are going

to bed or more often than not after.) At least one day a week I am giving or attending a seminar or meeting and therefore get home after 8.30pm. I routinely prepare cases until past ten o'clock in the evening sometimes until 1am if I am in the middle of a contested hearing. I routinely work one day every weekend to keep on top of the demands of my workload. I cannot envisage extending the court sitting hours and being able to prepare the work that I have to do each day to the required standard. I deal with the most serious type of cases of child abuse involving allegations of extensive physical, emotional and sexual nature. I have nearly 18 years' experience and although very conscientious I would hope that I have the ability to prepare cases in less time than some that are more junior to me. The subject matter of my caseload is incredibly draining and often upsetting and to be able to work to the best of my abilities I have to protect some time away from work to protect my mental health and decompress. It is only over the past five years that the bar has recognised the huge impact on mental health that the subject matter of our work and working patterns of the bar have and started to provide support to those who are able to access it.

I am incredibly concerned about the impact on mental health and wellbeing for the profession as a whole with the increased demands on time. The impact on those starting out at the bar with young families will be far greater than the impact on my own family. The barriers to entering the profession are obvious.

It is my view that many will be forced to leave the profession. Even at my call, I do not think that I would be able to sustain a career at the bar without having a full time nanny to care for my children. This is not something that I want or can afford. Those more junior to me would not have the luxury to be able to consider this as even an option. It is inevitable that talented barristers will leave the profession due to the demands and the expenses of childcare. The profession has changed over the past ten years but the proposal to extend the court sitting hours would have such an enormous impact on individuals' mental health, personal relationships and ability to care for both the young or the old that it would discriminate against and alienate those whom the profession surely wants to encourage and retain. It is my understanding that the Bar actively want to retain women over 15 years call and actively encourage women to apply for silk and apply to go on the bench. This type of proposal will increase the gap

between genders and increase the barriers for women achieving their potential at the bar.

Counsel U ***Male, criminal & family practitioner, 4 years' call***

[My wife and I are both at the publicly funded Bar.] We have 2 children under 5, both in Nursery, our daughter for 4 days and our son for 3. He has significant additional needs, is disabled, has a severe learning disability and is not independently mobile. He can't feed himself and he is in nappies. He has a one to one at nursery, an EHCP, physiotherapist, speech therapist, occupational therapist, play therapist. In term time he has hydrotherapy on a Saturday morning. He has orthotics to aid his walking. All these appointments and therapists take our time. Time is what we treasure most. We both like to exercise daily, often a run although we have a home gym now. We walk most days and cook each night. We don't have a nanny or any regular help. On top of all that we have to maintain our professional practices, maintain our CPD and learning/compliance, deal with the usual incessant stream of or so emails we receive Our son will start mainstream school in September - 5 days full time. Full time means 9-3, our daughter will be in nursery 830-530. The downside of a worthy practice is time required outside of court hours to work. The level of service from instructing solicitors and the CPS is ordinarily worthless insofar as time required to prep. We work most nights and at least an afternoon or evening session on a Sunday. If we are in trials and the working day is stretched this is all exacerbated - now factor into that extended court hours. The logistics, the cost, the restriction in family time...the need to find childcare, to find time to do all the lifemin that we already struggle to do...need I go on.

Counsel V ***Female, common law practitioner, 7 years' call***

Growing up as a girl in the 90s and early 2000s meant that the one thing expected of you was a successful career. The early years of your life until your mid-twenties were mapped out. Excel at school, attend University and choose a profession. Marriage and children would naturally happen after that of course, but apparently neither required much thought or preparation. It would just happen and you expected that it would work itself out. Women could have it all now – and if you couldn't you were doing something wrong.

I failed to achieve these milestones in the right order because I attended my pupillage interviews with a noticeably pregnant belly and started pupillage before my eldest child was 2 years old. My pupillage year was such an eye-opener for me in terms of the workload at the Bar. My supervisors were up to their eyeballs in cases, running back-to-back trials lasting weeks and booking new trials into their diary almost into the next year. It was a daily mission to get their children to and from childcare and get themselves to courts across circuit on time. If they happened to finish a hearing early, they would rush back to get an extra bit of time with their families. I could see the strain that this lifestyle placed on them, and yet they remained utterly dedicated to their work.

I always expected that being at the Bar would be difficult. I knew that, as a new practitioner, it would take me longer to prepare my cases but in time, as my experience grew, things would improve. Despite all the evidence before me from other mothers at the Bar, including those who had decided to have their children later, I believed I would eventually have some kind of life-work balance and more time with my kids.

Pre-pandemic, my days looked something like this. I would get up at 3am to prepare my trials and I would usually leave the house by 7am, just as the kids were waking, as I had to use public transport to get to far-flung places on circuit. On the occasions that I needed to do the drop-offs I would wake them up horrendously early to take them to my parents who would then take them to school. I usually wouldn't return home until after 6pm, which was often when my kids would get their first glimpse of me. It was always too late for me to cook dinner for anyone and I was too exhausted to engage meaningfully with my family. I had a couple of hours with my children before it was time to get them to sleep and I could then start on my long list of emails before collapsing into bed. I made sure that I kept Saturdays free so that we could have one whole day together. I always worked on Sundays.

My husband would usually dress and feed the children and transport them to wherever they were going in the week. He arranged and took them to their play dates. I didn't know the other parents at the nursery and school. I kept telling myself that it wouldn't be like this for forever, I had a public duty, I was a strong role model for the children, I was proving to my girls that they could have everything, I was privileged to do something so important, interesting and enjoyable for a living and the sacrifices were

worth it. I was extremely fortunate to have my parents and my sister to look after my children. I didn't want to put the children in wraparound care, neither could I afford it, so my family bent over backwards to help me. Most women at the Bar are not so lucky. Their husbands and families are usually unable to take on these responsibilities in the way that mine have.

Eventually, I realised that I had chosen a way of life. My eldest child was at school and I was continually thinking of ways to keep her further occupied elsewhere so that I could have more time to work. Then the Covid 19 pandemic put an end to all of this. My diary was cleared, my child removed from school. She was advised to shield and so we all shielded together for the duration of the lockdown. Never before had we spent so much time together as a family and it was both exhausting and wonderful. I had always missed being with them but, as they always seemed so bright and happy, until that moment I had never really appreciated how much they missed me and needed me to be around.

As the courts began making arrangements to reopen, I at first looked forward to the prospect of returning to "normality". Despite everything, I love my work and desperately want to continue with it, but in a way that meets the needs of my family. My bubble burst when I realised how abnormal our previous life had been and I was loathe to return to it.

Barristers are dedicated to a fault. We put our roles as advocates above all else. Public funding cuts have decimated the justice system and yet it doesn't collapse because we don't allow it to. Despite the dedication and goodwill shown by the Bar, the Government continue to treat us with contempt, using the excuse of the pandemic to now force us to work extended hours and weekends, in plans which were rejected long before the Covid 19 crisis.

I know that if these proposals are implemented I will have no choice but to leave the Bar. It is impossible for me to work more than I was before the crisis. Apparently, I am to simply plough on to the detriment of my own physical and mental health and pretend I am free and single, without ties or responsibilities to anyone, other than the Ministry of Justice, of course.

In my past naivety, I was able to convince myself into accepting my excessive workload by repeating the mantra that things would eventually improve. These proposals have made me realise that our sacrifices are in vain and improvements to our working conditions are simply a pipe dream. If the Government had any concern about the impact of extended working hours on parents, carers and women in particular, they would no doubt have carried out an equality impact assessment instead of bulldozing through these unconsidered proposals. They wish to sacrifice us to achieve their aims without investing sufficient funds to clear the backlog of cases in a more sustainable way which takes the needs of the Bar into account. I no longer believe, as a woman, and particularly under this government, that I can have it all or the career that I chose and I am no longer willing to sacrifice myself or my family to get it.

APPENDIX 2:

The Bar Council

Barristers' Working Lives 2017

Third survey of barristers' attitudes towards their working lives

Executive Summary

The Working Lives Survey in 2017 was part sponsored by the Specialist Bar Associations (SBAs) and the Circuits. One of the key objectives of the survey was to gather data and insights into the working lives and employment experiences of barristers at both the self-employed and employed Bars). Similar questions to those in the 2011 and 2013 Working Lives surveys were asked to enable us to identify trends.

The usable response rate was 26.4%, which is 4,092 usable responses from 15,515 valid email addresses. The profile of respondents broadly reflects that of the Bar when compared to other sources of information about the characteristics of barristers, albeit with a slight (3%) over- representation of women amongst respondents.

This report focuses specifically on survey findings related to barristers' attitudes towards their working lives. Further reports, due to be published later this year, based on the survey findings, will look at other aspects of barristers' working lives.

Key Findings

Work pressure is too much as more barristers report difficulties in balancing work and home lives

- Only 45% of barristers said they could balance their home and working lives satisfactorily, down from 50% who said they could in 2011.
- Barristers practising in criminal and family law said they were struggling the most with work-life balance - 48% of criminal and 58% of family barristers said they could not balance their home and work lives adequately.

- Criminal practitioners (50%) and family barristers (62%) are more likely to indicate that they are emotionally drained by their work.
- In terms of work pressure, 58% of criminal barristers and 66% of family barristers said they felt under too much pressure from work.
- Across the whole Bar, only 26% of respondents said they were not under too much pressure from work in 2017, compared with 34% in 2011.

Interest and enthusiasm

- 89% of barristers across all areas of practice agreed that they found their work interesting.
- 61% of barristers across all areas of practice agreed that most days they are enthusiastic about their work.

Overall

- There is a clear difference in views about working lives between practice areas, for example criminal and family practitioners were more negative about their working lives than those in commercial or chancery practice.
- Workload, stress and work-life balance were worse in 2017, than in 2013.
- A barrister's current situation (e.g. their workload and level of income) influences their views of their working life. Those who believe their needs are met and who are enjoying increased income have a more positive view of their working life. Increased workload can have a positive impact on perception of career progression, but a negative impact on stress and work-life balance. Generally, those for whom there has been little or no change in workload and income in the last few years were more positive about their working life.

APPENDIX 3:

The Impact of EOH on those handling particularly sensitive cases

1. Trials involving sexual offences are usually listed for 4-5 days and practitioners regularly have cases listed back to back. Due to the nature of the allegations it is extremely rare for defendants to plead guilty. The majority of such cases are contested and run to trial.
2. The demands on counsel dealing with these cases are already high. There is a significant amount of work to be done pre-trial such as ABE interview edits, consideration of unused material, ground rules hearings and the review of section 28 recordings. Trials of sexual offences occupy full court days and counsel are expected to work outside ordinary court sitting hours in order to prepare for the following day to ensure that no court time is wasted.
3. Practitioners dealing with such cases routinely spend 2-3 hours per night preparing for the following day.
4. In order to prosecute sexual offences counsel must be on the CPS RASSO list. Similarly, counsel with experience and expertise in defending such cases are regularly instructed. The practical effect of this is that very often the same counsel dealing with these cases week in week out. There is already very little preparation time in between cases. In addition to this, practitioners also have to manage the additional pressures of the section 28 provisions, typically with a ground rules hearing and section 28 cross examination taking place at the beginning and end of the week. It is common for these hearings to be listed when practitioners are already conducting another trial and in effect have to prepare and conduct two trials simultaneously.
5. The EOH proposals would significantly disrupt the normal working week and the consistency in working hours, both at court and outside court sitting hours, which such practitioners rely on in order to be able to prepare and deal with these trials back to back.

6. There are particular issues regarding working in the field of sexual offences that by their nature are a factor in the issue of retention of women. Practitioners who specialise in sexual offences already have significant additional pressures to cope with; they deal with traumatic evidence, harrowing accounts from victims and sensitive issues.

APPENDIX 4:

Affordability of Childcare - Case Study Counsel C as an example

1. Counsel C is a criminal practitioner with three children who are 1, 4 and 9 years of age. Prior to September when her 4-year-old will start school she would ordinarily have 2 children in nursery. She is based in Yorkshire and so her annual nursery bill could be as much as £27,376.80. However, if she were eligible for government support with childcare it could reduce to £17,813.60.
2. Her third child would ordinarily be at school but would attend breakfast club and after school clubs. The Childcare Survey 2019 found the average weekly price of after school club to be £59 (£2360.00 over the school year).
3. It is clear that as substantial proportion of her income would be taken up with childcare. It is likely that she would also incur the cost of placing her eldest child in holiday clubs or with a childminder during school holidays to enable her to continue to work outside term time.
4. Alternatively, Counsel C could employ the services of a nanny from 7am to 6pm, 5 days per week. The nanny would be entitled to be paid for all 52 weeks of the year to include her paid holiday entitlement, making an annual cost of £26,455, before taking into account the expenses of employing a nanny in terms of national insurance, pension etc. Given that Counsel C is a criminal practitioner, her income is unlikely to be sufficient to meet this commitment.
5. These examples would just cover the costs of childcare for an ordinary working week, without the introduction of Extended Operating Hours.
6. This example shows that whilst a nanny may potentially offer greater flexibility, the cost involved means that it is simply not an option for many barristers and certainly not those working in the criminal courts.

APPENDIX 5:
Full Survey Results