

The Solicitor Advocate

The Newsletter of the Solicitors' Association of Higher Court Advocates

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May 2009

THE SAHCA COMMITTEE

Tim Lawson-Cruttenden, Chairman
Lawson-Cruttenden & Co, London
tim@harassment.co.uk

Jo Cooper, Vice Chairman
Perren Buildings

jo.cooper@perrenbuildings.com

Shawn Williams, Hon Treasurer
Rose Williams & Partners, Wolverhampton
s.williams@roselaw.co.uk

Yvonne Spencer, Secretary
Veale Wasbrough Lawyers, Bristol
Yspencer@VWL.co.uk

Avtar Bhatia, Immediate Past Chairman
Bullivant & Partners, London
avtar@bullivant.uk.net

Silas Catling
Legal Services Commission, London
silas.catling@me.com

Andrea Clarke
CCW Solicitors, Spalding, Lincs
andrea_clarke2007@yahoo.co.uk

Leslie Cuthbert
leslie.cuthbert@orange.net

Lona Haddadi
Farrell Matthews and Weir, London
lona.haddadi@fmw-law.co.uk

Sam Harmel
Fentons Solicitors LLP, Manchester
sam.harmel@fentons.co.uk

John Hudson
Hudson & Associates, Lonsdale
johnhudson@hotmail.com

Kate Macmillan
Macmillan Gallant LLP, London
kate.macmillan@gmlegal.co.uk

Mike Mellun
CPS, York
mike.mellun@cps.gsi.gov.uk

David Orbaum
Stanley Hays, Heckmondwike
david@stanleyhays.co.uk

Flora Page
Perren Buildings
flora.page@perrenbuildings.com

Nigel Richardson
Hodge Jones Allen, London
nrichardson@hodgejonesallen.co.uk

Roger Sahota
BSB Solicitors, London
rogersahota@gmail.com

Richard Steer
Leo Abse & Cohen, Cardiff
richards@leoabse.co.uk

Sam Tate
Clifford Chance LLP, London
sam.tate@cliffordchance.com
june.venters@venters.co.uk

Carl Woolf
Meldrum Young Solicitors, St Albans
carlwoolf@solicitoradvocate.com

THE CHAIRMAN'S COLUMN

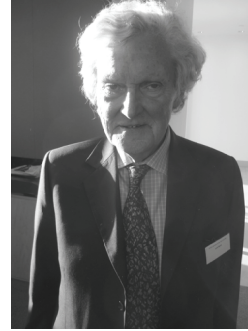
In the last edition of the newsletter I asked members to respond individually to the SRA consultation on the re-accreditation of solicitor advocates as well as communicating views to us so that those members of the committee responsible for drafting the SAHCA response were apprised of the views of the membership generally. I would like to thank all of those members who responded and also to the hard work of the committee members over the last few months on this issue, including consideration of judicial review proceedings as well as a lengthy response to the consultation.

The response was prefixed by three points. Firstly, that the consultation is unlawful. It was issued without any proper regard to the law on consultations, and in particular the need to ensure that consultors obtain sufficient information to demonstrate a real question on which opinions are to be sought. Further, it was issued without any proper regard to the SRA's own Equality & Diversity Strategy September 2008, especially as it affects the SRA's obligations in carrying out public consultations. Secondly, that the SRA's proposal for mandatory re-accreditation is fundamentally flawed, being a regulatory intervention which is based on no evidence of need, is unfocused, disproportionate, discriminatory in its impact, and lacking in fairness. Thirdly that the SRA's apparent indecision about its own role as a regulator and its inability to formulate a clear vision for its governance of Higher Court Advocacy, raises real doubts as to its capacity to do so in future.

Equally worrying is the misunderstanding of the qualification process. Solicitors are admitted and are entitled to practice so long as they have a practicing certificate. If they achieve the requisite standard under the 'entry level scheme' they are enti-

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LORD SLYNN OF HADLEY



Lord Slynn at the SAHCA Summer Party 2008.

Lord Slynn of Hadley died on 7 April 2009.

He was President of SAHCA from its inception in 1994. By that time Lord Slynn had returned to the UK as Law Lord from the European Court of Justice where he had served as first the United Kingdom's Advocate General and then appointed as the British Judge of the court. This experience meant that he was able to return to the English Jurisdiction with a new perspective on advocacy. He was always a keen supporter of solicitor advocacy and many solicitor advocates who thought it was dangerous and hazardous to appear in the Higher Courts without wigs took strength from Lord Slynn's support and commitment and from his continued enthusiasm for advocacy.

Lord Slynn retired in 2002 but remained very active in many capacities including that of President of the Association. He attended many SAHCA events and only last year addressed the delegates attending the summer seminars at Clifford Chance congratulating the Association on going from strength to strength and encouraging solicitor advocates to aspire to the challenges of higher court advocacy in a most inspiring and rousing speech seamlessly and effortlessly made on the spur of the moment.

What can QAA do for Crown Court solicitor advocates?

Many of you will have heard that the Legal Services Commission is likely to introduce a scheme called Quality Assurance for Advocates (QAA). This idea came in the wake of the Carter report so its fans may be few and far between amongst solicitor advocates. It will be another set of forms to fill in, yet another unpaid job which you will have to find time for. And even worse, it will require ongoing re-evaluation of your own skills, to determine whether you are suitable to take on more serious cases. Highly unappealing, given that as advocates we spend every day proving ourselves in open court, and we have all jumped through countless hoops to secure the dubious privilege of practising in the Crown Courts. Many of you may see it as another unnecessary reform that should be opposed.

If so, I hope to change your minds! I have signed up for the pilot study, which is being run by Cardiff University's Professional Development Unit, and I fully expect it to be a time-consuming nuisance. Nonetheless, I will try to console myself with the idea that it may help to protect my reputation and my earnings in the fractious years to come.

The Government has made it abundantly clear that there will be no new money for Legal Aid lawyers for the foreseeable future, and the current lean times have led to a Budget that insists on further cuts across the criminal justice system. The Budget also makes it clear that Best Value Tendering will come, and there is little we can do to prevent it if the political will is strong enough (albeit we can do much to delay, adjust and tinker with the proposals).

Of course graduated litigator's fees are already in place, and that has opened the door to the idea that solicitor advocates will try to punch above their weight. Whether or not they are doing so is another matter, but it is conceivable, because the more serious cases are better paid and firms who instruct in-house will get the litigator's fee and the advocate's fee.

In a recent 'judgment' by HHJ Gledhill, a circuit judge at a Crown Court in London, this suggestion as to why in house solicitor advocates represented defendants in a fraud trial was certainly made. Although completely rejected in the detailed response issued by Bullivant and Partners to that judicial attack on solicitor advocates, (see Crimeline's email from 22 April for full details).

At the moment there is no independent measure to demonstrate who is suitable to take on the more serious, better-paid cases. The fact that barristers are just as likely as solicitors to take on a case beyond their reach is imma-

terial. We are the newcomers to the Crown Court, and therefore, whether we like it or not, we must try harder to prove our worth.

Assuming it shapes up well, QAA may be just the protection we need. The idea is that all advocates will be graded from level 1 to level 4, in a similar way to the CPS in-house scheme. It will not aim to judge how talented we are in the abstract, but rather whether we have the competence to undertake cases at the next level of seriousness/complexity. Entering the scheme at a particular level will certainly not prevent advocates from moving up to higher levels. Importantly, the scheme will apply equally and in the same way to advocates from the two branches of the profession. And very importantly, it has the backing of the judiciary. If we are judged on an objective standard as suitable to take on a certain level of case then we cannot be criticised for taking on that level of case, and thus any outspoken bullying from the Bar and the Bench will be exposed for what it is.

It will also offer some degree of protection if Best Value Tendering is forced into the world of Crown Court advocacy. If there is no independent measure in place to prevent under-qualified advocates offering to do serious cases on the cheap, we are all exposed to being undercut. No one except the Government wants to see cowboys preventing the rest of us from doing a decent job and receiving decent pay for it. It will be better for all quality-conscious advocates if QAA is introduced soon, so that it will be entrenched before Best Value Tendering gets to the Crown Court. Even if BVT is scotched before that day comes, other cost-cutting schemes are liable to crop up at any time. Our best protection will be to buy into QAA.

The pilot scheme running at present is aimed at testing a variety of assessment methods, to see which ones provide the best indicators for appropriately classifying advocates from level 1 to level 4. The stated aim is to create a "light-touch scheme which takes account of the skills you have already, and which taps into relevant existing standards". I, along with the other volunteers, will be subjected to many more assessment methods than will survive into the proposed scheme. While the pilot is running I am obliged to keep the nature and substance of the assessments confidential, to protect the integrity of the results. Nonetheless, the main reason I have volunteered is to try to ensure that the assessment tools are not skewed to the advantage of either branch of the profession. If any methods give me cause for concern I will make sure those running the pilot are made aware of the potential problem. I hope that also means that if the final proposals look set to have an unfair effect, SAHCA can mount a strong opposition from a

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OFFICERS

Hilary Riddle
Administrator
PO Box 63251, London, N2 9UW
DX 52506 East Finchley
hilary@hradmin.co.uk
Tel 020 8444 5609

Angela Horne
Training Officer
56 Thurlestone Road
London SE27 0PD
angelahorne@sahca.orangehome.co.uk
Tel: 020 8761 4668

Committee Meetings 2009

The SAHCA Committee meets every month. Please contact the Secretary, Yvonne Spencer of Veale Wasbrough Lawyers, or the Administrator, Hilary Riddle if there is any issue you would like to be brought to the Committee's attention.

Committee meetings will be held as follows in 2009 :

Wednesday 3rd June
Wednesday 15th July

The agendas and minutes of the meetings are posted on the website, www.sahca.org.uk.

Dates for your diary 2009

Friday 11th September
&
Saturday 12 September 2009

RESIDENTIAL ADVOCACY
SKILLS TRAINING

Sidney Sussex College Cambridge

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Friday 13 November 2009
ANNUAL GENERAL MEETING
&
ANNUAL DINNER

Saturday 14 November 2009
ANNUAL CONFERENCE

The Metropolitan Hotel
Leeds



Invitation
to a
Summer
Party

On Thursday 18 June 2009

6.30pm to 9pm

at

CLIFFORD CHANCE LLP

10 Upper Bank Street,
London E14

SAHCA invites all Members
and all newly qualified Higher
Court Advocates to a
Summer Party at the
spectacular 30th floor offices of
Clifford Chance LLP with views
over London

Canapes and wine

Jazz band

£15 per person

Guests welcome

Free admission for seminar

delegates



Booking form enclosed with this
edition of the Solicitor Advocate



SOLICITORS ASSOCIATION OF HIGHER
COURT ADVOCATES

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ANNUAL SUMMER SEMINARS

18 JUNE 2009 2.00pm—6.00pm

CLIFFORD CHANCE LLP

10 Upper Bank Street, London E14

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or DOWNLOAD A BOOKING FORM AT www.sahca.org.uk

CIVIL PRACTITIONERS ' SEMINAR

JUDICIAL REVIEW
PROCEEDINGS

&

ETHICS FOR THE CIVIL
ADVOCATE

3.5 ADVOCACY CPD HOURS

COURSE LEVEL:

BEGINNER/INTERMEDIATE/ADVANCED

This course will give an overview of the work of the Administrative Court and proceedings for judicial review for civil practitioners, both as litigators and as higher court advocates. The course will cover the types of decisions that can be challenged; the grounds for applying for judicial review; the importance of written advocacy and approaches to oral Advocacy and ethics for the advocate.

SPEAKERS:

Hugh Southey, barrister and co-author of *Judicial Review : A Practical Guide*.

Simon Slidders, Senior Legal Manager at the Administrative Court.

Leslie Cuthbert, Higher Courts Advocate and trainer to legal professionals.

CRIMINAL PRACTITIONERS' SEMINAR

ADVOCACY ISSUES
ORAL AND WRITTEN

ADVOCACY &

ETHICS FOR THE CRIMINAL
ADVOCATE

3.5 ADVOCACY CPD HOURS

COURSE LEVEL:

BEGINNER/INTERMEDIATE/ADVANCED

This seminar will focus on how best to examine and cross examine child or vulnerable witnesses; the role of expert witnesses and how to deal with them; good written advocacy in skeleton arguments and ethics for the advocate.

SPEAKERS:

David Wurtzel, barrister and senior lecturer at The City Law School with particular experience in Intermediary training, higher rights advocacy training and on how to cross examine vulnerable witnesses.

Leslie Cuthbert, Higher Courts Advocate, with experience as both prosecutor and defence advocate and of providing training to legal professionals.

QAA FOR SAs*(Continued from page 2)*

position of having committee members who have welcomed QAA in principle.

Perhaps the main reason to embrace QAA is the fact that the judiciary support it. If they can be kept on board, their support for QAA will provide a much more powerful bulwark against the damaging effects of Best Value. Tendering than any representations our professional bodies can make. They are always a force to be reckoned with, and whatever prejudices some of them may harbour, at least politicians cannot stigmatise their views on preserving and promoting quality advocacy as mere trade unionism.

The pilot study needs more solicitor advocates to participate in order to ensure a level playing field for all advocates. You can read more about it and download a form to register at

www.legalservices.gov.uk/criminal/contracting/quality_assurance_for_advocates_pilot.asp

(please note volunteers do NOT need to appear in the courts participating in the pilot, but you may need to be willing to travel to one of the assessment centres in Cardiff, Birmingham or London).

You can also request a form from Grazia Trivedi at the LSC on 020 7783 7420 or gaa@legalservices.gov.uk.

If you are unsure and would like to talk it over you should feel free to call Angela Devereux, the Head of the Professional Development Unit at Cardiff University, on 029 20876948."

Flora Page
SAHCA Committee Member,
Advocate, Perren Buildings
Senior Lecturer, College of Law

Letters to the Editor

Members will be aware that judgments in House of Lords appeal are in the Chamber of the House, and that counsel are required to appear at the bar. Counsel who argued a matter for me before the Appellate Committee was unavailable. I decided that the advocacy was within my capabilities (since it is limited to bowing twice) and have so appeared, duly robed and (borrowed) wigged. Am I the first solicitor to do so, and (given the jurisdiction will transfer to the Supreme Court later this year) will I be the last?

Edward Solomons
Director of Legal Services
Metropolitan Police

CHAIRMAN'S COLUMN*(Continued from page 1)*

tled to the 'Higher Courts Qualification'. Thus solicitors and solicitor advocates gain their qualifications and any issue of accreditation or re-accreditation simply does not arise; any policy which seeks, retrospectively, to undermine 'entry level qualifications' must be both unlawful and misconceived.

In recent weeks the standard of solicitor advocacy has been the subject of self-doubt by the profession and high-profile criticism made by a HHJ Gledhill, a circuit judge at a London Crown Court.

The judicial criticism will undoubtedly be the subject of much discussion and debate. I cannot comment on the substance of the Judge's complaint. However, I quarrel with the way he did it. It seems to me that there are three ways in which judges should deal with advocates of either profession. If the error is trifling or not serious then that can be rectified with the advocate there and then (normally in the absence of the jury). If the errors are more serious then the judge can contact the head of chambers/senior partner. If the errors are very serious, then a complaint to the Regulator can be made. This is the good practice for judges to follow when concerned about the competence of advocates (whether solicitors or barristers) appearing in their courts. The judge did not invoke any of these procedures. He criticised the advocates without giving them a right of reply. By announcing that his 'judgement' should be widely published he sought, in the views of many, to undermine the profession of solicitor advocacy. Despite all of this he certified a fair trial.

How to deal with ethical issues arising in conference and while you are on your feet will be addressed in brief at the summer seminars for both criminal and civil practitioners on 18 June 2009. Committee members are always happy to give advice on such issues if queries are submitted through the website or directly to the Administrator. I look forward to seeing a good number of members at the event and the summer party that follows. The occasion will be a good opportunity for members to meet and discuss their experiences in the courts.

Tim Lawson-Cruttenden, Chairman

Notices

Notices from members or items considered to be of interest to members of SAHCA, will be posted in this section of the newsletter, free of charge and for a maximum of 2 consecutive issues at the discretion of the editors.

Notices for publication should be sent to Angela Horne, The Solicitor Advocate, 56 Thurlstone Road, London SE27 0PD.

email:

angelahorne@sahca.orangehome.co.uk

Letters to the Editor

Letters for publication should be sent to Angela Horne, The Solicitor Advocate, 56 Thurlstone Road, London SE27 0PD,

email:

angelahorne@sahca.orangehome.co.uk

They should not exceed 300 words and are liable to be edited ruthlessly.

THE SOLICITOR ADVOCATE

*Angela Horne, Media Officer
Leslie Cuthbert, Criminal Editor
Yvonne Spencer, Civil Editor*

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