

THE SOLICITOR ADVOCATE

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DIVERSITY WITHIN THE JUDICIARY

The SAHCA committee was delighted to announce at the Annual Conference in Leeds in November 2009 that The Hon Mr Justice Hickinbottom had accepted the invitation to become the new President of the Association. Below is an edited extract of the address given by Sir Gary at the conference. The full version, with references, can be found on the website.

Diversity within the judiciary is important for several reasons.

First, it is important that those who are ready, willing and able to be judges, have equal opportunities to be appointed. That is a question of individual rights. It was the initial driver for judicial diversity, and its importance remains undiminished. No quality that makes a good judge has anything to do with gender, or colour, or creed, or origins. I applaud those individuals and organisations that have done so much to ensure



that those that seek judicial appointment do so on the basis of a level-playing field.

But to think that that is the only reason why judicial diversity is important is simplistic.

A second reason - now more frequently cited than it used to be - is that it is important that the judiciary are representative of the population as a whole. However, that as a proposition can easily be misunderstood. At face value, it might be seen as requiring us to have repre-

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THE WAY AHEAD FOR SAHCA



Jo Cooper was elected Chairman of the association at the AGM on 13 November 2009 - and sets out here his priorities for chairmanship.

We chose as the title of our annual conference, 'Solicitors at the heart of the practice of law' and no doubt that phrase will be a theme of my period of chairmanship. It has certainly been a theme of my predecessors Tim Lawson Cruttenden and Avtar Bhattoa before him. And if the phrase is to be a reality then we at SAHCA have to continue to focus on the key priorities.

Of course one of SAHCA's prime functions is to **promote** solicitor advocacy - where and in whatever form it takes.

It is worth underlining the depth, and variety of our membership: members conduct their advocacy in civil, crime or family; they are in-house, employed or freelance; they are full time advocates or mix advocacy with litigation; they appear in the Higher Courts, the Tribunals and elsewhere. Our job is to promote the members' ability to provide advocacy services in their great diversity.

Of course that is easier in 2009 than 15 years ago. Our association has doubled in size in the last five years.

The reality is that as each day goes by, our members are doing substantially

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more advocacy, and in more places. And as SAHCA expands, our members are entitled to expect SAHCA to do more advocacy on their behalf.



'...promote ...protect ...provide...'

Our successes we not come without resistance. During his time as Chairman Tim Lawson-Cruttenden ably led the defence from some odious attacks, orchestrated by people who apparently had no interest in seeing solicitor advocates improve, let alone solicitor advocacy prosper. SAHCA's message to them is: "Face it. We are here to stay."

But part of **protecting the brand** means knowing when to listen to messages which are sometimes difficult to hear. One of our guests at the conference was HHJ Peter Collier QC the Recorder of Leeds. His judgement about the role of junior counsel in two counsel cases sent out some ripples of consternation amongst solicitor advocates. If you log into our new website you may be able to see that judgement. Why is it there? Because it is required reading for criminal practitioners. It makes the point that the role of junior is not a free ride. Solicitors are no more entitled to abuse the system than generations of barristers before them, by whom and about whom the expression "straw junior" was invented.

So protecting the brand does not mean retreating to the bunker, but engaging with the arguments and affecting the debate - particularly the quality agenda.

In terms of what the organisation can **provide** to our members, of course we have already have a range of member services, and it is our job to develop these further. Before turning to these, let's stand back and consider that perhaps of all the things we deliver as an organisation, confidence is the key thing: confidence as individuals, and increasingly, confidence as an organisation. Confidence, in the future, to set our own standards.

Increasingly as we engage with the quality debate, we will be working to influence and engage with regulators, with the quality assurance process in all its forms, and in due course ensuring that there is training provision that is precisely synchronised with the quality agenda that we as advocates have contributed to.

Of course we will continue and develop

our core tasks: our very important lobbying and watchdog roles; and to expand and develop our already highly successful and prolific training function. 2009 was a bumper year in terms of our delegate numbers and feedback and we want to take this further year by year.

There are other new initiatives that are designed to open up opportunities in areas of interest to our members and which are capable of making a real difference - **Judicial office** is one important strand which we intend to incorporate into our events programme. Allowing our diversity to reach the bench is an important initiative.

Another area is **Pro Bono** - Many of us do pro bono in our individual capacities but Sam Tate and Tim Lawson-Cruttenden are going to take forward a programme which will help us to look at how our **collective** skills can be brought to others needier than ourselves. Lastly, we have many solicitor advocate members working in **International** advocacy whether directly for clients in Brussels, The Hague and elsewhere; or in teaching and human rights advocacy abroad. I want to ensure that more opportunities like this are available to members who are interested. Initiatives like these are all about expanding our vision of what solicitor advocacy can do, what it can achieve.

'...confidence as individuals ... confidence as an organisation...'

So how will these principles be delivered in practice?

We are doing a bit of tinkering to our **organisational structure** to ensure that it is fit to deliver the vision we intend for it. That means more streamlined and effective committee positions, driven by clear policy objectives. In the past we have been much slower than the Bar to engage positively with both the judiciary, government and the media. As our association expands we need to have structures that help us to do this, and the confidence to reach out to wherever our advocacy is being done - namely from one side of our jurisdiction to the other and from top to bottom.

Jo Cooper

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Committee Meetings 2010

The SAHCA Committee will meet every first Wednesday of the month at 5.30pm at the offices of Hodge Jones & Allen, 180 North Gower Street, London NW1.

Please contact the Secretary, Leslie Cuthbert 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 2010

3 March 2010

7 April 2010

5 May 2010

2 June 2010

7 July 2010

4 August 2010

1 September 2010

6 October 2010

Sub committees will meet as required. The new sub committee structure is set out opposite. Members are invited to contact the chairs of the sub committee with any contributions, comments queries or ideas.

AGM 12 November 2010



2010
SAHCA
ADVOCACY
TRAINING

EXAMINATION
OF
WITNESSES

Saturday 27 February 2010 &

24 April 2010

9.45am to 4.15pm

Gibraltar House, 150 Strand,

London, WC2R 1JA

-

6 hours CPD in
'a dvocacy issues'
intermediate level

-

Course Leaders:

Leslie Cuthbert

and

Glenda Fontaine

-

Guest speakers:

HHJ Compton and HHJ Murphy

-

'A brilliant course'

'Group sessions were excellent'

'Authoritative, focused, relevant,
enjoyable'

-

LIMITED PLACES

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BOOKING FORM
ENCLOSED

STRATEGY IN ACTION

This is an overview of the part of the new sub-committee structure introduced to deliver the future strategy of SAHCA to promote the interests of the membership. Members are invited to contact the relevant chairs of the sub-committees with any contributions, comments, queries or ideas.

Training sub-committee

The training sub-committee oversees the content of SAHCA's annual training programme. Training is focused on advocacy training for civil and criminal practitioners. The sub-committee works closely with the strategy sub-committee and is considering ways to develop a more formal, or accredited, training programme.

Chair: Flora Page (07762104275).

Flora Page is a criminal advocate with Perren Buildings, a London chambers of solicitor advocates; and a senior lecturer and accredited advocacy trainer on the College of Law's Bar Vocational Course.

Membership IT and Media sub-committee

The Membership, IT and Media sub-committee is tasked with increasing the membership, managing the website, considering the membership fee, managing publications, setting and achieving targets for membership including considering equality and diversity issues and developing a strategy for communication through the media to promote the interests of the membership.

Joint Chairs:

Kate Macmillan (0207 7584720) and Carl Woolf (01727 840 333).

Kate Macmillan founded Gallant Macmillan in 2006 where she specialises in all aspects of reputation management, including defamation, confidence, privacy and harassment law. Prior to her legal career, Kate was an award winning journalist and magazine editor at Haymarket Magazines.

Carl Woolf is the senior partner at Meldrum Solicitors LLP and is a specialist criminal advocate with a broad practice across the spectrum of criminal work. He is a member of the International Bar Association and the International Criminal Defence Attorneys Association.

Strategy and External Relations sub-committee

The strategy and external relations sub-committee is tasked with managing external relations with SRA, Law Society, Judiciary, Bar organisations and with other associations, including by way of reciprocal representation where approved by the Association Committee; and initiating surveys of SAHCA's membership.

Chair: Chris Clark (01785 241 842)

Chris Clark is the Senior Partner of Chris Clark Solicitors of Stafford and Cannock Staffs. He regularly appears in the Crown Court, Court of Appeal and before The Parole Board. As a Law Society Council Member he is a member of the Criminal Law and Access to Justice Committees and a board member of the Regulatory Affairs Board.

Consultations sub-committee

The consultation sub-committee will decide to which consultations SAHCA will respond and draft responses to be approved by the full committee. At present the sub-committee is formulating responses to the following: Advocacy Standards issued jointly by the Solicitors Regulation Authority, ILEX and Bar Standards Board due by 22 March 2010; Reforming Advocates Fees issued by the Ministry of Justice due by 24 February 2010; and Very High Cost (Crime) Cases 2010 issued by the Legal Services Commission due by 8 February 2010.

Chair: Lynton Orrett (07917 204573).

Lynton Orrett is a criminal solicitor advocate. He is also a director of the Black Solicitors Network; he has been instrumental in challenging the proposals which would limit the right of a defendant to have the solicitor of their choice.

Pro Bono sub-committee

The Pro Bono sub-committee is tasked with exploring and supporting pro-bono activities including charitable awards.

Chair: Sam Tate (020 7006 4547).

Sam Tate is an associate at Clifford Chance in London. He has higher rights in both civil and criminal courts and has been a long serving member of the SAHCA committee.

New Route to Higher Rights

The SRA Board has approved a new assessment scheme for solicitors to gain the higher courts qualification. It is hoped that the new scheme will be introduced from 1 April 2010 pending approval by the MOJ. Under the new scheme there will be only one route to obtaining qualification for higher courts advocacy by way of assessment. There will be separate assessments in civil and criminal and both must be passed to hold higher rights in all courts.

The assessments will be run by assessment providers authorised by the SRA. There will be no mandatory training or experience, under the guidance of a mentor or not, criteria. The assessment under the [2009] regulations will test all parts of the standards for either the criminal or civil award. This will include procedure, evidence and ethics and an advocacy assessment by way of a case study or simulation.

The transitional arrangements for those who have already embarked on the qualification process under the development route of the 2000 Regulations mean that once both assessments have been passed an admitted solicitor can apply for higher rights under the new scheme without having to complete the 12 month advocacy period under the guidance of a mentor.

Those with existing higher rights will be 'passport' onto the new scheme. However, re-accreditation is still an issue following the SRA consultations last year. The SRA is working together with the Bar Standards Board with a view to reaching common agreement on the issue of re-accreditation.

(Sir Gary Hickinbottom Continued from page 1)
 sentatives from, for example, the entire spectrum of intellectual ability and judicial aptitude. That cannot be right.

Furthermore, when specific parties bring a case to court, what matters to them is not the make-up of the judiciary as a whole, but rather the virtues - and deficiencies - of one judge: namely, the judge who will try their case. What they want is a "good" judge, i.e. a judge with the abilities to try their case justly, competently and efficiently. During the period of their case, they do not mind about the judge's background, or whether he or she is representative of a particular part of our community or another.

Yet, in my view, still it is important that the judiciary is "representative". It is important that the judiciary maintain the confidence of the public: that is just as important as the maintenance of confidence in other two branches of government, the executive and the legislature. Without public confidence, the justice system - an essential component of democratic government - cannot continue to function properly. It is, therefore, not sufficient for our judiciary to be drawn from a limited group within our society who may well, in individual cases, do justice through applying the law appropriately to properly found facts. The only way of ensuring general public confidence in the judiciary is to ensure that no relevant sector of our society feels excluded. Such exclusion can have the potential for undermining the rule of law which is a cornerstone of our society. That is what Professor Malleson meant when he referred to the "corrosive effect... too great to ignore" of a failure to achieve judicial diversity. No part of our community should feel excluded from our justice system.

There is a third reason why, in my view, judicial diversity is important. As Lord Clarke said in his insightful address to the Pan-African Legal Conference last September, *How Judges Should be Appointed*:

"One of the great strengths of the judiciary is the experience that judges bring to their decisions. As a collective body, like the strands that go to make a rope, that judgment is collectively stronger, for being built of diverse strands".

For a number of years, I was the Chief Social Security Commissioner. The Commissioners were judges who heard appeals from Social Security Appeals Tribunals. Traditionally, they were not only white, male, public school, Oxbridge and over sixty - old conventional criteria for

judicial appointment - but they were senior barristers from the Chancery Bar. Undoubtedly, such people have a great deal to offer the benefits jurisdiction, and other judicial fields which require careful consideration and close analysis of detailed and often incomprehensible legislation. However, they do not necessarily make the best judges for dealing with all types of work - for example, a long list of applications for permission to appeal. Amongst those who now sit in that jurisdiction there are people from a wide variety of backgrounds, including academics, first-tier judges, judges from other jurisdictions, solicitors, those from the Common Law Bar, men, women, as well

'...One of the great strengths of the judiciary is the experience that judges bring to their decisions. As a collective body, like the strands that go to make a rope, that judgment is collectively stronger, for being built of diverse strands.'

Lord Clarke

as members of the Chancery Bar - and all across a wide age spectrum. Not all of those judges are equally proficient at all of the judicial work that comprises the jurisdiction. But, as they have moved into the new Administrative Appeals Chamber of the Upper Tribunal, as a cohort of judiciary they are undoubtedly stronger than any group could be if taken from any narrow band of society.

This factor has become more important as judges are required to do a wider range of work. We still hear cases in court - but, even there, the work is increasingly paper-based. We have written submissions and statements in almost all civil cases, and within five minutes of starting a case, you are ploughing into cross-examination of the claimant. That requires comprehensive preparation and careful consideration of the papers. Furthermore, much of our judicial work is done on paper alone. 95% of the Social Security Commissioners' work was done on paper without a hearing. As Designated Civil Judge for Wales, I had delivered - literally - boxes of judicial box work every day. As a High Court Judge, I now have applications for permission to pursue judicial review or AIT reconsiderations - of which there are well over 10,000 applications last year - and "Section 31s", paper applications for leave to appeal to the Court of Appeal Criminal Division. Most applications are now done on paper, at all levels of the judiciary, even if a dissatisfied party may have the right to a reconsideration of the resulting order at an oral hearing.

Furthermore, increasingly judges have to deal with "management". We have to manage individual cases: and, since the Constitutional Reform Act 2005, we also have to manage ourselves - judges have leadership roles in which they have to deal with other judges, staff, estate,

budgets and the administration. That sort of work requires different skills from, say, sitting in the Crown Court. A diverse judiciary is better able to cope with that varied workload. And, some parts of the pool from which judicial appointments can be made are more likely to be able to deal with a wider variety of work. Because of their experience, they may be better able to adapt to a greater variety of judicial work. They may have a wider comfort zone than others.

When these factors are being considered, solicitors should score high. We are not in awe of large amounts of paper. Dealing with paper applications - which is anathema for some judges - is frankly food and drink to most of us who have been crashing through paperwork for most of our professional lives. In practice, we are involved in both case management and, often, the management of our firms - and the people within them - which well-equips us to deal with management of other judges and with the administration. It should come as no surprise that judicial posts that have particularly heavy administrative responsibilities are often filled by solicitors. The trend is towards more judicial work for which solicitors are particularly well-equipped. We can, as one strand, make the judiciary as a whole the stronger: and we should not be slow in coming forward and putting our shoulders to that particular wheel.

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