

# THE SOLICITOR ADVOCATE

Newsletter of the Solicitors Association of Higher Court Advocates

Volume 10, Issue 2

www.sahca.org

May 2010

## THE SAHCA COMMITTEE

### Jo Cooper, Chairman

Perren Buildings  
jo.cooper@perrenbuildings.com

### Yvonne Spencer, Vice Chair

Veale Wasbrough Vizards, Bristol & London  
Yspencer@vww.co.uk

### Shawn Williams, Hon Treasurer

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

### Leslie Cuthbert, Hon Secretary

Perren Buildings  
leslie.cuthbert@orange.net

### Tim Lawson-Cruttenden, Immediate Past Chairman

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

### Adam Aldred

Addleshaw Goddard, Leeds  
adam.aldred@addleshawgoddard.com

### Jonathan Brierley

Freelance SA, Penarth  
jonathan.brierley@ntlworld.com

### Raj Chada

Hodge Jones & Allen, London  
rchada@hja.net

### Chris Clark

Chris Clark Solicitors, Stafford  
chrisclarksol@btinternet.com

### Jim Meyer

Tuckers, London  
Meyerj@tuckerssolicitors.com

### Kate Macmillan

Gallant Macmillan 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

### Lynton Orrett

Freemans Solicitors, London  
LOrrett@freemanssolicitors.net

### Flora Page

Perren Buildings  
flora.page@perrenbuildings.com

### Nigel Richardson

Hodge Jones & Allen, London  
nrichardson@hja.net

### Sam Tate

Clifford Chance LLP, London  
sam.tate@cliffordchance.com

### John Wiblin

Longmores, Hertford  
jrw@longmores-solicitors.co.uk

### Carl Woolf

Meldrum Solicitors LLP,  
St Albans  
CarlW@meldrumsolicitors.com

## CHAIRMAN'S COLUMN

There is progress on an episode that troubled many members. As an emerging competitor to a historic monopoly provider, solicitor advocates can expect to receive a few knocks. But the event that occurred early last year in Southwark raised questions not so much about the conduct of three advocates singled out for judicial criticism, but whether there is truly a level playing field for advocacy in the criminal courts. The question our members felt entitled to ask was whether judges were always as fair-minded with the advocates before them as they are with the parties. If there was an appearance of unfairness in that particular case, it has been resolved by the statement of regret now made by the judge concerned. The wider issue remains.

My view is that each of our members has to be prepared to win over judges one by one to the merits of solicitor advocacy. We are ambassadors for our clients - we also have to be ambassadors for ourselves and our colleagues. If we maintain a discipline of responsibility, integrity and professionalism in each case we conduct, we should be able to trust that others reflect the same principles in their professional dealings with us. I am optimistic about this. The fact is we have very regular and positive liaison with judges at all levels, whether by way of formal engagement with the most senior judiciary or rolling up our sleeves together with the many judges who pitch in with such enthusiasm at our training sessions.

In the future we hope to have an objective, even-handed and proportionate QAA scheme that will help give confidence to our members, and those they are appearing in front of. We are fighting for those three important principles to be given full weight as the scheme is developed.

SAHCA training continues with the seminars on 17 June followed by the summer party. I hope to see you there!

Jo Cooper

## THE WAY AHEAD FOR SAHCA

SAHCA exists, amongst other matters, to represent the interests of solicitor advocates, to promote high standards of advocacy and to assist with advocacy training. Much of the time of the committee is spent promoting and implementing these three aims which are not exclusive.

During my Chairmanship I stressed the importance of advocacy training and I am pleased that, under the leadership of Leslie Cuthbert and with the help of our training officer Angela Horne we have made a great deal of progress in this important area. Indeed it is now possible for every solicitor advocate to obtain all their CPD points through SAHCA's training programme. I challenge you all accordingly.

We have now reached our fifteenth year and it is not perhaps unsurprising that during this year we faced a major challenge from a senior circuit judge and an ill thought out consultation from the SRA which proposed mandatory re accreditation for solicitor advocates on a five yearly basis.

Recently the circuit judge has withdrawn his criticism.<sup>1</sup> This enabled me to publish an assessment of the health of solicitor advocacy which might be of interest to readers and was entitled '*Jumping the Bar - solicitor advocacy must overcome prejudice and other major hurdles to be wholly accepted*'.<sup>2</sup> A year previously I wrote the editorial comment '*Zero Tolerance*'<sup>3</sup> of 'solicitor bashing' which sought to contribute to the debate about solicitor advocacy.

The result is that solicitor advocacy remains stable but in my opinion, whilst it has not regressed, it does not appear to have progressed.

I am afraid that a great deal of prejudice still exists and must be challenged. Even within their own firms solicitors appear reluctant to instruct or brief their advocate colleagues. There is still a

(Continued on page 2)

(Continued from page 1)

perception that Counsel is superior. Whilst the Law Society is very supportive this does not appear to be the case with the SRA. Indeed the latter do not appear to understand the role and regulation of advocates. There is talk of level playing fields but in at least one respect solicitor advocates play uphill against the Bar and that relates to professional indemnity insurance. The Bar is protected by a mutual scheme. Solicitor advocates have to purchase indemnity cover at commercial prices in the open market, and can only do so once a year in a narrow time-frame of one short month, namely September. The inequality of overheads which results and the stress of having to cope with a mandatory system which opens for a short period for each year militates in favour of the Bar. I would like to see this system radically overhauled. It seems that the SRA are reluctant to do this for reasons which escape me.

What is the way forward? The answer must be high standards of advocacy and consistent and rigorous training of advocates on a continuing basis.

Mentoring ought to be considered on a more formal basis. Ad hoc and informal mentoring systems do not, in my opinion, work. Any mentoring should be on an orthodox and professional basis. It seems to me that the best model is for the mentor to be instructed and briefed by the mentee and for the mentoring relationship to be conducted on a professional basis. Mentees could perhaps consider offering themselves up as junior advocates at any significant trial or hearing. Thus they would gain first hand experience of the responsibilities and the stresses and strains involved in conducting both trial and hearing advocacy. I challenge readers to consider mentoring on this basis or to adopt more meaningful models.

Training is crucial and I recommend the courses on examination and cross examination which are presently being run by Leslie Cuthbert.

Finally only about one quarter of qualified advocates are members of SAHCA. This is disappointing and readers ought to consider recruiting as many of their colleagues and friends as they can in support of solicitor advocacy.

**Tim Lawson Cruttenden,  
Immediate past Chairman**

1 See 2010 Gazette 18<sup>th</sup> March  
2 See 2010 Gazette 25<sup>th</sup> March  
3 See 2009 Gazette 14<sup>th</sup> May

**CRIMINAL ADVOCACY  
CLAIM WHAT YOU CAN**

Criminal legal aid Advocacy fees will be reduced by 4.5% for 3 consecutive years for cases where the representation order commenced after 27th April 2010. Yet many Advocates (of either hue) are habitually under claiming fees to which they are entitled. This is not surprising as fees are based on a complex algebraic formula "G = B + (d x D) + (e x E) + (w x W)". Further, the way the relevant CDS Funding Order is written, and the way the Claim forms (of which there are at least 3 distinct types) have been laid out, leads to further confusion in many cases.

The issue is compounded by the LSC's provision of on-line calculators which do not lend themselves in many instances to allowing the full claim being made. This latter remark could also be applied to Litigators Graduated Fees. The purpose of this article is to set out briefly the different types of claim that can be made and the different forms upon which to make them. It is not a substitute for good value software which can not only actively guide the billing process but also save a lot of computation time as well as enhance a bill.

**One case - one claim**

Only 1 claim per case can be made. The claim must be made by the Instructed Advocate who must include work done by any substitute advocates, noting briefs, and wasted preparation by other advocates.

**Case Type Scenarios**

There are at least 14 broad 'case types' of which the main ones are Trials, Cracked Trials, Guilty Pleas, Appeals and Committals for Sentence, Successful applications to dismiss, Newton Hearings and others that space constraint do not permit going into.

**Offence Classes**

For most but not all case types (e.g. Appeals and Committals) the starting point is to ascertain which Class the offence falls into. Offences fall into Classes A to K. Any offence not falling into the offence class table should be claimed as Class H. If a defendant faces more than one count on the indictment then the Advocate can elect to make the claim on the most beneficial offence class.

**Pages of Prosecution Evidence (PPE)**

The final fee for many case types depends upon the page count. The advocate should always agree a page count with the prosecution and the court. Only prosecution witness statements, documentary exhibits and all defendants' interviews count as PPE. There is a cap on PPE of 10,000 pages. Other Electronic 'used' evidence should be claimed as Special Preparation.

**Trials/Effective Newton Hearings**

These are treated the same way. The main component is the Basic Fee and thereafter a Daily Attendance Fee. The first 2 days of trial, first 10 prosecution witnesses, first 50 pages PPE and first 4 standard appearances (e.g. Mentions/PTRs and PCMH) are included in the Basic fee for a trial. Additional ad hoc fees for associated work/hearings can be claimed against a full list that appears on the relevant page of the Graduated Fee Claim Form.

(Continued on page 4)

**OFFICERS  
Hilary Riddle  
Administrator**

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

**Angela Home  
Training Officer**

56 Thurlstone Road  
London SE27 0PD  
angelahome@sahca.orangetheme.co.uk  
Tel: 020 8761 4668

**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

- 2 June 2010
- 7 July 2010
- 4 August 2010
- 1 September 2010
- 6 October 2010

**DATES FOR YOUR DIARY**

24/25 September 2010  
Cambridge Residential Advocacy Training

12 November 2010  
AGM & Annual Dinner  
Radisson Blu Portman Hotel  
London

13 November 2010  
Annual Conference  
Radisson Blu Portman Hotel  
London





**Solicitor Advocacy  
Support Group  
first meeting  
23 June 2010**

*“Advocacy is a skill that needs to be developed in court, practised out of court and fostered by fellowship”* Tim Lawson Crutten- den in the Law Society Gazette 25th March 2010.

With the previous past chair- man’s aptly timed comments in mind, Stephen Page, SAHCA member, is organising a support group for solicitor advocates to practise their advocacy upon a regularly basis throughout the year.

**WHAT IS THIS GROUP?**

This will be a splendid opportu- nity for solicitor advocates to get together to practise advocacy skills in front of each other and obtain constructive feedback from the group. Both criminal and civil practitioners are wel- come to attend.

At each session, the group will consider a fictitious set of pa- pers and each member will have the opportunity to practise an advocacy criteria; whether that will be witness handling, cross- examination of experts, opening and/or closing submissions.

To find out more contact Stephen Page 01634332024 or by email to: [stephen.page@medway.gov.uk](mailto:stephen.page@medway.gov.uk)

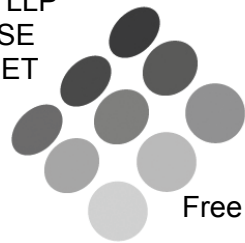
There is no charge for this event. To attend the first meet- ing book a place by email to: [hilary@hradmin.co.uk](mailto:hilary@hradmin.co.uk)

**23 June 2010  
6.00pm to 8.00pm**

at  
**Hodge Jones & Allen LLP  
180 North Gower Street  
London NW1 2NB.**

**SUMMER SEMINARS AND PARTY 17 JUNE 2010**

HERBERT SMITH LLP  
EXCHANGE HOUSE  
PRIMROSE STREET  
LONDON EC2



**PARTY 6.30 - 9.00pm**  
Canapés and wine  
Jazz band  
£15 per person  
Guests welcome

Free admission for seminar delegates



**CIVIL PRACTITIONERS’  
SEMINAR**

**17 June 2010  
2.30 ~ 6.00pm**

**THE JACKSON REVIEW**

Key note speaker

**The Hon Lord Justice Jackson**

Panel of Speakers:

**Dominic Regan**

**HHJ Simon Browne**

**Nicholas Bacon QC**

**To discuss the most important and far reaching review of costs in the civil justice system.**

**Practical advice and guidance on:**

Case Management - how it should be done

Costs update - issues at hearings

Problems with experts

Part 36 tactics

Electronic disclosure

**CRIMINAL PRACTITIONERS’  
SEMINAR**

**17 June 2010  
2.30 ~ 6.00pm**

**FORENSIC SCIENCE IN  
EVIDENCE**

**The Hon Lord Justice Leveson**

The best way to present scientific evidence

**Graham Cooke**

Expert Evidence ~ the Law governing the reliability and admissibility in Criminal Trials

**Dr Peter Gill**

Developments in DNA

**Mark Taylor & Simon Janes**

Computer Forensics

**The Hon Lord Justice Leveson will also discuss the work of the Sentencing Council as its recently appointed Chairman.**

**3.5 CPD POINTS**

**Only £95 per member for the seminars including invitation to the party  
Booking forms included with this edition of the Solicitor Advocate or  
book online [www.sahca.org.uk](http://www.sahca.org.uk)**

*(Criminal Claims Continued from page 2)*

### Cracked Trials

Fees depend upon the relevant "third" period of time in which the case cracks. A cracked retrial is treated as a crack in the 3rd third.

### Retrials

Retrials are governed by a more complex regime where the Advocate can elect between various alternatives depending upon the time lapse. Retrials (including those that become cracks, guilty pleas or effective Newton hearings) involve a depleted fee where the same advocate appears. The rate by which the fees are depleted depends upon the time lapse between the original trial and the retrial.

If the Instructed Advocate has not yet billed the original trial then he/she can elect to have either the original trial or the retrial treated as the trial for which a full claim is made. Therefore the Advocate will wish to elect the most beneficial of the two cases (e.g. by taking into account matters such as length of trial, offence class - if they change) and bill the most beneficial trial as the principal case and the other one as the retrial. A retrial which 'cracks' is always treated as a crack in the 3<sup>rd</sup> Third.

### Committals for Sentence/ Appeals/ Breach Hearings

Routine cases carry fixed fees. However, if the Advocate considers the case to be non routine or exceptional then a reasonable fee maybe claimed instead for any of the following: Brief/ Basic fee for preparation including where appropriate, the 1st day of the hearing; a refresher fees for any day/ part of a day for which a hearing continued including where they took place on that day: (i) short conferences; (ii) consultations; (iii) applications and appearances (including bail applications); (iv) views at the scene of the alleged offence; and (v) any other preparation; and subsidiary fees for- (a) attendance at conferences /views at the scene of the alleged offence; (b) written advice on evidence, plea, appeal, case stated or other written work; and (c) attendance at applications (including bail applications/adjournments for sentence).

I suggest that cases where jurisdiction would have been declined but for guilty pleas by virtue of the Plea Before Venue procedure whereby the Court commits for sentence, would fall into the non standard category and justify a 'red corner' form 5145. Similarly, any such case featuring Confiscation proceedings could arguably be claimed on a red corner form.

### Confiscation

Such proceedings are now subject to a page count specific to the Confiscation bundle served by the Prosecution and allowance is also made for specified defence material. As to what qualifies towards the page count is set out in the Funding Order as amended in August 2009. The first 50 pages are not separately paid. Where the page count is over 50 pages then the whole confiscation claim must be set out on a separate form introduced in August 2009 and such a claim must be sent to the local NTT to be assessed. In all cases, the Advocate can claim fixed fees for days/half days in court.

### Mental Health Dimension

If s.41 MHA 1983 Restriction Order is made then the case falls into class A regardless of the class of offence it was earlier listed within. This can often mean a substantially increased fee. If there is an Effective Fitness to plead hearing then the advocate can elect to claim either the existing class or offence class D thereby taking the more beneficial fee. Depending upon whether the defendant was found fit or unfit to plead, the Advocate can elect to choose between a trial fee or a cracked trial fee. So, all in all 4 computations need to be done in order to arrive at the best fee to elect. Sometimes a Cracked fee is better than a trial fee. Good software should readily show the Advocate all the fees from which to elect.

### Conferences / Travel / Disbursements

The first three conferences are included in the basic fee. Additional conferences are only claimable where the case goes/estimated to go beyond 21 days and the precise rules are set out in the Funding Order. Travel time to allowable conferences is always claimable as well as reasonable travel expenses. Travel Disbursements to Court can be claimed in some cases where the Court is located more than 40 kilometres and there is no local Advocacy provision or prior permission has been obtained.

**Avtar Bhatoo,**  
**abhatoo@bullivant.uk.net**

## Obituary His Honour Gerald Butler

His Honour Gerald Butler died aged 79 in February 2010. His illustrious career at the Bar and as a Judge is well known. HHJ Gerald Butler had already been the Resident Judge at Southwark for ten years before the first solicitors practised there as Higher Court Advocates in 1994. But many solicitors exercised their existing rights of audience in the court - notably on appeals against conviction and sentence. He would often preside over those cases in Court 15 and would be characteristically communicative and engaging with all who appeared before him. On one occasion my client was late for his appeal. The two remaining appellants were despatched in double quick time and a looming gap appeared in the court list. "Two wholly unmeritorious appeals," he thundered, "but at least they were decent enough to attend their hearings on time". The guffaws of his magistrate colleagues gave him away, and Judge Butler's face melted into a grin before withdrawing with them for an early coffee break. "Your client must be stuck in the lift - send a message to us when they let him out". Judge Butler was always a warm and generous tribunal for junior advocates, and was particularly welcoming to early adopters conducting jury trials in the first days of higher rights. Jo Cooper

## Obituary

### Graham Parkinson CBE

"I know that members of the Solicitors Association of Higher Court Advocates will greatly regret the passing of Graham Parkinson CBE. A successful solicitor in private practice in the West London firm of Darlington and Parkinson, he became a courteous and generous presence on the bench, first as a Stipendiary Magistrate at Highbury Corner magistrates court and ultimately as Chief Stipendiary Magistrate sitting at Bow Street. As a judge he was incisive, thoughtful, and accurate. Many of our members who were lucky enough to know him off the bench encountered a self-effacing gentleman with equal warmth and charm. Our members will recall many encounters in court. As it happens, he was the stipendiary magistrate who had the duty of presiding over my first criminal trial. He gave to the defendant, and to my submissions, the same careful hearing and quiet wisdom that he brought to all his cases, leaving no-one in doubt that each case in his court would be determined on a genuine appreciation of its inherent merits and with conspicuous courtesy to all before him. Unfortunately as my client ruefully observed later, the inherent merits point was where the case probably ran aground that day, but the general lesson was one which gave a young advocate the encouragement to return with confidence for the next of many future encounters. He will be greatly missed." Jo Cooper

## 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*

### THE SOLICITOR ADVOCATE

**Angela Horne, Media Officer**  
**Carl Woolf, Criminal Editor**  
**Kate Macmillan, Civil Editor**

### DISCLAIMER

The information and the expression of opinions contained in this publication must not be treated as a substitute for specific legal advice concerning individual situations and any liability for the content of this publication is excluded.