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WELLBEING AT THE BAR? IS A LEGAL AID LAWYER'S WORK ALL STRESS AND DISTRESS?

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'The first thing we do, let's kill all the lawyers'

Dick the Butcher, *Henry VI, part 2 Act IV, Scene 2*, Shakespeare

The common public reaction to that line is to laugh in sympathy with the sentiment. Why? For a profession that relies on the skill of an advocate to analyse and advance the cause of our clients why have barristers (historically) been so unable to explain what we do, and why it is important to society, to the press and public? When we scream in outrage at the decimation of legal aid, the exodus of women from the Bar at 5 years plus call, or the lack of diversity in our profession why do we do so at risk that our calls for action will be met with derision or indifference?

Books such as *"Stories of the Law and How It's Broken"* by The Secret Barrister and *"In Your Defence"* by Sarah Langford have started to push the tide back. Social media gives us a way to engage with the public without a (often) hostile press being the sole route by which our message is passed onto them. When I googled *'Fat Cat Barristers'* for this lecture the attitudinal shift in press coverage was striking. Aside from an old Express headline from 2014 screaming "Legal Aid Fat Cats: SIX barristers each earned more than £500k from the taxpayer last year" (*the MOJ having released the figures as the criminal bar was gearing up for a half a day strike over the Government's proposed cuts to legal aid*) the other images were of members of The Bar carrying placards saying 'Save British Justice' and 'No Legal Aid Cuts'. Moreover, as recently as 6.5.19, The Guardian carried a well-researched piece headlined *"Barristers in England and Wales 'in grip of mental health crises'"*¹. So, is press and public understanding changing about the role we perform and the genuineness of the desperation we feel that the system of legal aid justice we seek to uphold is broken? Perhaps. But what is needed is action by the Government and Ministry of Justice (MoJ) to address years of underfunding. Yet the state of professional alarm at the declining pool of colleagues at the criminal Bar, their reduced income and increased stress levels, has been met with a silence from the MoJ that is deafening and dismissive². It is a silence all the more noticeable given former and serving senior judges have felt compelled to go into print to talk about the devastation that legal aid cuts have wrought upon a once proud and world-renowned system of justice in family and criminal law³.

So, what do we have to be concerned about in terms of the wellbeing of our profession? I propose to deal with that question under these headings:

- The emotional cost of the content of the work we do,
- The stress of trying to do it in a system that has been underfunded for decades

¹ https://amp.theguardian.com/law/2018/may/06/british-barristers-mental-health-crisis-survey-criminal-bar-association?CMP=Share_AndroidApp_Tweet&_twitter_impression=true

² If you listen to the excellent podcast by Afua Hirsch on Radio 4 *"Barristers on the Brink"* that I reference below then you will hear of the efforts she went to to get the MoJ to engage with her and the topic and their lamentable response to it.

³ "The Times" Baroness Hale of Richmond 9.4.19, Sir David Bodey "The Times" letter 24.5.19, Sir Hugh Bennett "The Times" letter 30.4.19



- The consequences of those factors on practitioners in terms of collateral damage: vicarious or secondary trauma, PTSD, burn-out. What do we, personally, put at risk?
- What we can do for one another and ourselves to spot a crisis and avert it
- The ways in which our specialist professions can support us when we reach crisis point
- Final Words: Why does this matter?

At the end of these lecture notes I have attached resources that might be able to help when you are in need of support or someone you know is approaching crisis point. They aren't exhaustive but they aim to signpost you to sites that might otherwise suck out your depleted energy to locate.

The work we do

Warning: this section includes case anecdotes from barristers, including myself, that contain distressing information about cases we have been involved in: do not hesitate to skip to the Table at the end of it and read from there to avoid reading them, the point of the lecture will still be made.

Becky Owen, a barrister who reached her own crunch point in March 2018, had this to say about the pressures she and criminal colleagues were placed under describing what for her was a tipping point in her willingness and ability to put up with it⁴:

“For me, it was the conditions, the sheer volume of work and the complete lack of respect for me as a human being,”

“I got sick of arriving home dehydrated, starving and having not had time to go to the loo. It takes its toll.”

“There aren't many people who have to watch videos of two-year-old boys being raped before going home to sleep – and at times for less than the minimum wage.”

“That's what we are being asked to deal with, yet the profession attracts no sympathy because it is assumed we make a lot of money. I think in 20 years' time we'll look back and recognise this as the point when miscarriages of justice started happening.”

Becky spoke for a number of us. When you are working on cases that tap into the worst that human beings can experience or do to one another you do so at risk to your own wellbeing. Images and stories once heard are difficult to wipe from your retina or memory. I listened to the excellent interviews conducted with members of the Bar and solicitors by Journalist and former lawyer Afua Hirsch on Radio 4 “*Barristers on the Brink*”⁵ in preparing for this lecture. I confess I found it difficult to do so because hearing such personal accounts from the interviewees ripped through protective layers I had so carefully built up over the years.

The discussion with criminal lawyer Laurence Lee, who represented Jon Venables in his trial for the murder of the toddler Jamie Bulger, was profoundly affecting. In the interview Laurence bravely explains how the trial left him with PTSD (which he -and our and his profession- did not recognise as such at the time). Years later he still has nightmares in which he sees his own body beaten, left to be severed in two, on railway tracks.

“[the death] mentally affect all of us lawyers and of course anyone else listening to this tragic case. I had no counselling, I didn't seek any counselling because I didn't think that counselling was available, it's the last thing that crossed my mind and I did think to myself you're just going to have to get over this yourself. The case ended at the end of November 1993 and I immediately was traumatised by the thought of that poor child cut to death by a passing train. I started having the recurring nightmare of being on a ghost train, it stopping, me getting out, pushing it, and falling onto the rail on the front of the train and being run over by it and waking up in a cold sweat. I had that dream many many times.”

Whether, as barristers, we work in human rights law, immigration, crime or family the common thread that joins our work is the necessity, if we are to do our job well, not just read what the case is about but to delve into and question it to try to get a evidential and tactical handle on the evidence and the case it means we have to fight for our client.

⁴ Interviewed by The Guardian “Barristers in England and Wales are ‘in the grip of a mental health crisis’

⁵ Radio 4, “*Barristers on the Brink*” <https://www.bbc.co.uk/programmes/m0003597>



My field of specialist child abuse requires me, for example, to look at images of a baby's inert and dead body. I track its photographic transition during pathological dissection from child to its component parts of brain, bones and organs until its humanity is lost and becomes a collection of 'parts' and slides. If I cannot avoid it⁶ I look at images of child sex abuse, of rape and buggery of babies, barely a few months' old, as well as young children. Under the watchful eyes of the anti-terrorism force, I read restricted ISIS material: photos, images of the dead and dying and tortured. In the course of my work with families during the Hillsborough Inquests I, and my colleagues, had to look at footage of the crowd, trying to pick out a loved one from the grim press images of the many fans suffering; zooming in on a loved one's face to try to work out the moment of death the point at which the crush overcame the bodies resistance to the pressure of the crowd. We watched as they died. Over and over again. A task made no easier with the passage of time since the tragedy.

When I have a conference with my client, accused of shaking their child and causing it's death, I have to take them back to that day and make them relive it hour by hour, second by second, in case we have missed something that may explain the baby's collapse. The client is likely to be traumatised, de-sensitised, by the specificity of the detail I am asking them to describe. So am I.

When acting for a child victim of familial sex abuse, accused of sexually abusing his or her siblings, I have to plot a conversation line with that child carefully as I trespass on secret, shaming, horrifying details of their experiences at the hands of others and to others. I seek to peel back layers of deception and denial so as to try to get to the reality of his or her life. At what cost to the client does it do that? I am not a therapist. I am their brief. Who is there to pick up the pieces afterwards of the conversation I have with them? Is there a therapist on hand? In all likelihood there isn't. I certainly don't have one to deal with the material I am hearing. I have a 'stiff upper lip': surely that enough?

In one particularly difficult case I remember my 14-year-old client explaining (after years of silence) to me in conference why he had mutilated his penis with a razor: it was because his mother couldn't stand the sight of blood. The self-harm protected him from sexual abuse for as long as he could make himself bleed and it allowed him to vent his self-hatred. He was telling me now not because he wanted to, but because he felt compelled to, because he was accused of sexually abusing his younger siblings. As I worked through the evidence against him he was driven to the point where he felt he had to stop protecting his mother and say what she (and his grandmother, grandfather, uncles and aunts) had done to him to explain why he had acted as he had to younger children. In that case I was fortunate to have as my junior a former solicitor with social work experience: a man of warmth and wisdom with whom I could share the emotional responsibility of acting for this vulnerable client. But that was an exception.

In a client conference I will have a junior with me to sit, listen and note. I may have a solicitor with me but more often than not a clerk (legal aid solicitors can rarely now take the time out of office or court work as lost billing time can drill a Hatton Garden robbery size hole into a firm's meagre profits). Whilst I will have had this type of conference many times before, for the client it will be a first: and potentially so too for the junior and clerk. How well have they been prepared for this experience? When do I take the time in advance of the conference to make sure that they are going to be OK with what's going to happen? 'Not often enough' is the honest answer. And how can they ever be 'OK' with it actually?

As a junior barrister I went to a police station to watch client evidence. I had not been told what I was to see. I have never forgotten watching the video of a child being buggered and the sadistic delight the camera person took in zooming into the child's face as it contorted in terror and pain.

It's hard to feel clean and whole after these experiences. It is hard to go back home and to watch your own child innocently playing with his dad when all you can see is the difference in their size and what that can mean in terms of power and pain for an abused child. One's antennae for distress is heightened. It's hard going to a park and not noticing the slaps that should not have been given to a child irritating a harassed parent, not to notice

⁶ Because some other professional has done so and provided a summary, such as a specialist child abuse police officer, that all barristers can agree is accurate: often not possible when question of identity of participants are in issue



the child surrounded by a baying group of kids who may or may not be bullying. Adults- parents- didn't intervene when they saw Jamie Bulger crying being walked to his eventual death by Thompson and Venables: I have always intervened when I've seen a child in distress since that case. I can't watch film, TV dramas or documentaries that touch on anything to do with child abuse: that brings images into my living room that are not welcome in my home. It breaches that final barrier between work and normality that I try to erect.

So why do this? The answer?

Legal aid lawyers do this work because it is a vocation. We had (have) a desire to make a difference in the job we do.⁷ Whether we choose to practice in family, crime, immigration, human rights, we are all barristers. To be a barrister requires an ability to work independently with intuition, imagination and drive. We are competitive. We are judged by our performance in court: our last case, our last cross examination. There is no 're-wind' button if we ask one question too many that shatters a line of defence. We are self-employed: no work = no pay. We don't get sick leave. I know of too many women who have come to court having had a miscarriage that night/morning; of many a colleague who has come to court in the immediate aftermath of a bereavement. We come to work because we feel we have to. Because we fear the client's case will suffer if we don't. Because we are programmed by our work culture to tough it out, stay calm, and carry on. I have fallen ill in court three times in my career and have not been able to continue. Afterwards I felt ashamed at my weakness and worried at the damage I may have done to my reputation. I still feel 'small', years later, when I think of those instances.

It's not just me. This account comes from a junior barrister of 12 years call. It is on the Bar Council's wellbeing website:

"I have in the past few years suffered post-traumatic stress as a result of dealing with a number of cases involving horrific torture and abuse of some of my clients who have suffered at the hands of foreign governments, the instances of which make me sick.

It is part of my job to get details – the minute details of the abuse, such as, how and where someone was beaten, how it made them feel, how fearful they were of being raped and tortured by prison guards and inmates. The reason is that some asylum seekers do make things up, and so, in order to test their account. I have to listen to what happened, something that a counsellor or therapist does not have to do. The same can be said for those of us who have had to view child pornography. Something I have only had to do once and an experience that still haunts me 8 years later.

The problem with this job is that there is no training on how to deal with these matters. One learns coping mechanisms in one's personal life to deal with them, but then they don't always work. I had a case a few years ago and realised I was suffering from depression as a result of listening to instances of torture. The images of what had been described to me ran through my head all the time and I was exhausted.

I am fortunate in that I am reasonably aware of my frailties and am willing to discuss them. When on holiday I realised I was suffering and returned to chambers and met with my senior clerk and a QC who had more experience than I did of genocide and torture cases. They were very supportive. I took a couple of weeks off to try to recover and relax and I did not take on any additional work for a period and returned a number of my cases. But I realised I needed a specialist in PTSD. I tried a general counsellor, but he was dreadful.

Through the recommendation of a psychiatrist friend I found a specialist in PTSD. I saw her for a number of months and have learned to cope and overcome the issues with PTSD. I am now much more aware of protecting myself. I take significant breaks from practice and don't deal with too many of these types of cases.

⁷ In this lecture I am talking about barristers because that's the world I know but I am confident that the issue of trauma is as important to solicitors, police officers, social workers, doctors etc as it is to us.



*Chambers dealt with it well on an informal basis – I think we have a much stronger pastoral ethos than many chambers and professions, but I recognise I am fortunate, I could afford to take time off, and I could afford the significant counselling fees. For many juniors that would be impossible”.*⁸

This barrister was right about how it’s not just time and chambers support that’s needed to try to heal. I do not know of a single junior criminal barrister who could take time off to recover from the stress of the work they do, they operate at below minimum wage already. Far from taking time off between cases to recoup energy they have to double up on case prep and work in back to back trials to keep any type of income going.

And work we certainly do. The pressure on us to ‘perform’ in it is high. Consider the Bar Council’s seminal Working Lives survey 2015⁹. I am grateful to Rachel Spearing for this summary of its conclusions taken from an article she wrote for Counsel Magazine when Bar Council report was published¹⁰.

Summary of Findings	
Worry and Perfectionism	1 in 3 find it difficult to control and stop worrying 59% are very self-critical most or all of the time
Stress Levels	1 in 6 tend to feel down or in low spirits most or all of the time 1 in 4 tend to feel nervous, anxious or “on edge” 1 in 6 worry about their health most or all of the time
Cognitive Renewal	54% enjoy refreshing good quality sleep only some of the time 64% are not able to take breaks most or all of the time
Work Environment	2 in 3 feel that showing signs of stress at work indicates weakness 47% report work pressure as 8 or above 62% are unable to integrate work and outside of work most or all of the time
Engagement and Advocacy	39% of the employed Bar would recommend the Bar as a place to work “not at all” or only “some of the time” 57% of the self-employed Bar would recommend the Bar as a place to work “not at all” or only “some of the time”
Trust	64% see role models at leadership levels “not at all” or only “some of the time” For 3 in 4 within the environment in which they work, genuine mistakes are seen as opportunities for learning only “some of the time” or “not at all”
Wellbeing at the Bar Survey, 2015	

The Bar Council propose to run the wellbeing survey again later this year in order to assess the current wellbeing of the Bar against the data generated in 2015.

The Stress of trying to perform in a legal aid system that stifles rather than supports the administration of Justice

Carole Storer, in her thought-provoking article, *“It’s time to shift our thinking around stress and vicarious trauma in our workplace”*,¹¹ identified these key issues that we need to grapple with:

- LASPO 2012 has meant that people who get help from legal aid lawyers are generally at absolute crisis point: their life, liberty or home is at stake. This has culminated in a situation where the majority of lawyers who do legal aid work have to increase their workload to remain in business as well as juggle a large amount of unpaid work.

⁸ <https://www.wellbeingatthebar.org.uk/stories/vicarious-trauma/>

⁹ The Bar Council, *“Wellbeing at the Bar: A Resilience Framework Assessment (RFA) by Positive”*, April 2015
https://www.barcouncil.org.uk/media/348371/wellbeing_at_the_bar_report_april_2015_final.pdf

¹⁰ <https://www.counselmagazine.co.uk/articles/wellbeing-the-bar>

¹¹Legal Action October 2018

<https://static1.squarespace.com/static/592ea04729687f8352c0b27a/t/5be5790d1ae6cf20ddd3b6c7/1541765390024/Carol+Storer+column+Oct+18.pdf>



“Put simply, lawyers and workers in legal aid practices are faced relentlessly with serious crises, struggling public sector institutions and clients with highly complex psychosocial needs.”

- In organisations under huge financial pressure there are also long hours, an inability to relax on holiday, checking emails at time off etc., on top of the stress of working for vulnerable clients.
- It is essential there is a shift in the thinking around stress and legal aid/ not-for-profit work: *“But it is now time to shift our thinking around this, from innovative practices and methods to considering dealing with stress as an integral part of the job, while at the same time working together to fight for a properly funded legal aid service that does not take its toll on practitioners.”*

The Consequences: Collateral damage: Vicarious or secondary trauma, PTSD, burn-out: what is it?

The Advocate’s Gateway, *“Working with Traumatized Witnesses, Defendants and Parties”*, Toolkit 18 provides¹²:

- Detail on manifestations of trauma, PTSD, complex PTSD, dissociation
- Good practice examples on working with traumatised individuals.

It also covers material on secondary trauma:

“47 All those working with traumatised people should be aware of vicarious or secondary trauma. Charles Figley (1995: 7) defines secondary traumatic stress as ‘the natural consequent behaviours resulting from knowledge about a traumatising event experienced by a significant other. It is the stress resulting from wanting to help a traumatised or suffering person.’ People who work with or help traumatised people are indirectly or secondarily at risk of developing the same symptoms as persons directly affected by the trauma. Clinicians and advocates who listen to their clients describing the trauma are known to be at risk. Secondary traumatic stress is sometimes confused with burnout.

48 Unlike secondary traumatic stress, burnout can be described as emotional exhaustion, depersonalisation and a reduced feeling of personal accomplishment, which begins gradually and becomes progressively worse. Secondary trauma, conversely, can occur following exposure to a single traumatic event. Training will enable practitioners to understand who is more vulnerable to secondary stress and why, perform a self-diagnosis for symptoms, create and maintain a self-care plan and know how to manage the impact of secondary stress.”

Secondary traumatic stress (STS), also known as compassion fatigue or compassion stress, can be summarised as: *“the natural behaviours and emotions that arise from knowing about a traumatising event experienced by a significant other – the stress resulting from helping or wanting to help a traumatized or suffering person”*¹³

Unlike burnout which is a slow process taking the subject into a state of physical emotional and mental exhaustion that can potentially be prevented with self-care, STS can strike suddenly and without warning. E.g. a professional who watches video evidence of a baby being raped whilst a Christmas carol is played can have flashbacks of those scenes of abuse whenever s/he hears the carol.

Individual vulnerability is heightened by exposure to children’s trauma. Empathy acts as a magnet to STS. Advocates who have experienced a previous traumatic event in their lives often minimise the impact of traumatic material, thus drawing STS to them.

We need to recognise collateral damage, or the potential for it, in ourselves and our colleagues in order to help because sometimes it can be hard to spot it.

Experiences likely to induce STS are:

¹² <https://www.theadvocatesgateway.org/images/toolkits/18-working-with-traumatized-witnesses-defendants-and-parties-2015.pdf>

¹³ Figley et al, 1995, *Compassion Fatigue: Coping with Secondary Traumatic Stress Disorder In Those Who Treat The Traumatized*, New York: Brunner/Mazel.



- Witnessing or hearing of an individual's experience
- Disclosure of details
- Identifying with a witness
- Proximity to the trauma.

Psychological and physical symptoms are similar to those in untreated survivors of trauma including numbness and avoidance of feelings, depression, anxiety, self-medication through drugs and alcohol, overworking and compulsive eating. There can also be persistent re-experiencing of intrusive imagery, recollections of client's traumatic material, nightmares and flashbacks.

We may experience:

- Somatic complaints such as sleep difficulties, headaches, gastro-intestinal problems, impaired immune system.
- Self-harm or lack of care and exposure to abuse by others
- Isolation from family and colleagues.
- Cynicism and irritability.

Those of us who follow the endeavours of the Criminal Bar Association (CBA) to bring the plight of the criminal justice system, and those that work in it, to public attention know that Criminal barristers are in the grip of a mental health crisis with rock bottom morale. They face work pressures that suck their wells of resilience dry e.g., significant increases in the amount of digital evidence, long hours of work required to deal with last minute disclosure. In addition to which the administration of criminal justice is so disjointed that, having done the work, they turn up at court (for a listed case) too often to discover systemic administrative court failures lead to a last minute adjournment of the trial to a date the brief can't do (though s/he has prepped the whole matter and won't get paid for it) because the prisoner hasn't been produced or because there's no judge or no court room available. No money earned means more pressure to fill the diary vacated taking last minute returns with less time to do the essential work for the client.

Sarah Vine, when Wellbeing Director at the Criminal Bar Association (CBA) was interviewed by the Guardian in 2018¹⁴ pointed out what the profession had to look forward to 2019:

"There is a mental health crisis in the profession, and it is so insidious."

"I spoke to someone the other day who said in the last fortnight she'd done two all-nighters. That is two nights without any sleep at all and nobody bats an eyelid [...] that's incredibly dangerous for your mental health. It's absurd and mistakes are bound to happen as a result."

"At the bar there is this fetishisation of overwork and the government exploits that. They must think: 'Brilliant, here are a bunch of people who get their self-worth not from how much money they earn, but from how busy and close to a nervous breakdown they are.'"

Sarah's contribution to the Radio 4 "Barristers on the Brink" interview made plain that this problem had got worse, not better. Her stark warning was all the more powerful for the measured way in which she explained why this was the case. Criminal barristers are not 'crying wolf': the profession is in crisis and haemorrhaging talent.

In my own working world, the decline in funding for the court service and the lack of legal aid for large swathes of the public who use it for civil and private family justice has led to very public judicial acknowledgements that lawyers can't plug the gaps any longer.

¹⁴ [https://amp.theguardian.com/law/2018/may/06/british-barristers-mental-health-crisis-survey-criminal-bar-association?CMP=Share AndroidApp Tweet&_twitterimpression=true](https://amp.theguardian.com/law/2018/may/06/british-barristers-mental-health-crisis-survey-criminal-bar-association?CMP=Share_AndroidApp_Tweet&_twitterimpression=true)



It is significant, I believe, that when giving his 'First View From the Presidents Chambers' in January 2019, our new Head of Division, The Right Hon Mr Justice Andrew MacFarlane singled out as his number one priority the unprecedented and unsustainable volume of cases in the family justice system, and the impact of that on working conditions for professionals¹⁵. He identified the problems caused by the rise in private law applications and the increase in unrepresented litigants. He acknowledged the negative impact on cases due to the lack of paediatric experts willing to take on work in public law child protection cases. That much was not news to us: we see the consequences every day in every court when appearing or sitting.

What was new, however, was the 'official' utterance that *'it is neither necessary nor healthy for the courts and the professionals to attempt to undertake 'business as usual'*.

This was why. He said:

Every professional engaged in work in the Family Courts must, I fear, continue to experience the adverse impact of the high volume of cases. I have, on every occasion that I have spoken about these issues, stressed my concern for the well-being of social workers, lawyers, judges and court staff who are conscientiously continuing to deliver a professional service in a timely manner despite the increase in workload. Other than doing what I can to understand and address the underlying causes (which will obviously take time), there is little that I, as President, can do to relieve the current pressure. It is, however, I believe right for me to say publicly in this 'View' something which I have said on some occasions to some gatherings in the past few weeks. In these highly pressured times, I think that it is neither necessary nor healthy for the courts and the professionals to attempt to undertake 'business as usual'. For the time being, some corners may have to be cut and some time-limits exceeded; to attempt to do otherwise in a situation where the pressure is sustained, remorseless and relentless, is to risk the burn-out of key and valued individuals in a system which is already sparsely manned in terms of lawyers, court staff and judges'

He 'encouraged' local dialogue between the legal profession and each court to identify parameters *'as to what is and is not sensible or acceptable in terms of working practices'*. He offered suggestions such as agreeing

- The earliest time of day when the court can reasonably be expected to sit;
- The latest time of day when the court can reasonably be expected to sit;
- The latest time in the evening, and the earliest time in the morning, when it is acceptable to send an email to another lawyer in a case or to the court.

He was right to point out the impact of the tyranny of e mails. I receive emails 24/7 x7 days a week. There is only a slight diminution at weekends. I send emails at 3/4 am because that's when I am thinking and working. I now send them with a message that I don't expect them to be read: my way of working should not impose the strain of a reply on a recipient at an ungodly hour.

Emails, once a secondary route to passing on information, have now become the singular route for material to be shared, wherever it be an aside about a case or, more importantly, the only way that counsel are provided with case evidence by their solicitors. Yesterday I received an email with the heading 'FYI' and just the clients name. Nothing in the email save a composite PDF attachment of a hundred of pages or so containing critical (and time sensitive) information such as an opposing parties application to instruct a psychologist to conduct a risk assessment of our client, a controversial "support" plan, statements of evidence: all mixed up with pretty irrelevant correspondence. One only knew what was contained by opening up a blind attachment and ploughing through it. There were no instructions, not even a resume of the content. That is not acceptable. It risks the client's case. It terrifies me that I might miss something or a deadline. And this will be just one of scores of emails I receive in 24 hours whilst I am in court on another case.

To receive a "Counsel's Brief?" informing us what the client's instructions are on the evidence, is now a rarity. I try to insist on it because I have the seniority and status to do so. Junior members of the Bar often simply have evidence, served on the solicitor, passed on to them by email akin to a post box service.

¹⁵ https://www.familylaw.co.uk/news_and_comment/1st-view-from-the-president-s-chambers-the-number-one-priority



Solicitors have so much to do to keep a legal aid practice going that the thing they train in and specialise in, being the interface between the client and the case evidence, before passing on that intelligence to the counsel they have instructed is, sometimes (often) just too much to ask. They have to process a high volume of work just to create a viable profit margin.

All sides of the family justice system are having to cut corners given the pressures they are under. This is not sustainable without risking miscarriages of justice let alone retaining valued members of each profession.

I return to 'The Presidents "View":

'As family lawyers and judges it is, for me, a total 'given' that you will go the extra mile for the sake of the child, the parties and the system when this is needed. You will, I am sure, continue to do so. My present purpose is to acknowledge publicly that we are currently in a situation that cannot be accommodated simply by working beyond what can reasonably be expected every now and again.'

Our former President described the Family Justice System as 'working flat out' in 2016. As Andrew McFarlane P says, 'That was before the 2016/17 increase of 25% in workload'. As a result 'my aim is now saying what I have is to give each of you, as the psychologists would say, 'permission' to have a sensible discussion with each other and establish a dialogue between local professionals and the local judiciary in order to develop sensible parameters and guidelines on what can, and what should not, be expected from those appearing before and working in the courts.'

A judge, HHJ Roberts, issued a wellbeing practice note providing changes in Essex and Suffolk (26 February 2019) but that is currently an exception, not a rule. We have not seen similar, let alone co-ordinated, initiatives across the UK of courts taking up the Presidents invitation.

Indeed, just last week one senior barrister went on twitter to provide this account of continued, unacceptable, case conduct by a serving judge:

'4 day public children's case. At 4 pm on Day 3, Judge gives everyone a 5-minute break before expecting a parent and his partner to be cross-examined until 6.30 pm on the hottest day of the year, switches off the aircon, refuses to open any windows. Not acceptable on anyone'

All who read it agreed. The impact on the quality of evidence the parents could give in those circumstances, in one of the most important days in their and their child's lives, is obvious. The collateral impact on the court staff and lawyers who are expected to facilitate this unjust process may be less obvious. None of us who do this job want to do anything other than deliver the fairest of trials to those we represent. But it is a job. We do have lives to lead (or to try to) outside of court. The fact that each barrister may have had childcare responsibilities that, by staying in court to do their job, meant that they were not able to fulfil is significant. What if they are a single parent? What if the co parent works shifts or is unavailable to collect the child from childcare or to look after them at home? Do we leave a child unattended? Obviously not, but how can plans be made late in the day with just 5 minutes to make safe arrangements?

The Presidents words have clearly fallen on deaf ears in some quarters. What says that for respect for him or those who appear before him/her? This is not an isolated instance of a judge making a near impossible demand of advocates around childcare. Twitter and my inbox are full of similar examples.

Our own families too often come second to the ones we represent.

What we can do to spot the potential for anxiety?

If you are working with someone junior to you, take the time to explain how the case might impact on them in terms of content and set out the way you intend to work it with them. If your work pattern is one that fits with



your routine but may not fit with anyone others, set out the ground rules for how you can co-work the case at the outset of it. Check out how they are dealing with the workload as you get into the case. Be conscious that your work volume may intimidate the junior and be clear that you have different roles: you bear the weight of responsibility for it and they are not to try to emulate you. Be nice.

If you see a shift in behaviour in a colleague don't be too busy to check out how they are. Just saying you are having a rough day can make it less of a one.

Be civil to your opponents. Treat others as you would have wanted to be treated. It's not rocket science.

What can I do for a colleague?¹⁶

'A colleague in difficulty may display very few signs or symptoms of undue stress and those they show may be extremely subtle. As human beings, we are remarkably adept at masking concerns and worries. We might use techniques such as humour as a distraction or deflection technique. Someone with depression or anxiety may not appear sad or upset.'

'It is a good idea to keep things in perspective. A one-off situation of lateness or shortness of temper does not necessarily indicate that a person is feeling unduly stressed or is experiencing psychological ill-health. If you make it your business to know your barristers and other members of staff, you are more likely to appreciate when their behaviour is unusual.'

'If you've observed some negative changes in behaviour over a few days or weeks it may be time to approach the person. Depending on the individual (and the situation) this may be a relatively straightforward discussion, or it could be more complex. Remember that you do not have to be an expert on mental ill-health to offer support and signposting.'

'The support you offer may simply be allowing your colleague to offload his or her concerns. To be listened to is empowering. You may be the first person who has fully listened to your colleague in a long time. Approaching conversations from a position of kind enquiry is a great place to start.'

'Sometimes it might be enough for the person suffering from stress to know that their discomfort has been noticed and that there are resources available to help them. You can point them to this website which has information specifically aimed at both barristers and clerks. Remember, most people find it difficult to open up. Sometimes it will have to be you who will have to initiate the conversation.'

'Occasionally, you may find that the person suffering from stress just wants to offload their problems or concerns to you. This is fine and may be therapeutic for the person doing the offloading, but you must be aware that you are not there to act as a counsellor, merely as a support and guide. If at any time you feel that matters are becoming too intense for you to deal with, the you should refer things on to someone more senior (either barristers or staff) at the earliest opportunity'

'Avoid the temptation to 'solve' issues and be open to hearing things that may be surprising or concerning.'

'It is common to feel unsure of what to say or out of our depth when faced with issues of mental ill-health. Be assured that you don't need to be qualified in psychology or counselling to offer your listening skills. Being heard without judgment is a powerful thing to offer your colleague.'

What can I do if it's me?

If you can't talk to friend or family and you want to talk to someone who knows something about the work pressures you are under then the Bar Council (BC) support can help. Log onto

¹⁶ This is a summary of the superb advice found on the Bar Council website: use it! <https://www.wellbeingatthebar.org.uk/>



<https://www.wellbeingatthebar.org.uk/>.

It includes a wide range of resources for barristers/ clerks and staff/ pupils. It has a really easily navigable page covering alcohol addiction, bereavement, eating disorders, financial stress, lack of sleep, stress, perfectionism, bullying, drug addiction, excessive workload, gambling, panicking in court, possible professional error, self-harm and vicarious trauma.

The very fact that these click down boxes appear under the heading “Common Problems” tells you that you are not alone and you won’t be the first to need help

The Bar Councils website www.wellbeingatthebar.org.uk has had 242,440 hits since its launch, with 75,626 in last 12 months - there’s nothing to be ashamed of – **The Bar is using this resource: so can you.**

The BC also secured funding from the BMIF (Bar Mutual Indemnity Fund) to deliver an **Assistance Programme** which offers access to counselling 24/7 for all self-employed barristers, members of the Institute of Barristers’ Clerks (IBC) and the Legal Practice Managers Association (LPMA). It was launched at the beginning of November 2018 and is delivered in partnership with the IBC and LPMA: **Ring 0800 169 2040**¹⁷ Spread the word – it is confidential and where the Bar Council has received feedback it has been positive. **It is particularly important that this resource is there for clerks and staff too – we need to engage everyone in this.**

The BC also works to support **LawCare** and the number of calls they are receiving are increasing.

LawCare is a mental health charity with various online resources and is there to help all branches of the legal profession. Their support spans legal life from student to training to practice and retirement. They explain what I cannot about vicarious trauma (<https://www.lawcare.org.uk/information-and-support/vicarious-trauma>). See also their factsheet (<https://www.lawcare.org.uk/files/Vicarious-Trauma-UK.pdf>).

The BC website has a **support page** with names and numbers to contact¹⁸ including: LawCare, Mind, Mental Health Foundation, ReThink, Sane, Samaritans. If you are in financial dire straits the Barristers Benevolent Association may be able to help.

Talk to a friend you trust. Sharing helps.

Take time out by going to places of calm that we have access to as Barristers in London : such as The Temple Church , Lincoln’s Inn Chapel, and Gray’s Inn Chapel: Religion isn’t an entry requirement, feeling the need for solitude is the only passport you need to access these spaces.

The ways in which our specialist professions can support us when we reach crisis point

Rachael Spearing, a practising barrister at Sergeants Inn, headlined important work on this issue. She was the co-founder and Chair of the Bar Wellbeing Initiative which was set up to address the challenges facing the legal profession and support colleagues in facing them. She decided to act after a colleague at the Bar committed suicide. Rachel stood down as chair at the end of 2018, keen to ensure others had an opportunity to lead this work. The current chair is Nick Peacock.

The Family Law Bar Association (FLBA) is my specialist Bar organisation and I have the current Vice Chair, Cyrus Larizadeh QC in my chambers. ¹⁹Cyrus has been a strong advocate of well –being. He and his colleague barrister Vicki Wilson were on the original Wellbeing at the Bar Working Group in 2016 which created the initiatives and the contents for the Bar Council wellbeing website. Both have done road shows on it over the

¹⁷ <https://www.wellbeingatthebar.org.uk/ap/>

¹⁸ <https://www.wellbeingatthebar.org.uk/barristers-support>



UK (The lectures 2017-2019 will be available on the new FLBA website due to be launched this summer). Cyrus's lecture at the Brighton Conference in November 2017 "Wellbeing and Being Hit by a Bus on the Way to Court" launched the wellbeing movement at the Family Bar²⁰. He has been open about the impact of him, as a practising barrister, of his mother's suicide in 2006 and speaks of it frankly on the Bar Councils portal. Cyrus knows whereof he speaks when he talks of grief, a professional crisis in confidence and finding a route to recovery and some type of emotional equilibrium. In 2017 the FLBA initiated a start-up wellbeing survey and, arising from responses, a draft template wellbeing policy was created, sent to its members. Many chambers have adopted it (the template will be on the new FLBA website to be launched this summer). The aim is to ensure that by the end of 2019 every member has accessed the Bar Council's wellbeing portal, every family chambers has a wellbeing representative and that members have begun a dialogue about wellbeing.

When I asked Sam Mercer, Head of Policy, Equality and Diversity, General Council of The Bar, who to thank for the shift in thinking around well-being that is evident in the BC's approach, evidenced in its well-being portal and support services, Sam was clear that we should *'acknowledge the work of every individual representative of over 30 Bar based organisations (circuits, the inns of court and specialist bar associations) - and the support of every Bar leader - for over five years, in working together with Bar Council to ensure the resources are fit for purpose and work for everyone.'*

I gladly do so. The work that my colleagues at the Bar and the Bar Council have done to try to address wellbeing since 2015 is truly impressive. They may feel like King Canute (or Cnut) in the face of a tide of systemic funding failures they don't have the power to turn back (for that we require action from the Government and the Ministry of Justice) but they have sought to do what they can to help practitioners that can't wait for change and have to cope with the system as it is.

Sarah Vine makes the important point that the fact that the Bar has begun to talk about these issues might well mean that the situation is deteriorating, but there is also an element of knowing more because an increase in disclosure has arisen because there is greater awareness of the problem and preparedness to talk about it. I suspect it's a combination of those factors.

At the end of this note I have attached details of what support the Bar Council has put together to support its members. I have also put together a list of what the specialist Bar Groups and Inns have put in place.

Final Words: Why does this matter?

When I told my children (now adults) that I was going to write this last lecture of my 2018/9 series on 'wellbeing' they gave me one of 'those looks' that any parent caught out in a whopper will recognize. What, they asked, could I possibly know about that or have the brazen arrogance to write about as if I did?

In reality a 'working day' for me begins at any point from midnight onwards when I start strategizing cross examination or mentally listing 'things to do' to get a case trial ready. Waking up with the opening lines of cross examination in my head at 3am, getting up at 5am to sync the thoughts with the papers or sending off emails whilst leaning to one side of the bed (trying to keep the light on minimum and the key pad sounds light so as not to waken my recumbent husband) is 'normal' to me.

3am, or whatever random time I wake up, is simply the thinking start of a working day that will take me from the wee small hours to the court room, thence post court client care and home to start the next day's cross prep: trial tasks interposed with 24/7 email accessibility covering work on pending cases and other parts of my professional life: the Gresham Professorship, advice and support for colleagues, sitting (and don't forget the joys of commuting)...on it rolls.

My family know my way of working. They know that's not 'normal'. They also know that it comes at personal cost. So, having told them I was going to talk about my way of working I was told in no uncertain terms that if

²⁰ <https://www.wellbeingatthebar.org.uk/2017/06/27/wellbeing-bar-blog-cyrus-larizadeh-gc-victoria-wilson/>



I was going to describe it honestly, as an obsession with performance, then nothing I said should be allowed to fetishize my frankly ridiculous and unhealthy approach to work as a child protection silk.

I think that the Bars increasing willingness to talk about problems within the profession, such as sexual harassment and judicial abuse, has brought wellbeing out of the shadows and into the sunlight for discussion. But only by some. The stigma about saying you aren't coping is still there. It requires a good support network amongst family and colleagues - and faith in your clerk's room - to say that you need time out. That is easier for the more senior members of the Bar than the most junior.

I know I am not a good advert for 'well-being' at the Bar. Frankly none of the silks I know well are. 'Wellbeing' gets sacrificed on the altar of success (or striving for it). I am self-employed: if I don't work, I don't earn. I am the sole wage earner. I am a competitive silk. I want to be top of the food chain when it comes to getting the most interesting briefs in. And I do. It takes skill and stamina to build up a 'leading silk' practice and reputations are easier to lose than to acquire. In the small specialist professional world of very serious child abuse that I practice in cases are often unreported because of potential criminal trials in the wings or they don't hit the news because the court wants to protect the child's privacy - word of competence spreads by word of mouth. You are as good as your last case, your last cross examination. To my clients (I am principally a parent brief) there is no case more important than theirs, no job that's more important than the one I do when I cross examine on their behalf. They put their trust in me to know the papers, score the 'cross' points, win over the judge (not always one and the same thing). They have to live with my witness wins or loses long after I've left the court room, the case and their lives. So, I work. I plan. I plot. I don't sleep well. Because child abuse public law work matters. That's not an excuse. It's an explanation. It's not a good enough one. I need to change my mind-set and approach if I'm not to compel others to feel they have to copy it.

We have a duty to nurture and protect our junior colleagues. Those of us who have the position and confidence to speak out about the things that need correcting in our profession should do so. I and others are increasingly doing that. **We do so, not because we want to discourage the young from entering our profession, but because we should start to change our 24/7 culture so as to be able to actively encourage them to join us here. Being a barrister, and making a difference to people's lives, is one of the most rewarding, dynamic, fulfilling careers one can ever have.**

Wellbeing matters. The whispers of worry that emerged in 2015 have become a shout: we need to change our working culture.

Please join in the conversation. We are stronger together

Professor Jo Delahunty QC
4 Paper Buildings
Temple

5.6.19

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Appendix 1

Details of organisations and events that might assist

The CBA has had to be on the front line of defence as it is their members who have struggled the most out of relentless cuts in legal aid. I am a family barrister and can't pretend to know all that they have done for their colleagues. The work undertaken by their committees has been immense as illustrated by the creation of a free 24 hour helpline through Health Assured:



<https://www.criminalbar.com/wp-content/uploads/documents/171211075245-CriminalBarAssociationHealthAssuredAnnouncementEmail.pdf>

This health assurance programme was the forerunner of the one rolled out by the Bar Council when the BC secured its funding from the BMIF: it is a superb example of collaborative thinking in our industry

FLBA: <http://flba.co.uk/wellbeing/> the new FLBA website due to be launched in the summer will signpost member's access to the Bar Council website co created by FLBA at www.wellbeingatthebar.org.uk . The FLBA has arranged and advertised regular wellbeing sessions including a forthcoming workshop by Robyn Bradey the Australian wellbeing expert at a joint event with Resolution at Middle Temple on 26 June 2019 (free to FLBA and Resolution members and Middle Temple). The Vice Chair is speaking with the President on wellbeing and vicarious trauma at the Wellness Forum on 21 June 2019 at UCL and then on 3 October 2019 he will be addressing the Young Resolution Conference on wellbeing issues.

Chancery Bar Association : <https://www.cbba.org.uk/for-members/wellbeing>

CHBA/ IBC – Best Practice Policy: <https://www.chba.org.uk/for-members/wellbeing/best-practice-policy> this was produced in conjunction with the Institute of Barristers Clerks and was followed up with a seminar that launched it on managing relationships with clerks. The aim is to improve the way barristers and their staff manage their relationships. Chancery Chambers are encouraged to adopt the policy.

Young Bar Association

<https://youngbarhub.com/category/young-bar-toolkit/wellbeing-and-work-life-balance/page/2/>

<https://youngbarhub.com/2018/12/06/wellbeing-at-the-young-bar/> : covers important topics which may affect junior barristers more including judicial bullying, demanding solicitors, panicking at court.

The Young Bar is running a work shop on 15.6.19 which says “frankly ,if you are too busy to attend this seminar, you ought to’! . it will cover well-being, harassment and bullying as well as work practice advice (I note that Sarah Vine will be there and she has much to offer in terms of advice as do her illustrious co – speakers)

I couldn't find anything specific on wellbeing at the websites of the Employment Law Bar Association, London Common Law & Commercial Bar Association, Property Bar Association or the Personal Injuries Bar Association though I can see they have nominated contacts in the list below.

Our Inns

Middle Temple: Wellbeing policy: <https://www.middletemple.org.uk/members/wellbeing/middle-temple-wellbeing-policy>.

It also runs 'The Survive and Thrive Programme'

(<https://www.middletemple.org.uk/members/wellbeing/survive-and-thrive-programme>)

Gray's Inn: <https://www.graysinn.org.uk/members/support-and-wellbeing-the-bar>

Lincoln's Inn: Social & Wellbeing Group <https://www.lincolnsinn.org.uk/members/bar-representation/social-wellbeing-group/>

Lincoln's is running a seminar on 21 June 2019 at UCL Faculty of Laws, Bentham House Wellness for Law UK Forum 2019 – The Inner Temple – “TRiM (*Trauma Risk in Management*) – for Law”²¹

Inner: The portal was created as part of the Wellbeing at the Bar Programme, chaired by Rachel Spearing, Master of the Bench of Inner Temple.

<https://www.innertemple.org.uk/membership-services-support/wellbeing/>

Appendix 2

An 'At a Glance' contact list: there are these people and places to turn to as at 30.5.19

²¹ <https://48oyv93g3qwz3zrbiz3edttq-wpengine.netdna-ssl.com/wp-content/uploads/2019/05/Wellness-2019-flyer-2.pdf>



Circuit	Contact
Northern Circuit	Elisabeth Cooper (elisabeth.cooper@stjohnsbuildings.co.uk)
North Eastern Circuit	Jason Pitter Lisa McCormick (lm@kbwchambers.com)
Midland Circuit	Trish Dunlop (trish.dunlop@stmarysflc.co.uk)
South Eastern Circuit	Valerie Charbit (Valerie.charbit@18rlc.co.uk)
Western Circuit	Anjali Gohli (Anjali.Gohil@GuildhallChambers.co.uk)
Wales & Chester Circuit	Helen Randall (hjr@iscoedchambers.co.uk)

Association	Contact
The Bar Association for Commerce, Finance & Industry	Rebecca Dix (Rebecca.dix@sfo.gsi.gov.uk)
Bar European Group	Nina Caplin (nina.caplin@fca.org.uk)
Chancery Bar Association	Amanda Hardy QC (ajhardy01@btinternet.com)
Council of the Inns of Court	Lynda Gibbs (lgibbs@icca.ac.uk)
Criminal Bar Association	Valerie Charbit (Valerie.charbit@18rlc.co.uk)
Employment Law Bar Association	Rachel Crasnow QC (rc@cloisters.com)
Family Law Bar Association	Cyrus Larizadeh QC (cl@4pb.com) Victoria Wilson (v.wilson@goldsmithchambers.com)
Intellectual Property Bar	Charlotte May QC (charlotte.may@8newsquare.co.uk)
London Common Law and Commercial Bar Association	Josephine Davies (JDavies@20essexst.com)
Legal Practice Management Association	Catherine Calder (CCalder@serjeantsinn.com)
Personal Injury Bar Association	Theodore Huckle QC (t.huckle@doughtystreet.co.uk) Denise Owen (DO@no5.com) Elizabeth Gallagher (egallagher@tgchambers.com)
Planning and Environmental Bar Association	Mark Beard (mark.beard@6pumpcourt.co.uk)
Professional Negligence Bar Association	Nicholas Peacock (nicholas.peacock@hailshamchambers.com)
Property Bar Association	Philip Sissons (sissons@falcon-chambers.com)
Technology and Construction Bar Association	Riaz Hussain QC (RHussain@AtkinChambers.com) Jessica Stephens (JStephens@4pumpcourt.com)

Institute	Contact
Institute of Barristers' Clerks	Lucy Barbet (lucy.barbet@11kbw.com) & Arron Snipe (asnipe@st-philip)

Bar	Contact
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Bar Council	Sam Mercer (smercerc@barcouncil.co.uk)
Employed Bar	Efe Avan-Nomayo (Efe-Avan-Nomayo@fca.org.uk)
Middle Temple Young Bar	Aimee Stokes

Inns of Court**Contact**

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Gray's	Rachel Stephen Innes (S.Innes@4newsquare.com)	James
Lincoln's	Julie Linda Turnbull (l.turnbull@goldsmithchambers.com)	Whitby