



## Bar Council Protocol for Court Sitting Hours

### 1. Introduction

1.1 The Bar Council invites the adoption of a new Court Sitting Hours' Protocol for all hearings in the High Court, County Courts, Crown Courts, Magistrates' Courts and Tribunals.

### 2. Background

2.1 A tendency has developed to list cases increasingly early or late in the court day without reference to the majority of court users, particularly in the criminal and family courts. This has widespread implications for the professional practices of barristers, as well as their ability to manage appropriately their professional duties, own wellbeing, and any caring and personal commitments that they may have.

2.3 Bar Council and Bar Standards Board research has identified variable sitting times (at the unexpected behest of the court) to be a key factor contributing to the pressures upon barristers with caring responsibilities, particularly women, and therefore a significant barrier to retention after childbirth.<sup>1</sup> This is one of the reasons why the profession (though roughly 50:50 at the outset) is estimated only to become 44% female in about 30 years' time.<sup>2</sup>

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<sup>1</sup> See, for example, *Snapshot – the experience of self-employed women at the Bar* published by the Bar Council in 2015, and *Women at the Bar* published by the Bar Standards Board in 2016 <sup>2</sup> See the Bar Council report *Momentum Measures: Creating a diverse profession* Summary of Findings at page 9:

[http://www.barcouncil.org.uk/media/378213/bar\\_council\\_momentum\\_measures\\_creating\\_a\\_diverse\\_profession\\_summary\\_report\\_july\\_2015.pdf](http://www.barcouncil.org.uk/media/378213/bar_council_momentum_measures_creating_a_diverse_profession_summary_report_july_2015.pdf).

2.4 It is beyond argument that the Bar should continue to recruit and retain the best and brightest lawyers solely on merit and regardless of their gender, ethnic background, age, sexual orientation or disability. Where there are any barriers and obstacles still in place that artificially act to distort that equal recruitment and retention, we must act to remove them to ensure that there is genuine equality of opportunity and that our legal system and judiciary is capable of better corresponding to the community it represents.

2.5 In 2016, during a workshop at the Annual Bar Conference on “*Generating a diverse profession: Learning from domestic and international experience*”,<sup>2</sup> delegates considered and approved the concept of the Bar Council developing a similar protocol to the restricted sitting hours model in the Australian courts, in order to mitigate this barrier to retention.

2.5 In December 2016 the Bar Council’s Equality, Diversity & Social Mobility (“EDSM”) Committee mandated itself to working towards a court sitting hours’ protocol. Similarly, some Specialist Bar Associations (“SBAs”) and Circuits have been considering this issue too.

2.6 This protocol is not a direct response to HMCTS’s planned ‘Flexible Operating Hours’ (FOH) pilots. Nonetheless, FOH will run counter to our attempts to improve the retention of women at the Bar. Our grounds, reasons and the evidence base for this assertion, are set out in the [letter](#) from the Chairman of the Bar to the Chief Executive of HMCTS dated 10 May 2017.

2.7 We recognise that the Bar is a profession and not a fixed-hours job, and that our professional standards are such that we can react as flexibly as possible to issues as they arise in court. We suggest, however, that the time has now come to adopt a sitting hours’ standard for the profession, that is both appropriate and practical whilst still permitting flexibility where demonstrably necessary. It is obvious that barristers must also work on their cases outside the courtroom. Regular and reasonable court sitting hours will assist in ensuring that court hearings run as smoothly and efficiently as possible. We suggest that such hours will better enable us to discharge our duty both to the Court and to our clients.

2.8 Informal feedback, particularly again in response to the proposed FOH pilots, indicates that other professional court users (including solicitors, judges, court

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<sup>2</sup> Organised by the Equality, Diversity & Social Mobility Committee and the Association of Women Barristers.

staff and other public servants) have similar concerns about extended court sitting hours. We anticipate, therefore, a broadly favourable response and support for this protocol from those working within the courts to which it is intended to apply.

### **3. Status**

3.1 It is intended that this protocol signals to the profession, the judiciary and the Ministry of Justice the sitting hours that the Bar considers necessary to provide reasonable working conditions for all concerned and to improve the retention rate of carers, and therefore in particular women, at the Bar. We intend that this protocol encourages all concerned to resist demands on the court process to sit extended court hours.

#### **3.2 *The Protocol***

*This Protocol recognises that advocates must undertake a great deal of work outside the courtroom and outside court sitting hours in order that hearings run as smoothly and efficiently as possible.*

*It also recognises that justice must be delivered efficiently and effectively and within a reasonable period of time and that a degree of flexibility is required from those professionally engaged in this process.*

*Making provision for clear general court sitting hours provides certainty and fairness for all court users. It also underscores the Bar Council's principal aim of ensuring that all barristers can discharge their professional duties to their clients and the court, whilst at the same time properly balancing their work commitments and personal caring responsibilities. In addition, it seeks to ensure that all barristers can enjoy genuine equality of opportunity whatever their practice area, retention of barristers for a successful career and progression into Silk and the judiciary, and that our legal system and judiciary is capable of responding better to the community it represents.*

*The Bar Council accepts that on a case by case basis Counsel instructed will place the best interests of the client before their own, notwithstanding that this protocol may not have been applied.*

*The terms of the Protocol are that -*

1. *Subject to the paragraphs below, as a general principle no court or tribunal shall sit before 10am or beyond 4.30pm and telephone and video link hearings shall also be conducted within these hours.*
2. *Counsel who accept a brief to appear in cases of genuine urgency (for example: without notice applications for freezing or restraint of assets, or preventing the removal of children from the jurisdiction in emergencies) may be expected to attend court outside those hours for such urgent applications.*
3. *If a judge considers, in the interests of justice, that the court may need to sit extended hours in a case on a particular day, the parties and their representatives shall be notified by the court at the earliest possible time of a proposal to do so (wherever possible with at least 24 hours' notice). Before making a decision to do so, the court or tribunal will consider the family or other caring responsibilities of counsel and other court users.*
4. *In long cases or other cases where there are special needs such as relating to witness availability, so that a hearing timetable is necessary or appropriate, the timetable shall be agreed well in advance of the hearing and shall take into account the family or other caring responsibilities of counsel and other court users.*
5. *This Protocol is not intended to alter or prevent well-established alternative court sitting procedures ordered at a pre-trial hearing to apply to any particular trial, such as Maxwell hours in the Crown Court.*
6. *This Protocol shall apply to cases in the Business and Property Courts as it applies generally; however, in such matters it is recognised that account may need to be taken of particular pressures to sit longer hours arising from the nature of the dispute and/or the wishes of the parties to sit outside these hours and it may be appropriate for a court to decide to sit outside these hours if it is in the interests of justice to do so (for example for the efficient disposition of the hearing, including the maintenance of any agreed timetable).*