In recent years, the working lives of Criminal Barristers have changed significantly, giving rise to an increase in the number, nature and levels of stresses to which members are subject. The traditional in-court working hours – 10:30 to 16:30 – have steadily increased. Courts now typically start at 10:00, and frequently sit earlier. Similarly, whilst most cases are still scheduled to conclude at around 16:30, trial judges will often extend sitting significantly beyond that time. Breaks during the day have also been steadily eroded.

Additionally, more is expected to be done out of court and pre-trial; and since the advent of mobile telephones and email, it has become increasingly the case that barristers are called upon to address issues long before they attend court in the morning, long after they have finished court for the day, and also throughout the weekend. It is becoming increasingly frequent for trial judges to require written submissions to be prepared overnight and weekend.

The principal driver for this change has been economic – it is a statement of the obvious that the longer we work each day, for the same daily rate or less as previously, the less we are paid for doing the same amount of work. Another driver has been the laudable desire for cases to be dealt with in a shorter timeframe than had previously been the case, although this aim has been much negated by the substantial and planned reductions in the number of court sitting hours.

The Criminal Bar has always been, and will remain, a flexible public service orientated profession, and nothing in the Protocol is intended to restrict that flexibility and public service. There will always be occasions when Criminal Barristers, recognising genuine and particular need, will operate outside of this Protocol, but that flexibility should not be regarded as the norm, nor taken for granted. The stresses and pressures of practice at the modern Criminal Bar must be maintained within reasonable limits; failure to do so clearly places individual practitioners at the risk of substantial negative impact to their health and wellbeing. It also has the inevitable consequence of making the profession and the requirements of professional practice beyond those with other caring commitments. This has had a substantial impact upon the diversity of the profession.

The CBA therefore proposes the following Protocol to be adopted throughout criminal courts to assist in creating and sustaining safe and healthy working environments to promote longevity in careers at the Criminal Bar. The Protocol is to be regarded as the standard for ordinary practice. It is not intended to cover every possible variation in the situations faced in real life; and it is not to be regarded as inflexible in accommodating particular situations.

However, in the absence of particular and identifiable reason, it should be regarded as the limit of acceptable demand upon professional working life.

COURT LISTING

1. Listed trials or other substantial hearings should ordinarily not take place before 10:00 and the court day should ordinarily end no later than 16:30.
2. If the court intends to sit either later or earlier, then it should only expect to do so in exceptional circumstances. Enquiry must be made as to whether and to what extent this is consistent with practitioners' commitments.
3. Shorter non-trial hearings may be listed by the courts with a view to being concluded by 10:00, in order to assist counsel's availability.

BREAKS

4. Trials involve intense concentration, and there should be breaks, in addition to lunch breaks. Courts should not ordinarily sit for longer than 1.5 hours without a break.
5. Lunch breaks are a necessity. The Court should rise for a full hour at lunch time, ideally between 13:00 and 14:00. Significant variations should not be made by the Judge without warning, nor without good reason.
6. Lunch breaks should be used for lunch. The length of the lunch time adjournment should be adjusted upwards from one hour to accommodate any additional work required over that period, so as to allow advocates sufficient time to have a break as well as undertake such work.
7. For trials lasting longer than one day sensible time markings should be provided for the second and subsequent days to allow for any conferences or work that needs to be undertaken relating to the trial before it commences so that it does not have to be done outside of the ordinary work hours.
8. When listing or adjourning a case every effort will be made to accommodate prior commitments, where possible in order that practitioners do not spend time on cases they are then unable to attend, and defendants are able to retain continuity of counsel.
9. The courts will, where the interests of justice permit, make allowances for advocates to deal with other matters by video link or other remote means to maximise efficiency in trial counsel being present.

OUT OF COURT WORKING HOURS

10. Advocates' work is not limited to that undertaken in the court room. Sufficient time should be allowed for advocates to complete work requested/directed by the Court and hearings should be given appropriate time markings to accommodate this without the advocate having to work for excessive amounts of time outside of the ordinary work hours.

11. Enquiries should be made with the advocate in question regarding how long such work will realistically take in order that their other commitments and input from third parties (if required) can be accommodated. Unrealistic orders cannot be appropriately complied with, and therefore will not be. Where a barrister takes the view that they cannot realistically comply with an order, they remain under a duty to inform the court of that fact in good time.

EMAILS

12. Emails should ideally only be sent during work hours. Where that is not possible advocates may send their emails when is convenient to them. However, there is no need to read or respond to an email after 18:00 or before 09:00, nor at weekends. This includes emails received from the Court/Judges.

13. There should be no expectation of a response if an advocate is on leave.

14. Email recipients are encouraged not to "reply all" unless necessary.

RESPECT

15. All court users are entitled to be treated by all concerned with courtesy and respect. Verbal aggression is a form of abuse and should never be justified. Criminal barristers are entitled to be treated with that same courtesy and respect.