JO SIDHU QC

MANIFESTO FOR CBA VICE CHAIR

Dear Colleague,

I am seeking your vote in the election for the next Vice Chair of the CBA.

A Little Bit About Me

Born and bred in Southall, West London, I am the son of Indian immigrants who arrived here in 1964 in search of a better life. My parents instilled in me strong values: study hard, support others and find a vocation that gives meaning and purpose even if the money isn't great. They lived by their values: my mum as a nurse in the NHS and my father as a primary school teacher in Brixton. Public service was in their blood. It's in mine too.

I took the long route to the Bar and picked up a little non-law experience along the way. A comprehensive school education led to university degrees at Oxford and the LSE. All for free. So I learned early on how public money spent well can change lives and create opportunities. It's something I'm reminded of every day of my working life in my interactions with colleagues at the criminal bar. By the time I was called at the age of 28 I'd worked in a printing factory, as a pub barman, a teacher, a local authority policy officer, and a senior researcher at the BBC. A year into pupillage I stood for election to my local Council and spent the next four years representing an eclectic mix of clients and constituents. Standing up and speaking for people has always been more than just a job for me.

I undertook my pupillage at a criminal set in 1993 and have practised continuously in crime ever since. Based at 25 Bedford Row and No 5 chambers my cases have taken me to every circuit in our jurisdiction. I took silk in 2012 and was made a Bencher at Lincoln's Inn in 2014.

Progress and Challenges for Our Profession

Along that journey I have been privileged to work alongside practitioners who represent every strand of the rich diversity that is the modern criminal bar and at all levels of call. It's a human tapestry that we should be proud of and one that we must jealously protect. Without doubt, our fraternity today is more open, more inclusive and more reflective of the society it serves than the profession I signed up for 27 years ago. It has achieved that progress through the unstinting efforts of thousands of our ordinary members who have given their time so selflessly to nurture and support the next generation of criminal advocates from every walk of life.

The strides we have made in re-shaping ourselves have been all the more extraordinary given the hostility and disdain we have faced from successive governments over the last two decades. The rot set in a long time ago and each new political administration has sought to capitalise on the damage done by the last. The relentless undermining of our profession has been both cynical and savage. It is not paranoia that makes us feel we have been singled out for special attention by sneering politicians swinging the heavy axe of austerity. We know we are treated as easy targets because of the smug belief held by ministers that we cannot attract the public sympathy enjoyed by professionals elsewhere. And we know those same ministers remain convinced that our inherent sense of duty and noblesse oblige will always trump our anger and keep us from exercising the one right that any worker in a free and democratic society must enjoy: the right to withhold their labour and refuse to become complicit in their own ill treatment and casual exploitation.

As a brigade of outstanding advocates, we should be the finest advertisement for the bar; the siren that lures new talent into the profession. It is our signature image that defines a barrister in the eyes of society, and it is the unequalled courtroom skill of our women and men that is the true rationale for the retention of the two professions. We are both the backbone and the

outward face of the wider bar. But, hidden from public view, we are broken and bruised. Humiliated by the annual ritual of pleading for fairness in fees and in treatment, our genuflection has stripped us of the last shreds of our dignity. Never in the half century of our Association's history have we felt more despondent or more despairing than we do today.

This has got to stop.

It must stop because the justice system we uphold every day of our working lives is worth saving, worth supporting and worth securing for the generations that will follow us.

It must stop because the public for whom that system exists deserves to be protected by a cadre of advocates who feel respected and appreciated in deed and not just in word.

And it must stop because the individual sacrifices we have made to survive this journey should not have been in vain. Yes, we are public servants, but we must never feel compunctious in asserting our right to a meaningful and fulfilling career free of the fear of financial hardship, and one which permits a decent quality of life outside work.

As you read this, you may feel you have heard it all before through the voices of candidates who have solicited your votes in years past. But this has been a year like no other and what is at stake now is more than a fight for a fairer deal; it is an election about how we must safeguard our very survival into the future.

If I am elected these are the seven pledges and priorities that I will seek to pursue on behalf of our Association

1. **Getting Us Back to Work and Keeping Us There**

The last time I stepped foot inside a Crown Court was in Leeds on 18th March 2020. It was a five handed murder trial and we managed to get no further than one working week before the case was abandoned in fear of the virus. By the time we resume that trial on 7th September I will effectively have been unemployed for half a year. I am just one of thousands of criminal barristers for whom the shutdown of our system has had devastating consequences. The majority of us will eventually resume work albeit heavily laden with debt and fearful of a second wave. But some of us will not be coming back.

The colleagues we lose will not have been driven out of the profession because a virus put paid to their careers. They will fall because they were already too drained to survive the drought. Many of them will be young. And they will be forced to surrender their hard won careers because of the crass mismanagement of our CJS and the years of disinvestment that have crippled our capacity to meet this calamity. Covid delivered a devastating body blow, but the body it struck had been atrophying for years.

We are desperate to get back into court and desperate to return to as close to normal service as swiftly as we can. Neither we nor the system can subsist if we don't. Progress has been made and continues to be made. Credit should go to our leadership and the partners with whom they have worked to get us this far. But there remains a long way to go. These are only temporary fixes, not solutions, and they will last only for as long as we are spared a second wave.

The government can smell our desperation. They know we are weakened. Some of their asinine proposals for leading us out of this impasse reflect a scornful disregard both for the institutional integrity of the CJS and the welfare and livelihoods of the foot soldiers who hold it together.

So where do I stand? I will tell you:

I want us back at work full time as much as anyone. But not at any price. These are my red lines; they may be yours too:

Not at the price of losing our precious jury system in its full form. No dilution today, tomorrow or at anytime in the future

This is not a moment for ifs or buts. We who have lived and breathed the jury system know its worth. We know exactly why it has survived over eight centuries and we have faith that it remains inherently fair. Indeed, the Lammy Review found the jury system to be one of the only institutions within our CJS that has consistently delivered fair outcomes to defendants of colour. No surprise therefore that it is a constituent element that (exceptionally) retains their trust. Having served on two juries myself I can vouch for the simple unadulterated expression of democracy it embodies. Without prejudice is its epithet.

Despite this, the Lord Chancellor has pushed for change, entreating us with offers of a sunset clause and earnest promises that this incursion would be his last.

Our minds may be open, but we are no fools. And we may be beleaguered but our voices remain strong and they can be heard in quarters we often never see. The powerful backlash of the criminal bar (93%) against the threatened erosion of jury trials demonstrated that when we stand four-square to protect our system the MoJ is left with no choice but to back down. Our unity is our strength.

Nor are smaller juries any more acceptable. But the fact that they do not offer a panacea to the backlog is not the ground we fight on. This is at its core a matter of principle, not expedience or utility.

Not at the price of risking our health by cajoling us into working under arrangements where we feel our safety is compromised.

Yes, the current backlog of cases may take 5 years to clear, and yes we have voted to use extra buildings outside the court estate. What a shame it is then that our estate has been depleted so severely that we are now forced to look elsewhere. That is the price we are paying for decisions made by successive governments to slash its budget by nearly a fifth (in real terms) over the last decade while selling off court buildings, restricting sitting days and privatising the prison and probation services. Overwhelmingly, it is this deliberate disinvestment, and the Treasury's obdurate refusal reverse it, that has piled up the backlog, not Covid.

These are just some of the real reasons why we are struggling to get cases heard. Last year more than half of the 24,500 trials listed at the Crown Court had to be postponed. So let's keep this in perspective: the onset of the Covid shutdown accounted for only 1312 additional untried cases in our Crown Courts by the end of May. Before lockdown, government neglect had left us with a mountain of over 39,000 such cases. So the system was already overloaded, broken and unsustainable.

Without serious re-investment the backlog will become an albatross. The MoJ should be taking immediate steps to re-open all available court buildings and get all our available Judges back on the bench with our Recorders drafted in to make up the shortfalls. There is simply no excuse for not doing what is obvious to all of us.

And where some of our lost capacity is to be restored, and additional venues are to be identified, we must be included in decisions made about their suitability. Foremost in our considerations is the safety of our members and that of all other court users, not least when government has reduced distancing from 2m to 1m; a change that will carry an obvious enhanced risk to each of us in the confined spaces of both actual and makeshift courtrooms. We must not feel bounced into accepting proposals where there are well founded fears for our health. We should be especially alive to the particular vulnerability of our Black and Asian colleagues and older members of the criminal bar for whom we now know the virus can prove particularly merciless. Protecting our health must come before all other considerations.

Not at the price of being pushed into 'extended operating hours'. We already do those. We say no to more.

At the risk of stating the blindingly obvious, working unsociable hours is not a novelty for us. But what is being proposed here is different. There is no evidence relied on by government to show that extended operating hours will relieve the bottleneck. The fact is that the funds needed to implement that radical change (ie. the additional costs of extra sitting time and payment for prison officers, court staff and transportation being deployed during out of court hours) have simply not been allocated. Nor have we been told whether remuneration for working on weekends and/or during evening hours would be on a significantly enhanced basis to reflect the exceptional inconvenience and disruption caused to the lives of those barristers who might undertake it. The proposal is therefore entirely un-costed. It remains an unevaluated experiment and the long awaited outcome of the pilot has yet to be disclosed.

Moreover, it sets a dangerous precedent for our profession. In a modern bar we should open to exploring new flexible working practices whether in circumstances of duress or otherwise. But

here we must proceed with extreme caution. Bitter experience has taught us that not all change is necessarily good.

Any significant alteration to our usual sitting hours would be a retrograde and discriminatory step particularly for those who already struggle to combine caring responsibilities with practice. It would be unacceptable to place them under economic pressure to work unsociable hours and on weekends when the welfare of their dependants may be affected. We know how draining this job can be in normal circumstances and the wellbeing of our colleagues has already been taken for granted for far too long.

The CJS works best when its participants operate on the basis of mutual consideration. We will not be well served if our Judges, lawyers, court staff, witnesses, dock officers and, not least, defendants are exhausted from protracted sitting hours with inadequate relief.

2. A Fair Settlement of Fees

The supervening cataclysm of the Covid shutdown in 2020 must not be allowed to mask the perennial festering sore of inadequate remuneration for both defence and prosecution advocates. That won't, of course, stop the government trying. We can already hear the refrain *"bailing out the nation over the economic catastrophe has left the Treasury skint"*. Not so skint apparently that the MoJ couldn't find £2.5bn to build four new prisons as trumpeted in their announcement last week.

If elected, I have no intention of letting the MoJ or CPS play the Covid card in a lame effort to shirk their responsibilities towards us. A properly funded CJS is not a luxury to be afforded only when the economy is buoyant. It is not a luxury at all; it is a necessity for any civilised society and fundamental to the functioning of a healthy democracy in which every citizen accused of a

crime, and every complainant making an accusation, is entitled to have their interests represented by highly skilled advocates whose commitment and work is fairly reflected in the fees that they are paid.

It is nothing short of a disgrace that we have received next to no government support as professionals since March. The Self-Employment Income Support Scheme is but a chimera for almost all of our members. Even our most junior juniors have found it next to impossible to qualify. The hardship this has caused is incalculable. Deferment of tax payments is only that. Our profession is now plagued with anxiety about how to meet our financial obligations well into next year and beyond.

Our numbers have already been depleted by the exodus of hundreds of junior barristers across our jurisdiction in the decade leading up to the recent crisis. They were the young life blood upon whom the future of the criminal bar depends. Crippled by student debt and struggling to get financial traction on their fledgling careers with bills still to pay, scores are left with no choice but to throw in the towel well before we ever saw the best of them. Dreams shattered after years of endeavour. The haemorrhaging of such talent is not merely unfortunate; it is a hidden scandal, and we will pay dearly for it in the years to come. It's just another reason why we simply have to re-double our efforts in the fight to save our profession. If we fail, a slow, lingering death by attrition will be our epitaph.

We must build on the progress we achieved last year, limited though it was. Back then, our membership accepted an increase of CPSGFS fees from September commensurate with the restructuring of the AGFS (Scheme 11). For those who prosecute, the fees represented a significant enhancement in some cases. But it was woefully poor compensation for two decades of stagnation during which inflation gnawed away at real incomes.

For those who defend, tomorrow's jam still hasn't arrived. Defenders have suffered a decline in their fees of 50% in real terms since 2007. And they have seen nothing so far to reassure them that their expectations of fair remuneration will be met. Nor has the Criminal Legal Aid Review yet made its descent from the ether.

Remember, the ballot in 2019 resolved only to postpone further action, not to cancel it. We will not be waiting for Godot. If elected, the very least I will be pushing for is an end to flat brief fees that disregard case complexity and volume, proper payment for reading unused material and making sure that cracked trials are paid at 100%.

If even these minimum expectations are met with no more than platitudinous reassurances and promises of endless reviews, then we must revisit the option of taking the direct action necessary to concentrate the minds of our paymasters.

The options should include (but are not limited to) withdrawing our services, working to rule and refusing returns. Whatever we must decide, every quarter of the criminal bar up and down the country will have its say.

3. A New Working Protocol

The life of a criminal advocate is tough and sometimes unforgiving. For generations we have operated on the unspoken principle that we must do whatever is needed to keep the wheels of justice turning. The hours we work and the damage we inflict on our physical and mental health, not to mention our personal lives, was traditionally regarded as the unavoidable price that we must each pay for the privilege of working as trial advocates. It had almost become a badge of honour; the ultimate expression of sacrificing oneself for the sake of the greater good.

Perhaps, at a time long since past, when barristers were paid for out of hours work, the irritability that accompanied missed sleep and a forsaken social life could be assuaged if not justified, at least to ourselves. But the world has moved on and we have finally begun to accept that the working culture which we had regarded as normal is, in fact, inimical to our wellbeing.

We also know that the continuation of a modus operandi in which we are expected to toil evenings, nights and weekends for no extra pay is deeply exploitative. The notion that this is compensated for through the dispensation of a brief fee is both antiquated and meaningless having regard to our ongoing payment structures. In short, we have been taken for a ride in a vehicle driven by ourselves.

Something has to give, now more than ever, and it should not be our long term health.

But even in a world where the stresses are universal the burden does not always fall equally. The impact of a gruelling schedule is felt hardest by those whose time outside court hours is least elastic. Those with caring responsibilities are often the ones who live with the greatest anxiety that one day they will drop the ball. When a Judge orders a skeleton to be prepared overnight or directs without warning that a court will sit late or sit early, how much regard is really given to the impact that will have on someone who has young children. When a list office stacks a trial within a warned list with no guarantee it will be heard, what thought is given to the fact that childcare arrangements cannot be synchronised with the lottery of court availability.

As someone whose partner is herself a full time professional I have shared responsibility for the raising of my two daughters and juggled court timetables with nursery and school timetables, I know how easy it can be to fall between two stools. Life at the bar should not be a choice between being a good parent / carer and being a good brief. For some of us, the worst has passed (my daughters are now grown); but for others, it remains a daily challenge. We owe it to them, and to the ones that follow, to re-define how we wish to work and how we wish to be treated.

That is why I welcome the initiative already started by the CBA to develop a working protocol for our members. This year the Association set up a Judicial Liaison Wellbeing Committee which I Co-Chair. As part of its term of reference we have already made considerable progress in agreeing clear minimum standards of working conditions for our criminal advocates.

Building on that work, if elected to lead the CBA, these are some of the changes I would wish to see enshrined in a new working protocol to help us achieve a healthier work-life balance:

- More use of technology to increase the number of remote hearings. I welcome the MoJ's announcement this week that £142m of new money will be spent on court maintenance and technology to allow more cases to be dealt with remotely. One the few consolations of the shutdown has been the opportunity embraced by most of us to deal with straightforward hearings from home. The concomitant savings in time, travelling and commuting costs have provided some much needed relief. And now we've had a taste of the benefits I believe we must push harder for further investment in these technologies. We shouldn't need to go back to a world in which in-person hearings remain the default position of the courts. Where the interests of justice are not compromised remote proceedings for hearings other than trials should become the norm.
- Phasing out of warned lists.
- All trial and substantial hearings should ordinarily start no earlier than 10am and finish no later than 4.30pm. Where pre-10am hearings may assist counsel's availability then such accommodations ought to be made. Judges should only expand the ordinary hours in exceptional circumstances and only after taking into account any real difficulties that may be caused to the advocates.

- During full working days the default position should be that the court takes a break both in the mid-morning and in the mid-afternoon to give all of us an opportunity to rest and re-focus.
- Advocates should be entitled to a full hour for lunch and if the court requires additional work to be undertaken during the short adjournment then extra time should be allowed to accommodate that work.
- There should be access to food and drink in every court centre so that advocates are not forced to leave the court building, thus losing further time.
- If the court requires work to be done after the conclusion of a court day, time should be built into the morning of the following day for that to be done rather than expecting the advocate to give up excessive portions of their evening or night to complete the (unpaid) work. Alternatively, if work must unavoidably be undertaken outside ordinary court hours then proper remuneration should follow.
- Emails should ordinarily only be sent within court business hours. Where that is not possible no advocate should be expected to deal with an email received between 6pm to 9am or on weekends.

4. Building Alliances

We are but one part of the CJS and we need our allies. We cannot do this alone. In my committee work over the years I have learned how strategic partnerships can generate powerful synergies if the purpose is common. Forging lasting alliances with sister organisations is a pre-requisite for success. We need the support not just of our own Bar Council and the Circuits, but of our judiciary, the Law Society, the CLSA (and LCCSA) and of unions such as the FDA who represent our colleagues in the CPS. Such relationships thrive if there is open and honest communication

underpinned by mutual respect. It is only through such cooperation and collective action that we can create a phalanx fit to meet the MoJ mandarins with whom we must negotiate.

5. Equality of Circuits

My own practise is evenly split between the South East, Midlands and North Eastern Circuits. That broad reach is also reflected in my dual membership of chambers in London and Birmingham respectively. If the CBA is to have national appeal and national unity it is vital that we pay more than lip service to the inclusion of our many circuits in our decision making. Gone are the days when Executive Committee members were expected to trek down to London to attend meetings or to sit on the end of a poor telephone connection feeling disengaged from committee discussions. The advent of Zoom means future CBA meetings should be fully participative and inclusive. I am committed to ensuring that all CBA committees should meet regularly and that the voices of our circuits are heard through their representatives.

6. Direct Accountability to Our CBA Members

In addition to the weekly Monday message I would (as CBA Chair) introduce a monthly surgery over Zoom open to all our members giving you the opportunity to put questions to me, to express your views and to hold me to account.

Occasional ballots to gauge your views are not enough. I want members to feel they have regular access to the leader of their organisation. If you're not happy with the direction we're taking on a key issue, I want to hear it. If you've got suggestions for how things might be done better, I want to hear that too. To be truly democratic the CBA's leadership must be willing to engage in two-way conversations that give its members a genuine sense of ownership over the Association.

7. Communication with the Public

In my view, it is essential that we win the support of the public in our efforts to protect and promote the value of our CJS and of the women and men who serve it with such distinction and dedication. That means taking our arguments into the mainstream as opposed to waiting haplessly for our messages to be misinterpreted, or simply ignored, by a media that largely prefers to depict us as a disgruntled, self-serving interest group for whom money is the main, or only, driver.

Whether through radio, television, print or social media I believe I have acquired enough experience to engage effectively and proactively with the public and to get our messages across. We are facing an existential battle and we must use every legitimate tool available to us to win the support of ordinary citizens; something that we have hitherto struggled to garner. We are lawyers not politicians, but we are not so naïve as to imagine that our negotiations operate in a political void. Our cause is an honourable one: we are public servants seeking to protect a critical public service which belongs to the ordinary woman and man in the street, whether they use it or not. Our CJS should be an institution that brings pride to our country. We must continue to remind ordinary folk of its virtues.

Proven Commitment to the Criminal Bar

Finally, I stand in this election on my long record of service in the promotion our profession and, in particular, the work of the criminal bar.

I believe that my commitment has been demonstrated in the following work:

- Co-Chair of the CBA's Judicial Liaison Wellbeing Committee.
- Speaker at the 2019 CBA conference on Organised Crime.

- Vice Chair of the Bar Council's Equality, Diversity and Social Mobility Committee on which I served for 14 years.
- Member of the Equality, Diversity and Inclusion Committee of Lincoln's Inn.
- Senior Equality & Diversity Officer for 25 Bedford Row.
- Advocacy trainer on the SEC's 2019 Advanced Advocacy Course at Keble.
- Advocacy trainer for Lincoln's Inn for over 15 years.
- Advocacy trainer for the ICCA in foreign jurisdictions over the last 6 years.
- Key negotiator on legal aid polices with past shadow justice teams including the former Lord Chancellor and shadow Lord Chancellor, and on justice policies with the former Attorney General and Solicitor General.
- President of the Society of Asian Lawyers 2013-16 representing over 3,000 members.
- Pupil supervisor for over 15 years.
- Mentoring – I have supported well over a hundred aspiring criminal barristers often from non-traditional backgrounds.
- Speaker at numerous universities across the country to encourage law students to consider the criminal bar as a career still worth pursuing.

Whether you vote for me or not, if elected I pledge that I will represent each of you with commitment and passion. There is much work to do but I earnestly believe we are all equal to the challenge.

JO SIDHU QC

3rd July 2020