**CBA Day of Action: Monday, 6th January 2014: Frequently Asked Questions.**

1. **Why is the action only half a day, not a whole day?**

In consultation with the Circuits, it has been decided that the first such action will be a half day. It is a very reasonable and proportionate step and will act as a demonstration of the strength and unity of the legal professions..

1. **Are the solicitors also taking action?**

Yes. The CLSA, LCCSA, SAHCA and other bodies are calling upon their members to join the Bar in its action. Consequently, many criminal solicitors in England and Wales will not be attending court on the morning of 6th January. This will be nationwide.

1. **I am due to be prosecuting on that day. What stance have the CPS taken?**

Because the action is about the damage that will occur to the criminal justice system, we take the view that that is a matter which concerns all barristers in private practice, whether they are due to defend or prosecute on 6th January. Hence we understand that those due to prosecute on the 6th January or who prosecute all of the time may want to standby their colleagues with whom they spend their professional lives.

The Chairman of the CBA has spoken to the new DPP, Alison Saunders, about the action, and sought to impress upon her that, although the criminal Bar has no argument with the CPS, the government’s cuts to legal aid threaten the continued existence of the independent criminal Bar.

The independent Bar is a cornerstone of a criminal justice system that is the envy of the world, and a valuable resource upon which the CPS and other prosecuting authorities rely. Proposals which risk damaging the fabric of our system of criminal justice are as much a concern for the prosecution as they are for the defence. The DPP has not yet made any public statement about the action, either supporting it or condemning it. We are hopeful that, even if she does not go so far as to support it, she will at least not threaten disciplinary measures, such as withdrawal of instructions, or removal from the CPS Panel. If and when the DPP makes a public statement, we will issue further guidance, here, and in the Monday Message.

1. **I will be doing a privately-paying case on that day. Am I expected to join the action?**

Whether you participate in the action or not is a matter for individual decision. As with prosecutors, you may feel that, notwithstanding the fact that you are not conducting a legally-aided case on the 6th, the issues which lie at the heart of this action are a matter of concern to every criminal barrister – and solicitor, for that matter and whilst you may be doing a private case on that day, on others you may still accept legal aid briefs.

 Accordingly, you may wish to support the action. If so, you should write to your instructing solicitor, using the template we have suggested, tailored accordingly

1. **My case is in a warned list on 6th January. How should I deal with this?**

If you wish to participate in the action, you should do so in the same way as if your case is listed with a clean start in a court. You should inform your professional client (using the template letters) that you will not attend in the morning, but will do so at 2.00pm.

1. **I am representing a client in custody on 6th January. I want to participate in the action, but I do not want to jeopardise my client’s liberty. What should I do?**

You or your clerk will have notified the court of your intention not to attend until 2pm. The letter that you send to your instructing solicitor asks them to send a representative to court to reassure the client, who would otherwise be wondering where his solicitor and barrister are, and to tell him or her that you will be there at 2.00pm. In the (we think) unlikely event that the judge does deal with your client in your absence, you should ask for the case to be further mentioned when you get there at 2.00pm. See, further, the guidance at question 11, below.

1. **The Protocol advises that if I am involved in a ‘particularly sensitive’ case that cannot be moved to 2.00pm, I should attend court in the morning. What sort of cases do you have in mind?**

We have taken the view that it is not appropriate to make a blanket request to the courts to list all cases at 2.00pm on 6th January, but there are some cases, and we think that these will be few in number, where such a request, perhaps coupled with making arrangements with your opponent, may be the right course to take. If, for example, you are due to start a trial with a child witness who is scheduled to give evidence on the 6th, and you wish to participate in the action, you should act as follows. If you are defending, contact your prosecutor, informing them of your wish to not attend court before 2.00pm, and ask them to arrange for the witness to be brought at 2.00pm (or the next day, if time would not permit the evidence to be heard on the afternoon of the 6th) and write to the court, asking for the case to be listed at 2.00pm. If either your opponent will not accede to your request, or the court insists that the case is listed in the morning, then your duty is to attend, and you should attend.

There may be other types of case which cannot be moved to 2.00pm – perhaps involving defendants being brought from hospital, or where serious inconvenience would be caused to, for example, a medical professional, by having them wait until the afternoon.

Of course, it is a matter of individual decision whether you participate in the action; you must balance these competing considerations. If you require case-specific advice, email the helpline address below.

1. **What steps have been taken to inform the judiciary of the action, and the reasons for it?**

The Chairman of the CBA has spoken to the Lord Chief Justice, in his capacity as the Head of the Judiciary, to inform him of the action as a matter of courtesy and to discuss it with him. As with the DPP, the Lord Chief Justice has made no public pronouncement. As you would anticipate the Chairman received a courteous and kindly response.

We have taken the decision that it would be wrong to seek the co-operation of the judiciary, or the Courts Service, by making a blanket request for all cases to be listed at 2.00pm.

1. **What should I do if I find when I attend at 2.00pm, that the judge has dealt with the case in my absence?**

It is not the defendant’s fault that his or her barrister is not there. If you find, when you attend at 2.00pm, that the judge has dealt with your case in your absence, the course you should take will depend upon what action the judge has taken, but you should consider asking for the case to be re-opened, either that day or later.

1. **Will the judge make a wasted costs order against me if I don’t turn up?**

It is possible that, if the judge has stood your case down until you arrive, s/he may threaten to make a wasted costs order against you. If this happens, ask the judge to adjourn the consideration of that matter to a later date (the end of the trial, or after the sentencing hearing). Politely tell the judge that you wish to be represented at the hearing of that matter. Then email us at the address provided, or ring the helpline immediately. The CBA and the Circuits have a panel of silks and senior juniors to provide advice and, if needed, representation at wasted costs hearings.

1. **Will I be committing a misconduct offence for which the BSB might discipline me?**

If you fail to turn up when a case in which you are instructed is listed, it is likely that you would be committing an offence of professional misconduct, the seriousness of which would, at least in part, depend upon who was complaining about you, and what they were complaining about. For example, if you were defending, and your client’s case was dealt with by the court in your absence, s/he might legitimately complain about your failure to be there to represent them. If, on the other hand, the court simply adjourned your case to later in the day, or to another day, the judge might complain that you had shown discourtesy to the court.

As we have indicated, the CBA has taken a good deal of time and trouble to inform those who might potentially be affected by this action, and we very much hope that consequently no-one will be made the subject of a complaint to the BSB, by anyone. But if you are reported, or are threatened with such a complaint, you must deal with it courteously and refer the matter to the CBA and the Circuits. You will be advised, and if necessary represented,free of charge, by an experienced silk or senior junior.

1. **If I face disciplinary action, will I get support from the CBA?**

Yes, absolutely. As we have indicated, we have established a panel of silks and senior juniors on each Circuit who will be available to give advice on the telephone, on the 6th January and thereafter, to any member of the Bar who requires assistance. If you do face disciplinary action, you will be represented for free by a member of the panel. The email address you should contact for general advice about the day is: CBAdaysofaction@criminalbar.com

If you require professional conduct advice, for example, because you are threatened with disciplinary action or a wasted costs order, you should contact: CBAdisciplinarydaysofaction@criminalbar.com

Of course whilst advice and representation is pro bono, we cannot undertake to pay any financial penalty you may receive or wasted costs order that might be imposed.

1. **OK. If I don’t go to court, what should I do on the morning of the 6th? Are we organising demonstrations to publicise our cause?**

What we are doing on the 6th January will differ from circuit to circuit. There will be demonstrations outside of some courts and meetings at other locations. These plans are making quick headway and will be with you by the time you break for Christmas.

1. **What am I to say about why we are doing this if I am asked by a member of the public or the press?**

It is important that we do what we can to ensure that the public understand why we are doing this. It is not just a pay dispute for barristers, but a fight to preserve the fabric of a criminal justice system of which we should all be proud. It is **imperative** that you deal with members of the public courteously. So far as the press is concerned, we plan to have one member of the CBA outside every Crown Court who is briefed to deal with the media. You will know who this is in advance of the day. Please refer any press interest, either before the event, or on the morning of 6th January to that person. This will ensure that a consistent message is given nationwide.

**Nigel Lithman QC, Chairman**

**Tony Cross QC, Vice Chairman**