BERNARD RICHMOND QC - MANIFESTO

The Criminal Bar is truly something of which we should all be rightly proud. It contains some of the very best advocates in the country, if not the world. We demonstrate, on a daily basis, a level of dedication, hard work and integrity which is an example to everyone. We are professionals and we behave as such. We have amongst our number some of the most talented barristers and we are generous with our time (both to colleagues and others) in providing education, advice and support.

Despite this, many of our colleagues spend their days feeling frustrated, undervalued, put upon and taken for granted. Statistics seem more important than ensuring that we are able to perform our tasks with professionalism. We face what seems like a daily battle to have cases listed when we can do them, to obtain papers in good time for the hearing and, even if we manage to get through the case, to obtain prompt payment of the amount to which we are entitled.

Court days have become longer and longer with no improvement in our pay or conditions. It is, frankly, ridiculous and unacceptable for courts to list cases at 9.30 or 9.45 am when it is known that the client is in custody and defence counsel will have to see the client in conference before the hearing. Clients, not surprisingly, wish to see their counsel before an important hearing.

It is no answer to say that counsel should have seen the client in the days before the hearing. Prisons do not offer conference slots at times which are compatible with working in court and it is unfair to ask someone to give up a working day to attend a conference (particularly if it is for a case where there is no guarantee that it will be fixed so that they can do it).

Client care is not an "optional extra" for professional advocates. It is a necessity.

Similarly, colleagues engaged in prosecution work are being asked to do more and more for the same or less money. The current arrangements for prosecuting counsel seeing all

witnesses are ill thought out and place both practical and ethical pressures on us which should not have been there and should have been anticipated. It is not "unhelpful" to explain to the CPS that their plans are flawed; it is us being faithful to the independence of thought and advice for which we stand.

This is my 10th year in silk and my 26th in practice. I hope to spend many more years doing a job which I love. In case anyone is wondering, I have no desire to be a full-time judge and do not see this as any sort of "stepping stone" to an appointment.

I still feel that it is privilege to be permitted by people, often highly vulnerable, to protect their interests and tell their story in court. As a dedicated advocate and advocacy trainer, I know that quality advocacy requires the time to think and prepare. I believe strongly that the CBA must repeat the message loudly, publicly again and again that advocacy is far more than just talking in court. We must articulate simply and powerfully what it takes to be an effective criminal barrister, stressing our training, our collegiality and our professionalism. The public must be left in no doubt that criminal trials are too important to be dealt with other than by a specialist group of individuals dedicated to the study and delivery of advocacy. I make no apology for saying that the "specialist group" is not restricted to barristers. The ranks of specialist advocates are enhanced by the presence of those dedicated specialist solicitor advocates and they deserve our support and respect.

It is time to make clear to everyone that the bar has reached breaking point in terms of our willingness to be treated in the way that we are. I understand completely (as a Recorder and an Assistant Coroner) that judges are subjected to their own pressures and are also struggling to cope with an increased workload and worsening conditions; however, this cannot justify the increasing demands on the time and workload of barristers who are being paid no extra for working the increasingly longer hours needed just to be ready for the next day in court.

The CBA needs to be at the forefront of setting out the reality of life for the bulk of the criminal bar. I applaud the efforts already being made but we need to be more vocal and

clearer about what we can and cannot cope with and, ultimately, tolerate. Of course, in the old days, barristers used to stay up for 36 hours, prepare cases on a moment's notice, cross-examine without preparation, laugh in the face of adversity and still have time for a round of golf but those days, if they ever existed, are gone.

Clients both lay and professional are more demanding and complain more readily. Our ethical rules, which grow ever more opaque and unhelpful, ensure that many barristers, particularly our younger members spend much of their time anxious about not doing wrong, rather than focussing on getting it right. When barristers have an ethical dilemma, it is difficult, if not impossible, to obtain any form of definitive advice from the BSB.

It is unacceptable to place criminal advocates in a position where they are rushing into court for an early hearing where they have either had little or no chance to speak to their lay client or woefully insufficient time to prepare through no fault of their own. Those advocates should be able to tell the court that they have not had any or any proper time to prepare and need the case to be put back or adjourned. Those advocates should not be criticised or threatened with wasted costs orders. Pressurising barristers, especially the young, to progress a case when they have not had a reasonably opportunity to undertake the basics of client care and preparation is <u>plainly wrong.</u> The CBA needs to spell out loudly and clearly that it supports advocates in making it clear to courts when they are not able to undertake those basic requirements.

This is not an opportunity for the lazy or ill-prepared to avoid responsibility for their lack of effort – it is a recognition that we, as a profession, are not willing to paper over the cracks and pretend that everything is alright. Clients, victims of crime and the public generally deserve better. Of course, I understand that those working in other areas of the criminal justice system are also buckling under the weight of short-staffing, reduced funding and unrealistic expectation, but it is the task of the CBA to focus on the issues as they affect its members.

Our relationship with our solicitor colleagues is of vital importance to both us and them. I have made no secret of my willingness to support solicitor advocates who wish to specialise in advocacy and practice at a high level. If we support high standards for criminal advocacy then we should be willing to support and encourage all who genuinely aspire to and work towards those standards. Conversely, we must ensure that only those who are genuinely up to the required standards take the responsibility of protecting the interests of clients in the more difficult cases. I do not believe that this requires a prescriptive grading scheme; it should be a matter of professional integrity to which both sides of the profession subscribe and works towards collaboratively. I believe that maintaining a cordial and constructive relationship with those bodies representing criminal solicitors is essential.

The CBA, in conjunction with the newly-formed Inns and Circuits Advocacy College, should be at the forefront of identifying the skills necessary for effective performance at all levels of court; not for the purpose of encouraging some QASA type system but for the purposes of ensuring that our training of students, pupils and young practitioners prepares them adequately for the rigours ahead.

I have seen the efforts being made by those who are preparing for the vast undertaking of training us all in vulnerable witness handling. The workload on the Inns and Circuits and the CBA to provide this training will be enormous but it must be achieved, and quickly, if practitioners are not to be prejudiced. It is essential that the CBA participate fully in offering appropriate courses to members to support the work of the Inns and Circuits.

I know that the MOJ considers it appropriate that a similar exercise should be undertaken for Youth Court work. I do not support the notion that certain types of our work should be hived off and then practitioners should be "ticketed" before being permitted to do such work. This requirement is based on the premise that our system of training and pupillage is ineffective in preparing barristers for the Youth Court. We must maintain our position that our training and commitment to career-long CPD, coupled with our professionalism justifies the rights of audience we enjoy.

Whilst it has been very cathartic to get much of the above off my chest, I should now deal with two questions:

1. What am I going to do about it?
2. Why me?

<u>What am I going to do about it</u>

I am clear that there are certain "lines in the sand" which must be drawn and we must strive to obtain the agreement of the judiciary and MOJ about them. They should form the basis of a memorandum of understanding between the Bar, solicitors, the CPS and the judiciary.

They are:

a) Counsel cannot be expected to perform advocacy effectively if they have not had adequate time to consider the papers. Courts must understand that, if time is reasonably sought then such time should be given. There should be no attempt to cajole a barrister into presenting a case without any reasonable time to consider the papers;

b) Prosecuting counsel cannot be expected to undertake numerous administrative tasks, meet witnesses, think about the trial and run it. We must work with the CPS to ensure that those prosecuting are not put in the embarrassing and soul-destroying position into which they are currently placed on a daily basis (whether in-house or self-employed)

c) Criminal advocates at court have obligations to their clients (and witnesses, if prosecuting). If a client is in custody then the listing time for a case must be sufficient to permit counsel to see their client beforehand. If the cells do not open until 9.30 am, then a 9.30 or 9.45am listing puts unfair pressure on counsel and their client.

d) If extra preparation or paperwork arises during a trial, the court should not assume that counsel will do without a lunch break or work through the night. If preparatory work or paperwork is essential and arises during a trial, the court must sit at such time as to permit a reasonable time to prepare.

e) Continuity of counsel is now an essential element to many serious cases. The warned list system is an obstacle to such continuity. Whilst a warned list system for smaller cases cannot be avoided, counsel in serious cases cannot be expected to keep themselves out of court for days waiting to see if their case is taken. In particular, rape cases should not be placed in warned lists.

f) Courts should not ask counsel to undertake work for which they have no prospect of being remunerated, save in the most exceptional circumstances.

In addition to the above, I hope to achieve the following things, should I be elected:

1. Encourage criminal practitioners countrywide to see the CBA as something which supports them and their work. I know that those who work on the CBA committee work hard for us, but there is a perception that it is London centric and mainly dominated by a few of the larger sets. I am committed to ensuring that the CBA reaches out to members throughout the country. I would ensure that CBA CPD events occur in major court centres on circuit and that I visit the circuits regularly to meet with heads of criminal groups from all sets.

2. Many of us are completely frustrated at the way in which our claims for special preparation are treated. I would wish there to be clearly established and agreed information sheets for taxing officers, setting out what is and is not normal and expected preparation for various types of cases.

3. I will support and encourage the CBA to reach out to the public and explain what criminal barristers do and why it matters to each of them.

4. I will continue the excellent work of my predecessors in their work with the MOJ and other government bodies to ensure that we get the best deal we can in terms of funding and payment.

5. I will encourage criminal QCs to provide a more structured method of providing Ethics support and advice to practitioners, especially our younger practitioners, when they are stuck in court and at their most vulnerable.

6. I will encourage and maintain cordial relationships with those representing our solicitor colleagues and seek to establish a commonly agreed set of minimum standards of experience and ability for serious criminal work.

<u>So, why me?</u>

I know I am a "Marmite" person. But I am also committed to ensuring that this profession is the best it can be and that the brightest and best flourish. I believe in equality of opportunity and in a criminal justice system that treats people with dignity and respect.

I am also an experienced and persuasive public speaker with many years of experience. I am able to structure thoughts and arguments to all levels of individual. I enjoy meeting people and talking to them.

I have over 20 years of working for my Inn and elsewhere coping with the various consultations thrown at us with short deadlines for response. I understand the need for reasoned and balanced discussion with politicians, civil servants and judges.

On the other hand, I am not afraid to stand up for what I believe in and support those who do likewise. I believe in our profession and am determined to articulate clearly what we

stand for and why we matter. I want to play my part in ensuring a future for those bright and talented people who want to join us in our work.

I would relish the chance to support the work of our incoming Chair, Francis Fitzgibbon QC who I know well and respect greatly. I believe that we would make a formidable partnership.

The Criminal Bar is special. We are too precious a resource to waste. We need to fight for our future. I am ready to lead that fight.