RED LION CHAMBERS

CLERKS NOTE FOR GMC AND AGM *(June 21 Extract)*

Future Workflows and Associated Clerking Issues

Looking at our current work we can clearly see that there is a significant quantity of good quality work coming into chambers across all levels of seniority and call and the outlook for the next year and beyond on paper looks to be bright. However, I can foresee some real difficulties coming our way in relation to our ability to service the work we currently hold within chambers.

The immediate issue we face is that from speaking to Listing Officers, Judges & Government departments all indications point to the expectation from all parties that there is going to be a significant increase in Court capacity and in the number of cases going through the Court system as soon as the Government take the next step in relaxing Covid rules. We have already seen the announcement that Recorders are now allowed to sit for up to 80 days per year and they are being actively encouraged to book sitting dates.

Whilst we are a comparatively large set our members now undertake a significant amount of work in differing practice areas aside from our core area of Criminal law. Within Chambers it is well known that we have a large number of members currently engaged on Inquiries, Documents reviews and Regulatory case work etc. This work is all a good quality and shows that the attempts to diversify our core practice areas over the past few years has been successful.

However, the unintended consequence of this diversification is of course that despite our relative size, we now have a much smaller pool of members to call upon when we are looking to cover work in the Crown and Magistrates' court. Members of the GMC will recall an in-depth paper prepared by the HoCs for the last GMC held in March titled Tenant Analysis and Recruitment Discussion Paper which set out the statistical position of our membership. I do not intend to go into the contents of that report but would like to highlight the issues that we are facing which means that we are now having to limit the number of cases that we take on for some members. There are many reasons for this some of which are set out below.

Many members are totally inundated with work and have no capacity to accept new instructions at this time. Logically, it seems to me that one of the key reasons for this increased workload is that many cases that were in either fixed or warned in members diaries last year are still outstanding as due to Covid they did not take place. Alongside these new case work has continued to come in. It is well known that the CPS had a large backlog of charging advice work which they were able to allocate resources to whilst the courts were sitting on a skeleton basis during lockdown. This has resulted in many new cases now being charged and beginning to come through the system. It is fair to say that some members hold instructions in double the number of cases that they held this time last year and put simply keeping of top of these is understandably causing significant issues.

At the same time there are those members who due to being inundated with the work they are undertaking in relation to Inquiries, document reviews and or other work means that they are unavailable to go to court on a regular basis.

It is not only the Clerks who are concerned as to the issue we face. It must be noted that these same concerns have been raised by professional clients from differing firms and all centre on our inability to service the work already on our books and accept new work. One consequence of constantly telling clients that we are sorry, but no one is available is that it gives the impression that we have no interest in that work. These concerns have also been repeated to members of chambers and I know that several members have shared them with the HoCs.

Whilst as clerks we are doing our best, a fact fortunately recognised by our clients, we need, to put it simply, some additional assistance from members.

Chambers are a service provider and clients want and expect us to assist them. When work needs to be covered then they expect us to cover it with a member from chambers. When dealing with new work It is rare that we are allowed to accept a new case where it clear that we will be unable to cover an PTPH or other interim hearing in chambers and we are losing good quality work from Chambers because we have been unable to find someone to cover.

We face numerous problems, and they need addressing! If we fail and continue to turn away new work and or return existing work, then there is a real danger that at least one of our clients will eventually pull all their work out of chambers. Once work goes elsewhere relationships will be formed and it will be a long hard struggle to get it back. In a possible worst-case scenario this could lead to us losing one or more members if work upon which they are reliant is taken out of Chambers. Clearly this is a position we must avoid.

I know there are those who believe that we should only accept high quality work, but I am afraid as a Chambers we provide a service which is and must be comprehensive.

Finally, I think it is important to raise a conversation that I have with the HoCs over the past month or so raising my concern that soon we will be in a position where we will be unable to secure cover for a listed case. Over the past year returning a case has become noticeably more problematic. Pre-Covid, sending an email offering a 3-day CPS trial would generally result in numerous offers of named barristers from other sets. This is no longer the case, and we have found that it can take several hours of emailing and then phoning around other sets to find cover. The reasons are unclear. It is possible some members of the Bar have left over the past year; others, like our own members may well have diversified their work areas; others may simply be too busy juggling their own workload. At the very bottom end there is a lack of available pupils for magistrate's court work which may well be due to many sets having cancelled or deferred pupillage programmes last year.

These problems are not limited to our own set. A 3-day prosecution trial last Friday was listed where the chambers instructed were unable to find counsel to attend despite spending many hours trying to find cover. The case went uncovered and I understand that the Senior Clerk and HoC are currently making representations to the Court to explain what has gone on. Further to this I am aware that another large set in London has had similar issues with a listing in the past couple of weeks. Again, no cover was found for a trial, and the Judge has asked for full details of what has taken place from both the Clerk and Head of Chambers. My understanding is that Counsel instructed in the case could be held liable for wasted costs if these explanations are not accepted.

These problems will undoubtedly increase if the Courts expand capacity as is currently planned and I fear that we too will soon find ourselves in a position where a case goes uncovered. I know there are some who may think that there is a simple solution to this, and that we should return warned list cases that appear problematic in advance. Unfortunately, this is not an option. Most of you will appreciate that returning a warned list case is always difficult as no one wants to accept a case and then be held available for the entirety of a warned list period. Besides this, the work would be going out of chambers and would further increase our professional clients' belief that we are not interested in their work. In the case of a CPS trial our statistics, which are monitored by the CPS for returns< would also be damaged.

We need to find a solution before we face a major issue.

MB
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