

18 September 2017



**OPEN LETTER FROM GARDEN COURT CRIME TEAM**

Dear Lord Justice Fulford,

**Re. 'Flexible' Operating Hours Pilot at Blackfriars and Newcastle Crown Courts, Highbury Corner and Sheffield Magistrates' Courts.**

The flawed premise of this pilot has already been communicated to HMCTS by the Bar Council, Criminal Bar Association, South Eastern Circuit and other Circuits, Criminal Law Solicitors' Association, London Criminal Courts Solicitors' Association and other professional representatives. We write to endorse their collective concerns and to emphasise the below:

- The scheme is discriminatory and will adversely impact on *all* court users with childcare responsibilities, namely, judges, magistrates, lawyers, court staff, witnesses, jurors and defendants;
- Trial length may increase with a commensurate and significant increase in financial cost and inconvenience to jurors and their employers;
- The pilot assumes that prison vans will arrive in sufficient time to have a pre-court conference, where necessary, and sit in time for the early shift. Prisons vans arrive late with depressing regularity even within the current timetable, frustrating judges and other court users alike;
- Defendants who are brought back to prison late in the day usually miss meals and the chance to shower, given the inflexibility of the prison regime. This will be a routine problem for those in the late shift;
- There is no mechanism by which a lawyer can be protected from working a longer court day as HMCTS envisage.

We note that the purported purpose of the pilot is to explore the more efficient use of the court estate. The recently released responses to FOI requests suggest that a number of criminal courts are running at less than capacity. It seems to us that it may be more efficient to use that spare capacity, rather than promote a pilot that has so many adverse consequences.

Unlike other courts, Blackfriars Crown Court exceeds its capacity. Putting Magistrates' Court work into that court, as the pilot intends, will make it less, not more, efficient. If the true purpose of the pilot is to justify further court closures by consolidating work into fewer buildings at a supposedly reduced cost, then we remind HMCTS that such closures come at an ever increasing cost to witnesses, victims, defendants and their families, who will have to travel further and further afield to access justice. We invite you to put at the forefront of your considerations the fact that the proposed shift patterns discriminate against those with primary childcare responsibilities (who we know are predominantly women). The demands of criminal practice combined with the low remuneration at entry level, already exclude too many women from being able to return to criminal practice post childbirth. This loss of talent is an embarrassment to a





profession, which is striving to modernise itself, and impacts directly on the make-up of the judiciary.

In recognition of this the Bar Council recently passed a One Bar Directive (please find attached) which all courts were invited to adopt. The directive indicates that 10am-4.30pm sitting hours, in all but exceptional circumstances, are appropriate to ensure that the court as a workplace is both inclusive and non-discriminatory. The proposed hours allow those with childcare commitments to drop and collect their children from school, school breakfast clubs and after school clubs, nursery and childminders (typically with opening hours of 8am-6pm) and to meet all of their professional commitments.

The FOH pilot flies in the face of this welcome modernisation. The proposed hours will have precisely the discriminatory impact sought to be avoided by the directive.

You will of course know (but the general public may not) that court sitting hours and a barrister's working hours are not the same. We conduct out of court conferences with our clients before and after court sitting hours and regularly work late into the night and from early in the morning, foregoing social lives, free weekends and holidays in order to meet our professional duties. We do this without complaint because we recognise and adhere to our duty as officers of the court. However, longer sitting hours have consequences for the mental health and general wellbeing of all practitioners, not just those with caring commitments. The pilot cannot be packaged as an 'impact neutral' change to our working lives.

The judiciary, court staff, prison and probation officers and the Bar are as much a resource as the 'court estate' is. Without us, it will fail. It is unreasonable to expect us to be placed under even greater pressure in order to facilitate a scheme which, in the long term, will be to the detriment of our justice system.

As is now well documented by the BSB and Bar Council, women are already profoundly under represented at silk level and amongst the judiciary. We deprecate a scheme that makes the next Lady Hale a more, not less, remote possibility.

For these reasons, and for those so articulately expressed by all of the professional bodies, we call for the pilot to be abandoned.

**Yours Sincerely,**

**Garden Court Crime Team**

**crimeclerks@gclaw.co.uk**

**cc.**

**Lady Justice Macur DBE**

**Rt Hon David Lidington, Lord Chancellor**

**Susan Acland-Hood, Chief Executive HMCTS.**