the barrister

#105 ESSENTIAL READING FOR BARRISTERS
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Safety at Court: A Cornerstone of Access to Justice

Until April 2024, I took court security and special measures for granted. As a practitioner frequently appearing in the Family Court in domestic abuse-related matters, I would arrive at court and only take notice of the security measures for the time it took to have my Bar Council pass scanned and be ushered through, before I rushed to hunt down a conference room that had hopefully been set aside for my client in accordance with special measures. My blasé attitude came abruptly to an end when I was assaulted last year at court by my opponent, a litigant in person.

This was a case where my client had asked for special measures. She had previously been assaulted by her ex-husband and he had been convicted of this assault. On the morning of the hearing, as is often the case, the court did not have sufficient capacity to cater for the number of cases in the list that required separate conference rooms. Conference rooms – thin on the ground at the best of times – were therefore incredibly limited. I thought I was lucky therefore to secure a conference room for my client at all. However, it quickly emerged that this room did not provide sufficient protection. The location of the room was such that my client had to walk past her ex-husband to get to and from the toilet facilities, or indeed the entrance / exit. Every time she did so (accompanied by either myself or my solicitor), the litigant in person would make comments loud enough for her to hear, seemingly in an attempt to intimidate her. I raised repeated concerns throughout the day to court staff regarding this behaviour, however, there was no other place for the court staff to move him to, nor were there sufficient security guards

Jennifer Lanigan, Barrister, 4KBW

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From Compliance to Commitment: Embedding EDI in the Legal Profession

Disability Pride Month ***("DPM")*** is approaching, and an opportunity to discuss the positive impact the Bar Standards Board's (the ***"BSB"***) package of Equality, Diversity and Inclusion ***("EDI")*** reforms on addressing some of the remaining problems faced by disabled barristers. DPM is held each July to commemorate the enactment of the Americans with Disabilities Act (the ***"ADA"***) on 26 July 1990. The first celebration was held in Boston, and it is celebrated annually in various U.S. cities. Unfortunately, Brighton is the only UK city to host a similar event, despite the UK's potent disability rights activism since the 1980s and 1990s. Protests, including those against negative media portrayals and efforts of disabled people, led to the Disability Discrimination Act 1995. However, we have adopted the annual event into our calendar.

Challenges around accessibility and inclusion remain. Within the legal profession, disabled barristers are leading the movement to address these concerns, coordinated by groups like the Association of Disabled Lawyers (the ***"ADL"***), Neurodiversity in Law, AllBar, Barristers with Lived Experience of Mental Illness (***"BLEMI"***) and Bringing (Dis)Ability to the Bar (***"BDABar"***). Bar Standards Board (the ***"BSB"***) Disability Taskforce and Bar Council's Disability Panel also contribute to representation and reform.

These welcome reforms will introduce an outcomes-focused approach while retaining prescriptive requirements for transparency and accountability.[1] Central to these proposals is the recasting of Core Duty 8 from *"you must not discriminate unlawfully against any person"* to *"you must act in a way that advances equality, diversity and inclusion"* when

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Publishing Director: **Derek Payne**
0203 5070 249
email: **admin@barristermagazine.com**
Publishers: **media management corporation ltd**
Design and Production: **Jeremy Salmon**

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on duty to cover both the court entrance as well as the waiting area. Ultimately, his behaviour escalated to the point where, after concluding my cross-examination of him for the day and after we had left the courtroom, he shoved me, hard, from behind.

Somewhat ironically, on the morning of the assault, the Central Family Court had announced a pilot scheme whereby judges would be robed in the CFC. This robing scheme was introduced with a view to assessing whether greater formality would assist in reducing poor behaviour: the supporting announcement referenced 'concern about incidents of violent and threatening behaviour experienced by judges and court users'[1]. Although not explicitly referenced, this would appear to relate in part to the violent attack in November 2023 against Judge Perusko in Milton Keynes Family Court. As many readers will remember, Judge Perusko was repeatedly punched in the head and had a radiator thrown at him by a litigant in person, who appeared before him in a family case. Judge Perusko required hospital treatment after the attack[2].

The robing scheme was introduced for an initial period of 3 months. To my mind, the scheme was an admirable attempt to improve behaviour in the face of a beleaguered justice system where other concrete measures had simply not been properly funded for years. I am sceptical however as to whether or not the robing scheme made a material difference to aggressive or violent behaviour at court, in the absence of sufficiently numerous and visibly present security staff, for example, or genuinely separate waiting areas, or sufficient conference rooms.

A survey of the impact of the robing scheme was conducted before, during and after the pilot scheme, to assess whether there was any difference in proceedings. Unfortunately this information does not appear to have been made publicly available. It is telling however that 12 months after the pilot scheme was introduced, the Central Family Court seems to have retained robing for judges for children cases and has provided for optional robing in financial remedies cases (this is taken from anecdotal information, and not any public announcement). The retention of the robing scheme would suggest that the impact has been positive, at least to some extent. If it has made a material improvement, it is unclear why this robing scheme has not then been rolled out across the country to other family courts, or indeed to all courts and tribunals generally.

The issue of judicial security continues to remain firmly on the agenda. The Lady Chief Justice for example in her annual press conference in February 2025 noted that 'concerns over judicial security are at an all-time high', before outlining 'a rolling national programme of improvements to courts'[3]. In April 2025, the President of the Family Division Sir Andrew McFarlane dedicated an entire section of his annual View from the President's Chambers to the issue of judicial security; he echoed the Lady Chief Justice's comments regarding judicial security being a priority, and highlighted that training will be given to all Family judiciary in the Spring; that the HMCTS 'Potentially Violent Persons Protocol' is being updated; and that there will be a Judicial Security Taskforce to consider the issue of both physical security as well as online threats and abuse[4].

What was striking about the LCJ's annual conference was her acknowledgement of the necessary limitations upon security due to the physical constraints in courtrooms across the country. She said: *"you all know the issues about [the size of some] of these courts when you'll have a judge sitting in a room a quarter of the size of this with no usher, no clerk, doing a very heated family dispute, taking a parent's child away in a tiny room with no physical barriers at all. So you can understand how problems occur"*[5]. It is evident, therefore, that any security measures or training provided may be inevitably undermined by unsuitable court buildings and courtrooms. I wonder how effective any improved security measures might be in the context where judges tasked with determining a heated family dispute may continue to be required to sit in a small room with no or very limited physical barriers.

I would add a further concern: judges will frequently need to determine disputes involving at least one litigant in person and sometimes two. The most recent Family Court statistics at the time of writing from October to December 2024 show that 39% of private law cases had no legal representative involvement whatsoever, followed by 27% applicant only: at least two thirds of private law cases therefore have at least one litigant in person.[6]Readers who practice will be familiar with the difficulties judges commonly face when attempting to determine complex and emotionally fraught cases involving a litigant in person who rightly or wrongly feels aggrieved by the process or by the other party. This is a particular problem in cases involving domestic abuse where special measures are required. I hate to think what would have happened to my client in April 2024 if she had been left to represent herself at a final hearing against her ex-husband abuser who was willing to act violently, despite being at court. It

was unacceptable that she was exposed to intimidating behaviour, whether directly, or indirectly via her representative, whilst attending court to have her matter determined. It is small comfort to think that she was not required to face her ex-husband alone, but it is a concern that there will be many individuals who do not have the luxury of a legal representative and who will be alone in similar circumstances.

Whilst it is of the utmost importance that judges are properly protected, particularly in the current climate where they are targeted as 'enemies of the people', it is important to ensure that proper security measures are afforded to all court users, not just those on the bench. After all, the CFC announcement back in April 2024 referenced incidents of violent and threatening behaviour that had been experienced by judges *and court users*. It is imperative that all court users can attend court and not feel exposed and vulnerable at a time when they are having to engage in often complex and heated hearings, particularly where they may not have a legal representative. This is especially significant for victims of domestic abuse, who may be re-traumatised during proceedings in the Family Court. Indeed, the Domestic Abuse Commissioner's report of July 2023 'The Family Court and domestic abuse: achieving cultural change' noted that 'victims and survivors of domestic abuse find going through the Family Court retraumatising', and concerningly but unsurprisingly in the writer's experience, 'Special measures, while in theory available, were found often not to be successfully deployed'[7]. Proper measures are required to protect court users from being re-traumatised or exposed to intimidation and violence during the court process. This includes, but is not limited to, genuinely separate waiting areas and secure conference rooms, and adequate legal aid funding for both parties in a dispute.

Are these issues already being addressed? To some extent, yes. Barbara Mills KC, Chair of the Bar Council, has been clear of her agenda

to achieve funding for legal advice and representation for both parties in children matters relating to domestic abuse. In respect of funding for the court system, in March the Lord Chancellor announced 'record' court investment, with funding for repairs and maintenance rising from £120 million last year to £148.5 million this year[8] (though this is far below the sums required to address the repairs backlog). Funding has also been provided for new court centres, such as the new tribunal centre in London at Newgate Street, and a County and Family Court in Reading.

Hopefully these new court centres will have the facilities required to ensure that special measures are not a theoretical ideal, but a certainty for any court users in domestic abuse-related matters. Only by ensuring that there is adequate funding for the justice system – including adequate security, purpose-built conference rooms and courtrooms, and adequate legal aid funding – will there truly be access to justice for all court users.

Jennifer Lanigan, 4KBW

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[1] Courts and Tribunals Judiciary, 'Robing pilot begins at Central Family Court' (15 April 2024) <https://www.judiciary.uk/robing-pilot-begins-at-central-family-court/> accessed 30 April 2025.
[2] Alex Pope, 'Longer sentence for man who threw radiator at judge' (BBC News, 22 November 2024) <https://www.bbc.co.uk/news/articles/cvg75zlg8mpo> accessed 30 April 2025.
[3] Courts and Tribunals Judiciary, 'Lady Chief Justice's annual press conference 2025' (19 February 2025) <https://www.judiciary.uk/lady-chief-justices-annual-press-conference-2025/> accessed 30 April 2025.
[4] Courts and Tribunals Judiciary, 'A View from The President's Chambers: April 2025' (16 April 2025) <https://www.judiciary.uk/guidance-and-resources/a-view-from-the-presidents-chambers-april-2025/> accessed 30 April 2025.
[5] Courts and Tribunals Judiciary, 'Lady Chief Justice's annual press conference 2025' (19 February 2025) <https://www.judiciary.uk/lady-chief-justices-annual-press-conference-2025/> accessed 30 April 2025.
[6] Ministry of Justice, 'Family Court Statistics Quarterly: October to December 2024', section 8 (updated 7 April 2025) <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-october-to-december-2024/family-court-statistics-quarterly-october-to-december-2024#legal-representation> accessed 30 April 2025.
[7] Domestic Abuse Commissioner, 'The Family Court and domestic abuse: achieving cultural change', p14 (July 2023) <https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-Court-Report-_2023_Digital.pdf> accessed 30 April 2025.
[8] Alex Smeiman, 'Westminster update: lord chancellor announces record courts investment' (The Law Society, 14 March 2025) <https://www.lawsociety.org.uk/topics/blogs/westminster-update-lord-chancellor-announces-record-courts-investment> accessed 30 April 2025.

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practising or providing legal services.[2] Under the new duty, all barristers and chambers would take steps to identify and mitigate *EDI* barriers, ie "advance" *EDI*. Beyond the reform to Core Duty 8, a dual framework for self-employed barristers and BSB entities is introduced in the consultation. Firstly, the General Equality Rules set four outcome-based objectives. These are eliminating unlawful discrimination and advancing equality of opportunity; preventing bullying, harassment and victimisation; ensuring equal access to services; and promoting an inclusive culture. Secondly, Specific Requirements include for self-employed barristers and entities include policies, equalities data collection and analysis, action plans, training and disability access and access to premises. Furthermore, Specific Requirements for chambers mandate six core policies to govern practice and enable grievance procedures. These policies cover *EDI*; anti-harassment and bullying; reasonable adjustments, flexible working, parental leave, and allocation of unassigned work.[3] These measures appear to apply proportionately, with sole practitioners exempted from work-allocation policies where not relevant.

Compliance with the Equality Act 2010 alone has proven insufficient. The evidence suggests that the profession inherently fails to address discrimination and ill-treatment. The 2020 Legally Disabled Report (***"The Report"***)[4] highlighted some of the discrimination and bullying experienced by disabled barristers. Of those surveyed, 45% experienced ill-treatment in the working environment and 71% of these barristers believe the ill-treatment was in relation to disability. Ill-treatment, as defined by The Report, includes poor attitudes, lack of understanding, ridicule or demeaning language, refusal of necessary reasonable adjustments, bullying, overbearing supervision and unreasonable performance targets. However, these issues are often unreported, as 54% of the barristers surveyed never reported the ill-treatment they experienced, and 37.5% sometimes reported it. Additionally, only 8.3% said they consistently reported ill-treatment. Requesting reasonable adjustments caused stress and anxiety to the surveyed barristers who asked for them 72.3% of the time. In 2024, the *BSB* noted that despite improvements in diversity, significant challenges persist in recruitment, retention, and addressing bullying, harassment, and discrimination at the Bar. Furthermore, too many chambers occupy heritage buildings lacking step-free access, adapted facilities, or suitable hearing loops. This limits the work opportunities of barristers with limited mobility, hearing and sight. For example, alternative means of meeting other members of chambers, staff and clients become necessary. This causes isolation in a profession where networking is essential.

Change is imperative. The Bar professes "excellence" as its standard and *EDI* must not be an afterthought or a mere add-on. The "reasonable steps" contained in the reforms can and should be scaled to chambers of varying sizes and practitioners at different career stages, which is a real asset. For large commercial sets, this might entail annual *EDI* audits, data-driven reviews of work allocation, and targeted outreach to underrepresented groups. Sole practitioners or small sets could satisfy the duty by ensuring websites meet accessibility standards, engaging with *EDI*-focused "Continued Professional Development", and pre-emptively offering reasonable adjustments to clients and colleagues. The ambiguity of "reasonable and proportionate" allows for context-sensitive implementation. Still, it also places a premium on the *BSB* to issue concrete examples and non-exhaustive toolkits to guide practitioners.

This flexibility should address concerns about a potential conflict with Core Duties 2 and 7, the obligations to act in the best wishes of the client and to a competent standard.[5] These could be compromised if a client's views or instructions are perceived to conflict with *EDI* objectives. Additionally, Chambers fear that conducting detailed