JUDICIARY OF
ENGLAND AND WALES

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IN SICKNESS AND IN HEALTH

Judicial Welfare in England and Wales

Committee for Judicial Studies National Conference 2016

Thank you very much for inviting me to speak to you today on the issue of Judicial Welfare.

First a bit of background.

When I was appointed to the Court of Appeal in 2013, the Lord Chief Justice asked me to become the Chair of the Committee for Judicial Human Resources or HR. This is a committee of the Judges' Council of England and Wales. Like the Judges' Council, it has members who represent the courts and tribunals judiciary at all levels.

It was created in 2012 as an amalgam of the Welfare and Support Committee and the Committee on the Guide to Judicial Conduct. And as you can imagine from these titles, its remit is a very broad one indeed.

I must be frank with you; when I was promoted to the Court of Appeal, getting involved in such issues was not uppermost in my mind. For most judges, I suspect, the use of HR speak is an immediate turnoff – and provokes a strong desire to head for the hills, metaphorically if not actually. The initial unspoken thought, might be that such matters are neither necessary or relevant to the judiciary.

However, neither of those things is true. The fact that we are professionals with a strong sense of duty and vocation does not protect us from the vicissitudes that affect every other mortal.

An article in a recent issue of the British Medical Journal,[1] focused on the question "Why doctors don't take sick leave". The answers it came up with might ring a few bells with you. It identified a culture of battling on through illness, of not letting the side down, because of the effect on patients or on colleagues or on career; a culture where taking time off is seen as a sign of weakness, and where doctors who are ill – and suffering from anxiety and depression for example - are desperate that nobody should find out.

There are, I suggest, several reasons for concentrating on Judicial Welfare, some of which are obvious, and some which are not.

First the obvious one. We owe it to ourselves, as colleagues, to support judges who are ill, or under stress, in a way which may affect their judicial performance.

Secondly, a great deal of time and public money is invested in appointing the most skilful and suitable judges through a rigorous public process; and it is in everyone's interests to keep judges in good health, where possible, and in post. We are an invaluable resource. Judicial skills are not readily replaceable and a premium should be placed on retaining judges for the full period of their appointment, provided they can carry out the functions which their posts require of them.

Thirdly, there is the vexed question of age. Judicial appointments in England and Wales, particularly at the more senior level, tend to be taken up by people who have pursued a professional career for many years and who would normally expect to continue in post until retirement at 70. Age does not merely bring wisdom, we hope, and a free bus pass; it carries with it unfortunately, an increased risk of ill health.

Fourthly, judges are not readily replaceable, whether for statutory or economic reasons or because of the time that the appointment process itself can take. And temporary appointments are not a serious or realistic option.

[1] The BMJ, 12 December 2015, p11, published by BMJ Publishing Group Ltd.

I had not realised how complicated it was to make sure that the right judge was in the right place to decide the right case until I had some responsibility for these matters which I did when a High Court Judge, and a Presider of the Western Circuit. These things do not happen by magic as we all know: and if Judge X is absent intermittently, or for a long and sometimes indeterminate period, it can make it difficult to sort out judicial deployment and the allocation of work.

Quite apart from the administrative side of things, the fifth reason is one that is often unacknowledged; it is that the absence of a judge, or the fact that he or she may not be firing on all cylinders, can put real pressure on colleagues who are left behind, and who may be expected to pick up the slack, particularly if they are in a small court centre.

It follows from all this that the welfare of judges matters on a human level, it matters to the judicial system and it matters to the public at large.
It also follows that we should pay attention to maintaining or preserving judicial health, as best we can, as well as to addressing the problems which arise when someone is ill.

Before coming to the nuts and bolts of what we do or would like to do, some of you may be asking yourselves why this is our responsibility, and why we cannot simply leave it to others, civil servants or administrators with an HR background to sort out.

Certainly, in England and Wales the short answer is that the Lord Chief Justice has been given the statutory responsibility for matters of judicial welfare by the Constitutional Reform Act 2005.[2]

However, the reform which gave him this responsibility, reflects an underlying point of principle which concerns judicial independence.

When we think of judicial independence we think first and foremost about the independence to do our judicial work, to hear and decide cases and to write

[2] Section 3 of the Constitutional Reform Act 2005. The Senior President of Tribunals is given the like responsibility for the welfare of judges and members of the relevant tribunals.

judgments, without external pressure or interference from the Executive or anyone else.

It has long been recognised that judicial independence also involves the ability of the judiciary to have some control or influence over what has been described as "the administrative penumbra surrounding the judicial process". But there is more to judicial independence than that. The independence of each judge which is necessary to uphold the rule of law, is founded on the broader institutional independence of the judiciary as a body, and its freedom from executive interference, in relation to matters which are properly the subject of internal judicial governance.

And health and welfare is one such area. [3] I would add that how we deal with these matters is not simply a matter of internal concern; public trust in the judiciary rests in part on the confidence that the internal structures in relation to judicial governance, work, and work well.

So, let me turn now to some nuts and bolts.

We have had a Health and Welfare Policy for some years now, but it underwent a very substantial revision in 2015.

The previous policy was, undoubtedly, an excellent document, and it had been revised as recently as 2013. However, there were several reasons why we needed to look at it again.

First, hardly anyone knew it existed. It was a classic example, of a document that talked to itself. Certainly, if you mined the judicial website to a sufficiently deep layer, you could find it, but its inaccessibility reflected the lack of attention paid to this topic.

Secondly, the prose was – as one would expect from a judicially crafted document – impeccable. But the guidance lacked any formal process. If someone did manage to

[3] See for example, how the matter was put by Lord Justice Thomas, as he was then, the Senior Presiding Judge of England and Wales in: The Position of the Judiciaries of the United Kingdom in the Constitutional Changes: Address to the Scottish Sheriffs' Association, 8 March 2008.

find it, and read it, they would still have very little idea of what they should do in concrete terms, to help themselves or someone else.

This caused practical problems of governance, but it also meant that Welfare problems were not identified in a timely way.

With the encouragement, therefore of the Judicial Executive Board, and the Judges' Council, the HR Committee set about creating a policy that provided a structure and a clear process to be followed when ill health arises.

Before we drafted anything, we consulted widely to try and find out what the problems were and what it was thought, could or should be done to address them. Hardly rocket science, I accept, but it mattered that we asked, and it mattered that what we produced met a perceived need.

I should say at once that problems are rare. However, under the old regime, the resolution of them frequently took too long because of the lack of clarity about who was supposed to be doing what and when. This was unsatisfactory for the judge who was ill, and who could feel isolated and unsupported; and it was unsatisfactory for those trying to manage the issue. Another concern was confidentiality: judges did not feel comfortable or confident about how this worked in matters of ill health. Equally some of the relevant leadership judges, particularly at a level lower than the Senior Judiciary (Resident Judges in the Crown Court and Designated Civil Judges at Civil Justice Centres) felt they had neither the time, nor the ability to deal with these issues, which were simply beyond their 'ken'.

We did several things to address this. Firstly, we set about creating a policy that provided a clear and consistent framework for managing sick absence. The time scales encouraged early intervention: this matters because the advice we received was that early intervention in cases of stress, for example, can often prevent such problems becoming intractable.

The Policy also brought together in one place, sources of advice and guidance that are available to the judiciary when a problem comes up.

We knew that what was proposed touched on some sensitive issues; and it was important that our colleagues understood what we were trying to achieve and were reasonably happy with any changes. We therefore consulted with the individual associations once we came up with a draft. This stimulated a widespread and helpful discussion about what the Policy should cover, and what it should not; and it also spread the news (and it was news to many) that there was a process, and other help available.

The Policy now sets down clear timelines for every stage, and it makes the responsibilities of those concerned with the implementation of the Policy, clear. It is written in language that is suitable for the judiciary, and avoids as far as possible, what might be termed, "HR speak".

It has sections on managing sick absence; on roles and responsibilities; on procedures; on who to contact; it has a pictorial process at a glance; and it has sections on reasonable adjustments; occupational health referral, medical retirement and disability leave.

Let me touch on roles and responsibilities for a moment. The Policy identifies that judges who are ill should seek the support of their leadership judge when they are experiencing stress or any other problem which might be affecting their health or ability to work; likewise, if they have a health condition that could affect their judgement or performance, or if they are receiving treatment which could do so. They also have a responsibility not return to work before they are well, for their own sake, and because they may not be able to perform their judicial duties properly.

Leadership judges for their part are expected to provide support to judges who are experiencing stress or other problems which might affect their health or ability to work; including by making appropriate adjustments to sitting patterns or other aspects of deployment. They are also expected to stay in contact with judges who are off sick; and to help them to return to work by talking to them, as appropriate, about any support they might need to do so.

The Policy explains how medical confidentiality works. This provides reassurance for those who might be nervous about getting help when they need it, because of what their colleagues might think. The Policy explains the purpose of an occupational health referral and its limits. Contrary to what some believe, judges are not obliged to disclose to leadership judges the details of what their doctors say; and an occupational health assessment simply provides an opinion on a judge's current state of health and a prognosis on his or her capacity to perform the duties of their office.

As I have said, the Policy gathers together information about the support available to the judiciary. And I should like to highlight two sources.

First, the Judicial Helpline. This is a confidential telephone line for the judiciary and their immediate families (partners and resident children). It provides immediate access to "practical and emotional support" from trained personnel 24 hours a day, every day of the year, free of charge. In the first instance, this support and counselling is given over the telephone. But face-to-face counselling is also given to the judges when necessary, again, free of charge.

Secondly, LawCare. This is a charity which provide health support and advice free of charge, for the judiciary and members of the legal profession, all year. As the Policy says, its website full of useful guidance; it has information packs which can be downloaded from the website; and articles on topics of interest; it provides training courses on stress and vicarious trauma; and can refer the caller to a volunteer lawyer who has had similar experiences, for more support. LawCare also provides a 'Wellbeing' portal to help users recognise and manage stress in their lives; and judges who have used the portal have found it to be excellent.

Other practical steps have been taken to make the Health and Welfare Policy effective, rather than merely aspirational.

First, the Judicial College, the body responsible for training judicial office holders, has dedicated part of its leadership training courses to helping judges on matters germane to the responsibilities given to them by the Policy. As part of the training provided to all newly appointed leadership judges across all jurisdictions, the Judicial

College offers a module on managing stress. Topics include an introduction to stress and how it develops; potential for stress amongst the judiciary; how judicial leaders might identify and respond to stress in others, and strategies for how judicial leaders might manage the pressures of their own role.

Michelle Austin, who has designed this part of the course, has a special interest in secondary or vicarious trauma, about which you have just heard. She uses guidance given by the Health and Safety Executive [4] on possible sources of stress that may occur across any field of work, and on the management of stress in others. [5] She tells me that this guidance normally stimulates an excellent discussion amongst the judges of issues that might arise within their different jurisdictions; and that it helps them to understand the "dos and don'ts" of helping colleagues who may be suffering from stress. Everyone learns through these sessions. The participants obviously, but also, more senior judicial leaders, who can be alerted to pinch points and potential solutions to them.

The second and very recent innovation is the introduction of Judicial HR Regional Advisers. These posts are entirely new. The Regional Advisors are part of the Judicial Office, but they work out on circuit: indeed, there is one for each circuit. Their role is to provide advice and support for leadership judges on all matters pertaining to judicial welfare. In any other organisation, there would be nothing radical in any of this, but I understand the Advisors are regarded as a genuine "game changer" because of the professional HR support they provide, in practical terms to judges, 'on the ground'.

These policies and new measures are as much about preserving health as they are about managing sickness. Obviously, we want to prevent stress, and ill health so far as it is possible to do so. And work is still being done on this. This includes developing a "stress assessment" for individual judicial roles to ensure that the support that is given to a judge, matches need. The clearest example of this, is the provision of proper judicial security to those who most need it. Other work is being done to see

[4] http://www.hse.gov.uk/stress/furtheradvice/causesofstress.htm
[5] http://www.hse.gov.uk/stress/standards/index.htm

whether all judges, not merely Leadership Judges, can be offered help through the Judicial College in managing areas of work that may cause stress.

As for the Committee, there is now a much greater focus than before on well-being. Judges may not take kindly to being told they should think about how much they drink and smoke, or that they should take the stairs rather than the lift. But I suspect they would be pleased to share the fruits of best practice from other jurisdictions, where judges are facing the same challenges. There is much that we cannot change in these straightened times, but much which we can.

Before we all leave for a long walk and a vegetable smoothie, let me tell you about a recent programme run for the Canadian judiciary on judicial wellness, as it is called. The Canadian judiciary has access to a free confidential counselling service, as do we; but it also provides a specialised counselling service for judges who have had stressful trials dealing with "toxic evidence." It runs a course called "Survive and Thrive: Optimising Judicial Productivity and Well-Being". Topics covered include vicarious trauma, toxic evidence, and handling high profile cases. There are sessions on the physical and psychological well-being of judges, stress and the ageing brain, judging humour: the benefits of Laughter and Light heartedness and Mindfulness and Meditation. Indeed, meditation sessions are offered after breakfast.

It may be some time, before the Judicial College goes down that route; but I hope that I have offered you, if not some time for Meditation, and least some food for Mindfulness and thought.

Thank you.

Victoria Sharp
18 November 2016