

The Solicitors' Association of Higher Courts Advocates – the Voice of Solicitor Advocates

## Dress, address and redress

Dress and behaviour before the Courts are a current high profile issue, along with conflict resolution between advocates and the judiciary. This article is prepared with Article 1a of the SAHCA Constitution in mind, to promote the maintenance of the highest ethical and professional standards of Higher Court Advocacy.

Recent stories have highlighted the potential need for guidance as to how advocates are to dress and address the Court. Recent decisions of the Courts have similarly focused on conduct by Solicitors, Barristers and Solicitor Advocates.

### Court Dress

Court dress in the criminal courts is easily identifiable as there is specific guidance from the Lord Chief Justice in the form of the [Criminal Procedure Directions General Application A: COURT DRESS](#). However that guidance is limited, to appearing without robes or wigs in the magistrates, and in the crown court wearing gowns and wigs. Wigs are wigs, and for junior advocates only come in one type, no matter which side of the advocate divide you fall on. The gown is always a Solicitors' gown. These basics should also be accompanied by a collar and bands (or collarette for female advocates) which are the same for both sexes and both professions.

In the civil courts, there is even less guidance, the last formal guidance having been withdrawn. Discussions abound and as always guidance is said to be due to be released shortly. What dress is expected often varies dependent upon the judge, and you will learn from experience and advice from court clerks.

In the Senior Courts (Higher Courts), the dress for civil cases is normally robed, however, there are many variations to this. For instance, urgent Queen's Bench Division (QBD) cases are normally argued un-robed, unless they are committal cases in which instance they are often robed. Many of the specialist courts also see advocates normally appearing unrobed.

What is to be worn underneath a robe is something that does not have formal guidance either in the criminal or civil courts. Certainly trainers and a track suit will never be appropriate though! Generic guidance is that court dress should always be sober and not detract from the points that are being made. Criminal cases are generally considered more serious and as a consequence more restrained attire would be expected. You will never go wrong with a white starched shirt (or bib collarette), black suit, whether three piece or two piece, ensuring that this is buttoned up so that nothing shows below the top button of the suit. You should also always be well groomed.

As you mature and become more aware of conventions within the Court, you will notice that many advocates develop their own style, including coloured shirts, pin striped suits and so on. These are fine provided that they do not detract from your case, as if so you will have done your client a disservice. As with all things, advocates should seek to ensure that submissions are made with a minimal amount of distraction possible, this includes visual.

Medals and decorations are not normally worn before the Court, although on ceremonial days, were you are taking part in the ceremony, i.e. as a QC, there may be occasions when you could wear medals. You will be specifically instructed to do so. At Court Martial medals are not worn, although on service dress, ribbons for the medals would appear. These would never appear on the robe itself which always remains unchanged. On the death of royalty weepers as a sign of mourning were traditionally worn, however, it appears that this practice is now discontinued.

## Addressing the Court

When speaking to the Court you must always present yourself as eloquent, and polite, even if by nature you are not. Never get into an argument with a judge, there can only be one loser. Equally nor is your learned friend someone to openly argue with in front of the judge. Make your submissions and answer theirs but do not engage in squabbling that detracts from the matter in issue. Ensure that you refer to the parties by their correct name and/or correct convention. Ensure that you always refer to the judge by the correct title. If you are unsure of pronunciation or the title to use, ask before you go in. There is a comprehensive guide to be found on the [judiciary website](#).

Submissions must be made clearly and in accordance with the code of conduct. You must always remember that whilst your duty is to your client, and you must defend / prosecute without fear, you have an overriding duty to the Court to ensure that it is not misled. This applies equally to making applications on the papers as well as to oral submissions.

## Redress

When disagreements happen, and they will between an advocate and a judge, both parties must be at pains to ensure that they remain calm and polite. Personality clashes can and will happen, but you must always remember that you may well appear before the same judge on another matter in the future. As such you must always maintain your composure, even if others lose theirs.

No matter what the rights or wrongs of the case are it is nearly always the advocate that loses when composure and courtesy are abandoned in the courtroom. A member of the Bar recently found himself facing contempt of court following a heated interchange with a judge. His contempt being the failure to re-appear in the afternoon, when ordered to do so. Only on appeal was he cleared of contempt, although referred to the Bar Standards Board (BSB). The Court of Appeal found that his "wilful and deliberate disobedience of an order of the court [w]as an act of defiance, which is serious misconduct of a type that is wholly inimical to the proper discharge of his professional duties and, furthermore, in total disregard of his duty to the court."<sup>[1]</sup>

In other cases solicitors have recently been reprimanded not for their advocacy, but for allowing applications to come before the High Court<sup>[2]</sup> and the Upper Tribunal<sup>[3]</sup> in respect of Judicial Reviews. The reminder to all lawyers is that their duty is to the Court, primarily, and to their client as a secondary but important issue.

Adam Tear, Director Duncan Lewis

SAHCA committee member

[1] In the Matter of: Ian Stuart West (Appellant) [2014] EWCA Crim 1480

[2] R oao Hamid v SSHD [2012] EWHC 3070 (Admin)

[3] R (on the application of Okondu and Abdussalam) v Secretary of State for the Home Department (wasted costs; SRA referrals; Hamid) IJR [2014] UKUT 377 (IAC)

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