HOW WE TREAT OTHERS: COMBAR'S, TECBAR'S AND THE CHANCERY BAR ASSOCIATION'S BEST PRACTICE PRINCIPLES FOR INTERACTIONS WITH OPPONENTS, TEAM-MEMBERS AND OTHERS IN THE CONTEXT OF BUSINESS AND PROPERTY DISPUTES

Introduction

1. In this document, the Commercial Bar Association of England and Wales (COMBAR), the Technology and Construction Bar Association (TECBAR) and the Chancery Bar Association[1] set out the fundamental principles of professional courtesy, respect, and conduct to be expected of practitioners when interacting with fellow practitioners in relation to Business and Property Division claims and arbitrations, including (in particular) opponents and team-members (the "Principles").

2. The Principles reflect conventional norms of courtesy which have long been at the heart of the English Bar and the best practice to which our members aspire. Nonetheless, they merit express formulation and emphasis as disputes have become more hard-fought and increasingly involve larger teams and (sometimes) interactions on a multi-jurisdictional basis, accompanied by an increasing use of more informal modes of communications and interactions.

3. COMBAR, TECBAR and the Chancery Bar Association believe that adherence to these Principles is consistent with and complementary to our members' promotion of the best interests of their clients in accordance with their professional duties. Adherence to the Principles should be accepted and treated as a central part of the conduct of effective advocacy and as forming an important part of how members are best able to act in the best interests of their clients in a professionally accepted manner.

4. The Principles are not intended to be exhaustive in relation to the conduct expected of counsel. They are additional (and, in the case of conflict, subordinate) to the many obligations to which counsel are already subject under the law, the Bar Standards Board Code of Conduct, other applicable codes of conduct and otherwise.

[1] The Chancery Bar Association and TECBAR are grateful to COMBAR for initiating this project and for the work carried out by COMBAR.

Overarching Principles

When interacting with fellow practitioners in the course of claims and arbitrations, practitioners should expect of each other at all times (always taking due account of their professional obligations and the needs of the case):

1. Courtesy;
2. Respect;
3. Appropriate and respectful treatment regardless of seniority, background or personal characteristics (going beyond compliance with the Equality Act 2010 and relevant provisions of BSB Code of Conduct which is required of all barristers);
4. Consideration of personal wellbeing;
5. Thoughtfulness in relation to known personal, family, religious and any other individual circumstances or commitments; and
6. Avoidance of, and active challenge to, any form of bullying or harassment.

Principles in dealing with Opponents

Specifically in interacting with opponents in the course of claims and arbitrations, practitioners should expect of each other:

1. Observance of the Overarching Principles above;
2. Avoidance of belittling, dismissive, or unequal treatment of opponents, particularly more junior opponents, both in and out of hearings;
3. Avoidance of language, whether during hearings, in written submissions or correspondence, or in other professional settings, that is inflammatory, offensive, or directed at the personal attributes or professional standing of opponents rather than at their arguments;
4. Avoidance of expressly or implicitly disrespectful conduct in hearings (such as name-calling, snickering, exaggerated head-shaking / eye-rolling / loud muttering) especially during submissions or evidence;
5. Avoidance of conduct outside hearings that seeks to intimidate or undermine opponents through personal pressure or misuse of seniority or status. This is not intended to preclude firm, critical or forthright professional exchanges, but to discourage behaviour that crosses the line into personal intimidation;

6. Avoidance of unmerited threats of professional complaints, wasted costs applications or other personal attacks, during hearings or by way of correspondence;
7. Active consideration of known personal, family, religious, or other individual needs or commitments of opponents, especially for listing and timetabling purposes (insofar as consistent with the needs of the case); and
8. Not seeking to take a perceived tactical advantage with respect to the likely personal commitments of opponents when timing hearings, applications or correspondence or in respect of other timetabling matters.

Principles in dealing with Team Members

Specifically in interacting with team members (other counsel or instructing solicitors) in the course of claims and arbitrations, practitioners should expect of each other:

1. Observance of the Overarching Principles above;
2. Active efforts to ensure observance of the Overarching Principles by others and throughout the team;
3. Promotion of constructive teamwork by which members listen actively; avoidance of criticism which is rude, disrespectful or directed towards personal characteristics (as opposed to objective, courteous and professional critique of work product); invitation of views and ensuring each member of the team is given the opportunity to contribute; and ensuring any issues within the team are dealt with in a constructive manner;
4. Where possible, promotion of the introduction of a team protocol for communications at the outset of a case, which takes account of the timing of communications and family and other commitments;
5. Active consideration for the known personal, family, religious or other individual commitments of team members and assistance in such commitments being taken into account wherever reasonably possible; and
6. Proactive challenge to inappropriate behaviour, especially if that behaviour is directed to more junior members of the team.