

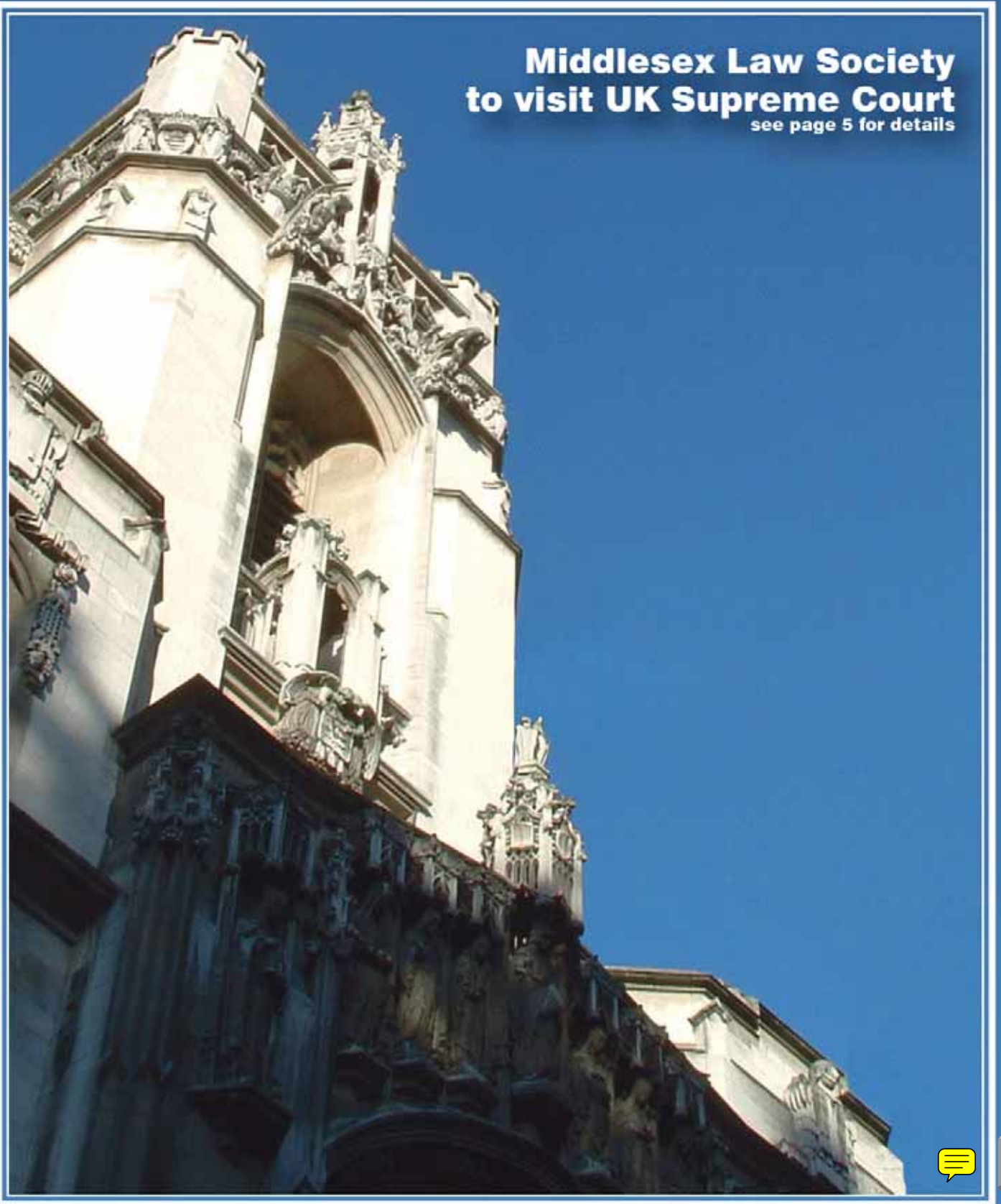


Summer 2009

The Bill of Middlesex

Official magazine of Middlesex Law Society

**Middlesex Law Society
to visit UK Supreme Court**
see page 5 for details



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All views expressed in this publication are the views of the individual writers and not the society unless specifically stated to be otherwise. All statements as to the law are for discussion between member and should not be relied upon as an accurate statement of the law, are of a general nature and do not constitute advice in any particular case or circumstance.

Members of the public should not seek to rely on anything published in this magazine in court but seek qualified Legal Advice.



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FUNCTIONS

Charity Quiz Night - 12 November 2009

Annual Dinner - 3 December 2009

Family Law Dinner - 4 February 2010

See Newsletter for ongoing events

Lunches for specialised interest groups will be ongoing throughout the year. Contact our Administrator or Hon. Social Secretary for details or visit our website.

EDUCATION & TRAINING PROGRAMME 2009-2010

2009

30 September

Crime law Update - Tony Edwards

Others to be announced. Contact the Administrator or visit our website for details.

The venue for the lectures is the Thames Valley University, St Mary's Road, Ealing. Each seminar commences at 6.00pm and includes 2 CPD points. Light refreshments are provided from 5.30pm onwards. For further details to the actual times for each seminar please contact Peter Hesom on 07930 386798.

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COMMITTEE MEETINGS

2009

15 June

20 July

21 September

19 October

16 November

2010

18 January

15 February

AGM

Wednesday 10 March 2010

Parliamentary Liaison

Edward Lock

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e-mail: peterhesom@aol.com

www.middlesex-law.co.uk



President's Page



Middlesex Law Society

Charity Quiz Night

Thursday 12 November 2009 @7pm

Ealing Town Hall
in aid of Cancer Research UK

Reserve your team table for £120 or £12 per head
Contact: rsdrepaul@vickers-solicitors.co.uk

We have set up a series of training and social events for the autumn. These include: wine tasting evening (**17 September**), criminal law update by **Anthony Edwards** (**30 September**), money laundering (**7 October**), and continuing our successful breakfast event in collaboration with 7 New Square Chambers we offer a morning of Mediation in Employment Law (**13 October**), a Jack the Ripper tour (**30 October**), a quiz night in Ealing Town Hall (**12 November**), a child protection seminar (**18 November**).

In addition we are planning a visit by members to the new Supreme Court (**27 November**), and the major social event of our 50th year as a law society is the annual dinner in Pillars. This will be held in the highly acclaimed restaurant at TVU in Ealing (**3 December**). The guest speaker will be **Linda Goldman** author of *Wigs and Wherefores - A biography of Michael Sherrard QC*.

The final event of this year will be a talk on antiques and silver forgeries (**8 December**). In the New Year we will run a family law dinner addressed by **Judge Plumstead**. For further details contact **Peter Hesom**.

The committee has been busy with a sponsorship programme and thanks to **Michael Garson** a lot of hard work has gone on into improving the communications infrastructure of the Society and the MLS website to make it more informative for the membership.

The external climate for lawyers is not a settled one and the Committee is doing its best to keep abreast of the many resource and policy issues that affect the profession. New developments are afoot. One is the meeting we are holding on **2 September** with the Institute of Paralegals who are offering a qualifications framework for non lawyers in the legal world.

We aim to make the *Bill of Middlesex* (through the efforts of **Robert Drepaul**) and the website useful to you as a means of keeping in touch with colleagues, experts and the policy developments in the delivery of law.

I look forward to seeing you at the many events we have organised this autumn.

Professor Malcolm Davies
Head of Ealing Law School and President of Middlesex Law Society
2009-2010
malcolm.davies@tvu.ac.uk



Middlesex Law Society

Visit to UK Supreme Court

27 November 2009

Register your interest with
Robert Drepaul:
rsdrepaul@vickers-solicitors.co.uk



Middlesex Law Society

Annual Dinner

3 December 2009 @6.30pm

Pillars Restaurant
Thames Valley University, W5 5RF
£50 per person

Guest Speaker
Linda Goldman

Contact Malcolm Davies:
malcolm.davies@tvu.ac.uk

How far will you go to beat cancer? **Run 10k**

Running 10k might sound like a challenge, but a little bit of training is all it takes. Join a Cancer Research UK Run 10k and get sponsored, and you will help save lives. Suddenly, 10k doesn't sound like far to go at all.

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To sponsor Robert Drepaul for his 10k run at Hampton Court Palace, 27th September 2009, visit: www.run10ksponsorme.org/robertshamidrepaul



Together we will beat cancer

CANCER RESEARCH UK



REGISTERED CHARITY NO. 1027709



Middlesex Law Society (est. 1959) APPLICATION FOR MEMBERSHIP

Surname _____ Mr / Mrs / Miss / Ms

Forenames _____

Name of Firm or Organisation _____

Postal Address or DX no: _____

Telephone _____

Email _____

Status & Area of Work _____ Date of Admission _____

Would you be interested in joining the Committee? Yes/No

I wish to apply for FULL / ASSOCIATE / FIRM Membership of the Society (see below for details)

I enclose herewith my cheque for £ _____ for the current year, made payable to "Middlesex Law Society"

Signature _____ Date _____

Individual Subscription Rates:

- Full Membership: £50.00 per annum - 3 years since admission or academics
£30.00 per annum - less than 3 years since admission or Members in full-time employment in Local Government or Industry
- Associate Membership: £15.00 per annum - Trainee Solicitors, ILEX members, Paralegals, caseworkers, fee earners and students of law
- Firm Full Membership: Partners/Solicitors 2-5 £125 per annum 6-10 £250 per annum 11 or more £500 per annum

Please return completed form and remittance to: The Administrator, Middlesex Law Society, 55 Brookbank Avenue, Hanwell, London W7 1LA or Middlesex Law Society DX: 5104 Ealing Tel: 07930 386 798

CONTACT THE MEMBERSHIP SECRETARY TO CHECK IF YOUR SUBSCRIPTION IS UP TO DATE



Law Society Excellence Awards

The awards recognise and reward the most outstanding practitioners in the legal professions and are open to individuals and teams across the entire legal sector, not just solicitors.

individuals and firms. These awards reflect the Law Society's commitment to the promotion of excellence in the legal profession."

New categories have been introduced for 2009 to reflect the diverse work of the profession. Individuals are invited to enter one of six categories to win the title of legal executive, advocate, junior lawyer or solicitor of the year 'in-house' or 'private practice'. An award will also be presented to the AWS legal businesswoman of the year. Teams are encouraged to compete for awards in client service, innovation, equality & diversity, environmental responsibility, marketing & business development, practice management, exporting legal services and community investment.

This year the awards will be presented at a celebration dinner at the Royal Horticultural Halls, Greycourt Street, on 22nd October, offering finalists an opportunity to celebrate with their teams and a host of VIP guests.

Entries will be judged by President of the Law Society, Robert Heslett, Vice President of the Law Society Linda Lee, Deputy Vice President of the Law Society, John Wotton, as well as specialist judges in each category.

The awards reward and promote excellence across the legal profession and celebrate outstanding achievement in areas that are central to the profession today. They will demonstrate that lawyers continue to innovate and to deliver work of the highest quality despite the challenging economic climate.

Law Society President Robert Heslett said, "These awards provide a fantastic opportunity to celebrate what is great about our profession. Winning a Law Society Excellence Award is a huge achievement and brings great recognition for



Following the outstanding success of the Excellence Awards since their inauguration in 2007 they are already established as the leading awards for the profession in the legal calendar. This year the principal sponsor will once again be Mercedes-Benz.

EXCELLENCE AWARDS SPONSORS



MEDIA PARTNER



Middlesex Law Society

Family Law Dinner

4 February 2010 @6.30pm

Ramada Jarvis Hotel, Ealing Common

Guest Speaker
HHJ Plumstead

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How Secure is Your Search Data?

David Kempster, Marketing Director of SearchFlow, highlights the changes afoot with the National Land Information Service (NLIS) and how legal professionals should embrace better value technology and support to improve their service to clients.

Property searches have never been far from the front page in terms of controversy due to HIPs or the variable quality of personal searches perceived by the conveyancer.

While HIPs created a low cost, high volume product suited to a commercial HIP provider, it has done little to persuade conveyancers acting for the buyer to undertake less searches. In fact, the most recent SearchFlow survey showed that the vast majority of those polled were replacing searches in a HIP with an official search every time.

So, what does that say about official searches? Actually, it says a lot. Where "buyer beware" still holds sway, legal professionals are choosing to get the official search from the relevant Local Authority as the authoritative source.

With the future of HIPs in some doubt, if a Tory administration comes into power from summer next year, the role of personal vs. official searches in Conveyancing will be further scrutinised.

The next step in the evolution of conveyancing, regardless of the future of HIPs, is to embrace on-line official search ordering – a practice that many legal professionals still have difficulty wrestling with, either due to resistance to change practices or a perception that the National Land Information Service (NLIS) is an expensive option compared to applying to the local authority themselves.

Since December 2008, local authorities in England and Wales have been able to set search fees on a cost recovery basis, reducing the average cost of official local authority searches to about £110, with some boroughs reducing their fees by nearly 50%. Land Data, the community interest company that regulates the NLIS Hub, has also just announced substantial reductions in the cost of processing an official search via NLIS with effect from October and SearchFlow will be passing this onto the conveyancer accordingly.

This marks a real opportunity for conveyancers to embrace more effective on-line working to reduce operational costs significantly.

Additionally, from October, new NLIS channels, in addition to SearchFlow, will ensure that NLIS generates real forward momentum, with new offers opening up to the conveyancer. We see this as welcome competition as the channels demonstrate better value, high quality ways to deliver official search content. At the same time, personal search firms are sure to be plagued by accusations of inferior quality and worsening turnaround time due to the additional information requirements for manual collection that are already in the CON29R.

Data security and quality of support will become ever more vital as conveyancers seek to differentiate their services as we aim to claw our way out of recession and maximize opportunities in the coming years.

NLIS has been operational for some 8 years, processing 17 million searches and counting. It is the only national portal that can deliver connectivity to all local authorities effectively to the legal marketplace in a regulated manner. Other portals will superficially seem to offer the same, but can you be sure that the data transmitted and managed is secure if it is not regulated, whether pricing could change frequently with little notice, whether any behind-the-scenes manual intervention could be fraught with human error and cannot be scalable to your needs?

I see a positive future of on-line official searches that will be better value, better quality with better support, that go a long way to enhance your client's conveyancing experience

Copy Deadlines

Autumn Issue 09	23rd October
Winter Issue 09/10	15th January
Spring Issue 10	2nd April
Summer Issue 10	18th June

Anyone wishing to advertise or submit editorial for publication in the Bill of Middlesex please contact Rob Griffiths, before copy deadline.

**Email: robgriffiths@benhampublishing.com
Tel: 0151 236 4141**

Grab the opportunity

Coming soon – even better value official searches

SearchFlow has been a proud supporter of the National Land Information Service (NLIS) since its launch in 2001. With more than 17 million property searches and counting, thousands of legal professionals nationwide are testament to its success – delivering high speed, high quality Local Authority Official Search content direct to their desktops. NLIS is the proven scalable platform that sends the right message to your clients.

We are the leading provider of official searches, working in close partnership with the NLIS Hub and local authorities to deliver an unbeatable combination of the best customer support, the best turnaround times and the best value.

What's more, from 1st October, the cost of ordering an official search via SearchFlow will be £10* less per search.

 **SearchFlow**
An MDA Business

 **nlis**
national land information service



So don't delay – swoop on this great opportunity and call us today on 0870 430 0031 or visit www.searchflow.co.uk to access a quicker, smarter and easier way to order searches.

* The reduction will be applied to the management charges not to the local authority official search pricing. Offer applies to residential CON 29s only.

College of Law Adds to its Pioneering Roster of Training Consortia

The College of Law has set up two new consortia of London law firms to provide training for their junior lawyers in the areas of dispute resolution and tax.

The College, the largest provider of legal education in the country and also the leading provider of structured post-qualification training in law and practice, has pioneered the use of consortia as a cost-effective training solution for firms.

Its existing programmes cover the practice areas of corporate, banking and finance, commercial property and private client.

The dispute resolution structured training programme consists of twelve courses designed for lawyers from 0 to three years PQE (Post-Qualified Experience). It enables them to secure a thorough grounding in the core areas of the litigation process, from pre-action considerations to judgments and appeals, and including the most common methods of alternative dispute resolution (ADR).

Design of the programme was led by Frances Pryor, the College's Head of Dispute Resolution in Professional Development and a former partner of Herbert Smith. The courses are highly interactive, incorporating two High Court commercial case studies, and the College plans to add more advanced courses as the programme develops.

So far the consortium has been joined by 12 firms which are Berwin Leighton Paisner, Clyde & Co, Dechert, Dundas & Wilson, Lewis Silkin, Lovells, Mayer Brown, Mills & Reeve, Mishcon de Reya, Nabarro, Olswang and White & Case.

Colin Davey, the College's Director of Professional Development, said: "As far as we are aware this is the first training consortium in the area of dispute resolution in the country. The programme leads directly on from work that the lawyers will have done

at Legal Practice Course and Professional Skills Course level, and stretches participants so that they can manage the demands of practice more comfortably."

Patrick McCann, Head of Training at Berwin Leighton Paisner, one of the founding member firms for the consortium, said: "We've been very pleased to see this offering brought to the market, creating new practical learning opportunities for junior associates in the litigation and dispute resolution department, being particularly effective for those with between six and 18 months' PQE."

The College's structured tax programme is aimed at tax lawyers for 0 to two years PQE. It covers the core areas that a junior tax lawyer could be expected to deal with in the early stages of practice - starting with basic principles but extending into a wide range of tax issues relevant to corporate finance transactions.

The style of training is practical and interactive, with a heavy emphasis on relating black letter law and practice to transactions and projects in the office.

The programme was developed initially for Berwin Leighton Paisner and has now been taken by a consortium of London firms including Herbert Smith, Latham & Watkins, Lewis Silkin, Mayer Brown, Nabarro, Osborne Clarke, Pinsent Masons and Simmons & Simmons.

Colin Davey said that the consortium training structure gave value for money to members, through economies of scale and the fact that there is no joining fee. It is also flexible because joining up does not impose any commitment as to the minimum number of delegates sent to courses.

"Law firm training budgets are having a tough time in the current market, which is why the College is determined to keep innovating and providing cost-effective, high quality training programmes," he said.

"The College designs materials in accordance with an agreed specification, sources specialist trainers, provides the venue and administers the programme. Subject to viable numbers, the courses can be run as often as the consortium wants so if a lawyer misses out on one, there should be another running within a reasonable period of time."

Participating in a consortium means that senior lawyers within firms do not have to take time away from client work to carry out internal training.

Other benefits include the following:

- Even if a firm has only one or two potential attendees, it can still take part.
- Recruitment patterns fluctuate. From year to year a firm will not necessarily have the same number for each level of experience. Economies of scale through a consortium should enable consistent availability of courses.
- Even if a firm has enough numbers to merit its own established programme, consortium membership can provide a back-up, not just to cover the factors mentioned above, but also to provide suitable courses for lateral hires who arrive between in-house programmes and who have a gap in their experience.
- The provider and the consortium can create an ongoing dialogue - including formal review meetings - to enable delivery of feedback on courses and also to enable ideas to be generated for course development and for new courses.
- Once a consortium is established, a firm can promote its consortium membership to its current lawyers and to potential recruits. Because consortium membership offers real engagement and involvement, there will be substance behind the promotion.

For information about joining the College's consortium training programmes contact Andrew Collin on **01483 216264** or e-mail andrew.collin@lawcol.co.uk

Rapid Response to Redundancy and Recent Unemployment

My Job My Future is a new programme launched in West London offering support for Middlesex Law firms and their clients. The project is part of a Government and European funded initiative to assist up to 4000 West London people who are under notice of redundancy or have become unemployed within the last 6 months.

Free Programme

This FREE programme can be of benefit to Middlesex Legal practices and their clients and individuals based across West London by:-

- Helping those who are having to make redundancies within their own firms
- Helping clients whose businesses are having to downsize
- Providing additional or alternative support for clients, seeking guidance on HR or employment issues, when facing redundancy or unemployment

Minimise Impact of Redundancy

My Job My Future provides a series of interventions which is aimed to minimise disruption to the client's life and career by providing:-

- Job opportunities with training
- Advice, guidance and training geared to career aspirations
- Access to a huge range of quality training and specialist consultants
- Support for self-employment and entrepreneurship

The Project provides help to move some 1300 clients back into employment.

Referrals are welcomed from all Middlesex Law practices; firms or their clients can obtain full information by calling Diana, Anette or David in confidence on **020 8896 8997**.

The My Job My Future project runs until December 2010.

MY JOB MY FUTURE

ARE YOU HAVING TO MAKE REDUNDANCIES?
 ARE YOUR CLIENTS DOWNSIZING?
 CAN WE HELP YOUR HR AND EMPLOYMENT LAW CLIENTS?

FREE PROGRAMME

- Job opportunities focussed on early return to employment
- Information, advice and guidance on all aspects of career development and training
- Access to a huge range of quality training interventions and specialist consultants
- Help with counselling, financial and benefits advice
- Support for self-employment and entrepreneurship

Available to residents and people over 18 who have been working in Brent, Ealing, Hammersmith & Fulham, Harrow, Hillingdon and Houslow under notice of redundancy or who have become recently unemployed (within the last 6 months)

www.myjobmyfuture.com
info@myjobmyfuture.com
020 8896 8997

My Job My Future
 Swarn House, 296-300 High Street, Acton, London W3 9BJ

Logos: European Union, >lsc



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Grow your firm through Lexcel accreditation

Would you like to improve your profitability and competitive advantage? Improve your marketability to prospective clients? Improve your client care? If so, Lexcel accreditation is for you.

Lexcel is The Law Society's practice management quality mark. Written specifically for the legal profession, it allows any type and size of practice to undergo independent assessment to certify that the Lexcel Practice Management Standards are being met.

Real business benefits of Lexcel
Independent research undertaken in 2005 by Sir Stephen Lander highlighted the benefits of Lexcel. The research showed that firms with Lexcel have benefited from:

- Improved profitability and competitive advantage
- Fewer mistakes
- Improved client care
- Improved marketability to prospective clients

- Improved risk management leading to fewer claims or complaints
- Lower insurance premiums or favourable treatment from insurers
- An established framework to meet compliance requirements (e.g. Regulation Authority Code of Conduct 2007)

What can Quality South East offer you?

Quality South East (QSE) is an accredited assessment body for Lexcel. We can offer a pre-assessment service to enable you to ascertain where you are against the Standard as well as assessment services. If you are an Investor in People, we can also carry out a joint assessment with Lexcel.

One of the law firms QSE has worked with to help achieve Lexcel and Investors in People is TPP Law, a specialist law firm working with public authorities and not-for-profit organisations in areas which include education, housing, health and social care. Mark Johnson, Managing Director said: "Achieving Lexcel and Investors in People has helped us attract and maintain motivated, talented professional and support staff, and to instil a clear set of values and expected behaviours to maintain reputation and high standards of service."

Want to find out more?

If you would like to find out more about Lexcel or Investors in People and how QSE can help you achieve them, please call Maggie Francis on 01329 822067 or email maggie.francis@qse.org.uk.



Let's be clear. Employers can legally make employees redundant but by the same token employees do not have to accept that they are redundant just because their employer says that is the case.

Redundancy has always been relevant in the workplace, perhaps never more so than in the current economic climate. Whether we are still in recession, bumping along the bottom of the economic cycle or benefitting from green shoots of recovery, unemployment continues to rise as employers seek to cut costs and make their organisations leaner and fitter for the future.

It is strange but the new ACAS Code of Disciplinary and Grievance Procedures for dismissal does not apply in redundancy. This does not mean that the employer cannot follow proper procedures, in particular, consultation with all employees who could be affected by redundancy. The employer cannot just pick a few people and get rid of them and call it redundancy! However, if matters are dealt with in a proper manner then the employer can legally make staff redundant.

As an example, a large manufacturing plant in the UK was closed where some 450 people were involved, as the work carried out at

Redundancies - Dos and Don'ts

the factory was being transferred to other company premises, much of it going to Poland. Despite the number of people involved and the complex issues, with all departments and Unions working together and following appropriate procedures, the factory was closed over a period of time, the appropriate payments made to the employees, and no claim whatsoever made against the employer.

However, an employer cannot be blasé when dealing with redundancy; in the case where an employer made a number of people redundant and failed to acknowledge the rights of a female worker on maternity leave, this resulted in a number of claims, including unfair dismissal and sexual discrimination (there is no limit on the amount of the award for a successful discrimination claim) against the company. The company's method of dealing with the matter meant that she was not properly made redundant or should not have been made redundant at all.

Here are some simple dos and don'ts:

- 1. What is a redundancy dismissal or what can give rise to a redundancy dismissal?**
 - i The closure of the business in whole or in part.
 - ii The employee will no longer be required to do their job due to an economic downturn and/or business restructure.
 - iii The place of work was closed where an employee is employed by the employer.
 - iv A diminishing requirement for an employee to carry out work of a particular kind at the place where they are employed.
- 2. What needs to be done for redundancy?**
 - i A staff meeting with employees to introduce the employer's intentions.
 - ii First individual consultation meetings with employees.
 - iii Seek volunteers for redundancy and for employees to put forward their suggestions to avoid redundancy.
 - iv A fair selection process, including what is called "pooling" of employees in that it is not the employee in person who is redundant but their job and consideration must be given to all employees who could be affected by redundancy to decide which one should be made redundant in any particular case, if at all. The selection process can often be dealt with by a proper scoring process.
 - v Inform employees affected of their provisional selection for redundancy.
 - vi Second individual consultation meetings with employees.
 - vii Consideration of suitable alternative employment for affected employees.
 - viii Additional individual consultation meetings if required.
 - ix Written confirmation of the redundancy decision.
 - x Give the employee a right of appeal against the employer's decision to dismiss on the grounds of redundancy.

All these decisions and the process leading up to them should be properly considered and documented.

Continued



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CONTENTS



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Consultation – you need to do it!

Consultation provides an opportunity for the employer and the employee affected by the redundancy situation to discuss the redundancy that the employee is faced with; to obtain suggestions from the employee on possible ways to avoid the redundancy and to provide an opportunity to reduce uncertainty by the employee on the process and what they are faced with.

Collective redundancies – More than 20 employees facing redundancy – it's a little different

An employer looking to make more than 20 employees redundant must still follow a fair and reasonable redundancy process and go through a collective consultation process. Employers in such situations are advised to seek advice on ensuring that the proper processes are followed.

The Most Common Mistakes in Redundancies

Not following the proper procedures. Other mistakes can happen but by far and away the most likely basis for a claim by an employee against an employer in such situation is that the employer has failed to demonstrate a proper decision making and execution process in making staff redundant.

Redundancy payment – how much does it cost/does the employee get?

Some employers pay more than the statutory amount but the statutory sum, which is the sum that employers must pay, is made up of a simple algebra formula being number of years of service (this is completed years of service to a maximum of 20) multiplied by the gross weekly wage (maximum £350 as of the 1st February 2009) x 1, or in the case of years of service over 41 x 1 1/2.

In addition the employee is entitled to all their benefits under their contract which would apply under a notice period.

Redundancy is not a pleasant topic, either for employers or employees, but is a fact of economic life. As in all such circumstances, matters have to be dealt with on an individual basis but there is no reason why the process cannot be completed in a proper legal and efficient manner if dealt with appropriately by the company.

Julian Goulding
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Negotiating your 2009 Professional Indemnity Insurance Renewal

For many firms the change in the Professional Indemnity Insurance market conditions last year took them by surprise. Insurers, under increasing pressure due to rising claims and a lack of investment income, were looking to lower the risk exposure within their client portfolios. As a result of this many firms saw increases in premiums and excesses. Will these conditions continue at renewal in 2009? The answer is "yes"!

When the insurance market starts to "harden" there is a temptation to send a proposal to all who offer their services in an attempt to ensure no stone is unturned. Flooding the market with multiple applications, however, can work against the firm. Understanding the options available to your size of firm is imperative. Talk to your advisers at an early stage to establish how you are going to access the market to your best advantage.

Start to collate information now. The insurance market is different this year and this is not the year for late submissions. When considering the renewal of a law firm's PI policy the proposal form constitutes the bulk of the information considered. They are, however, often incomplete, contain errors or are untidy and generally unprofessional. The proposal form will be one of the most important documents you complete in the course of a year and therefore due care and attention are required and strongly recommended.

Insurers want to see all claims information relating to the firm they are being asked to provide a quotation for. Firms should request a Qualifying Insurers' Claims Schedule (QICS) from every insurer they have been insured with during the previous 6 years - even if only to confirm there have been no claims or circumstances notified.

It needs to be remembered that the process of renewal is complex and the insurers' underwriters will review many proposal forms. Most insurers select the risks that not only look good on paper but also "feel" right. How does your firm ensure that they make the best of their negotiations this year and therefore obtain the best combination of both cover and cost with the right insurer?

Whilst the criteria used by each insurer to establish their risk rating will appear to be similar, there are subtle differences that need to be understood and prepared for. These criteria may change from year to year so obtaining good advice has never been more important. Entering into the renewal negotiations effectively blind or leaving things until the end of September will only increase the chances of your firm being unhappy with the outcome of negotiations.

Insurers sometimes offer a quotation with subjectivities attached. The responses to these need to satisfy insurers' concerns and cover will not be confirmed if any of the subjectivities remain outstanding or if insurers are in any way dissatisfied by your response. Likewise, many insurers will not confirm cover until they have received cleared funds or a funding agreement has been arranged to their satisfaction.

It is clear that the renewal in 2009 will be challenging for many firms. Now is certainly the time for independent and specialist guidance to ensure obtaining PI insurance is not a problem for your firm.

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Lawfulness of contingency fees in probate genealogy

Constance McDonnell is a barrister at 9 Stone Buildings, Lincoln's Inn

In today's modern age of transient living, portfolio careers and extended families, probate can be less than straightforward to complete. By law, all reasonable steps must be taken to locate all the beneficiaries of an estate before the estate can be distributed. Solicitors, executors, administrators and trustees of estates may more frequently find they have to turn to probate genealogists (sometimes referred to as heir-locators) to help distribute assets to their rightful heirs.

There are two types of fees charged by probate genealogists to locate beneficiaries. The first type of fee is the so-called "contingency" fee arrangement where genealogists charge nothing up-front and do not charge anything unless they find the missing heirs. If, however, they do find the missing heirs, they charge a proportion of the inheritance due to that heir, typically between 10%-30%. The percentage fee is agreed with each beneficiary or the executor/administrator to the estate. In these cases, the fee received by the genealogist can rise proportionally with the value of the estate.

The second cost basis is where the genealogist charges a fee based on a fair reflection of the amount of time, effort and skills needed to locate beneficiaries. Such fees are agreed in advance with the probate practitioner handling the estate. The fee agreed is often a fixed fee. These fees are proportionate to the work that needs to be undertaken, rather than to the value of the estate.

There are good reasons for professionals involved in the administration of estates to have significant concerns about the legality of contingency fee agreements used in these circumstances, which have been set out in some detail in a recent

Counsel's opinion provided to Title Research, one of the few firms in the sector that does not charge contingency fees. A copy of that opinion is available from Title Research upon request. The arguments canvassed in that opinion and in this article should not be advanced by any person without having obtained independent legal advice based upon that person's particular situation.

Where an executor/administrator or professional adviser (e.g. solicitor) agrees to a contingency fee agreement to find beneficiaries, it is agreed on the basis that the executor/administrator does not pay anything out of the residuary estate towards the cost of locating those beneficiaries – instead such costs would be paid out of those beneficiaries' respective shares of the estate, thus depleting their inheritance (possibly to a far greater extent than would have been the case if such costs were paid out of the residuary estate). There is a well established common law principle that the personal representative has a duty to preserve the estate. A personal representative (PR) who instructs or allows an heir-locator to trace beneficiaries on the basis that it will then present any traced beneficiaries with a 'contingency fee' agreement, may be found personally liable to a beneficiary for having breached his duty as a PR of the estate, and possibly his fiduciary duty, as a result of the beneficiary's share of the estate having been depleted by the contingency fee.

A beneficiary who has signed a 'contingency fee' agreement with an heir-locator is likely to have an argument that such an agreement is unlawful as 'savouring of champerty', so that the agreement is not enforceable by the heir-locator. This argument is based on the well-established principle that a third party should not profit by assisting a claimant to prove a case. In other words, an heir-locator (who is likely to have to provide his expert assistance to prove the claim of that particular beneficiary to his inheritance) should not be permitted

to profit by taking a slice of that inheritance as his fee for providing his expert assistance. A beneficiary who has signed such a contingency fee agreement may well be entitled to notify the heir-locator and the PRs of the estate that he considers that the agreement is unlawful and unenforceable (although if they are not enforced, the heir-locator may still be entitled to a *reasonable* fee based on time spent for the work he has done).

It is considered that it would be improper for a PR to permit the value of a beneficiary's share to be depleted by entering into a contingency fee agreement; and the only proper method of charging would be according to an hourly rate or fixed fee. Either an hourly rate or fixed fee might be objectively viewed as a reasonable and proportionate reflection of the research carried out to locate missing heirs, and therefore properly payable by a PR, depending upon the commerciality of the fixed fee and the extent to which the number of hours of work to be undertaken by the heir-locator is clear in advance.

Best practice tips

1. Prompt action is essential. You do not want to find out at the last minute that you have no money to fund research to locate the beneficiary.
2. Consult two or more firms of probate genealogists as advice is free. You should receive a detailed assessment, covering the likely prospects and any foreseeable difficulties.
3. Discuss the genealogists' advice with the PRs. Revert to the genealogists to answer any questions or concerns you have.
4. Select a reasonable charging method (either an hourly rate or a fixed fee), bearing in mind the PRs' legal duty to preserve the estate assets for the benefit of the heirs.

A full copy of Constance McDonnell's legal opinion is available on request from Title Research, email: info@titleresearch.com, tel: 020 7332 9056, www.titleresearch.com



Benefit Fraud

By David Winch

David is a forensic accountant specialising in crime and proceeds of crime and a director of NIFA member Accounting Evidence Ltd. www.AccountingEvidence.com

In this article I cover some key points relating to benefit fraud from the perspective of a forensic accountant who is often instructed on behalf of defendants in such cases.

Typically the client will be charged with one or more offences under the Social Security Administration Act 1992. Sometimes a domestic partner may also be charged.

This is not the easiest piece of legislation to follow as it has been amended – and the amendments have themselves been amended! Even prosecutors are apt to quote incorrect section references, which can add to the confusion. An important difference is that the more serious offences under section 111A (which carry a maximum sentence of seven years imprisonment) necessarily involve dishonesty, whereas the summary offences under section 112 do not.

Fraudulent claims

In practice most criminal charges fall into one of three types. These allege:

- A claim has been made for benefit which was illegitimate from the start, contrary to s111A(1) or s112(1);
- Claims initially were legitimate but have continued illegitimately despite a change of circumstances, contrary to s111A(1A) or s112(1A), or
- An individual, who is not himself the claimant, has caused or allowed an illegitimate claim – which may be contrary to s111A(1) or s112(1) if that claim was illegitimate from the start, or contrary to s111A(1B) or s112(1B) if there has been a failure to notify a change.

As prosecutors may include several counts in one prosecution, and the different counts may be of different types, it is necessary to carefully tease out exactly what the prosecutor is alleging and what evidence he is adducing in relation to each count.

It is not unknown for such careful analysis to reveal that the prosecution has little or no evidence in support of some of the counts charged.

Where an offence under s111A is alleged the prosecution must prove dishonesty and that the offender himself realised that he was behaving dishonestly by the standards of ordinary and decent people (the *Ghosh* test).

Where there is an alleged failure to notify a change the prosecutor must show that a change has occurred, see *R v Mote* [2007] EWCA Crim 3131, and that the change actually would have affected the benefit payable, see *R v Passmore* [2007] EWCA Crim 2053.

Where an individual who is not the claimant is charged with causing or allowing a failure to notify a change that individual must have been active in some way in that failure. Mere inaction in the face of a failure of the claimant to notify a change of which the claimant was fully aware, is not sufficient, see *R v Tilley* [2009] EWCA Crim 1426.

Mitigation

In benefit fraud cases there may be substantial mitigation to be offered whether on conviction or on a guilty plea. The personal circumstances of the offender and the motive for the offence will be relevant to sentence.

A further factor which may sometimes be overlooked is the defendant's entitlement on the true facts to other benefits, such as tax credits, for which no claim has been made. In many cases in which, for example,

entitlement to income support or jobseeker's allowance has been lost, there will have been an entitlement to tax credits which have not been claimed. Such unclaimed entitlements are recognised as a factor in mitigation, see *R v Parmer* [2006] EWCA Crim 979.

Confiscation

In many benefit fraud cases before the Crown Courts the defendant, if convicted, will satisfy the criteria of a 'criminal lifestyle' under s75 Proceeds of Crime Act 2002 where the 'benefit' of an offence is £5,000 or more and the offence has continued over at least six months. However, in practice confiscation proceedings may not be instigated where the defendant has no substantial assets.

Using a forensic accountant

The defence will wish to have the prosecution's figures of the illegitimate benefits paid carefully checked. Where appropriate a calculation of tax credits and any other benefits to which there may be an unclaimed entitlement should be put forward in the course of mitigation.

A forensic accountant with appropriate skills and experience, whose fees may be covered by a prior authority from the LSC, can be invaluable to the defence in these circumstances.



Confiscation?

Accounting Evidence Ltd are forensic accountants specialising in crime and proceeds of crime, including restraint, confiscation and civil recovery proceedings under the Proceeds of Crime Act 2002 and earlier legislation.

The firm acts in cases throughout the United Kingdom.

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FILM & THE LAW No 5: Sex and the single lawyer



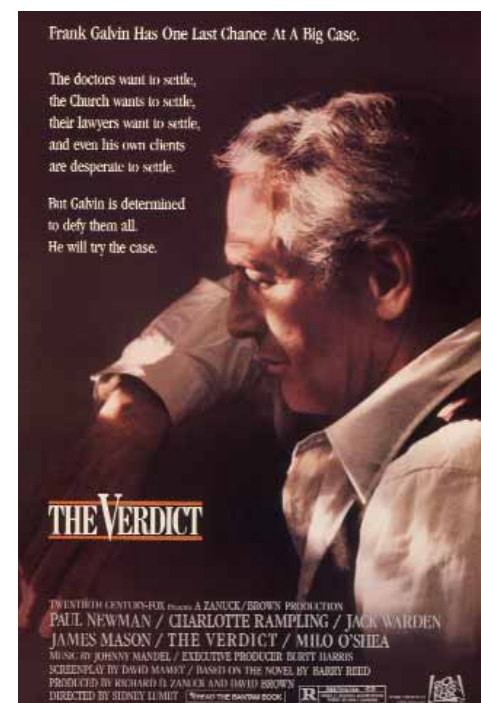
By Vincent McGrath
The author runs The Film Nite film group on Tuesdays at The Soho House Club in central London. The next term commences October 2009.
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A Hollywood icon, almost as famous for his saucy products as his screen appearances, sadly died recently. His passing was rightly marked with extended obituaries that focused not just on his memorable performances but also his philanthropic activities, the latter marking him out as a thoroughly decent man.

Marvellous though he is as Butch Cassidy, to say nought of Cool Hand Luke and the Hustler, for me it is his performance as the one-case-a-year ambulance chaser Frank Galvin, that will forever linger in my filmic memory. We first meet him at the wrong kind of bar, playing pinball would you believe? If that's not reprobate enough, he also smokes and has an alcohol dependency problem. A low life lawyer in a crumpled suit. Interest levels soar. Next we see him being ejected from a funeral parlour after he tries to slip his business card to the father of the deceased. It's getting better.

David Mamet's Oscar nominated script gives Paul Newman what in my opinion must be his greatest role, and in the hands of director Sidney Lumet, **THE VERDICT** (1982) is transformed into a highly satisfying cinematic experience, with bags of law thrown in for good measure.

Meanwhile, Frank gets a client - a young woman in a vegetative state, which allegedly is the result of medical negligence. It is assumed that he will settle with the hospital lawyers, headed up by the viperous James Mason. But our hero has other ideas. He takes a Polaroid photo of his client, and as the image slowly appears on the photographic paper resting on the unfortunate woman's hospital bed, we have a visual motif of Frank's mind as it slowly but surely comes into focus. This is the one he will fight. Redemption beckons.



He turns down an astronomical sum, and gets a punch on the nose for his efforts from the client's not so caring brother-in-law, who wants to settle for guaranteed dosh. Lawyers getting duffed up! It's got to end in tears.

Later, back in the bar and taking a break from pinball wizardry, Frank encounters Charlotte Rampling, who fails to mention when they later rumble in the

bedroom, that she is in the pay of Machiavellian James Mason and his cadre of supercilious corporates.

Things go wrong. Witnesses mysteriously disappear. He's not ready for trial. But the never say die advocate tracks down one of the nurses present at the operation and our heroic lawyer steals, yes steals, her phone bill which lists all her calls. She becomes the surprise witness and reveals the cover up. Wow!

His closing speech to the jury is masterful. Slow build-up with lots of dramatic pauses and appealing to their sense of decency - a speech I've reprised in my local mags court on many an occasion with excellent results. Not really.

The final scene has the distraught Charlotte constantly ringing the now teetotal victor and him not picking up. What strength of character?

Now that's what I call a lawyer role model. Not for me the squeaky clean father and son team of the 60's TV series *The Defenders* or Gregory Peck in *To Kill a Mocking Bird*. Give me skid row Frank wrestling with his personal demons (not to mention dear Charlotte), and standing up for justice against the smug well-heeled defenders of a negligent hospital. It's poverty row law versus magic circle law. A story almost as old as time itself. David v Goliath. And David wins again can you believe?

David, that's David Mamet, of course, wrote the script. And much admired it is too. He started off writing plays such as his witty critique of capitalism *Glengarry Glenross*, and the even wittier satire on Hollywood, *Speed the Plough*, recently revived at the Old Vic with Kevin Spacey and Jeff Goldblum. There was a woman in there somewhere as well, but she was hard to find. Her role was a bit like Charlotte's in that her purpose was to act as a conduit between the two male leads. Things are no better in *Glengarry Glenross* where female characters are distinguished by their absence.

You see David doesn't do women, unless they happen to be his latest girlfriend/partner/wife, and he's directing a film of one of his own scripts. Then she gets the lead. One can't help feeling that if David were to have a road to Damascus moment and change his career to, say, for example soliciting, he would be in difficulties with the Law Society's equal opportunities policy. But he's in show biz, and there he will stay. If for no other reason than he can write his own scripts and by definition his own rules. Apparently that's creative freedom, and very nice it is too. But one wonders, who are the beneficiaries? Certainly not the legion of unemployed female actors gnashing their teeth at what some people may describe as thinly disguised misogynistic productions.

Meanwhile back at the film and its far from complex moral, which can be summarised as follows:-

If you are into civil litigation always check out the credentials of any prospective partner, particularly if she is a lawyer and bears a passing resemblance to Charlotte Rampling. Unless of course you go by the name of Frank Galvin and bear a more than passing resemblance to Paul Newman. In



which case you will probably not only be able to have your cake but also you will doubtless be able to eat it as well, with a variety of autographed exotic sauces to boot!

Here's to you, actor, sauce inventor, and general all round good guy.
Paul Newman 1925-2009 RIP





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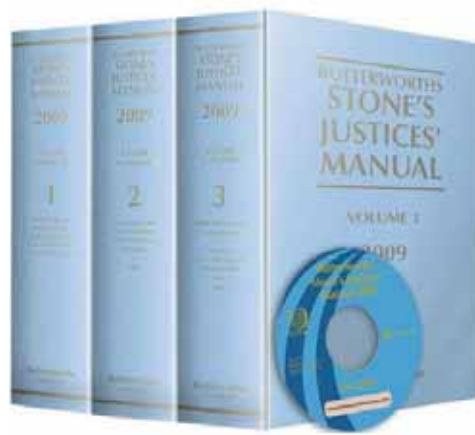
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Book Review



Butterworth's STONE'S JUSTICES' MANUAL 2009

EDITORS:
P. Carr and A. J. Turner

Human Rights contributor: Keir Starmer QC,
Licensing contributor: Ian Seeley

ISBN: 978-1-4057-4259-7

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THE 2009 EDITION LEAVES NO STONES UNTURNED

An appreciation by Phillip Taylor MBE and
Elizabeth Taylor of Richmond Green Chambers

Not for nothing is Stone's Justices' Manual referred to as the Bible for criminal practitioners, in particular, justices' clerks in the magistrates courts and the legal workforce. It's capacious, compendious and strangely compelling, with a mighty reputation for being indispensable, complete, thorough and unassailable.

Certainly it has the weight of almost two centuries behind it, the first edition having appeared in 1842, edited by Samuel Stone himself, who also presided as editor over the next seventeen editions from 1842 to 1874. This latest edition by Carr & Turner is the 141st in 167 years so it's an established publication and very heavy at 10,000 pages - you get a natty plastic carrying case and a CD for those who have the time for new technology ...and weak arms!

If you're a practitioner, Stone's is the one-stop reference source containing everything you need to know for your criminal practice (and the civil bits the justices still retain). Year after year, Stone's continues to be relied upon to provide the most reliable and current coverage of the legislative changes affecting magistrates' courts, including all existing new and amended legislation and hundreds of new cases that set precedents or clarify particular principles of law.

This massive and formidable three-volume work covers criminal law, procedure, evidence, sentencing, family law, youth courts, licensing, road traffic, transport and offences (from 'agriculture' to 'game' and from 'health and safety' to 'witnesses').

Ready reference pages quickly direct you to what you need to know by topic, or by statutory provision and paragraph numbers. For convenient reference, all new material for 2009 is included in the preface which is well worth reading in detail every year. Do familiarize yourselves with the layout as the cases and main index are in the final volume which actually works quite well because of the sheer size of the work. Our abiding memories of it remain, however, with the wafer-thin paper it's made of, and its massive content - it brings a whole new meaning to the concept 'ignorance of the law is no excuse!'

Were all this not enough, then Stone's also gives us a number of other goodies in the accompanying CD which contains the full contents of the Manual, with hyperlinks to cases from:

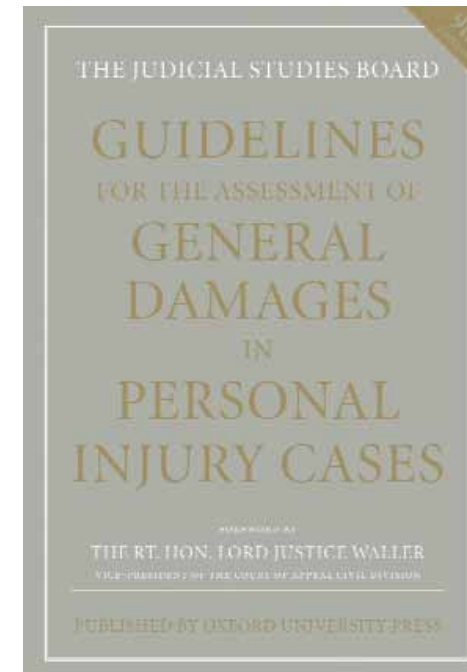
- All England cases and statutory material
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So there you have it! As a criminal or indeed a civil practitioner for that part of the justices' jurisdiction, can you live without Stone's during the course of your career? We doubt it. The Butterworths Supplements are also a fundamental part of the package with updates and new commentaries which are fully cross-referenced to the main work.

If you will pardon an unpardonable pun to end, Stone's is the rock on which many a legal toiler has relied upon to build up a truly solid practice - this is hewn by those who made Stonehenge, but it's not quite as old!

YouTube:
<http://www.youtube.com/watch?v=GcGznpmrFow>

Book Review



THE JUDICIAL STUDIES BOARD: GUIDELINES FOR THE ASSESSMENT OF GENERAL DAMAGES IN PERSONAL INJURY CASES - 9th EDITION

Compiled by Mr Justice Mackay, Martin Bruffell,
John Cherry QC, Alan Hughes and Michael Tillett
QC

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THE PI BIBLE FROM AND FOR THE JUDGES

A review by Phillip Taylor MBE, Barrister-at-Law,
Richmond Green Chambers

This work first appeared in 1992, and at that time, Lord Donaldson wrote that there could be no doubt about the practical value of this volume. Since then, the work has become essential for practitioners and now I would not dream of advising on a personal injury matter without referring to the JSB Guidelines first. The guidelines are always well received, and they have a clear and well received influence on the judiciary. Colin Mackay explains the current need for the work as a record of the levels of awards and settlements which we use as a starting point for our advocacy.

Updates are always difficult but I believe Mackay J and his team have produced the level of consistency needed for the making of awards which served the interests of justice as well as any person can. Lord Justice Waller, in his Foreword, welcomes the work and highlights the comments from the book's readers together with all the different areas where reports are to be found which makes the working party's job so difficult.

This is not, however, a 'ready reckoner' but, as Mackay says, it distils the conventional wisdom contained in the reported cases, and supplements it from the collective experience of his working party, presenting the result in a convenient, logical and coherent form.

The work is now widely adopted as the starting point in negotiating levels of payment for general damages in personal injury cases. Contents cover the following: Injuries Involving Paralysis; Head Injuries; Psychiatric Damage; Injuries Affecting the Senses; Injuries to Internal Organs; Orthopaedic Injuries; Facial Injuries; Scarring to Other Parts of the Body; Damage to Hair; Dermatitis and a useful index.

The publishers send copies of these guidelines to all hearing PI cases, and it is an indispensable tool for all legal professionals involved in PI litigation, from lawyers to insurance companies, trades unions and medical defence organisations.

Today, I cannot be without my copy of the JSB guidelines, and I know the clients appreciate the wisdom they give!

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Gain new business while changing lives with Will Aid

Last year solicitors all over the UK found that Will Aid, the UK's leading charity Will-making scheme, introduced them to thousands of new clients and, at the same time, gave them the opportunity to raise nearly £1 million for some of the UK's best loved charities.

With the 2009 campaign planned for November, Will Aid is urgently seeking more solicitors to participate. During November, instead of charging for drawing up a basic Will, Will Aid solicitors will waive their usual fee and ask instead that the client donate the fee they would normally have been charged to the Will Aid charities. The suggested minimum donation is £75 for a single Will, £110 for mirror Wills.

The scheme couldn't be easier to operate and you are free to decide how many Wills to write under the scheme. Joining Will Aid enables you to attract positive publicity and new clients to your business while raising vital money for charity.



Mallika has benefited from joining the Women's Collective
Photo courtesy of Harriet Logan, Network/Christian Aid.



Save the Children improving young lives.
Photo courtesy of Save the Children.

First time participant Trusha Velji of We Solicitors LLP, Manchester explained the benefits to her business:
"I think Will Aid was great. Trying to set up a department is never easy, but in the Wills and Probate department it's that much more difficult. Will Aid month actually gave us the highest number of clients."

And regular supporters, TWM Solicitors LLP with offices in Surrey and Wimbledon, who raised well over £8,000, also had a great campaign. Victoria Adams, Associate Solicitor, explained why she thinks the campaign was so successful:

"For TWM, Will Aid was a very positive experience. Our Will Aid clients were very pleased that our firm was participating and many said they were surprised and impressed that solicitors would prepare Wills in this way. Because they received such good service, many clients said they would consider us to be "their solicitor" for future legal matters. We have been appointed Executors for several of the Wills drawn up and have already received conveyancing referrals."

Will Aid expects to better the huge publicity achieved in the last campaign to ensure that all participating solicitors gain the maximum possible positive publicity nationally and in their local area. This will inevitably attract lots of interest from the public who are really motivated by the scheme. Will Aid's research has shown that Will Aid clients have higher than average incomes and are likely to choose their Will Aid solicitor for their future legal work.

In difficult economic times, it is particularly important to stand out from the crowd and make a positive impression on potential customers. Why not join Will Aid, help more people make a Will and at the same time make a positive difference to the lives of the thousands of people all over the world helped by the Will Aid charities?

To find out more, please log on to www.willaid.org.uk. To take part, all you need do is register on-line. Alternatively, you can email shirley@willaid.org.uk or phone the Campaign Office on 01460 271178 to receive all the information you need to participate successfully.



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Client Care & Professional Standards (Corporate) Day 2*	16 September 2009

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Client Care & Professional Standards (Commercial / Private) Day 2*	18 September 2009
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*Please note: Client Care & Professional Standards Day 2 cannot be taken within the first 6 months of your training contract.

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