Summer 2010

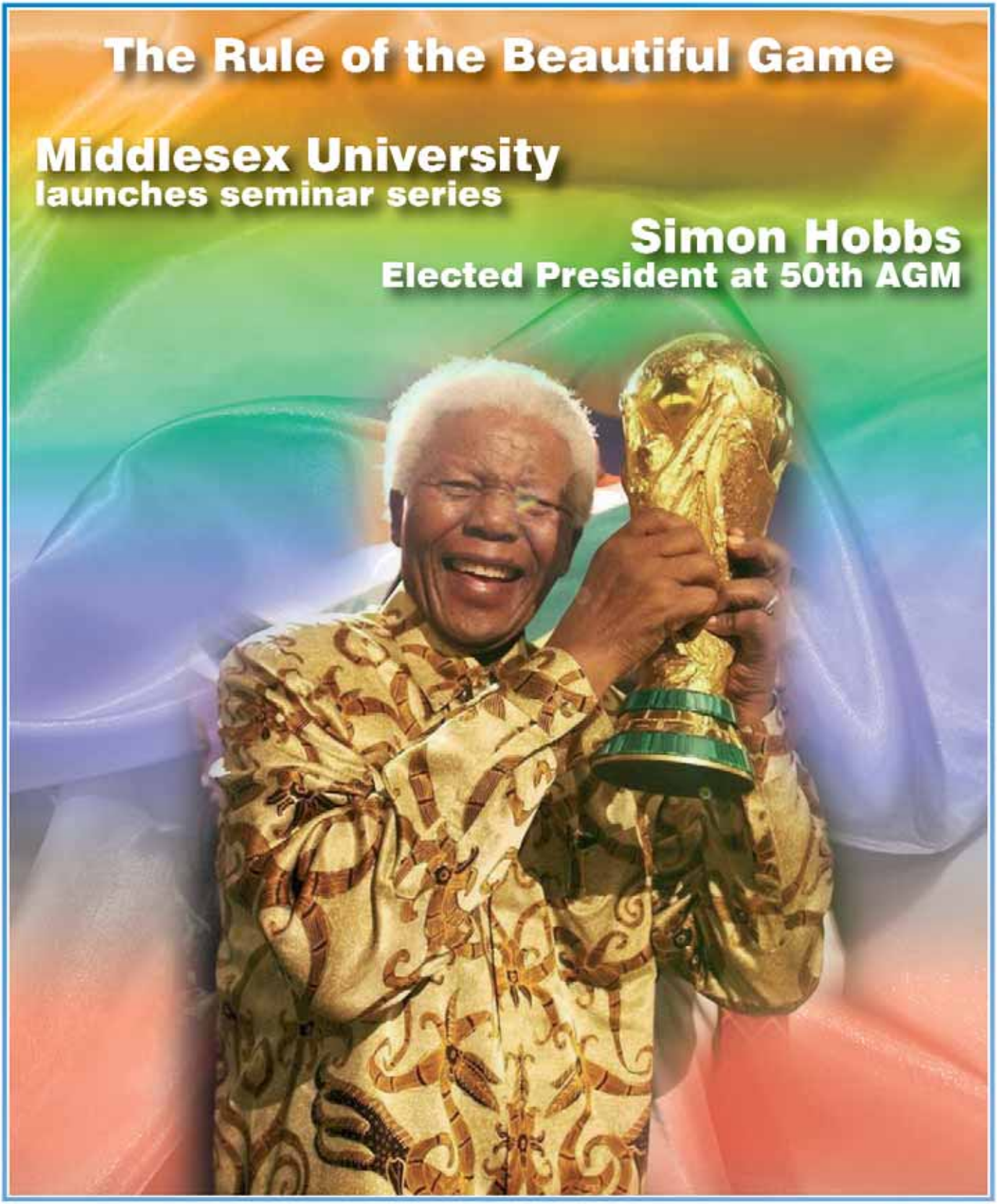
The Bill of Middlesex

Official magazine of Middlesex Law Society

The Rule of the Beautiful Game

Middlesex University launches seminar series

Simon Hobbs Elected President at 50th AGM



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A Darlington, S Chhokar, Maria Crowley,
Professor M Davies.

FUNCTIONS

15 May
Indoor 5 a-side Football - 4pm at Beacon Centre, Beaconsfield
18 May
Antique Evening in Uxbridge - 6.30pm
4 June
Summer Party, Chesham
July
Middlesex CC v Gloucester at Uxbridge CC - 2.30pm
11 July
Football World Cup Party, Denham
27 October
Charity Quiz Night, Venue TBA
29 October
Jack the Ripper Walk, Tower Hill tube station at 6.30pm
25 November
Annual Dinner at Pillars Restaurant, TVU - 6pm

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 2010-2011

6 July	Employment Update by P Benjamin - TVU
Sept	Employment Tribunal at TVU
Sept	SRA Management Course stage 1 - TVU
Sept	Family Law & Legal Aid - MU
6 Oct	Crime Update by Tony Edwards - TVU
2 Nov	Conveyancing Update - TBA
16 Nov	Criminal Legal Aid Update - MU

Contact the Administrator or visit our website for details. TVU is Thames Valley University - St Marys Road, Ealing Campus. MU is Middlesex University - Hendon Campus

For further details to the actual times for each seminar please contact Peter Hesom on 07930 386798.

COMMITTEE MEETINGS

2010
19 July
20 September
18 October
15 November

2011
17 January
14 February

AGM

Wednesday 9 March 2011

Parliamentary Liaison

Robert Drepaul

www.middlesex-law.co.uk

President's Page

I am most honoured to take over the presidency of **Middlesex Law Society** in this, its 51st year. I follow in the footsteps of a number of impressive names, a number of whom I am delighted to say remain to give invaluable service to the Committee, for which I thank them. I also follow in the footsteps of my grandfather, of whom I was very proud, and his father and grandfather before him for that matter, as President of their local Law Society – theirs was Bristol, where they were in turn all Senior Partners of Meade-King & Co, mine obviously Middlesex. That said, it is probably difficult to think of two more different Law Societies, such are the challenges that are permanently facing Middlesex.

For those of you who don't know me, I am a commercial litigation and insolvency solicitor at Iliffes Booth Bennett in Uxbridge. It is fitting that this is my year as 2010 is actually the 25th anniversary of the formation in Uxbridge of Booth Bennett by my Senior Partner and a past President of the Society himself, **Steven Booth**, with his partner **Karen Bennett**. Following successful mergers with Iliffes & Edwards in Chesham, Summers Outram in Beaconsfield and Reginald Johnson & Co in Hayes, the merged firm is now unrecognisable from its original Uxbridge roots.

My immediate predecessor, **Professor Malcolm Davies**, Head of Ealing Law School, has led the Society through another terrific year - actually over a year stepping notably into the breach as he did - and leaves the Society in fine fettle:

1. the list of training and social events set up for the year has never looked so good;
2. we have had 2 tremendous dinners - one fittingly marking our 50th anniversary in style;
3. the Society has contributed to keeping our members abreast of the many resource and policy issues affecting the profession over the year; and
4. we have secured sponsorship for the year through our friends at Lloyds TSB.

He is to be congratulated. Despite 2009/2010 being Malcolm's year I would like to pick out a couple of other Committee members for special thanks - firstly because they deserve it - and secondly because I want them to continue carrying on their tremendous work this year. Firstly, **Michael Garson**, our Council Member from **Kagan Moss**. Michael probably puts more work into the Society than anyone else. This year he has spent a huge amount of time improving the Society's website to make it more informative for our members and more useful for us so that we can contact our members online rather than by DX; almost single-handedly taken it upon himself to increase the Society's membership and clean up the databases of our existing members. This has been a great success - as evidenced by the large number of responses from potential new members; and, put in place a tremendous series of seminars in conjunction with TVU and Middlesex University. The Society owes him a large debt of gratitude. Quick other mentions in dispatches for our honorary treasurer **Darrell Webb** of **Duncan Lewis & Co** who has recently taken over the reins from **Elizabeth van der Weit** of **Hameed & Co** and thoroughly immersed himself into the Society's Accounts. His rapid understanding of our financial position is extremely impressive. The other is **Robert Drepaul** of **Vickers & Co**. Not only has he spent another year as the Society's Secretary but he is also the editor of our well respected and well read quarterly magazine, the *Bill of Middlesex*. He has also kindly succumbed to pressure to continue his joint role for another year, as well as taking on the Parliamentary Liaison role.

Bearing in mind the great work undertaken by Malcolm et al last year, I believe what the Society needs is more of the same:

1. more training courses - which really need your support. These cannot be put on if no-one attends. The debate between **Lord Hunt of Wirral**, Auditor of the Report to the SRA on the Regulation of Legal Services, and **Adam Sampson**, Chief Ombudsman of the Office of the Legal Ombudsman, at Middlesex University the end of March was fascinating. Bearing in mind the overarching powers that the Office of the Legal Ombudsman has now been given, it should really have been attended by every practising solicitor in the County;
2. more social events - because if everything else is depressing, at least we can have a good time together. To that end, it was great to see over 30 members and their families at the Battle of Britain control room at RAF Uxbridge at the end of March. In fact, unbeknownst to us, we were the last official party to be shown around as the base was decommissioned the next day. I look forward to meeting some more of you at our World Cup event;
3. an increased membership - and I hope we can reap the benefits of **Michael Garson's** work. Without a decent membership there is, frankly, little point having a Society. Not only is it demoralising putting on events that few people come to, but we will also not have the benefit of annual membership fees – the Society's life-line;
4. continued representation of our members' interests at the Law Society; and
5. more new Committee members. On that basis, do let me know if any of you would like to serve on the Committee. We have had a number of well deserved retirements from the Committee this year. I thank these members, a number of whom are Past Presidents, very much for all their hard work over the years. They have made the Society what it is today. But now its time to move on and so I'm looking for new Committee members to take the Society into the future.

I very much look forward to meeting you all over the year.

Simon Hobbs
President
Email: simon.hobbs@ibblaw.co.uk

Editorial

A Living Legend

It is not often that a local law society newsletter gets the opportunity to pay homage to a living legend, and this is too good an opportunity to miss! **Nelson Rolihlahla Mandela** (born on 18 July 1918) a former lawyer, was an anti-apartheid activist who spend 27 years in prison, much of it in Robben Island before being democratically elected President of South Africa. He has become a symbol of freedom and equality.

The first World Cup held in the African continent is taking place in South Africa this summer. Football is considered the beautiful game, not only because of the way it is played by the Brazilians, but also because it is the most democratic of sports. No sophisticated or expensive equipment is required to play, it only requires a ball, which can be made of anything handy. To quote a placard held by a North Korean supporter coincidentally just before his team scored against Brazil '*Forget politics for 90 minutes*'.

Hopefully England are still in the competition by the time this goes to print. If not, well played boys and better luck in Brazil in 2014.

Robert S. Drepaul, Editor
rsdrepaul@vickers-solicitors.co.uk

Isleworth Crown Court Users Group

1. Isleworth Crown Court have now adopted an Xhibit Ortal system for communications with the court.
2. West London magistrates' Court have indicated that they can facilitate early listings in the Crown Court of section 51 cases where the Defendant wishes to plead guilty.
3. HHJ McGregor Johnson wishes it to be known that the court will react positively through the case progression officer.

Aludred Darlington
10.6.10

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

Council Member's Report

The Spring of 2010 will certainly go down in history as different. Expectations for an inconclusive election were duly fulfilled, although few predicted the final outcome. By the time this report reaches you, the implications for us may be getting clearer. The parliamentary hiatus is coming to an end with announcements for budgetary cuts and new policies for legal aid and a variety of other matters. A start has been made with the suspension of Home Information Packs. More of that another time.

The March and April meetings of Council were dominated by the aftermaths of recession affecting lenders and insurers and hence the profession; the appointment of administrators to Quinn Insurance and the closing of lenders' panels have affected a number of firms. The SRA have now decided following consultation to adjust the terms for operating the Assigned Risk Pool, particularly for those in it for more than 12 months and preventing newly formed firms from entering into it. The change to the successor practice rule enabling outgoing partners to trigger run off is welcome. A further change for which Council is lobbying is to the single renewal date, which may ease the renewal process and avoid the type of problem now encountered with the withdrawal of Quinn from the market. Much advice of a practical nature is offered to firms concerning submission of this year's renewal proposals. The reality is that insurers are applying stricter judgment to the underlying performance of firms. Whilst the occurrence of negligence claims is to some extent foreseeable, the incidence of fraud, not just amongst sole practitioners, but among all firms, is giving rise to increasing concerns. The increasing calls made on the Compensation Fund are also showing signs of the strain.

Some lenders are not satisfied with the way the Compensation Fund is operated and further investigation and enquiries are ongoing to establish whether criticisms are well founded.

The Law Society through an initiative of the Legal Affairs and Policy Board is working via the Membership Board on a Home Buying project which looks to satisfy the lender's concerns and avoid the worst case scenarios that are emerging with the closing of panels and restriction of work to large bulk provider firms.

All this takes place against the back drop of consultations by the SRA to smooth the passage for Alternative Business Structures, which are scheduled to be licensed from October 2011. Also with the backing of the Legal Services Board, SRA propose to alter the way in which it handles regulation of the profession.

I look forward to the pleasure of chairing Regulatory Affairs Board of the Law Society from September and dealing, as my first challenge, with the draft handbook that the SRA propose to table for consultation in May, to replace the Conduct Rules of 2007. This is designed to complement the policy dubbed 'OFR' – Outcomes Focused Regulation. This is intended to give back responsibility to practitioner entities, be they small, large or ABS. Each recognised body will have responsibility to conduct business so as not to breach the underlying principles to be announced. It is anticipated that these will echo those in the current Rule 1. The proof of the pudding will be in the eating, which for many represents a considerable risk.

Firms will need to plan, risk manage and be accountable. This is all extremely difficult for small firms, but in reality, follows a model which is well suited to larger businesses that make or sell products. Its suitability for legal services remains open to question. The Council remains extremely concerned at the potential cost of the SRA policy as, in order to implement plans, a big programme for new and upgraded IT is in its early stages and remains unproven. Risk assessing that project, along with the problems, as yet unknown in relation to OFR, will make the next few months extremely challenging.

Michael Garson
Council Member
May 2010
michael.garson@kaganmoss.co.uk

HAPPY RETIREMENT

Bill Richard who has been the usher at Brentford County Court for nearly 15 years, is retiring at the beginning of July. All of the Judges, Staff and Court Users wish him a Happy Retirement.

Obituary for HIP

Home Information Packs had a short, eventful but not exactly merry life with property professionals or consumers. It may be deemed churlish to record that they are likely to be mourned only by idealists who dreamt of real change and by opportunists who lobbied to make money from a mostly valueless process.

Seller's Packs started as a twinkle in the eye of the writers of the winning 1997 election manifesto. However gestation was neither easy nor short as the embryo was hot housed at DETR by its putative father, John Prescott. Early life came to an abrupt end on a trip to the House of Lords in 2001 but the infant was revived and renamed the Home Information Pack.

It was then intensively nursed and spoiled by a succession of eager wet nurses.

It moved house and was given new foster parents experienced in handling hot potatoes. The adolescent years were punctuated with frequent twists and turns as the HIP avoided coming to a sticky end. It finally came out in the Housing Act 2004.

Through its formative years it was thoroughly spoiled by adoring consultants so it came as no surprise that two differing sets of HIP Regulations produced in 2006 displayed a personality etched with determination and volatility.

The first HIP regulations survived a mugging incident from the 'vested interest' gang over at the RICS. They dared to challenge legality and housing minister Ruth Kelly beat a grudging retreat.

Anxious to protect the confidence of the young adult the minister promised to give the pack contents a makeover. Nothing is that simple and sadly the HIP lost perhaps its most useful limb - the Home Condition Report.

The family's feelings were mollified by a magical fig leaf - species Energy Performance Certificate. It was imported from Europe and never was genus EU Directive more gratefully appreciated. It was given prime position in the pack pecking order, only displaced when, having lost novelty value, in later years, newer gifts arrived, such as sustainability certificates and PIQs.

The new HIP regulations were produced on waves of optimism insensitive to a changing climate. They gave a place in the world to new pack offspring, all of which suckled in the capacious HIP.

But life for the HIP went from bad to worse as ever changing governesses tinkered with the contents of the pack, phasing its street exposure for fear of another ambush.

Once it finally emerged in 2007 the HIP never really made its way in the world. It proved unable to persuade anyone to really love it or like enough about it - save for those who had lavished millions upon them. All in all an inauspicious life ended by the stroke of a minister's pen suspending them into oblivion.

HIPs are survived by EPC's with an extended life guarantee of ten years, rather than three giving us all something to remember and a number of DEA's whose bravery is widely admired. Vociferous among mourners have been AHIPP who bemoan that £100m of VAT will remain in consumer pockets rather than gathered in by the government.

Post script

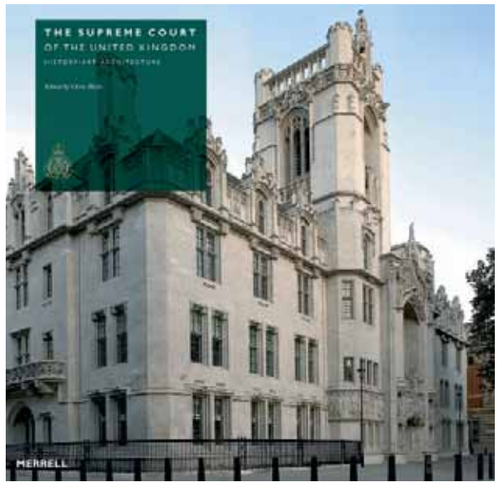
The Home Information Pack (Suspension) Order SI 2010/1455 suspends the HIP Regulations pending repeal of Part 5 Housing Act and the Energy Performance regulations are amended by The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations SI 2010/1456 to provide a duty upon sellers to commission an EPC before selling a residential property and a duty upon agents to ensure that a report has been commissioned before marketing may start. There is no waiting period necessary between commissioning and the date of marketing and up to 28 days is allowed for the EPC to be available.

Congratulations to...

Stephen and Sue Ingall
who are celebrating their Silver Wedding Anniversary at a World Cup Final BBQ on 11th July.

Kiroulous Abadir
on his First Class Honours LLB from Brunel University.

Members Offer



THE SUPREME COURT OF THE UNITED KINGDOM

Edited by Chris Miele
Photographs by Tim Imrie
Published by Merrell
£35.00 (Hardback Edition)

This fascinating book commemorates the creation of the first Supreme Court of the United Kingdom, and its home in the magnificently refurbished former Middlesex Guildhall on Parliament Square, at the heart of the nation.

In October 2009 the new Supreme Court of the United Kingdom began its work as the highest court in the land. The advent of the Supreme Court confirms the independence of the judiciary from both Parliament and government, and is a milestone in the history of the constitution. **THE SUPREME COURT OF THE UNITED KINGDOM** is a unique and inspiring account of this momentous event, and charts the remarkable transformation of the building in which the Supreme Court makes its new home.

In the opening chapters, two eminent judges, Lady Hale and Lord Bingham, lucidly describe the history of the building and its earlier associations with legal practice, providing intriguing details of the developments that led to the creation of the new court.

When it was formed in January 1959, the Middlesex Law Society's constitution included the Middlesex Guildhall extra-territorially in its constituency. This was to enable solicitors on the staff of the Middlesex County Council to qualify for membership. After the County of Middlesex was abolished in 1965, the Court of Quarter Sessions remained in the Middlesex guildhall later becoming a Crown Court and today the Supreme Court.

Middlesex Law Society members can a copy of the hardback edition at a special discounted price of **£30.00 (free p&p)** from **Marston Book Service** tel: **01235 465500** quoting ref: **MPMERSCM**.

Copy Deadlines 2010

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Winter Issue	**5th November**
Spring Issue	**4th February**
Summer Issue	**13th May**

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

Email: tracydawkins@benhampublishing.com
Tel: 0151 236 4141

The truth, the whole truth and nothing but the truth

Disclosure failures and the public purse

Morag is a senior litigator specialising in criminal fraud and regulatory work. She represents clients facing investigation by the SFO, FSA, FPS, RCPO/CPS, SOCA and BIS. She also defends clients at the General Dental Council (GDC) and (Health Professions Council (HPC).

Morag joined Byrne and Partners LLP in 2005 from Irwin Mitchell. Until 1999, she was an assistant solicitor at Simons Muirhead and Burton where she worked in White Collar Crime, following her early experience in general crime. She was a founding member and Training Officer for the Young Fraud Lawyers Association and the Editor of the London Criminal Courts Solicitors' Association (LCCSA) London Advocate magazine from 2000 to 2006. She has written articles on disclosure and stop and search and contributed to consultation papers for the LCCSA.

Another case collapsed at Southwark Crown Court in December following disclosure failures on the part of the prosecution. This was an FPS case, the specialist prosecution group who were examined by the HMcpsI in 2008. A series of recommendations were made in this report, two of which specifically dealt with disclosure. Recommendations are made to address a significant weakness and should attract highest priority.

The CPS had been heavily criticised for it's approach to disclosure in the 2007 report and since then the law has changed with a more streamlined and amalgamated test, a new code and new AG guidelines. The recommendations for the FPS included the following
"The FPS should develop systems for ensuring that prosecutors take a uniform approach to examining material, consistent with the terms of the disclosure manual."

If the disclosure manual is drafted in accordance with the statutory obligations then this would be satisfactory. In my experience little has changed over the last 18 months to suggest that this recommendation has been implemented. There seems to be an inconsistent approach to whether an unused schedule should be served, some prosecutors suggesting that that this should not be provided until a defence case statement has been sent. Others take the view that the schedule can be served but items should be treated as clearly not disclosable until a defence case statement has been served and even after that the FPS lawyer may refuse to disclose material in spite of counsels' advice or the disclosure officer's decision to do so. Problematically these schedules are often incomplete or inaccurate and are provided so late in the day that crucial decisions cannot be made in respect of applying to vary or discharge a restraint order as material has not been made available. When unused schedules are drafted inaccurately or in a misleading way there is always the danger that exculpatory material will be disclosed too late to be used or not at all as happened in a trial recently when we had not been provided with a piece of unused evidence which, had we seen it, we would have been able to make a hearsay application and more accurately convey the circumstances of the alleged offence to the jury. Each disclosure request, if it is responded to at all, precipitates a stream of correspondence and inevitably results in a hearing which is wasteful and time consuming for all concerned.

Disclosure is treated as the elephant in the room by legislators who consider defence requests as an attempt to delay or to derail proceedings. Nevertheless proper preparation of a client's case demands that this work be approached seriously and thoroughly. Blanket refusal to disclose or an erratic and inconsistent approach to disclosure inevitably causes wasted court time through section 8 applications and other hearings which could be avoided. The CPS and the FPS may be overworked and underfunded, although any practitioner carrying out publicly funded work is in the same position, but their job would be easier and their success rate in terms of convictions would be higher if they adopted fully the recommendations of the Inspectorate. It must be a case of applying the first principles. The prosecutor must ensure before charge that the investigators have complied with their obligations to examine evidence which leads towards or away from a suspect. If this has happened, there will be no risk of cases collapsing when the prosecution are forced to disclose unused material. The Government considered a series of unsuccessful fraud cases in the research paper 06/31 which preceded the fraud act. One of those cases referred to is the *Prudential, [R v Melton and others]* which was stopped for abuse of process following large scale disclosure failures on the part of both the alleged victim, police and prosecution. The ruling in that case was salutary, the police and prosecution had abrogated their responsibilities onto the Prudential and disclosure requests were ignored for 2 or 3 years. In the recent case at Southwark the police had not obtained all the relevant documentation from a witness and following repeated requests to the FPS did not do so until a court order was obtained. Again this was evidence that the police should have obtained 2 years before and if they had done so, the defendant would never have been charged and more importantly would not have been remanded in custody.

Guest Speaker Charles McCall from the Ministry of Justice

Sales of Membership Ties increase!

Translation in a multi-cultural world

We live in a multi-cultural world where communication is the key to success. Translation is an essential part of that communication link. The art of translating not just words but also meaning and nuances from one language to another is a difficult one but it is essential for organisations and businesses to thrive in global markets.

In Britain, **The Local Democracy, Economic Development and Construction Act 2009** aims to secure greater involvement of people in the workings and decision-making processes of local authorities. Local authorities and governmental agencies will need to provide many of their documents and web sites in different languages, to ensure linguistically diverse populations in cities like London, Birmingham and Liverpool can be fully involved in decision-making which will affect their lives and communities. This legislation will lead to greater opportunities and demand for professional translation services.

Quality translation services have never been more important – particularly with London and the UK's role as world host during the 2012 Olympic games. In today's difficult economic climate, highly trained professionals within various universities can offer expert translation services at very cost effective prices. Using such services can be an excellent way for UK businesses to build and develop partnerships overseas. TRANSCEN Middlesex University translation service is one such example.

Technological advances, including the worldwide growth of Internet, have made rapid global communication a reality, not just a possibility. It is easy to communicate and work with people from all over the globe. Often, integral business functions for the same organisation, such as the creation of important documents, are done in several different countries. There is a growing appreciation worldwide that the process of translation plays a vital role in every field.

When is a subject to contract agreement a binding contract?

On 10 March 2010, the Supreme Court handed down a decision in *RTS Flexible Systems Ltd-v-Molkeroi Alois Muller GMBH [2010] UKSC 14*. The Supreme Court had to determine the deceptively simple question of whether or not the parties had entered into a contract in circumstances where the parties never signed a formal written agreement, which was expressed to be subject to contract.

The Facts

In January 2005, RTS successfully tendered for a £1.68 million project to supply an automated system for packaging yoghurt pots to Muller, the well-known dairy foods supplier.

To enable work to begin, the parties entered into a Letter of Intent ('the LOI'). The LOI lapsed on 27 May 2005 and the parties continued to negotiate the terms of a more formal contract.

RTS continued to work on the project and payments were made by Muller, albeit not by reference to the stage payments contemplated by the formal contract.

The negotiations proceeded on a subject to contract basis. Clause 48 of the proposed contract provided that " This Contract may be executed in any number of counterparts provided that it shall not become effective until each party has executed a counterpart and exchanged it with the other."

The essential terms of the formal contract were agreed by 5 July 2005; but that contract was never signed as contemplated.

The project ran into difficulties between June and August 2005, which meant that RTS would be unable to meet the original delivery timetable. As a result, there was a meeting on 25 August 2005, at which it was agreed by the parties to vary the more formal contract primarily to alter the delivery schedules of the lines of the automated system, so that line 1 would be installed first to allow production to begin on that line as soon as it could be made operational.

RTS subsequently delivered the project equipment to Müller, but did not carry out the site acceptance testing provided for in its original tender document and the draft contract, and Müller subsequently alleged the equipment had defects. Müller paid only part of the contract price and RTS brought a claim against Müller for the outstanding balance of the contract price or alternatively damages.

The Issues

The issue of whether a contract had been made and, if so, on what terms, depended on the resolution of two issues.

Firstly, were all the essential terms of the contract agreed?

Secondly, even if they were, did the contract not become effective as the parties did not execute counterparts and exchange them with each other, as contemplated by clause 48?

The Decision

The Supreme Court unanimously concluded that the parties had reached a binding agreement on or about 25 August 2005 on the 5 July terms (as subsequently varied on 25 August). The parties had by their conduct waived the subject to contract provision on or by that date.

Essential Terms

As already indicated, after a careful review of the facts, the Supreme Court found that all the essential terms of the formal contract, including crucially the price for the entire project, were agreed by 5 July; and accordingly that a contract would have been made, but for clause 48.

Subject to Contract

Given that the formal contract was not executed or exchanged, the Supreme Court accepted that, unless and until the parties agreed to vary or waive clause 48, the formal contract would not become binding or effective; notwithstanding that all the essential terms had been agreed.

Waiver

It was not necessary for such a variation or waiver to be made by an express statement. A variation or waiver could in principle be inferred from the parties' correspondence and conduct.

Indeed, the Supreme Court decided that the subsequent agreement on 25 August to vary the formal contract, so that RTS agreed to provide line 1 before line 2 was reached without any suggestion that there was no contract and thus nothing to vary or that that variation was agreed subject to contract. The parties treated the agreement of 25 August as a variation of the agreement that they had reached by 5 July.

Nobody suggested that RTS could have refused to perform the contract as varied pending a formal contract being signed and exchanged; and it did not.

The Supreme Court decided that the only reasonable inference to draw from that conduct was that, by or on 25 August, the parties had unequivocally agreed to waive the 'subject to contract' condition in clause 48; and accordingly concluded that there was a contract on the more formal terms agreed as at 5 July as subsequently varied by the agreement of 25 August.

The parties had, in effect, departed from their earlier agreement that the formal contract was to be subject to contract, until it had been executed and exchanged and had agreed that there was no necessity for the agreement to be executed and exchanged.

Conclusions

The main conclusions to be drawn from this case are that:

1. Parties proceed at their peril if they start work without a formal signed contract being in place. Indeed, the Supreme Court itself commented *"The different decisions in the courts below and the arguments in this court demonstrate the perils of beginning work without agreeing the precise basis upon which it is to be done. The moral of the story to is to agree first and to start work later."* The case was a long drawn-out and expensive battle which went to the Supreme Court, with each court reaching a different decision. The Court of Appeal held that there was no contract and the High Court held that a contract consisting of only part of the formal agreement's terms had come into existence.
2. It may not always be possible to act on that advice, but parties should be aware that by beginning to carry out their side of the contract they may waive the protection offered by a 'subject to contract' provision.
3. The words subject to contract are not rendered meaningless by this decision. A contract which is being negotiated on a subject to contract basis will not normally be binding until the negotiations have been completed and the contract executed and exchanged.
4. Indeed, to avoid the risk of a contract being made when that was not intended, negotiations should be marked subject to contract and the contract itself should provide that it is not to be effective until signed by both parties and the counterparts exchanged. That would have prevented a contract coming into existence in this case, had it not been for the waiver point.
5. It is possible for an agreement 'subject to contract' or 'subject to written contract' to become legally binding if the parties later agree to waive that condition, for they are in effect waiving the 'subject to [written] contract' term or understanding.
6. The fact that a contact has been fully or substantially performed on both sides will often make it unrealistic to argue that there was no intention to enter into legal relations and difficult to submit that the contract is void for vagueness or uncertainty.
7. The fact that a contract has been performed makes it easier to imply a term resolving any uncertainty, or, alternatively, it may make it possible to treat a matter not finalised in negotiations as inessential.
8. If the price is agreed, that price must have formed a part of a contract between the parties.
9. It does not necessarily follow from the fact that work was performed that the parties must have entered into a contract. It is, however, plainly a very relevant factor pointing in that direction and the courts are, in those circumstances, strongly inclined to find the existence of a contract. It may often be unrealistic and contrary to commercial sense to suppose that a party would agree to proceed with detailed work and complete the whole contract on a non-contractual basis, subject to no terms at all.
10. On the other hand, a contract will not exist if the parties have not agreed all the terms which they regarded or the law requires as essential for the formation of legally binding relations.
11. This decision goes against a recent trend in which the Court of Appeal has tended to decided against the existence of a contract; and may lead to a reversal of that trend.
12. However, these cases depend on their facts and hence the judgment in one case may well not be the answer to another set of facts.
13. As the Supreme Court said *"In a case where a contract is being negotiated subject to contract and work begins before the formal contract is executed, it cannot be said that there will always or even usually be a contract on the terms that were agreed subject to contract. That would be too simplistic and dogmatic an approach. The court should not impose binding contracts on the parties which they have not reached. All will depend upon the circumstances."*

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professional issues

professional issues

Supporting Solicitors - the Law Society's free helplines

The Law Society offers a wide range of helplines which provide advice and support for solicitors and members of their staff.

Practice Advice

The Practice Advice Service is a dedicated support line staffed by eight experienced solicitors who answer questions from practitioners on all areas of legal practice, policy and procedure. Common queries relate to anti-money laundering, conveyancing, solicitors' costs and probate, though assistance can be provided in most areas. In the event that a complex issue is raised, the team holds a weekly meeting where it draws on the experience in practice of the solicitors who work in the team and other sources of information within the Law Society. Practice Advice cannot provide legal advice.

The service is free and confidential. The majority of enquiries are received by telephone and are answered immediately. When enquiries are received by email, we aim to acknowledge and provide a verbal response within 24 hours.

Money laundering

Practice Advice provides assistance in navigating the Law Society's practice note on the Money Laundering Regulations 2007 and related legislation. In light of the legislative changes and the potential criminal sanctions against solicitors for breaching such rules, the Practice Advice team is a useful starting point for providing clear and concise guidance to enable practitioners to focus on their duties and responsibilities. The sheer volume and diversity of calls received on this matter may well provide practitioners with reassurance that this minefield need not be crossed alone. Indeed, without discussing details, the team may refer to other similar cases and discuss principles on that basis to provide guidance.

Conveyancing

Practice Advice provides guidance and assistance on all stages of the transaction, including enquiries relating to current issues such as land registry requirements. If a policy issue is raised, this can be referred to a policy adviser for further guidance. Matters potentially affecting the profession as a whole may be referred to the Conveyancing and Land Law Committee for consideration.

Costs

Practice Advice has published a series of booklets that provide general information on costs. 'Payment by results' covers the often controversial and evolving areas involving contingency fees and conditional fee agreements. Our other booklets include 'Contentious costs' and 'Non contentious costs' Common queries relate to solicitors' bills and potential challenges, and the team can assist by providing advice on the current guidelines regarding the various charging regimes.

Probate

Specialist cost-related queries relating to the administration of estates are common, as are queries on foreign assets in addition to general queries on practice and procedure. We also receive questions relating to tracing beneficiaries and the information which a solicitor should provide in relation to a disputed will.

Multi-party actions and group litigation orders

Practice Advice maintains a database of group litigation orders and is the first port of call for practitioners' queries on details of potential and actual multi-party actions, and on firms who have registered their involvement with us. It is a requirement of the Civil Procedure Rules that all group litigation orders are registered with Practice Advice.

Call Practice Advice on 0870 606 2522 or email practiceadvice@lawsociety.org.uk

Lawyerline

Lawyerline is another solicitor staffed service which provides specific, bespoke advice on areas relating to client care and complaints handling. We provide advice to solicitors who may be developing or implementing their own internal complaints handling procedures in compliance with their professional obligations as set out in the Solicitors' Code of Conduct 2007.

Lawyerline is also able to provide guidance on the practice and procedure of the Legal Complaints Service. We can provide updates on the proposed reform and widening of the complaints handling system that is likely to occur with the opening of the Legal Ombudsman scheme in late 2010. Lawyerline promotes the message that if a complaint does arise, adopting good practice in complaints management can have a real benefit in changing a negative perception about the way a client may view your firm.

Call Lawyerline on 0870 606 2588 or email lawyerline@lawsociety.org.uk

Pastoral care

Practice Advice acts as a referral service, guiding solicitors, their staff or relatives to the relevant helpline for assistance with personal, professional, financial or employment difficulties.

Call Pastoral care on 020 7320 5795

training

New Masters in Human Rights and Business at Middlesex University

Multinational corporations may be involved in human rights abuses in a variety of ways, especially in developing countries where such corporations may be unaware of political realities and sometimes end up being accused of complicity in the commission of gross human rights violations. Not only can the consequences be disastrous for business, but the companies are also at risk of being targeted in legal proceedings.

While international human rights law has traditionally been seen as binding governments only, there is currently little remaining debate about whether companies should comply with this body of law. In fact, corporations have a growing responsibility to respect and even promote international human rights standards. There have been thriving discussions about these crucial issues at the international level, especially since the appointment in 2005 of Professor John Ruggie (Harvard Law School) as the UN Special Representative of the Secretary General on human rights and transnational corporations and other business enterprises.

In October 2010, the Law Department at Middlesex University will propose a new postgraduate programme (MA) in Human Rights and Business. The MA aims at equipping professionals with a range of legal tools to enable them to follow, influence and work within human rights frameworks. It is a highly innovative programme in terms of its contents and delivery. The new modules will cover areas of law such as international human rights law and the law of the World Trade Organisation and explore their relevance to multinational corporations, especially those operating in emerging economies. The modules are deliberately human rights law-centred and go beyond the mere idea of corporate social responsibility. Moreover, the programme is tailored for busy professionals, uses extensive online material and is being taught two days a month (Friday-Saturday). In between sessions the students will be given material to read and case studies to work on and discuss during the teaching days.

The programme will be officially launched on 14 July 2010 at the Hendon Campus with a drink reception starting at 6 pm, followed by an interactive panel discussion on **Human Rights and Business: Ethical Globalisation?**. The panel will include Christopher Avery, Director of the Business & Human Rights Resource Centre and former Deputy Head of the Research Department at Amnesty International and Professor Joshua Castellino, Head of the Law Department at Middlesex.

If you are interested in these issues and would like to know more about the MA, contact:
Programme Leader, Dr Nadia Bernaz:
n.bernaz@mdx.ac.uk
Administrator, Ms Sharon Procter:
humanrights@mdx.ac.uk
Phone: **0044 (0)20 8411 6149**

Conference on residence and citizenship Middlesex University - 9th September 2010

The Migration and Law Network and Middlesex University Law Department are holding a joint one-day conference on 9th September 2010 under the title "Long-term Residence and Citizenship in Contemporary Britain".

Immigration practitioners will be familiar with recent legislation on residence and naturalisation. The prospective introduction of 'probationary citizenship' to replace 'indefinite leave to remain' and of 'earned citizenship' will make the route to a permanent status more complex and more difficult for some. This conference will analyse recent developments and explore the changing relationship between migration, long-term residence, and citizenship in the UK from a variety of perspectives. Bringing together speakers from law and other disciplines, it will address the implications of this more restrictive approach, going beyond the technical detail of the law (although this will be addressed) to ask broader, policy-orientated questions. Are these developments a significant departure in official thinking about residence and citizenship? Can they be justified in terms of integration and social cohesion? What are the implications for equality and human rights for migrants? What should policy on long-term residence and naturalisation look like?

Speakers include Ian Macdonald QC, Steve Symonds (Legal Officer ILPA) and academic speakers from law, politics and sociology. The audience will be a mixture of practitioners, academics and postgraduate students. Immigration practitioners and other interested parties from Middlesex Law Society are welcome to attend. CPD points are not available for this event but the cost of the day (including lunch and refreshments) is modest at £60 (£30 for students/unwaged).

More information about the conference and a registration form is available at **http://www.mdx.ac.uk/aboutus/Schools/school/departments/law/citizen_conference.aspx** or from the conference convenor, Dr. Helena Wray, at **H.Wray@mdx.ac.uk**.

Middlesex Law Society and Middlesex University launch seminar series for local lawyers with event on 'Client care – a New regime'

On the evening of March 25th Middlesex Law Society and Middlesex University Law Department had the honour of hosting an event featuring two nationally leading figures in the area of legal regulation. Adam Sampson, the newly appointed Chief Ombudsman of the Office of Legal Complaints, and Lord David Hunt, author of the important October, 2009 report for the Solicitors Regulation Authority on the future regulation of the solicitors' profession spoke on 'Client Care – a new regime for lawyers.' Professor Joshua Castellino, Head of Law at Middlesex University, and past MLS President, Malcolm Davies jointly welcomed guests and the speakers were introduced by Michael Garson, Council Member for the Middlesex Area.

Adam Sampson spoke of his forthcoming role as the first Chief Legal Ombudsman of the Office of Legal Complaints. The OLC is accountable to Parliament through the Lord Chancellor and is sponsored by the Ministry of Justice. The Legal Ombudsman will begin to process complaints towards the end of 2010. The Ombudsman's Birmingham offices were opened on the same day that Mr Sampson spoke to the gathering of lawyers, academics and students at Middlesex University. Having taken up his appointment in July, 2009 following seven years as the Chief Executive of Shelter, the leading housing and homelessness charity, Mr Sampson intends to bring into effect a system for dealing with complaints that provides a prompt and efficient response to consumers while acting fairly towards firms. Above all, the service will seek to simplify procedures and, by providing a rapid informal and practical response to clients, obviate the need for protracted investigation in all but the most complex cases. Lord Hunt responded briefly to Mr Sampson's remarks on the way the new scheme will work, drawing attention particularly to the centrality of the principle set out by Rule 1 and the desirability of taking careful instructions in the beginning of a matter in order to prevent ambiguity and misunderstanding from later developing.

Altogether it was a very enlightening evening presented with a sprinkle of good humour. Both speakers were especially generous not only in responding to questions from practitioners but also in spending time chatting to some of the LLB students who attended about their hopes to enter the professions.

The event marked the launch of a series of early morning seminars to be held at Middlesex University Business School in Hendon beginning this spring and continuing with the start of the new academic year in September, 2010. The series aims to benefit of legal practitioners who either live or work in the North London area of by offering presentations by highly experienced speakers on a variety of technical and business-oriented topics, professional regulation and compliance issues as well as by offering legal updates in specific areas of legal business such as property law, family law, immigration, criminal litigation and employment. The first of these seminars took place on the morning of May 20th, when we welcomed as a speaker, Gerald Newman, principal of LawComms.com and former Deputy Director of Communications at The Law Society, who spoke to a small group of local solicitors on Marketing and Networking for lawyers. The session was packed with tips for effective e-marketing techniques and information on how to avoid typical pitfalls. Feedback from those attending was extremely positive with requests to offer further in-depth sessions on e-marking tailored for smaller high street practitioners.

Middlesex Law Society and Middlesex Law Department plan to continue the series with a second early morning seminar on 'Media Literacy for Lawyers: the New Technologies.' Our speaker will be Mike Howarth, an education and media consultant and former BBC producer who is widely published in the area of e-learning and multi-media. For further information or to book a place on this seminar see the Middlesex Law Society website (**www.middlesex-law.co.uk**), the special website for the series (**www.middlesexlawyers.tk**) or contact Adam Raoof (Middlesex University Law Department) at **a.raoof@mdx.ac.uk** or on **0208 411 5767**.

FILM AND THE LAW No. 8:
THE RULES OF THE BEAUTIFUL GAME

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National Treasure in a dickie: Ken Loach, director of KES.

***THE RULES OF THE GAME* (*La Regle du Jeu*) directed in 1939 by French *maestro* Jean Renoir took a battering at the box office and also got the thumbs down from the critics. The complex farce about the upper class was then cut by the producers and eventually banned! Can you imagine? With war looming, Renoir felt he had no choice but to flee to Hollywood. Poor chap!**

30 years later our own national treasure Ken Loach directed his first feature, the much loved KES, to national and international acclaim. The main narrative is about a young delinquent's love for a bird – a kestrel that is! However within this film there is another film trying to get out - a film that could almost share the same title as Renoir's.

THE RULES OF THE BEAUTIFUL GAME aptly describes the football *vignette* that comes in the middle of our hero's doomed attempts to escape the limiting opportunities on offer for a school leaver in the grimy North. Teacher turned actor Brian Glover, in a memorable performance demonstrates clearly why young people should never trust the word of an adult with a bit of authority to wield. Playing a PE teacher with a tad *conflict of interest* in that he not only appoints himself to be the referee but also elects to play captain, centre forward and Bobby Charlton to boot, Glover creates the definitive template on how to

KES: A boy and his bird.

The Rules of the Game: Romantic intrigues of the French Upper class.

win at sport. He disallows opposition goals, blatantly fouls opponents, indulges in unwarranted sendings-off and to cap it all, awards himself a penalty. A hilarious metaphor for the unfairness of life as seen through the eyes of an adolescent.

As our heroes while away their time between games, in their luxurious Southern Hemisphere surroundings, one would hope that Fabio has to the good sense to take my advice and screen the above sequence every night to our pampered 23 before they are tucked up into bed with their play stations. Apart from putting a smile on their darling little faces, the nation's *crème de la crème* may just learn from Brian Glover the subtle and not so subtle art of cheating with style and, if I was of cynical disposition which I hasten to add I am not, then a little nudge here and a little push there might, just might, get us past the quarter finals. Better still of course if England's referee representative to the Rainbow World Cup, Howard Webb, already of some notoriety, was invited to the screenings as well, then he could bone up on his infamous refereeing skills. All we would need then of course is for FIFA's computer to slate in Howard for the England v Germany final, and the trophy would then be ours again.

And what of Renoir's film after all these years? It is now considered to be a *masterpiece of cinema*, though when I show extracts to my film class, such an accolade is not usually greeted with unified agreement. Still, I convince them in the end. And *KES*? Sadly the bird gets killed in the film and outrageously no one is brought to book. David Bradley who plays our young hero pops up now and again in the press moaning (justifiably I'd say) that his career never really took off despite the rave reviews he got. Similarly Brian Glover's career also didn't fullfill expectations and sadly he passed away last year. Ironically *KES* will always be remembered for their fabulous debut performances.

It is interesting to note that I have yet to see the legendary *KES* footy match screened on television during a World Cup series. Could it be that those who run our TV Sport would see it as an irrelevance or they just don't appreciate their own culture?

If, on the other hand, YOU appreciate your own culture, and would like to know more - in particular film – then join FILM NITE. It starts up again on Tuesday 5th October 7-9pm at London's celebrated media club, SOHOUSE. The first two sessions will be given by British film expert RICHARD DACRE who has been researching the place of comedy in *brit film*. He will be screening choice extracts both old and new. **A not to be missed event.** The rest of the 11 week term will be given over to seeing contemporary films from all over the world followed by presentations/discussions.

Come On England. Come On England.
Kindly note that FILM NITE is not an official England team sponsor.

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