



Autumn 2010

The Bill of

# Middlesex

Official magazine of Middlesex Law Society

**51st Annual Dinner & Dance**  
**12 November 2010**





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## Contents



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<b>contents</b>	
3	Contents
4	Officers for 2010-2011
4	Committee Members
<b>local issues</b>	
5	President's Page
6	Editorial
6	Members Application
7	51st Annual Dinner & Dance
8	Council Member's Report
<b>education</b>	
11	Outstanding achievement at Merchant Taylors' School
<b>professional issues</b>	
12	Change is in the air for the UK legal sector
14	Defence witnesses need support at court
15	Escaping the ARP
16	Point Abandoned or Appeal Withdrawn?
<b>yng</b>	
17	Law Society helps prepare students for legal career
<b>corporate hospitality</b>	
19	London Marriott Hotel Twickenham
<b>film</b>	
20	FILM AND THE LAW No 9: Lies, Damn Lies and Film
<b>property</b>	
22	Bypassing Chancel Screening Searches means everyone's a winner!



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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
8 October
Quiz Night, Ealing Cricket Club
29 October
Jack the Ripper Walk, Tower Hill tube station at
6.30pm
12 November
Annual Dinner at Holiday Inn, Brentford - 7.30pm

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 D J Tan Ikram - 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 - Ealing Cricket Club
15 November - Ealing Cricket Club

2011
17 January - Ealing Cricket Club
14 February - Ealing Cricket Club

AGM
16 March 2011 - Ealing Cricket Club
Parliamentary Liaison
Robert Drepaul



Welcome to the latest edition of The
Bill of Middlesex. We have set up a
series of training and social events
for the Autumn. These include a
criminal law update by District Judge
Tan Ikram on 6 October, a quiz night
in conjunction with Ealing Cricket
Club at their clubhouse on 8 October,
a repeat of the popular Jack the
Ripper tour on 29 October, a visit to
the UK Supreme Court on 26
November and culminating in the
Society's flagship dinner dance at the
Holiday Inn at Brentford Lock on 12
November, of which more below.

We have not been quiet over the
Summer either though. 25 July saw
the first of what I hope will be at
least a bi-annual 5-a-side football
competition at Goals in Heathrow.
Strong teams from OWC, IBB, Duncan
Lewis, Vickers & Co and ABV
contested a keenly fought contest,
with Duncan Lewis narrowly beating
IBB in the final. Goals looked after us
extremely well, providing the
referees, putting on a buffet lunch
and running the round-robin
competition. Watch this space for the
next game. It would be great to be
able to run this event quarterly if
there was sufficient interest.
Certainly, Turbeville's, Bird & Lovibond
and the CPS have expressed an
interest in competing in the future -
along, hopefully, with certain sets of
barristers' Chambers. I am extremely
grateful to Alan Williams for
arranging such a good day.

President's Page



The other recent high profile event was the tripartite networking event between
Lloyds TSB (the Society's sponsors for the year), West London Chartered
Accountants and the Society on 14 September, kindly hosted by IBB. Gridlock at
Hangar Lane prevented large numbers of the accountants from attending,
which was a great pity, but those who did make it enjoyed an excellent talk
from Chris Marston, Lloyds TSB's Head of Professional Practices. It is very much
hoped that future such events can be arranged as, in these continuing uncertain
times, better links between local solicitors, accountants and bankers can only
but be of benefit to us all.

To that end, I am delighted to report that Lloyds TSB have confirmed that they
will kindly continue to sponsor the Society for another year. We are delighted to
continue this association.

The external climate for solicitors remains uncertain, especially in the light of
continuing talk of a double-dip recession. In the midst of this comes the LSC
family law contract tender, preparations for ABS and the forthcoming PII
renewal. The Society continues to keep abreast of the many resource and policy
issues affecting the profession and for this we continue to be indebted to our
Council member for Central and South Middlesex, Michael Garson. A lot of
work has gone into improving the Society's website, also mainly by Michael, and
I hope members find it useful for keeping up to date. Please do feed any
comments back to me or Michael via the website or Robert Drepaul, the editor
of The Bill of Middlesex.

As mentioned above, our flagship event of the year is our annual Black Tie
Dinner Dance at the Holiday Inn, Brentford on 12 November. It promises to be
an excellent evening, kicking off with a champagne reception at 7 pm. There
will also be a raffle and, so far, prizes have kindly been pledged by local
businesses Hasbro, General Mills UK, AIB, Smith & Williamson, London Wasps,
IBB and the Watford office of Baker Tilly. In these uncertain times, a really good
dinner dance is just what the doctor ordered and so I hope to see as many of
you there as possible. Please do join us.

Otherwise, I very much look forward to seeing you at one of the many other
events organised for the Autumn.

Simon Hobbs
Partner, IBB Solicitors and President of the Middlesex Law Society 2010-2011
simon.hobbs@ibblaw.co.uk

Middlesex Law Society logo and text: visit to the UK Supreme Court on 26 November 2010. Register your interest with Susan Scott Hunt: s.scott-hunt@mdx.ac.uk

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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)

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- Firm Full Membership: Partners/Solicitors 2-5 £125 per annum 6-10 £250 per annum 11 or more £500 per annum

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

Middlesex Law Society

# 51st Annual Dinner & Dance

at the Holiday Inn,  
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Friday 12 November 2010

£50 per person

**Black Tie: Bucks Fizz Reception from 7.30pm**

Contact the President, Simon Hobbs 01895 207983  
e-mail: [simon.hobbs@ibblaw.co.uk](mailto:simon.hobbs@ibblaw.co.uk)

or

Social Secretary, Robert Drepaul on 0208 280 1095  
e-mail: [robertdrepaul@yahoo.com](mailto:robertdrepaul@yahoo.com)

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# Council Member's Report

Whilst the vision enacted within the Legal Services Act is coming into closer definition current uncertainties continue. Litigation over the family legal aid contract tender and other legal aid contracts, has brought in its wake for many firms distress and upheaval. A volatile indemnity insurance market has brought worry and financial pressure affecting numerous firms in Middlesex and even where firms are able to secure cover without changing insurer the cost of the ARP presents a rising cost.

In just one year it is planned by SRA that we will enter the new regime offered by the SRA in its new 'handbook'. Do not be fooled by the title it will not be a short guide to better practice, but rather a compendium of the regulation that binds the profession as an entirety be it as a sole practitioner or multi national corporate firm with registered foreign lawyers. It is currently proposed that rules in the code of conduct will be replaced with a series of principles and outcomes, drawing on much the same topics as the existing Code of Conduct but bringing in new provisions adapted to enable new types of licensed business structures to operate.

As a curtain raiser to all that, the Legal Ombudsman opened its doors for business on the 6 October. This was heralded by a new complaints rule amending the current Rule 2.05, requiring practitioners to notify clients of the new arrangements. Some may ask why such prescriptive requirements have been directed by the SRA at the behest of the Legal Services Board just when we are supposed to be entering an era of enlightenment and simply 'doing the right thing' to ensure 'the right outcomes'.

This is typical of the kind of issues that remain to be resolved over the next twelve months in relation to the current rules of conduct. The first draft of the Handbook contained outcomes which largely echoed the current Conduct Rules, but the proposed amendments to the Solicitors Account Rules are relatively few. New flexibility in relation to

dealing with the payment of interest on client money offers wider discretion but at the same time offers fertile territory for future uncertainty. This is a very typical of the challenges that OFR presents. An opportunity and freedom to apply judgment but a risk of censure at a later date when called to account.

In relation to the second consultation on the Handbook starting in October, it will be vital to gauge the mood of the profession, and the Regulatory Affairs Board will be listening carefully to practitioners' responses. Having attended the first meeting of RAB as its chair in September I can report that we believe that the receptiveness of the profession to the proposed changes is vital to their success. Personally I believe that if the burden of outcomes regulation delivers too few benefits, it will be appropriate to signal this to the SRA sooner rather than later.

In relation to the SRA itself becoming more outcomes focused, the question is again one for practitioners to assess. The culture of change which the SRA is undergoing, should bring about a more flexible and supportive approach with less attention to unimportant detail. Relationship management is offered to encourage correction rather than disciplinary process. There is every reason for the SRA to adopt this new approach now rather than wait and we at the Regulatory Affairs Board, are watching carefully, to see examples of the new approach being adopted by the SRA. The whole purpose of the change in approach by the SRA is to enable it to adopt a more risk based focus on dealing with problems that threaten the reputation of the profession. There have been recent problems, and it would seem that some of these should have been identified earlier and prevented.

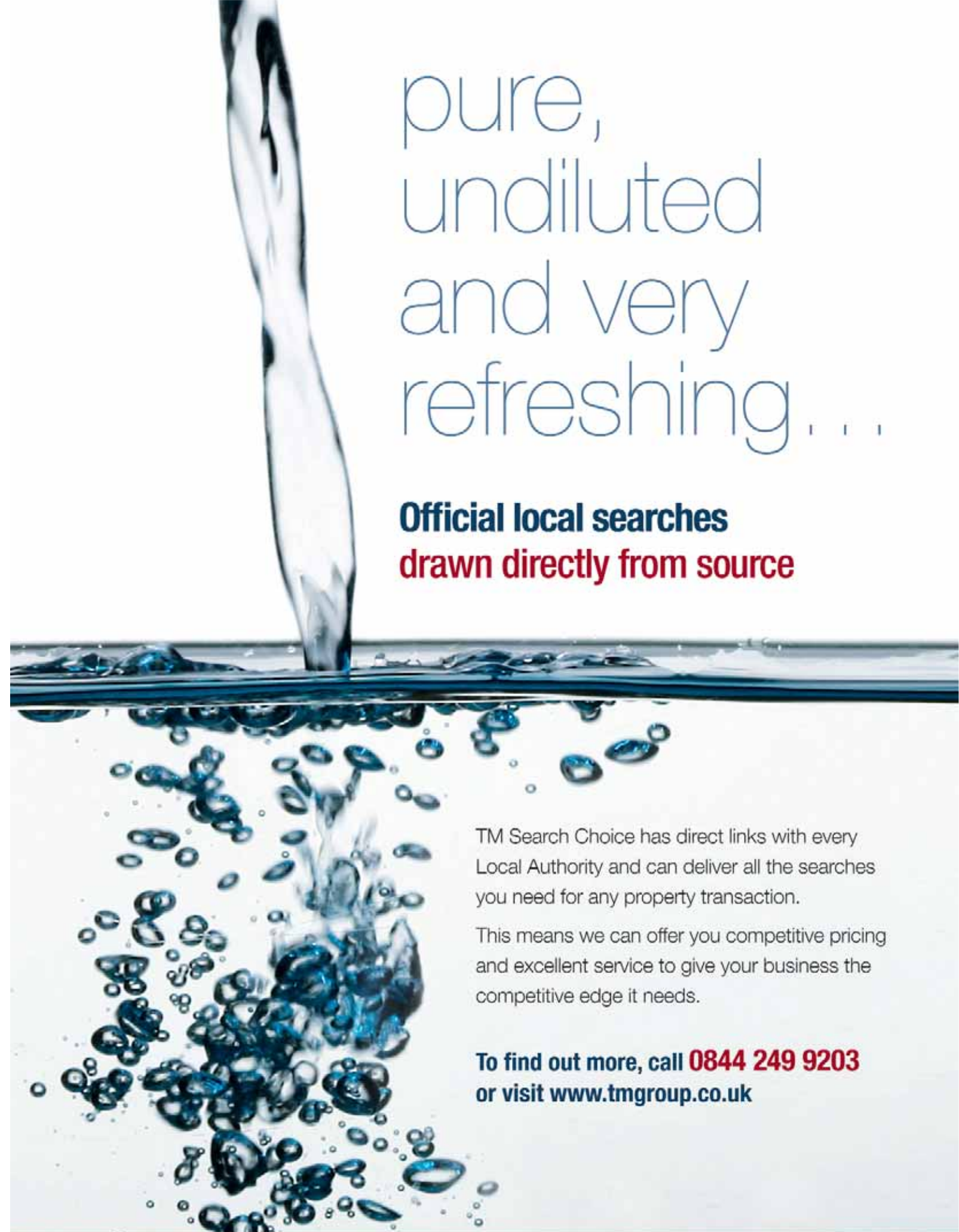
Our regulatory structure is one which requires a careful balance between regulators, insurers and clients (including government in the case of the LSC) and needs to be managed carefully and strongly but with sensitivity. This year it has become clear that the management of the profession's indemnity insurance arrangements had fallen into neglect. The ARP had swollen and insurers complained that they had lost confidence in the current system. The SRA have accordingly announced a wholesale review and the Law Society, through the Regulatory Affairs Board, is heavily engaged with this. Time is short, if improvements are to be made in time for the 2011 renewal.

It was my declared aim upon being elected to the Regulatory Affairs Board, that I would make efforts to achieve improvements, particularly in relation to insurance and the new OFR regime. I also have particular concerns in relation to the licensing terms for new business structures. Although they are expected to arrive in less than a year, the detailed provisions relating to their approval, remain undrafted and it is quite clear, from the fraud that has recently penetrated within firms of solicitors that new risks are to be anticipated when opening up ownership of legal firms to non-professionals. Important work is in hand, to assess the essence of the solicitors' profession and the combination of knowledge and ethics that is central to professional behaviour.

Practitioners have an active part to play in the coming months to really shape the realisation of the vision set by the last government five years ago. The framework of the Legal Services Act is just that; it is a framework. The shape of the body that we attach to the frame is to an extent in our hands. We will be expected to make the new system work, and in our own interests, we must therefore strive to get common sense onto the agendas of both the SRA and the LSB in the coming months.

The horizon will be the reality in less than twelve months; please help us to shape the vision and make it work better.

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



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coach and rail from almost anywhere in north-west London and nearby Bucks and Herts. The school has outstanding facilities: there are centres for Politics and Economics, Art, ICT, Modern Languages, together with a splendid Library. There is also a magnificent sports field (nine cricket squares) and adjacent golf course, two all-weather hockey pitches, heated pool, sports hall and lakes (sailing, windsurfing). Music has its own Recital Hall, Drama its own Studio; the School has a large CCF and is also a centre for the Duke of Edinburgh's award.

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# Change is in the air for the UK legal sector

by Mr Clement of Conference Chambers, PO Box 626, Harrow, Middlesex HA2 2DZ

## “With new legislation supporting Alternative Business Structures (ABS) due to come into effect next year, law firms can expect to see some big changes in the market” says Dominic Cullis, Chairman of the Legal Software Suppliers Association

With legislation supporting Alternative Business Structures (ABS) due to come into effect in 2011, change is in the air for the UK legal services sector. These modifications to the Legal Services Act are already attracting attention from outside the industry, as ABS will allow non-lawyer organisations to provide legal services to the general public for the first time, and will therefore allow much wider options in how lawyers and non-lawyers can share the management and control of a business which provides reserved legal services to the public.

As such, next year's launch of ABS is already proving to be controversial, as it will allow external investment and ownership of law firms for the first time. Firms who decide to take this route and accept third-party investment (or are indeed purchased), will no doubt face a number of new challenges. But what about traditional high street firms who simply want to retain their current model? Will the arrival of ABS have any effect on them?

**A “client-centric” approach**  
The ethos behind these changes to the Legal Services Act is to put the consumer at the centre of the legal services market. As a result, traditional law firms are already looking at new ways of adopting a more “client-centric” model in order to compete with new – and potentially larger – players entering the market.

However, even though some firms have made progress in this area, many traditional high street practices have been slow to embrace areas such as marketing and contact relationship management, although these changes to the Legal Services Act may now encourage them to take action in this regard.

“The Legal Services Act is changing the way many lawyers do business,” says Catherine Bailey, Head of Marketing at IRIS Legal Solutions, a legal software supplier and member of the LSSA. “Given that the whole ethos surrounding the Legal Services Act is to put the consumer at the heart of the operation, there is no doubt that we will see an industry-wide move towards more ‘client-centric’ operations.”

### A changing market

As part of this shift to a more client-focused approach, many firms are feeling pressured to offer ever-greater service for ever-lower fees. As a result, industry analysts have begun to ponder whether the kind of customer “self-service” that has permeated the financial services sector will come to the legal market, as well.

“Brutally put, once some of the larger players enter the market, traditional law firms will be asked to deliver more for less, and so it's fair to say that ‘self-service’, at least to some degree, will be an essential strategy to win business and manage cost,” according to Catherine Bailey. “The Legal Services Commission's schemes will continue to drive the market towards value-based pricing, which means that there will be a commercial need to use technology to automate as much of the legal process as possible in order to preserve margins. Automated case, practice and chambers management systems will therefore be essential for legal services providers, with web-enabled solutions and other products that allow remote access likely to be the most sought after.”

In the UK, however, clients have been very slow in obtaining legal advice via media such as the Internet, according to Mark Garnish, Business Development Director at TikitTFB, another LSSA member and legal software supplier.

“Although this ideology is beginning to change, any legal ABS who wants to do business via any form of ‘self-service’ (whether that be over the Internet or via touch screens in a shop), will have to gain consumer confidence in the first instance,” he says. “In order for this shift to gain any real momentum, however, a large and trusted corporate would probably need to pave the way for such services.”

### Legal services enter the mainstream

One of the largest changes that ABS will bring is the availability of legal services from a wider ‘point of purchase’, such as inside a supermarket. Legal services from providers like these are more likely to be available out of office hours, and therefore perceived as offering greater convenience for consumers.

“Traditional high street firms will definitely need to adapt to a whole new generation of open-all-hours legal services,” says Mark Garnish. “However, provided they look carefully at their practices and can develop and promote their own specialised services, they can still thrive. This shake up will be radical, yes, but I am confident that law firms will adapt.”

One of the most ubiquitous media buzzwords surrounding ABS relates to the arrival of “TescoLaw”, a term sparked by the possibility that a prominent law firm could, indeed, be bought by the likes of Tesco. Clearly, this would raise some operational – and technological – challenges for Tesco, but what about for the firm being purchased, as well as for the developers of legal software?

“Certainly an organisation such as Tesco would look long and hard at the sort of software being used to manage caseloads,” says Darren Gower, Marketing Manager at Eclipse Legal, another LSSA member. “They will want to see flexible systems that can be managed and tailored ‘on the fly’ without the need for specialist knowledge of niche technologies and systems. As such, case and matter management software that has a good track record of being used in commercial organisations, not just law firms, would probably have a distinct advantage in that regard.”

“In actual fact, if a huge conglomerate such as Tesco was to enter into this market, it is likely that its IT Department would write its own bespoke system,” Mark Garnish adds. “However, as this would be a huge undertaking, it is also very likely that it would look to some outside assistance from suppliers who currently write such systems for extremely large global legal practices, taking into account the myriad of multi-discipline and multi-regulatory requirements which would need to be considered.”

### An “end-to-end” service

With the arrival of ABS, most industry analysts are expecting to see a rise in complete “end-to-end” services for consumers, whereby law firms partner with accountants, insurers, and banks in order to provide a single seamless service for their customers. As a result, law firms will not only need the ability to interface quickly with one another, but also with anyone else in the value chain.

“Clients will increasingly expect, and to a certain extent demand, a complete end-to-end service in which firms and chambers form partnerships with players such as accountants, insurers, banks and other retail brands,” says IRIS Legal's Catherine Bailey. “It therefore follows that staff will need the ability to access real-time data instantly from anywhere in the world.”

Although technology can certainly support these developments, there may well be questions as to potential conflicts of interest. Already, concerns have been expressed with regard to the ‘relaxation of the rules’ which could allow ownership of law firms to fall into ‘less desirable hands’, a worrying prospect which has already been dubbed ‘Maxwell Law’.

Even more worrying would be a situation in which a commercial ABS puts pressure on the Head of Legal Practice to consider the business' interests as much (or even above) as the client's, according to Mark Garnish.

“For example, an ABS formed with a bank may be under pressure to sell financial services to a client where a financial settlement is reached through the legal action,” he explains. “To address potential conflicts like these, tight regulation will be essential, but it is already understood that an ABS could be refused on grounds of an adverse impact on access to justice.”

### Legal software changes with the times

Because ABS legislation will allow greater competition in service delivery and new ways of meeting consumer demand for legal services, traditional law firms will need to take action in order to stand out in this competitive new market.

“New players in this market will expect to see efficient, customisable case and matter management systems, and they will not expect these elements to be bolt-ons or afterthoughts,” says Darren Gower from Eclipse Legal. “As a result, the focus may well shift from simply counting beans (traditional legal accounts software) to making more beans (fully integrated case / matter management systems). In any case, I think there will be a greater emphasis on ‘front-end’ benefits for staff and fee earners. The days of hard to learn, inflexible, and difficult to use systems will rapidly come to an end.”

As a result of changes like these, many feel that traditional law firms will need to “get their houses in order” to compete with ABS. After all, the new breed of ABS law firm will be, by its very nature, marketing and IT savvy. A more commercial approach will therefore need to be taken, and technology will be one key area where changes will need to be made. According to Darren Gower, a serious focus on both service delivery and cost-cutting will be essential as competition heats up.

“Traditional law firms will clearly need to embrace more automation and ‘trim the fat’ from their work processes, but they will also need to consider services like online case tracking and text messaging to keep clients informed and make them feel valued,” he says.

### Facing the future

As with any service industry, it will always be necessary for firms to review and consider their services regularly, and to pay attention to what their competitors are doing. The difference with ABS, however, is that the competition may not necessarily be local.

Purely legal practices, such as the traditional high street solicitor, will therefore need to promote their ability to offer a highly personalised, traditional service that can only be obtained from a long-established practice whose solicitors and fee-earners are all fully trained lawyers.

“Firms need to reinforce this message, and to make it very clear that they can offer their clients a full service option,” says Mark Garnish. “Although many firms already do this, others may get caught out if they allow themselves to be complacent in this regard.”

Continued

# Defence witnesses need support at court

"In this changing market, Chambers and law firms will need to work collaboratively if they are to reduce clients' costs whilst still retaining high levels of client care," adds IRIS Legal's Catherine Bailey. "They will need to optimise the value of their services and possibly look to include value-added content where appropriate in order to enrich the client experience. Finally they will need to track and monitor their clients' behaviour in order to build an accurate profile of their behaviour and needs. Harnessing these profiles will then give them the ability to market other services that might be appropriate to that particular client. This kind of pro-active marketing will be essential for building new revenue streams and retaining loyal clients in what is likely to be a very competitive marketplace."

### About the Legal Software Suppliers Association (LSSA)

The Legal Software Suppliers Association (LSSA) is the UK industry body for legal systems developers and vendors. Representing most of the leading UK suppliers, the LSSA sets and maintains professional standards within the legal software industry, and also manages areas of mutual interest between lawyers and software providers.

The LSSA also has numerous links with legislative bodies - such as the Land Registry, LSC, and the Law Society - and is committed to developing clear channels of communication so that law firms can gain the maximum benefit from their selected software solutions. For more information please visit [www.lssa.co.uk](http://www.lssa.co.uk)

### Victim Support is a national charity that supports victims and witnesses, both prosecution and defence, of crime.

A recent example at Uxbridge Magistrates Court highlighted how important it is for defence witnesses to be offered support from the independent Witness Service.

A trial was happening with 3 prosecution witnesses. Later that day Margi Thompson, the manager of the Witness Service at Uxbridge, went to see if there was a result. "I was informed by the Usher of the court that there was still a defence witness to give evidence. The young woman had driven from Liverpool (with the defendant, her father) the night before and had slept in their car before arriving at court at 9.00am. She had been waiting all day to give evidence and had no idea about what was happening or the likely time of finishing. As the case went part heard, she will have to return".

Margi explains how the witness would have benefited from the Witness Service.

- We would have gone through the process to inform her and explain the delay.
- We would also have tried to arrange for her to go out in the morning and be back at lunch time as it was obvious she was not going to be called early in the day.
- At the very least we could have given her something to read and make sure she was as informed as possible to assist her on this day.

Please do refer your witnesses to the witness service at the court, Advocates priority is the defendant and the Witness Service can ensure defence witnesses are supported to be able to give their best evidence on the day.

## Quiz Night

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# Escaping the ARP

**The widely predicted lack of competitiveness in the Solicitors' Professional Indemnity insurance market has proved to be nowhere near as severe as first thought. Consequently, it is likely that far fewer firms will be in the Assigned Risks Pool (ARP) than had been forecast. There will still be, however, a large number of unfortunate firms that are currently facing the dilemma of finding themselves in the ARP and having to take the urgent action to rectify the situation.**

The Solicitors Regulatory Authority does allow days of grace during which a firm can come out of the ARP without "penalty". This is provided that a firm can obtain a quotation from a qualifying insurer and have cover granted with effect from the 1st October. If they can, then it will be as though that firm had never been in the Pool in the first place. Often, many firms find themselves in the ARP through circumstances and not through any real fault of their own. So, if you find yourself in this position how do you go about proving your worth to an Insurer and extracting your firm from the ARP?

Firstly, the key is act quickly and to ensure you get the right advice. You will need the expertise and experience of a specialist broker with wide access to the insurance market. One that knows what underwriters need to see and hear, who is prepared to review your issues and work with you to remedy them. It also requires a broker who is prepared to give honest advice on how best to approach all insurers - even if that broker is unable to access some insurers themselves.

At Prime, our approach will be to firstly verify that all the appropriate insurers have been considered and that there have been no "gaps" in market coverage. At the same time, we need to understand your own risk profile in detail to identify any potential issues that led to a firm finding themselves in the ARP. Any matters identified would be investigated in order to provide improved or more comprehensive information to insurers. We will then review how the original approach to the insurance market was planned and implemented, identify what occurred and exactly what insurers' issues are. Insurers will then be approached in the most effective way.

Some of the common reasons for firms finding themselves in the ARP are:

- Leaving it too late
- Not approaching all appropriate insurers
- Not completing the proposal form properly
- Incomplete submissions (claims information etc.)
- Property matters
- Regulatory/disciplinary matters
- Claims Records
- Lack of risk management controls
- Fraud

Some of these issues are easier to rectify than others. Issues involving property matters, fraud and chequered claims histories may need detailed analysis and understanding. However, in many cases the process is straightforward so, if you find yourselves in the ARP do not despair. With a well-planned campaign as outlined above insurers can sometimes be persuaded to reconsider. With the right approach, you greatly increase your chances of getting them to offer terms and you can get back to what you do best - practising law!

Richard Brown  
Director and Head of Professions

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# Point Abandoned or Appeal Withdrawn?

by Ryan Clement

Ryan Clement is a practising barrister at Conference Chambers, Harrow.

There are times in court when it becomes apparent that a point being pursued becomes unarguable – either for factual or legal reasons – and has to be abandoned. Such factual or legal reasons can come about in a number of ways, be it in consequence of a concession made on the evidence or through a straightforward change of evidence. Either way, a representative would either no longer pursue the now defunct point and leave to the judge to decide the obvious or, under clear and ambiguous instructions from the client, withdraw the corresponding ground of appeal. In this article I shall examine part of the recent Upper Tier (Immigration and Asylum Chamber) decision in *Nav Raj Ghale v Secretary of State for the Home Department IA/34711/2009* that deals with the consequences of abandoning a point without necessarily withdrawing the corresponding ground.

In *Ghale* the appellant was a citizen of Nepal. He appealed unsuccessfully a decision of the respondent's refusing to vary his leave to remain in the United Kingdom; the respondent was not satisfied that he had met the requirements of paragraph 317 of HC 395 – in particular, that he was, "financially wholly or mainly dependent," on his son.

## Appeal before First Tier

At the start of the hearing, the IJ considered the papers with the appellant's then representative and decided that the figures showed that the appellant's income exceeded his expenditure. According to the IJ's note the appellant's representative, "conceded that Rule does not assist appellant and relies on Art 8 alone".

When the appellant received the determination dismissing the appeal he was very concerned to find the point had not been argued. It had never been his intention to abandon the claim under the rules.

At paragraph 2 of his determination, the immigration judge recorded: "During the course of the hearing, [the appellant's representative] informed me that the Appellant was no longer pursuing his appeal on the basis of the relevant rule, namely paragraph [...] 317 of rules [...]. The basis for such concession was that the evidence in fact showed that the Appellant was neither wholly nor mainly dependent on his son in the UK. Having regard to the evidence in this case, including the certificate of the Appellant's income at page 5 of the Appellant's bundle. I find that the concession was properly made." In consequence, the judge then went on to consider the case solely on the grounds of the appellant's human rights, which, like I said earlier, he dismissed in any case.

## Appeal before Upper Tier

The grounds before the Upper Tier were settled on the basis that the appellant's then representative withdrew the grounds alleging that the appellant met the requirements of the Immigration Rules and that the IJ erred by accepting the appellant's representative's decision without confirming it with the appellant. The Senior Immigration Judge ("SIJ") stated that he was surprised that anyone would find anything wrong with the judge's approach if the appeal had in fact been withdrawn but counsel for the appellant was able to refer him to two relevant cases. The first was a decision of the House of Lords in *R v Diggines ex parte Rahmani & Others* [1986] Imm AR 195. The leading speech was given by Lord Scarman. Here, the HL found that on the particular facts of the case an advisory service had made a mistake and this had led to a misunderstanding. Nevertheless Lord Scarman did say that the immigration judge, "should have required an unambiguous declaration from the Service either that their instructions have been withdrawn or that they have no instructions". The SIJ was also referred to the decision of *Nachhtar Singh v SSHD* [1991] Imm AR 195, a decision of the Immigration Appeal Tribunal chaired by its VP Professor D.C. Jackson. There the Tribunal decided that solicitors who were without instructions could not withdraw an appeal.

## Error of law

The SIJ expressed the view that he was not sure that either of these decisions would have helped the appellant very much if he had had to decide if the ground relating to the appeal under the rules had been withdrawn properly. However, he was satisfied that it had not been withdrawn. The word "withdrawn" does not appear in the determination and there was no reason to think that it was formally withdrawn. It was quite clear to the SIJ that the appellant's representative simply abandoned a point that he did not think could succeed. It was still incumbent upon the IJ to do something with the appeal in front of him and on the particular facts of the case. He should have decided if the decision that was the subject of the appeal was in fact in accordance with the rules and he did not. Given the way the case was presented before him the SIJ had considerable sympathy with him for making this error, "but it was an error and it has to be corrected."

## Conclusion

This is a decision worth taking particular note of because many times, by way of 'house keeping', an advocate would be asked out the outset of a hearing about the issues in question that, depending on the approach of the presiding immigration judge, may entail points being pursued on appeal or not. However, according to *Ghale*, it is clear that, on the latter, an immigration judge ought not to treat a point not pursued by an appellant's representative as indicative of the appellant's withdrawal of the corresponding element of the appeal without further enquiry establishing that it is the appellant's desire to have the relevant in fact withdrawn.

# Law Society helps prepare students for legal career Seminar 21 October, 2010

Law students are encouraged to attend a free conference being held next month to prepare for the challenges of a legal career.

'Preparing Students for Gaining Entry to the Solicitors' Profession' will provide students with an overview of the Legal Practice Course (LPC) and advice from industry experts, graduate recruiters and senior partners.

As part of the conference the Law Society will officially launch its new toolkit providing advice for graduates on preparing a CV, covering letters, application forms and interview techniques.

Delegates will also be given insight into alternative career options offered by different types of employers within the legal profession.

Law Society President Linda Lee says;

"Today's law students are entering a market that is competitive and challenging but also rewarding.

"The Law Society continues to work with students and graduates to ensure they are well prepared."

Ali Zaidi, partner at Edwin Coe and Claire Lay and graduate recruiter for DLA Piper will address the conference.

Preparing Students for Gaining Entry to the Solicitors' Profession will be held on 21 October 2010, The Law Society's Hall, Chancery Lane, London.

## Copy Deadlines 2010

Winter Issue	5th November
Spring Issue	4th February
Summer Issue	13th May
Autumn Issue	12th August

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

Email: [rogerswift@benhampublishing.com](mailto:rogerswift@benhampublishing.com)  
Tel: 0151 236 4141

**Brentford County Court  
Users Meeting  
on 21 October 2010  
at 4.30pm**

(Light refreshments will be provided)

## The Law Society Black History Month

The Law Society hosts the Black History Month Inspirational Evening on October 15, featuring a panel of guest speakers including the Honourable Mrs Justice Dobbs DBE, Angela Jackman, partner at Maxwell Gillott and Legal Aid Lawyer of the Year 2009, Oba Nsugbe QC, Head of 3 Pump Court Chambers, and Trevor James the first black managing partner at the London office of Morrison & Foerster, a leading US and international law firm.

The event begins at 6.00pm on 15 October and will give the audience the opportunity to hear high-profile lawyers talk about how they got to where they are with a Q&A session to follow. Register for the event at [blackhistorymonth@lawsociety.org.uk](mailto:blackhistorymonth@lawsociety.org.uk).



**Middlesex Law Society**

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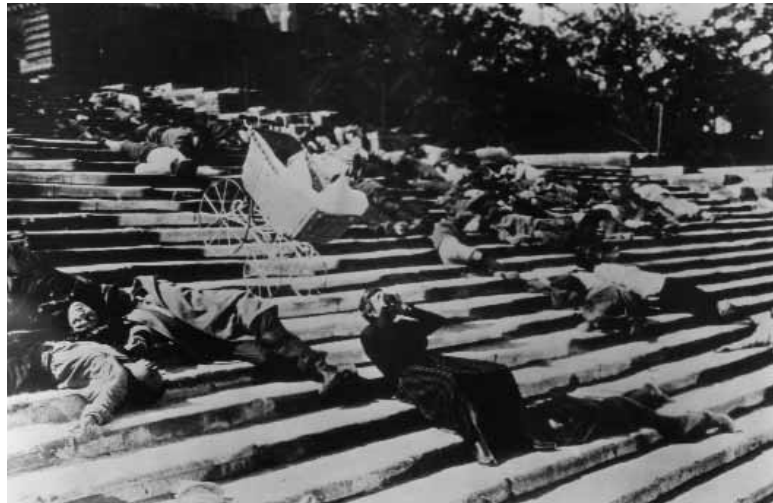
# FILM AND THE LAW No 9: Lies, Damn Lies and Film

The good book poses the question, What is truth? 2,000 years later radical film-maker and all round wag Jean-Luc Godard posited an answer. Truth he said, is 24 times per second – a reference to how the illusion of reality is re-produced on the silver screen by the passing of 24 frames of film every second through the gate of a film projector.



By Vincent McGrath  
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020 8579 5330  
07877 551442

As every film student knows the stirring Odessa Steps sequence in Eisenstein's masterpiece BATTLESHIP POTEMKIN (1926) never actually happened, although it clearly took place for the benefit of the director's camera. If you are privileged enough to visit the location of the steps then you can join a tour that is conducted on the basis that you are visiting the hallowed ground of a real event, made famous by the film. No harm there you make think. Just an amusing little con by the tour operators. What's new?



Odessa Steps: When fiction became truth.



Battleship Potemkin.



Nanook: Is this a just image or just an image?

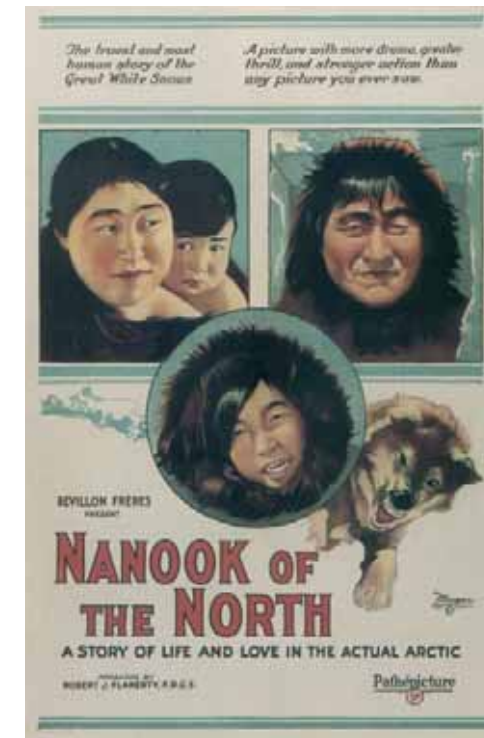
NANOOK OF THE NORTH (1922) depicts an Eskimo building an igloo, fishing through a hole in the ice and other folksy activities associated with the intriguing life of a people who are at home in the frozen North. Explorer/director Robert Flaherty turned young Nanook into an international celebrity and gained kudos for his documentary style. Only problem was that Nanook and his contemporaries had long since given up such a way of life by the time Bob came along with his camera, and what you see is a re-creation of a collective memory that had joined the mists of time. Nanook with his engaging smile became an icon overnight but had trouble coping with fame. Eventually he took to the bottle and died long before his allotted three score and ten.

Kim Longinotto and Ziba Mir-Hosseini are film makers who were granted unrestricted access to an Iranian divorce court. Their fly on the wall DIVORCE IRANIAN STYLE (1998) is a fascinating insight into what in many ways appears to be a fair and open albeit idiosyncratic system. However there exists a troubling moment when the amiable judge turns to the film makers and asks them their recollection of an incident that took place outside the court room when they were filming the woman who was a party to the matter. They gave an answer that was clearly at variance with what we the audience had already seen. In other words they lied. Admittedly, they were not under oath or acting as officers of the court. Such film makers would have you believe that their *raison d'être* is to document events, not make an intervention. Yet when questioned about the matter they volunteered that they felt they had an obligation to support the woman as she was in danger of losing her child. As it turned out the judge found in the woman's favour but we will never know to what extent the film-makers' evidence influenced the court.

One wonders if they would have acted any differently, had they been granted similar access to an English Family court. One can only speculate although I suspect the answer would be in the affirmative, which then raises the question of how they viewed the quality of law obtainable in Iran, and just as importantly how they viewed their role as documentary film makers.

So we have a conundrum. Whilst on the one hand Godard with film in mind, says that truth is 24 times a second, he also memorably uttered that, every edit is a lie and that cinema is the most beautiful fraud in the world. Perhaps Byron should have the last word when he said that truth can sometimes be stranger than fiction. Although come to think of it, if film had been around when the lad was tagging the Parthenon for posterity, he may well have added the rider,

except for film, where truth is fiction, and fiction is truth.



Nanook of the north.

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# Bypassing Chancel Screening Searches means everyone's a winner!

Joan Pask of CCS Insurance Explains Why

A previous article in this publication strongly suggested that conveyancers could be deemed negligent should a chancel screening search not be carried out. It went on to ask if it was worth taking the risk of either ignoring the matter or putting in place insurance that does not comply with the CML and Law Society guidance. Joan Pask of CCS Insurance responds and puts a compelling case for why chancel screening searches are not necessary - allowing you to stay within the advice from the CML and Law Society with NO fear of PI insurers knocking on your door!!

The subject of searches, in particular chancel screening searches arouses a lot of passion in the legal world: Are they needed? Must I carry out a search? Am I fulfilling my duty of care if I don't carry one out? Am I liable if I don't?

Some solicitors carry out screening searches as standard practice, some do not, and for others, only when a 'potential' risk is highlighted. It is accepted by all that once a 'potential' or real risk is identified, insurance is required to mitigate against this risk.

**You don't need to carry out a search, provided you take out insurance. If there is a liability, your client will not have a claim against you/your PI cover, the policy will cover the costs.**

There is a rapidly growing belief that searches are **not** required as there is no single central register which can be used to identify all chancel repair or other liabilities and restrictions attached to land and property in England and Wales (Source: National Archives). Joan Pask says **"bypass screening searches"**. Why? They just use up valuable resources: time and money, when at best all a screening search will do is establish a 'potential' risk. This means that you need to revert and take out insurance cover to manage this 'potential' risk.

If you are still unconvinced and you are currently adhering to the practice of commissioning screening searches to determine if a property falls within a risk category, there are two major shortcomings associated with chancel screening searches:

1. **They only search against an identified address point and NOT the delineated property/land boundary.** This makes the search worthless as the church land is likely to have been developed, the boundary split and developed into thousands of newer properties.
2. **The information cannot be relied upon.** Only c. 1,900 of the Tithe maps, about one-sixth of the whole called first-class maps, can be accepted as accurate. The unsealed (or second-class) maps constitute a very mixed collection - indeed, some are little more than topographical sketches.

**This is further collaborated by an extract from the Law Society's Submission in October, 2006, Sections 21 & 22.**

21. "A commercial searching service has been established. However, it necessarily suffers from the limitations imposed by the incompleteness of the records. A routine search, described as "a low cost screening report" only addresses the question whether the property falls within a parish where there is chancel repair liability. **Even within a parish where the liability exists, the search report does not address the question whether the liability definitely affects the land in question.**
22. It is immediately apparent there are severe limitations with the service it is possible to offer. A property may be within a parish where there is some liability, although it does not affect that particular land, or the parish may be one for which there is no record. We understand that, as a result, a substantial number of search results states that the possibility of liability cannot be ruled out. **That does nothing to offer any certainty**".

This view is shared by Paul Stevens, Partner at Harris Waters & Co "my preferred approach is to purchase insurance cover from CCS insurance rather than purchase a screening search, which is not property specific and inconclusive as it only establishes 'potential risk' relating to the parish in which the property is, or may be located. This means that we would need to incur further costs on our clients' behalf to purchase insurance to mitigate against this potential risk. This decision was also taken in support of our commitment to our clients' in fulfilling our duty of care obligations".

## Conclusion

**Bypassing screening searches - means everyone is winner**, except those companies who want you to first buy their screening search and once they have told you that you have a 'potential' risk, try to sell you their insurance! By purchasing insurance over conducting screening searches, you save valuable resources, time and money. Insurance is available from a number of companies including CCS Insurance, with policies realistically priced, starting from £16 - almost the same cost as the screening search! The transaction process moves faster, resulting in meeting your customer services charter and you have a happy client. Further, you are also giving your client protection and peace of mind - they are covered should their parochial church council (PCC) serve a demand on them for the cost of, or contribution towards the repair of its church chancel.



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## Chancel Liability

**A chancel screening search does not conclusively establish whether a property is or is not subject to a chancel liability – so why pay for one?**

**Just buy insurance – we cover limits of indemnity up to £3m online!**

**No Screening Report Cost! No Admin Fee! No VAT!**

**Below is a sample cost comparison for residential properties valued up to £500,000:**

	Screening Report (inc VAT)	Non-Successor Cover			Successor Cover		
		£100,000	£250,000	£500,000	£100,000	£250,000	£500,000
<b>CCS</b>	No Screening Report Required	£16.00	£16.00	£20.00	£25.00	£25.00	£37.50
<b>ChancelCheck &amp; ChancelSure</b>	<b>ChancelCheck £17.63</b>	<b>£45.88</b>	<b>£59.88</b>	<b>£80.88</b>	<b>£70.88</b>	<b>£100.88</b>	<b>£130.88</b>
		Inclusive of £5.88 (inc VAT) Admin Fee			Inclusive of £5.88 (inc VAT) Admin Fee		

All premiums shown above are inclusive of IPT. Please note that other limits of indemnity and premiums are available. **Non-Successor policies** cover the purchasers and their lenders but do not cover successors in title or their lenders. **Successor policies** cover the purchasers, their successors in title and their respective lenders.

**Many legal professionals are under the impression if they do not recommend chancel screening searches are carried out they are putting their firm's professional indemnity at risk – they are not, so long as they purchase insurance.**

**CCS offers a full range of conveyancing insurance solutions, e.g. search, planning & building regulations, restrictive covenant, defective title, etc. - it takes seconds to obtain a quote and purchase a policy. Try it - you'll like it!**

**Get smart – find out more at**  
**ccs-insurance.co.uk**  
**or call 020 7256 3836**

Cost comparison correct at 18/05/2010

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# Have you uncovered all the facts?

## Reveal your client's true identity with our new Foreign National Search

With instances of mortgage fraud on the increase there is even greater pressure on law firms to ensure their due diligence.

Our new online **Foreign National Search** will replace the need for time consuming manual checks on foreign nationals, returning results in seconds.

Launched in partnership with Intelligence Information Systems Limited, the powerful C6 database scans a wide range of data covering over 240 countries and leaves you in no doubt as to the true identity of your client.

This unique global product has been designed to assist in the fight against fraud and to comply with the current terrorist and money laundering regulations. Furthermore it is competitively priced and easy to use.

**To find out more about the Foreign National Search, call 0845 250 7040 or email [fns@searchflow.co.uk](mailto:fns@searchflow.co.uk).**

[www.searchflow.co.uk](http://www.searchflow.co.uk)



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