



May 2013

# The Bill of Middlesex

Official magazine of Middlesex Law Society



Middlesex Day

16 May



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**PUBLISHED**  
May 2013  
© Bill of Middlesex - Benham Publishing

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**SOCIAL PROGRAMME 2013 - 2014**

June Five aside Football  
 July Supreme Court, Guildhall Anniversary event  
 Nov Annual Dinner Dance  
 13 Nov Quiz Night

Contact the Middlesex Law Society Administrator,  
 Peter Hesom: 07930 386798

**EDUCATION & TRAINING PROGRAMME 2013 – 2014**

24 July Crime Update – Dinner & Seminar  
 14 Aug Family Law – Dinner & Seminar  
 • Feb. '14 Conveyancing Update Dinner & Seminar  
 • Legal Aid Update - TBA

UWL is University of West London, - St Mary's Road, Ealing campus  
 MU is Middlesex University, - Hendon campus  
 BU is Brunel University – Uxbridge campus

Others To Be Announced  
 Contact the Administrator or visit our website for details.

**COMMITTEE MEETINGS**

2013  
 15 April  
 20 May  
 17 June  
 15 July  
 16 September  
 21 October  
 18 November

2014  
 20 January  
 17 February

**AGM**

Wednesday 14 March 2014

**PARLIAMENTARY LIAISON**

Robert Drepaul



[www.middlesex-law.co.uk](http://www.middlesex-law.co.uk)

# President's Page



*Darrell Webb*  
 President, Middlesex Law Society  
 e-mail: [darrellwebb@boltburdon.co.uk](mailto:darrellwebb@boltburdon.co.uk)

Welcome to this special *Risk and Compliance* edition of the Bill of Middlesex. It's packed full of helpful news, articles and advice so please do read on.

It is a great privilege to have been elected President of the Middlesex Law Society and I look forward to working with my fellow committee members over the next 12 months to provide a full range of services and support to our members.

My predecessor, Susan Scott-Hunt, has done an absolutely fantastic job in her year as President getting the Society back on track. We now have a new database and emailing system that will enable us to attract new members and communicate more effectively with our current membership base. I really do hope you will like our 'new look' emails and that the information, news and updates provided will be helpful and of interest to you. As our new Membership Secretary, I'm sure Susan will continue her good work in increasing our membership.

I am extremely grateful to Robert Drepaul for agreeing to continue as Social Secretary this year. It is a very difficult and time consuming job, but I really cannot think of anyone who could do it better. A full list of our Social Events will be released shortly, but amongst other things there will be the usual Charity Quiz Night, Past Presidents' Dinner and the much anticipated Annual Dinner and Dance. I do hope you will support us by coming along and I look forward to seeing you all there.

An extra special thank you must also go to Nirmala Chandrasena for taking over my former role of Treasurer. I have no doubt that she will do a brilliant job managing our finances and keeping a close eye on the figures.

Generally I have a great committee behind me and I thank them all for their invaluable support and guidance now and in the forthcoming year.

This year celebrates the centenary of the Middlesex Guildhall, now the prestigious Supreme Court of England and Wales. The Middlesex Law Society has had a close affinity with the Guildhall throughout its history. Indeed it was added extra-territorially as being within our membership area to permit solicitors on the staff of the Middlesex County Council to qualify for membership of the Society. The Society is therefore working closely with the Supreme Court this year to host an exhibition during the summer recess to celebrate the importance of the building throughout the years. We also intend to hold a social event at the Supreme Court, which should be a fantastic occasion.

One of our most important functions is to provide education and training to our members. This is becoming increasingly difficult in such a competitive market, which is why we are going to try something a little different this year. What our members want is practical advice and help in running their businesses and answers to the day-to-day problems they are experiencing in the office. We have

therefore teamed up with Law Client to provide a Q&A on Risk and Compliance that we will be running in this magazine and our website [www.middlesex-law.co.uk](http://www.middlesex-law.co.uk). If you are the appointed COLP or COFA for your firm and have any questions that you want to put to our experts, please let us know and we will do our best to answer them for you.

If this then enables us to identify a particular area of training that we can provide we can run a programme of bespoke seminars specifically for our members. We are also going to reintroduce our CPD Dinners, which always proved very popular. This will consist of a short talk on Family, Crime or Conveyancing followed by dinner. What better way to get your CPDs and socialise with other lawyers and legal professionals working in your field.

Lastly, I would just like to finish by saying how saddened I was to hear about the passing of our Past President Maria Crowley. Maria was President of the Middlesex Law Society from 2008-2009 and was much liked and respected. I personally considered her to be a good friend. She was also a very keen photographer and we therefore thought it would be fitting to run a photographic competition in Maria's memory to find a new picture for our website. More details are available on page 14.





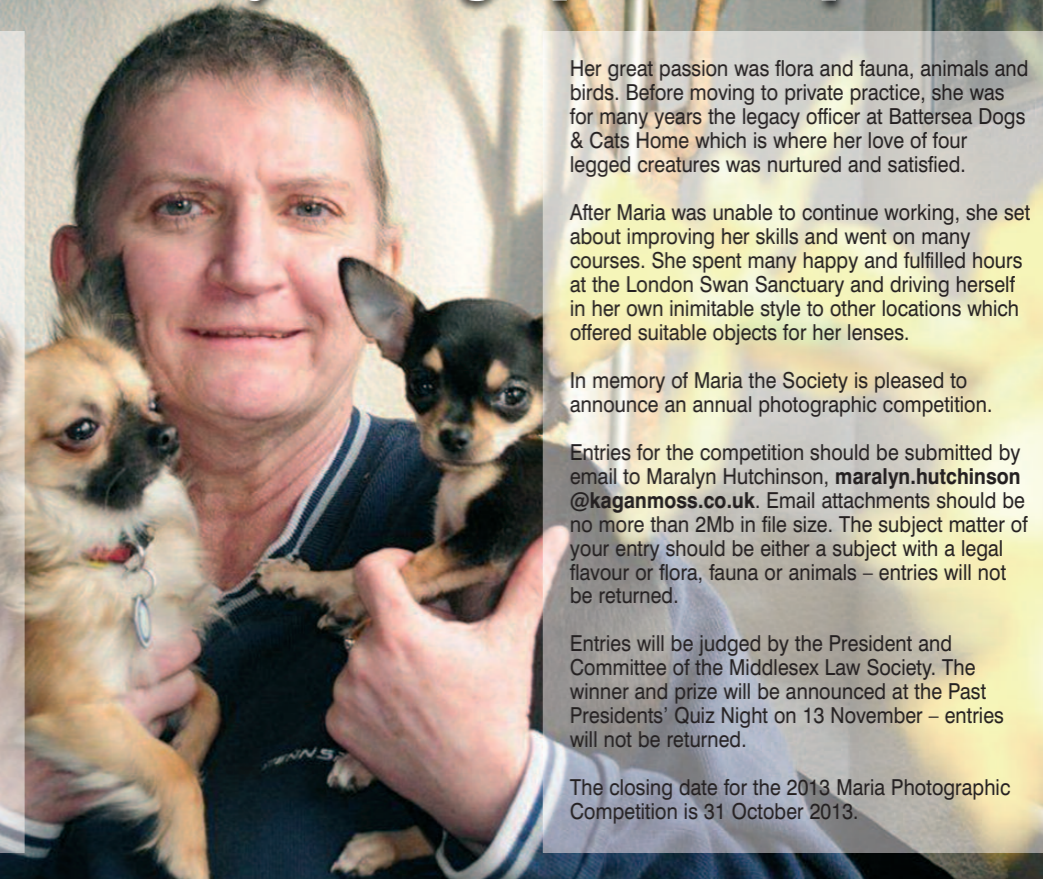
## Darrell Webb elected President at the Middlesex Law Society 53rd AGM on 20 March 2013 at Ealing Cricket Club

Guest Speaker: Ben Wilson from the Supreme Court



## The Maria Crowley Photographic Competition

Our recent past President Maria Crowley who tragically died earlier this year was a very keen and gifted photographer. She became the Society's photographer of choice for all our social events and many of her photographs graced the pages of the Bill of Middlesex.



Her great passion was flora and fauna, animals and birds. Before moving to private practice, she was for many years the legacy officer at Battersea Dogs & Cats Home which is where her love of four legged creatures was nurtured and satisfied.

After Maria was unable to continue working, she set about improving her skills and went on many courses. She spent many happy and fulfilled hours at the London Swan Sanctuary and driving herself in her own inimitable style to other locations which offered suitable objects for her lenses.

In memory of Maria the Society is pleased to announce an annual photographic competition.

Entries for the competition should be submitted by email to Maralyn Hutchinson, [maralyn.hutchinson@kaganmoss.co.uk](mailto:maralyn.hutchinson@kaganmoss.co.uk). Email attachments should be no more than 2Mb in file size. The subject matter of your entry should be either a subject with a legal flavour or flora, fauna or animals – entries will not be returned.

Entries will be judged by the President and Committee of the Middlesex Law Society. The winner and prize will be announced at the Past Presidents' Quiz Night on 13 November – entries will not be returned.

The closing date for the 2013 Maria Photographic Competition is 31 October 2013.



### Past Presidents' Charity Quiz Night

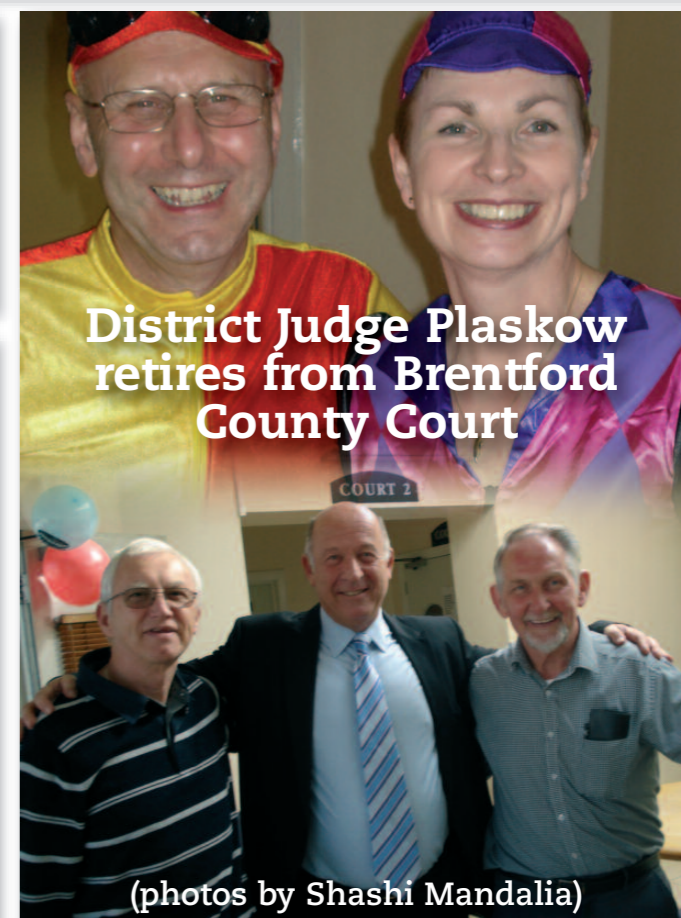
Wednesday 13 November 2013  
@ 6.30 pm  
The Drayton Court Hotel,  
The Avenue, W13

### Middlesex Law Society Practitioners Working Dinners at the Drayton Court Hotel, The Avenue W13

Criminal Practitioners  
24 July 2013  
Contact: Alan Williams  
e-mail: [creativewit@tiscali.co.uk](mailto:creativewit@tiscali.co.uk)

Family Practitioners  
14 August 2013  
Contact: Darrell Webb  
e-mail: [DarrellWebb@boltburdon.co.uk](mailto:DarrellWebb@boltburdon.co.uk)

£25 per person  
2 hours CPD



### District Judge Plaskow retires from Brentford County Court

(photos by Shashi Mandalia)





# Council Member's Report

## 'Facing the music'

At the end of 2011 the chair of SRA's was optimistic for the future. "We are a stronger more robust and confident organisation than we were even two years ago. Our relationships with the regulated community in all its diversity has improved substantially... A recurring message is that members welcome the SRA's efforts to interact more effectively and more personally. We have improved our relationship with the City law firms by appointing a City firm's adviser and by building regulatory relationships with them. In short we have shown that we can and do listen to what the regulated community has to say."

The chief executive echoed this: "I am encouraged at the way in which we have as an organisation learnt how to build more effective relationships with our stakeholders especially regulated community. Communication has been at the heart of our engagement programme. We have demonstrated that value for money and transparency underpin all our activities."

Then in the 2011 report the SRA Chair said: "it is important that all our stakeholders understand the benefits which the new regulatory regime will bring to consumers and the profession alike and our research of all stakeholders confirms that to be the case."

Reality is that the introduction of Outcomes Focused Regulation (OFR) 6 October 2011 and the appointment of compliance officers from 1 January this year has brought us to a situation where the vast majority of firms want to try and do the right thing but are floundering while dealing with increasing cost and uncertainty. In February the SRA published its own research into the impact of OFR which indicated limited progress in winning confidence from the profession.



By Michael Garson  
Council Member and chair of  
Law Society Regulatory Affairs Board  
michael.garson@kaganmoss.co.uk

The Legal Services Board report 'Developing Regulatory Standards - An assessment of the Solicitors Regulation Authority' published February 2013 [http://www.legalservicesboard.org.uk/news\\_publications/press\\_releases/pdf/2013\\_02\\_27\\_sra\\_re\\_g\\_assessment\\_FINAL.pdf](http://www.legalservicesboard.org.uk/news_publications/press_releases/pdf/2013_02_27_sra_re_g_assessment_FINAL.pdf)

identifies a number of failings particularly relating to enforcement, change management and the SRA Board's lack of information and focus on managing the business. It also criticises the SRA for failing to measure the impact of OFR on consumers.

It was of course the LSB who pressed for the introduction of OFR with very little concern as to the impact other than a vague notion that liberalising a market would see an automatic increase in innovation. The regulatory maze has mushroomed, the cost of regulation has increased and now the Legal Services Board recently suggested to the Parliamentary Select Committee that the entire legal profession should have one super regulator.

This backdrop does not help in a situation where the downturn in conveyancing and small business continues and cuts in Legal Aid affect the size of the market for legal services. The ongoing recession also affects larger firms and when they fail there is a new and additional direct cost to the profession. Due to financial instability some large and established firms have had to merge and sold or intervened. Following the failure of Halliwells and Wolstenhomes we have seen, in 2013, the financial failure of Cobbetts, Atteys, Blakemores and other smaller firms. The SRA have indicated that they have contacted firms - some in the top 100 and others in the top 600 - regarding concerns over their financial stability. We know that the High Street has been struggling for a long time but the failure of large firms is a new and costly development.

Against this economic backdrop we have to find ways of making the new system of regulation work. My concern at reading recent surveys is that it is not an appropriate outcome for a regulatory system to be 'harmful to business, or difficult to understand as to how it will work'. Uncertainty surrounding the impact of OFR does presently make it difficult for firms to innovate or to confidently adopt new methods of undertaking work.

Asked about OFR members have said: "You feel nervous that your actions are going to be put under a microscope with the benefit of hindsight and highlight issues which could not have been foreseen at the time' and 'Previously established attitudes have been thrown open to doubt and often it is not possible to determine from reading the code what the position now is. It is more difficult to cascade understanding of the code on to less qualified members of the firm."

Good relevant and proportionate regulation should be encouraging confidence and not undermining it. Because SRA do not issue detailed guidance and there are as yet few examples of what they would approve or disapprove it is not felt by most firms to be safe to embark upon new or radical courses of action.

We are a practical profession so what are we going to do about this? I suggest we can:

- commit to shared practice for resolving long standing or chronic problems
- identify market challenges and examples of good and bad practice
- develop safe strategies and identify areas of weakness
- create action plans to deal with current problems and advance planning for identifiable business risks including transfer or close down
- communicate problems more quickly
- challenge SRA more vigorously together where necessary

By working together, developing and sharing what we believe to be good practice we can draw strength and reassurance from each other. All firms do things slightly differently and when the reasons are discussed we can all benefit. Through discussion standards are changed and improved. In effect, we are now re-discovering self regulation. Effectively we are required to become our own regulators. In a sense this is the rationale for accreditation schemes - a space where practice procedures are examined endorsed and improved. This is true self regulation and makes the antics of the professional regulators something of an irrelevance.

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# Editorial

## Tendering Justice

The Ministry of Justice is proposing competitive tendering for the £1 billion criminal legal aid budget for services ranging from advising suspects at the police station to preparing for trial in the Magistrates' and Crown courts. A sensible procurement would seek suppliers after sourcing the market but the Ministry of Justice says it cannot deal 'efficiently' with 1,400 mainly small and medium size service providers.

There will be a cull of one thousand High Street Firms throughout England & Wales as the government is openly attacking small and medium enterprises (SMEs). This is also an attack on localism i.e. local firms, local probation services, local barristers and the local police. These are the very people who understand the dynamics of local justice.

One solicitor has called the plans a 'dark piece of social engineering' and 'a fundamental attack on most people's legal rights should they become a suspect and be at the mercy of a state-funded prosecution'. Richard Atkinson, chair of the Law Society's criminal law committee says that the combination of flat fees and removing choice is 'a recipe for lower standards and reducing public confidence in the justice system'.

Thorney Island in Westminster was originally a small island on the River Thames, upstream from medieval London. It was a place for those seeking refuge and justice. As the level of the land rose and the Thames embanked, there is now no sign of the island. Today the Palace of Westminster, Westminster Abbey and the Middlesex Guildhall (home of Supreme Court) sit on the original corners of the island.

Thorney Island is reputed to be the location in 1016 of King Canute's demonstration that he could not command the tide. Today, 21 May 2013, local criminal firms of solicitors are lobbying their MPs outside Westminster Palace to try to stop the tsunami of competitive tendering. If they are unsuccessful, a new Thorney Island may be needed.



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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/FIRM/ACADEMIC/ASSOCIATE/STUDENT (YMG) 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 \_\_\_\_\_

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	£30.00 per annum (less than 3 years admission)
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Students:	£5 per annum (Young Members Group)

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Tel: 020 8411 6019 e-mail: [s.scott-hunt@mdx.ac.uk](mailto:s.scott-hunt@mdx.ac.uk)



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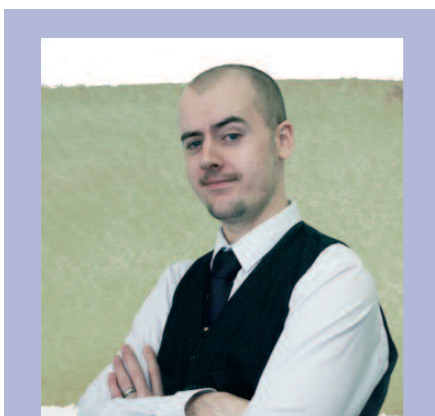






# New website aims to close gap between profession and public

A new web app called Lawyerly, which immediately connects solicitors with potential clients wherever and whenever they need advice, was launched in mid April.



Matthew Cavanagh,  
Company Founder  
[www.lawyerly.co.uk](http://www.lawyerly.co.uk)

“...it’s more important than ever for firms to establish trust and bolster their reputations...”

“Essentially, Lawyerly is a highly-localised and specialised search engine” said company founder Matthew Cavanagh. “Customers can find the best solicitor closest to them that suits their needs, and with our rating and review system they can see at-a-glance what others think of that firm, too.”

With the introduction of Alternative Business Structures, the Jackson reforms and LASPO it is more important than ever for firms to establish trust and bolster their reputations in the eyes of potential clients.

The app, which is compatible with smartphones, feature phones and tablets, as well as traditional computers, will be followed by dedicated Android and iOS apps in the next few weeks. These standalone offerings will feature everything available on the web app plus a system whereby customers can send videos, photos and audio supporting a claim directly to a qualified solicitor.

“The app effectively acts as a seamless link between someone who needs immediate advice and a solicitor equipped to act in that branch of law” Cavanagh continued.

The service, which will be free to use, is in short a gateway for the man on the street to access legal advice on his terms, without being pursued by call centres.

“The app is foolproof and has benefits for both user and lawyer. The client can reduce the likelihood of any ambiguity at a time of high stress, while the solicitor is presented with a customer at a very early stage in the legal process.”

“From the very start of this development, the objective was to reduce any friction in the business process. Trust, confidence and results are what this app will breed” said Mr. Cavanagh.

Lawyerly is now available to solicitors to list their practices for free (with extended features available in the coming weeks via a monthly subscription). The directory goes live to the public later this month. Its launch and development can be followed on Twitter:

<http://www.twitter.com/lawyerlyuk> and to find a solicitor, users should visit the website at [www.lawyerly.co.uk](http://www.lawyerly.co.uk)



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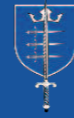
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# Lawyerly

For more information, visit [www.Lawyerly.co.uk](http://www.Lawyerly.co.uk)





# Sponsor the Middlesex Law Society's Shield of Justice

The Supreme Court of the United Kingdom is planning an exhibition in August and September 2013 to mark the centenary of the opening of its home, the Middlesex Guildhall. As well as serving previously as a Crown Court, the site of the Guildhall had strong links with the administration of justice going back to Norman Times. The Middlesex Law Society has been given the opportunity to support this unique exhibition.

As part of the exhibition, the Middlesex Law Society intends to have its Shield logo redesigned and built by the designers of the exhibition. Below are two of the possible designs:



We are looking for firms, academic institutions and organisations associated with the Middlesex Law Society and the Bill of Middlesex to help raise the funds for the construction and exhibition of our Shield. This Shield will then be permanently displayed at our future event.

In return, sponsors will have their names printed in a two page spread of a special 'Middlesex Guildhall Centenary Exhibition' issue of the Bill of Middlesex.

Please e-mail the President Darrell Webb at [DarrellWebb@boltburdon.co.uk](mailto:DarrellWebb@boltburdon.co.uk)



## Supreme Saturday begins Middlesex Guildhall's centenary celebrations

The Supreme Court opened its doors on Saturday 25 May, kicking off celebrations for the building's centenary while giving those unable to visit the building on weekdays an opportunity to see inside the UK's highest court.

The Court opened between 10am and 4.30pm on this Saturday, becoming only the second time the Court has opened fully to the public on a weekend since it was established in 2009. As usual, admission was be entirely free.

The Guildhall building was officially opened in December 1913, originally housing both the Middlesex County Council and the Middlesex Justices' Quarter Sessions. Later changes to both local government and the courts system led to the building undergoing a number of changes of use before being chosen as the future home of the UK Supreme Court in 2006.

While there was no appeal hearings taking place on the Saturday, there was plenty for visitors of all ages to see. In addition to the courtrooms, library, exhibition and café area, a wide range of portraits from the Middlesex Guildhall Art Collection was on show. The open day also saw the launch of two new services for those interested in the history of the Middlesex Guildhall:

- A free audio tour 'app', available on both Apple and Android platforms, which guides visitors around the outside of the building. The tour will highlight points of architectural interest, telling the story of the rich allegorical design of the exterior decoration of the Guildhall. From the intricate keystones above the ground floor windows to a gate recovered from the old Bridewell Prison and built into the rear of the building, the audio tour leads visitors back in time to discover more about the architects' aims for the Guildhall and how the site has been linked to public administration and justice for centuries. A simple version (in mp3 format) will be available for download from the Supreme Court website for those without access to a smartphone.
- A full colour booklet detailing the background to each of the heraldic shields depicted in stained glass found throughout the Supreme Court building. These windows commemorate notable figures from the

county's history, concentrating particularly on prominent individuals holding public office around the time of the Guildhall's construction, including a number of Lord-Lieutenants, Dukes and Sheriffs. The guide, written in conjunction with Rupert Barnes of the Historic Counties Trust, will be freely downloadable from the Supreme Court website or available on loan from the Court's Reception desk.

Thursday 16 May was marked as Middlesex Day. The county flag will fly from the Supreme Court tower to commemorate the anniversary of the battle of Albuhera in 1811, when the Middlesex Regiment engaged in one of the bloodiest battles of the Peninsula War.

The Supreme Court will also take part in the Open House London weekend this autumn ([www.londonopenhouse.org](http://www.londonopenhouse.org)), 21 and 22 September 2013), after a positive response from visitors in 2012 which saw more than 2,600 people look around the building over the two days. A temporary exhibition relating the history of the Middlesex Guildhall will be in place during the Court's summer recess, including the Open House weekend.

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## Copy Deadlines 2013/14

August Issue	19th July
November Issue	18th October
February Issue	24th January
May Issue	18th April

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

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





# 'Compliance Corner' forum to be held 27 June 2013

This article begins an initiative of the Society to support members in working through the everyday issues raised in working through the requirements of the current regulatory framework. Outcome focused regulation (OFR) introduced by the SRA in 2011 requires risks to be managed by solicitors and managers in regulated bodies and monitored by their compliance officers (COLPs and COFAs).

Admittedly some firms may still await approval of nominated officers but hopefully those that need help in that direction have sought assistance. There has been much talk up and down the country about the duties of compliance officers and so Middlesex Law Society through the Centre for Professional Development at UWL (formerly TVU) has established a forum for discussion of issues to help us all in keeping up with new developments.

Two of our members recently met to discuss just a section of the many issues surfacing in the news headlines. Elisabeth van der Weit, a family solicitor, practices in a small High Street firm handling civil matters. She is a COFA. Michael Garson is our Law Society Council Member and COLP in a small firm handling property, probate and business matters. Many of the principles underlying the issues faced by their firms are similar.

**EW: There is worrying news that the SRA will be short of funds to deal with interventions. Why do they have to intervene?**

MDG: We are used to the SRA intervening where there may be abandonment of a practice or allegations of dishonesty, but the situation in the news where there is risk of financial failure is a feature of the current market conditions. In the case of medium and larger firms, such collapse could have a widespread and detrimental impact on the reputation of the profession. Closing down or breaking up a firm creates an uncertain situation in which clients' matters may be put at risk. Whatever the background reasons, where intervention becomes necessary, very substantial costs are incurred and new methods must be found to reduce the dislocation to firms and clients as well as the costs. The Law Society is exploring suggestions for mitigating intervention costs to the profession.

You suggest that in the current year SRA could be short of funds to deal with interventions and whilst their budget may be exhausted the SRA can never be short of funds as it has the power to levy the profession at any time to meet the costs.



For the current year it appears that a levy will be avoided to cover any shortfall and instead reserves in the Compensation Fund will be utilised. To avoid future increase in levy it is therefore important that the process be re-examined and improved.

**EW: Are there lessons for Middlesex firms from these recent failures?**

MDG: I think so - in the current economic climate with chunks of work disappearing and a sluggish economy there are lessons for firms of any size. Members of the profession may have to reconsider their business plans. SRA have published indications of what they call 'good' and 'bad practice' but in truth these can be no more than markers for underlying financial change and it is for firms to set their plans and show that they are managing them.

There is a duty under chapter 7 to manage the business and a duty to report and cooperate with the regulator; and if this is done in a proper way then SRA are on record that they will try and make the Supervision function work so that intervention is not necessary.

A continuity plan is necessary for all firms and when one reads in recent intervention cases that large numbers of files were not closed off it could be safely assumed that this is not an isolated phenomenon. Where organisations adopt over-ambitious targets that put fee earners under pressure to start new files rather than bill and close old ones there are issues which the COLP and COFA should be alert to manage.

**MDG: I am worried about the impact on solicitors and their firms of April's withdrawal of public funding for civil work, and prospectively for criminal work. This obviously means that members of the public who need help have to handle their own cases. So for a divorce a party may be able to afford to pay for some help but not for a full service. It seems tempting for solicitors to provide work on what is now being called an 'unbundled' basis. Do you think that solicitors can go along with this?**

EW: Most people who were eligible for legal aid for a divorce before 1 April 2013 are no longer able to receive free legal help. Other areas of law, too, are now excluded from legal

aid and access to justice has been reduced considerably. It is a sad state of affairs for the less advantaged people of the country. I am aware that some firm already are "unbundling" legal services to make them affordable for those with lower incomes. This involves providing client services for a particular step in litigation which would historically be part of an overall retainer covering the process from beginning to end. An example of unbundling would be to confine the services to particular steps in the process such as giving an hour's advice and drafting a divorce petition for a fixed fee and letting the client remain on the record as a litigant in person. The client may or may not come back for further help with some other aspect of the case, but for a fee to be agreed.

It is in my view essential to ensure that what you do is both safe and profitable. I think that the pressures have to be very carefully balanced between carrying out a carefully scoped piece of work for a certain amount of money and running a case on a continuing or 'drip' basis. I would need to know that my professional indemnity insurers approved of my policy and terms of business.

I would be concerned at possible complaints if the outcome of the case is unsatisfactory. For that reason it is so important to be clear and to have a record about what the client wants and expects from you.

There is much that could be done by the government to modernise the court system and make the savings that they are looking for elsewhere rather than achieve the savings at the expense of those who need assistance. It does not help court staff including Judges to have to deal with litigants in person. Unbundling will mean that fewer solicitors will be on the Court record as acting for litigants. Solicitors ought to be regarded as part of the solution; and not as the problem. I hope the new Law Society Practice Note on unbundling will be updated as experience grows and give some guidelines on this topic that will protect members - especially for dealing with the court when solicitors agree only to act for part of a case and do not wish to go on the record.

**MDG: I am the COLP and COFA for my firm and must confess that I am largely doing what I have always done; nothing is very different at all. However I do feel anxious that I may be missing something that with hindsight the SRA could criticise?**

EW: That seems to be an inevitable outcome of the system of OFR and the way the SRA want it to operate. There is no substantial

guidance or safe harbour. We can be judged by the SRA with hindsight - usually when something has gone wrong. The stated policy is that where something untypical occurs or even in the event that successive breaches emerge the SRA approach will lead to supportive supervision based always upon their assessment of the risk. And of course that may not be the same as any individual solicitor's assessment.

I think that we can look at the practical problems that arise in the office on a regular basis at our forum meetings and cover routine matters such as file openings, risk assessments, file closures and accounts balances. I think that regularly updating on changes in all aspects of practice is a really important aspect of self managing risk.

**EW: I am really worried by the focus the SRA is now putting on the question of financial stability. Any firm could choose to operate off an overdraft or not. That may be part of a business plan or a choice. I do not understand how SRA are going to judge whether or not there is financial stability?**

MDG: I agree that firms will need to take care to ensure that SRA are not able to reasonably conclude that financial management is lacking. What SRA seem to be moving towards is publishing some benchmarks by which firms can judge whether or not they are sustainable. At this volatile time in a number of core legal markets it could reasonably be argued, for example that, absent other factors where partners consistently draw out more than their firm is generating in profits there may come a time when the business will no longer be sustainable. The question really will be whether the business plan that supports an overdrawing policy is realistic. Where a business has been built up relying upon a certain type of work (for example PI) and there is no certainty that that market will continue then, for the business to continue unaltered - on the basis that a buyer for that business will be found - may not be realistic. On the other hand given realism and appropriate time and skills to plan it should be possible to avoid all but the most sudden and unexpected of disasters.

The first forum will on **Thursday 27 June 4pm - 6.30pm at the University of West London**. Please confirm to Michael Garson of Kagen Moss, [michael.garson@kagemoss.co.uk](mailto:michael.garson@kagemoss.co.uk)

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# Orchestrating Your Due-Diligence

If a conductor falters, the performance will suffer. A beat out of time, an allegro misplaced or a forte too soon and even the Royal Philharmonic can sound like the worst school orchestra. Without an effective conductor there is no unity and harmony.



Marshall King  
CEO, SearchFlow  
[www.searchflow.co.uk](http://www.searchflow.co.uk)

The best conveyancers and property lawyers need to be much like the best conductors. Understanding the risks associated with property transactions in their region and advising buyers on the potential for these risks enables them to provide effective and efficient due-diligence. Both conductors and conveyancers also need to have impeccable timing. If it isn't, conductors face the embarrassment of a disjointed piece, while conveyancers face the jarring consequences of buyers missing key information and the potential fallout of negligence claims.

For many conveyancers, direct experience of dealing with all the risks that could impact properties in their region may not be in their repertoire. This should not stop them from being able to provide a thorough service to buyers though.

## Soggy and unsteady ground

Getting to grips with the risks in your region is essential. For example, one in four properties in the UK is at risk of flooding, but the prevailing myth is that the biggest risk of flooding comes from rivers breaking their banks. However, surface water flooding now accounts for around half of all flood risks. This could be due to

groundwater levels, now very high after such a wet series of winters or, more specifically to the urban nature of Middlesex, the ability of sewers and rainwater goods in the streets to deal with sudden deluges that could occur anywhere. Understanding the pattern of flood claims at property level is the only way to be really sure what the local picture is.

Heavy rainfall in recent years has also put swathes of the country at risk of subsidence. A dry summer in 2013 would cause large amounts of damage to property in areas with high levels of clay in the soil. In many areas of North London, large numbers of properties are built in clay-heavy soil and this increases their risk of shrink/swell subsidence. Clay soils swell when saturated but when dryer weather causes evaporation these soils can shrink, crack and cause movement in properties. With two years of heavy rainfall behind us, a dry year could wreak havoc. Property buyers need to understand this risk and take all the necessary precautions to avoid unseen problems unfolding in the future.

## The crowded capital

London and the South East continue to be attractive for both potential homeowners and developers as ongoing wealth concentrates around the capital. At the same time, the government is looking at how to loosen planning regulations by relaxing the burden of red tape on planning regulation, approvals and permitted development.

The National Planning Policy Framework (NPPF) is the catalyst to free up and simplify previously lengthy and more restrictive planning policies via local councils' own Local Development Plans. The NPPF now sits on top of these with the presumption in favour of development on a tiered set of preferred sites, with Brownfield and infill land within the developed boundary being priority. Thereafter, green belt land is to be looked at more positively for development where there is clear local need and is free of other protections, such as Areas of Outstanding Natural Beauty. This is placing greater pressures on the conversion of available land and

increases the risks that your client will face some unexpected changes in the neighbourhood after completion unless you alert them beforehand.

Indeed, this ever more crowded island and the concentration of infrastructure improvements needed to support growth is placing great demands, especially in the Middlesex catchment. Large infrastructure projects such as HS2 can have a serious and slow-burning impact on the properties in close proximity to the planned works. While there have been recent victories that improves prospects, such as the decision to create a tunnel under Ealing rather than the demolition of 18 bridges and compulsory purchase of property, its spectre is sure to hang over West London for the next decade and a half.

Details of the HS2 compensation scheme are now published, with the government offering to pay the full un-blighted value of the property, along with additional compensation of 10 per cent up to a value of £47,000. Whether in the scheme or not, the construction and operation of HS2 will cause significant disruption from noise, dust and vibration, smell, fumes, smoke and artificial lighting. Your clients need to understand how proximal they will be and the relative impacts to their asset values and well being.

Of course, HS2 isn't the only large-scale infrastructure project in town. Other big projects include Crossrail and the Thames Tideway scheme. Again, understanding the subterranean impacts to your client's property, together with any loss of amenity disruption from surface access works is vital, whether residential or commercial.

Conveyancers need to be aware of the risks that are relevant to your area and understand how these factors may change over time and affect properties and sites in different ways.

This understanding will allow conveyancers to orchestrate their due-diligence much more effectively and help them provide a service so unified and smooth that even the best conductors in charge of the most complex symphonies would be proud.



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## “Your bank should be part of your business”

We sat down with Tim Wright, Finance Director at highly regarded commercial and private individuals law firm Penningtons Solicitors LLP. Penningtons are the 77th biggest law firm in the UK and the fastest growing by turnover in 2011/2012, a title they have continued to build on into 2013.

*“In my opinion, your bank should be part of your business. For us this doesn’t just stop at the day to day, we refer business to each other and organise joint social events outside work. Having previously banked with a high street bank, we have banked with Allied Irish Bank (GB) for 13 years and built a very strong relationship. It’s great to be able to pick up the phone and talk directly to our branch manager or discuss what’s coming up at our quarterly meetings.”*

### Professional Indemnity Insurance

*“As with most firms, our annual indemnity insurance renewal comes up in October but we start the process at the beginning of June. Predominantly we would look to our specialist brokers to advise us on the best offer and then to our bank to provide us with the right loan product. Primarily, the most important aspect that I require as Finance Director is flexibility. It’s important the loan is suitably financed over the whole year and that I am able to draw it down in blocks.”*

*“With regard to keeping the annual premium and therefore the loan requirement to a minimum, it is all about managing your risk proactively. The guidelines and procedures from our continued Lexcel accreditation and our annual independent audit have been integral to this management. The most important aspect, of course, is ensuring that all these safeguards are followed through in practice to reduce the firm’s risk and ultimately the claims made against it - insurers look favourably on this.”*

### Asset Finance

*“When it comes to funding, the relationship a firm has with its bank becomes all important. In 2011, a merger was proposed with two other firms. Penningtons required funding to enable the merger and to purchase office furniture and IT for new premises. I needed to know that I could pick up the phone to our bank and discuss the proposal with someone who understood our business. Our Relationship Manager at the bank carried out their own financial analysis and provided us with a timely, competitive quote over the right payment terms for the firm. An important aspect for me on the fit out for the new office was that we were able to source the equipment ourselves and the bank then reimbursed us, rather than waiting for the bank to pay the supplier or an alternative supplier of the bank’s choice.”*

### Partnership Loans

*“As Finance Director I advise new partners on market rates and then they arrange the loan with a bank directly. Typically, the rate is the most important aspect here, although some prefer to use their own bank or favour the security of using the firm’s bank.”*

### International Trading – foreign currency payments and transactions

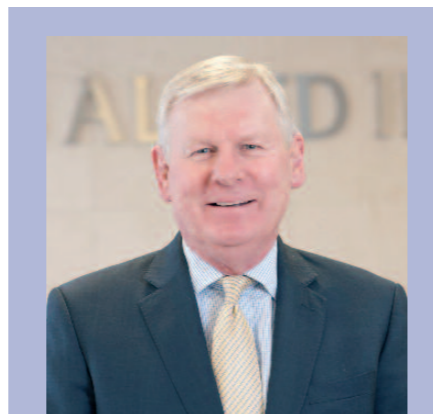
*“Currently, 12% of Penningtons’ turnover comes from abroad and we are very much looking to grow this international business. With payments required to overseas lawyers, clients and foreign probate transactions, a foreign currency banking capability is increasingly important.”*

*“We see the growth within the Eurozone as much smaller than elsewhere and hence we have had significant success in places like North America and India from investors looking to the UK for property or business acquisition. Our membership of Multilaw, a global association of independent law firms, has been a great asset to the growth of our international business and we have also recently appointed our first partner from Mumbai.”*

### Online Banking

*“We use the iBusiness Banking provided by Allied Irish Bank (GB) and this offers us everything we need to conduct payments efficiently and reliably. Most importantly, it is secure and allows different levels of authority to ensure staff can only access the parts that they need.”*

*“For client account opening we rely on the bank’s Central Deposit unit. We require these accounts to be opened and managed efficiently and look to negotiate a good rate on larger deposits. Our direct relationship with the staff in this unit means that we are able to quickly track a payment by picking up the phone.”*



*Peter Slattery, Regional Manager – London and the South East, at Allied Irish Bank (GB), continues where he left off from the last issue with more on finance in the legal sector from a bank’s perspective and what banks should be offering their professional clients.*

### Credit Card Payments

*“Generally across the legal profession we have seen an increase in credit card payments and for this we look for merchant services solutions. We currently have a point of sale terminal in operation to accept card payments. The increase in card use is down to two reasons. Firstly, there has been a positive social shift towards using credit cards for paying legal bills whereas previously this was not done. Secondly, for the firm this provides a greater speed of collection than chasing invoices. Ultimately, for any business in the current environment, cash is king.”*

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We see the relationship with our clients as a partnership and it is pleasing to see Tim echo this. From Tim’s comments, it is clear that drawdown and repayment options are crucial to changing the cash flow of any business. It is vitally important that banks listen closely to their clients and adopt a flexible approach when trying to match their requirements.

*Peter Slattery  
Regional Manager – London and the South East,  
Allied Irish Bank (GB)  
[www.aibgb.co.uk](http://www.aibgb.co.uk)*

With special thanks to:  
Tim Wright  
Finance Director  
Penningtons Solicitors LLP  
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**Tim Wright, Finance Director  
Penningtons Solicitors LLP**



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# On the up

The Law Management Section's 2012 Financial Benchmarking Survey report shows that, despite the ongoing challenging economic and market conditions, the situation for law firms continues to improve. Andy Harris introduces the findings, and Chris Marston reflects on the results.

This is the fourth year that we have produced the Financial Benchmarking Survey for the Law Management Section. Now in its 13th year, the Survey is sponsored by Lloyds TSB Commercial. This year, the survey was opened up to the whole profession, and the submission deadline was brought forward to allow us to produce the report much earlier than in previous years. Despite the earlier deadline, almost 170 practices took part, making it one of the biggest of its kind in the UK. As in previous years, participants provided two years' data – the most recent accounting period and the previous one – allowing us to compare results on a like-for-like basis.

- the median cost of an employed fee-earner (including fixed share partners) increased slightly to £40,860;
- total lock-up (work-in-progress and debtors combined) remained very similar to 2011, at 159 days;
- median profit per equity partner increased by 3.6% to £120,677, following the trend in both 2011 and 2010, with increases across the board for all but the largest and smallest practices in the survey – for some practices, profits are as high as they were four or five years ago.

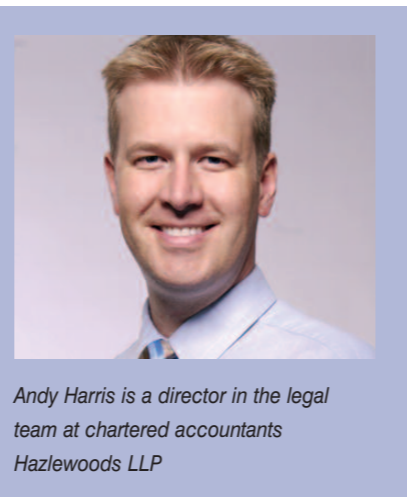
The increase in profitability has resulted from a combination of increased income and continued control over spending. Greater numbers of practices have also begun outsourcing their key functions.

Continuing the positive trend, in this year's survey, we asked practices for their fee predictions for 2013. Overall, the responses were fairly positive, with a median expected fee growth of 3.4%. Given the uncertainty coming from alternative business structures (ABSs) and other legislative changes, this is pleasing.

We also asked participants for their thoughts on their own future over the next few years, particularly following the introduction of ABSs and external investment in practices at the

Here are a few brief headlines:

- median practice fee income increased by 3.6% compared to 2011, following a 1% increase last year, and a 0.2% increase the year before;
- median fee income per equity partner was £559,000;
- interest receivable increased by 20% – an average of almost £2,600 per partner – as the amounts of client money held continue to increase, and banks are beginning to pay improved rates of interest on client monies;
- the ratio of fee-earners to equity partners increased slightly, up to just under five to one;



Andy Harris is a director in the legal team at chartered accountants Hazlewoods LLP

beginning of last year. A third of practices told us that they were likely to merge with another practice within the next two to three years, and a similar number were already speaking to other practices.

This certainly ties in with our own experiences – we are currently assisting more practices with mergers, demergers and hiving off parts of their practices than ever before.

Finally, one in five practices thought it likely that they would seek external investment for expansion, and a similar number said that they were likely to bring in one or more non-lawyer owners, such as HR, IT or finance partners, or partners' spouses.

### Note

This article was first published in the February 2013 edition of *Managing for Success*, the quarterly magazine of the Law Society's Law Management Section  
[www.lawsociety.org.uk/lawmanagement](http://www.lawsociety.org.uk/lawmanagement)



The LMS Financial Benchmarking Survey 2012, produced by Hazlewoods and sponsored by Lloyds TSB Commercial, is available to Section members now, at the special price of £75, or to non-members at £150. Survey participants receive a copy free of charge, plus a personalised report, comparing their results against all other participants. To buy your copy, visit the Section website at [www.lawsociety.org.uk/lawmanagement](http://www.lawsociety.org.uk/lawmanagement).

## Wilkins Kennedy Chartered Accountants specialist solicitor's group WK Law launches new briefings and in-house training courses for 2013.

WK Law was launched in 2010 by top 20 UK chartered accountancy firm Wilkins Kennedy LLP to provide specific tailored services to businesses operating within the legal profession.

The group regularly hosts informative breakfast briefings for law professionals across the South of England, with the opportunity to network with fellow law firms, and also discuss issues relevant to the sector with professional chartered accountants and specialist tax advisors.

Attendees have the opportunity to listen to presentations ranging from the New SRA handbook, budget and tax updates and planning points, audit and accounts requirements, practice issues and Lexcel and compliance issues and more, with each seminar finishing with a Q & A session. Attendees are encouraged to propose topics for future seminars so that presentations are relevant and informative to those solicitors that attend.

To consolidate their expertise in the legal sector, twelve staff and partners at Wilkins Kennedy are Lexcel accredited consultants, having completed the Law Society's Lexcel training program. All WK Law seminars and briefings are CPD accredited with the Solicitors Regulation Authority.

Tommy White, Partner at Wilkins Kennedy, says: "Based on our extensive experience working with the legal sector, we launched the WK Law briefings to help law firms and practitioners make sense of the relevant regulations and support clients in meeting their day to day and ongoing obligations with the SRA."

Wilkins Kennedy have recently rolled out their own SRA Accounts Rules training course for law firms wishing to take advantage of a bespoke course tailored to their specific



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needs. This training includes the new obligations for compliance officers (COLP and COFA).

WK Law has over 60 members, a regular e-newsletter and a discussion group on LinkedIn. For further information on SRA briefings, WK Law newsletters or bespoke SRA Accounts Rules in-house training please email: [wklaw@wilkinskennedy.com](mailto:wklaw@wilkinskennedy.com).

## Banking on success

Chris Marston, Head of Professional Practices at Lloyds TSB Commercial, reflects on the 2012 survey results

This year's survey results demonstrate once again the remarkable resilience of the solicitors profession. In difficult economic conditions, it's really impressive to see median income grow by 3.6%, and a similar percentage growth in median profit per equity partner. But the measure I like best is the profit after deducting a realistic notional partner salary, and notional interest on partners' capital. The resulting 'super profit' (or, to be blunt, real profit) has grown to almost 8% of fee income, from last year's 4.5%.

Partners tend to have three roles in their business – as investors, managers and practitioners – and the challenge is to do justice to each role. This important annual survey provides detailed and valuable data to allow them to look at their firm's financial performance objectively and make the right investment and management decisions. Without those, it really doesn't matter how great a practitioner you are.



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To give you an idea of how we can help, here are just a few of the enquiries that our librarians have handled in the past\*:

### Comparing text between previous and current editions.

**Q.** I have a copy of the 4th edition of Hague on Leasehold Enfranchisement. Can you let me know if some text has changed?

**A.** Yes. The library holds the current edition of Hague on Leasehold Enfranchisement, which is the 5th edition published in 2009. We are happy to read a few sentences over the phone to members. If there is too much to read out we can supply copies of most of the material we hold (subject to copyright law) using our Lawdocs document delivery service (see below for more information).

### Case searches

**Q.** I'm looking for case law on a particular scenario. Can you help?

**A.** Yes. The library currently subscribes to Westlaw, Justis and LexisLibrary, all of which have case databases that can be searched by key words. If you would subsequently like a copy of a case or law report, we can email you copies (subject to licence agreements and copyright law) using our Lawdocs document delivery service (see below).

### Legislation in force in the past

**Q.** I need a copy of the Town and Country Planning (Use Classes) Order as it was in 1970. Do you have a copy?

**A.** We have library resources that provide copies of legislation as they stood at particular points in time, so we will be able to provide you with a copy of this using our Lawdocs service.

### Succession rights of illegitimate persons on intestacy

**Q.** I have a partial intestacy probate matter still open from 1982. The only close living relative at the time (and now) is a niece, but she is illegitimate. Can she inherit the remainder of her aunt's estate?

**A.** The library holds textbooks going back to the 1800s, and we found the answer in Holloway's Probate Handbook (9th ed, 1993), which states that between 1 Jan 1970 and 3 April 1988 the Family Law Reform Act 1969, s.14 was in force, and gives detailed commentary of how an illegitimate child can inherit under intestacy.

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We look forward to hearing from you.

*\*Information correct at time of enquiry.*



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# Straight Talking Guidance

Jo Coleman, Partner and Head of Charity and Not for Profits at IBB Solicitors, looks at the recent ICSA Guidance for the corporate world and finds that its lessons are just as relevant for charity trustees



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There is a difficult balance to be struck for anyone engaged in training or advising trustee boards between making sure that they clearly understand their duties and responsibilities (for the general control and management of the administration of the charities they serve) and making sure that you don't scare the horses. Trustees give up a significant amount of their free time to serve as charity trustees and it can often be difficult for them to find additional time to attend the many excellent training courses and conferences that are now readily available in the sector.

The Charity Commission's Guidance is a good starting point for any new trustee but the Commission's 'one size fits all' approach and general tone of voice does not suit everyone. As a sector, we need a variety of different tools and guides to get the message across to the hundreds of thousands of trustees who serve the sector and may respond to different styles. Which is why I always pick up any new Guidance with interest in the hope that I can file it away, and use it in the right situation.

In January 2013, the Institute of Chartered Secretaries and Administrators (ICSA) published Guidance on liability of non-executive directors: care, skill and diligence. It is a short four-page note which is designed to help Non-Executive Directors (NEDs) think about the steps they might take not only to ensure that they are effective in their role but also to ensure that they are not exposing themselves to liability. In essence, the Guide is focused on ensuring that

NEDs can defend themselves effectively against any future allegations of wrongdoing. In any discussion about the role of trustees and their duties, it is often the question of personal liability that most engages the audience. So, it may be that this new Guidance (with the right health warnings) could be of real value to trustee boards – especially those that comprise trustees drawn from the corporate world.

The Guidance is based on the UK Corporate Governance Code and the FRC Guidance on Board Effectiveness, and as such is not all relevant, but it does make some really useful points which are just as pertinent for charity trustees. Expressed in the language of UK PLC, it may also be more accessible to some trustees.

The Guidance splits its recommended practice into two areas – what to do before a NED joins a Board and what to do following appointment. There is no game-changing solution or magic bullet but it does offer some sensible and common sense recommendations to help limit possible future liability.

**BEFORE:**  
**DUE DILIGENCE** – undertaking sufficient due diligence about the organisation before joining the Board to ensure that it is an organisation in which they can have confidence and to which they can make a strong and value-added contribution.

**DUTY OF CARE** – understand that a director's duty is to exercise the care, skill and experience that may be expected from a reasonably diligent person, but be clear that a higher standard is expected from a director with a specific skill or experience.

**CULTURE AND VALUES** – take time to understand the culture, values and behaviours of the organisation.

**CONFLICTS OF INTEREST** – understand the rules on conflicts of interest. Of course in the case of charities, we also need to add the prohibition on trustee benefits.

The Guidance for NEDs suggest that they spend time reviewing their **Letter of Appointment** making sure it sets out the minimum time commitment expected and the possibility of additional time commitments. Many charities now have a trustee role description which sets out what is expected

from trustees but maybe now is the time to take that a stage further and consider asking charity trustees to sign a document similar to a letter of appointment (which is careful not to create any employment relationship) but which sets out very clearly both parties expectations. Charity trustees should be warned at the outset (just as NEDs should) of the need to be available to meet the needs of the charity at times of significant challenge or crisis.

**ONCE APPOINTED:**  
**UNDERSTANDING THEIR ROLE** – which is to provide independence, oversight and constructive challenge to the Board, in contrast to the senior leadership team, whose role is to manage the business.

**INDUCTION** – receive a comprehensive induction-programme into which they should have input and take responsibility themselves for their on-going training and continuous development – including keeping abreast of developments within the sector and the legal regulatory and governance environment. Whilst many charities are good at introducing new trustees to the work of the charity, the legal and regulatory duties are often given less focus.

**SCHEDULE OF MEETINGS** – planned well in advance and notified to all in good time.

**PROVISION OF INFORMATION** – which should be high quality information provided sufficiently in advance of meetings and should be accurate, clear, comprehensive, up to date and timely.

**ACCESS TO THE EXECUTIVE TEAM** – to raise any concerns that they may have and also to appoint independent professional advice if necessary.

**OBJECTIVE DECISION MAKING** – in the best interests of the organisation.

**CONSIDER THEIR POSITION** – appreciate that circumstances may arise when they should consider resigning.

Whilst there is an additional charity perspective that will need to be explained to charity trustees, charity trustees wishing to know how best to avoid personal liability going forward, will be heading in the right direction if they have read and taken on board this new Guidance for NEDs. As such it would be five minutes well spent for charity trustees and senior directors, particularly those with Boards drawn from the corporate world.

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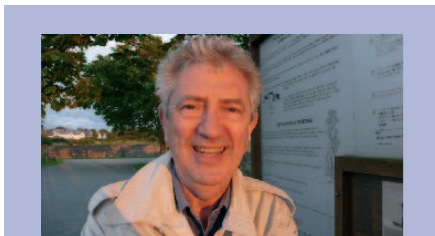
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# FILM AND THE LAW No 19: The Hegemony of Hollywood and the CIA



By Vincent McGrath  
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020 8579 5330  
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Kathryn Bigelow.



"Nazi sympathiser" Leni Riefenstahl.



Vocal critic of Bigelow's ZD30 - Naomi Wolfe.

"All you need to make a film is a girl and a gun"  
- Jean Luc Godard

"All you need to make a film is a boy and a gun"  
- Rules 1-10 Hollywood Producers' Handbook



The Battle of Algiers (1966).

In the days of wireless, the BBC Home Service used to broadcast something called **Round Britain Quiz**, which featured impenetrable questions for panels of eggheads from around what used to be affectionately known as Britain.

It might have gone something like this:-

Hello Birmingham. This one is for you and it was sent in by Mrs P Trellis of Much Binding in the Marsh.

What is the connection between,

- 1 The world's most famous female film director of her time, who gave triumph to the will of her leader in 1935
- 2 The 1956 John Ford western which shared the same title as a Liverpool 60's pop group
- 3 A 1966 film by an Italian anarchist which opens with a torture scene that shocked the civilised world.
- 4 Zero Dark 30
- 5 A predatory canine mammal from New York otherwise known as a canis lupus who wrote a controversial open letter to the most powerful woman in Hollywood since Mary Pickford.

Well London. Canis lupus of course is a wolf, and the only New York wolf who would consider writing to the most powerful woman in Hollywood who eh these days, has to be Kathryn Bigelow the director of **Zero Dark 30**, would be eh, Naomi Wolfe. We're not au fait on the pop culture of the 60's but we think the 1956 John Ford film is **The Searchers** and the 1966 film which starts with a torture scene, is **The Battle of Algiers** and of course the 1935 female film director with the ear of her fuhrer was the politically ambivalent Leni Riefenstahl.

I will give you 2 points for that Birmingham, but I did ask you for the connections. To get the full 5 points you would need to have given me something like:-  
Naomi Wolfe likened Kathryn Bigelow to nazi sympathiser Leni Riefenstahl, in that whilst the latter got financial support and co-operation from Hitler to do a PR job, namely **Triumph of the Will**, Bigelow seemed to get similar support from the CIA to turn them into the good guys of **Zero Dark 30**. The plot of **ZD30** can be reduced to "Americans in the homeland killed by foreign ethnics (Islamists) who have to be pursued to destruction", which bears a striking resemblance to the plot of **The Searchers** viz "John Wayne pursues foreign ethnics (Native Americans to give them the correct nomenclature) to destruction after they have destroyed his family in the homeland". Wayne even shoots out the eyes of a Comanche to cast him between the four winds in the afterlife, which rings bells with the dumping of Bin Laden in the ocean. And finally, Gillo Pontecorvo's, **The Battle of Algiers** of course opens up with a torture scene somewhat reminiscent of the opening in **ZD30**.

Now turning to Northern Ireland, your first question in Belfast is.....

When Gillo Pontecorvo decided to open his film of the last days of French rule in Algeria, with a torture scene he was anticipating that audiences would be shocked by what they saw. And so they were, as also were jury members of Film festivals around the world who en masse garlanded the film with countless awards. Which is all a bit mystifying, given that Bigelow in seemingly taking a leaf out of the *anarchist's cookbook*, so to speak, has done exactly the same but managed to elicit a very different response. The trouble seems to lie in the way Bigelow has attempted to explain the depiction of American agents torturing Iraqis for information about the whereabouts of Bin Laden. In several interviews she seems to take the pragmatic line of, well, that's how it was, and anyway, torture didn't work, given that, (as the film depicts) the whereabouts of America's Nemesis was revealed through electronic surveillance of one of his close associates not the torture of his foot soldiers.

But few film critics seemed too bothered by this. Even my gurus in a couple of week-end broadsheets couldn't resist climbing on the **ZD30** bandwagon and hailing it as a masterpiece. A well-crafted film true, if you like that sort of thing, but a worrying film all the same. Whilst **Argo** (2012) at least gave us some context of the recent history of Iran, **ZD30** (2012) on the other hand, apart from haunting Twin Tower phone calls and shots of the London 7/7 bombings, made little attempt to inform the audience of the *raison d'etre* of the *snatch and grab* exercise. State of art choppers presumably on loan from the CIA illegally breaching national boundaries at the drop of the hat, and a *shoot to kill* policy doing little to enhance the Rule of Law in the Land of the Free, are all seemingly OK in this definitive *revenge movie*, where cutting to the chase is the name of the game.

Clearly Bigelow is a very fine director. In fact I've been one of her biggest fans since she first surfaced with her vampire horror **Near Dark** (seen/discussed at Film Nite 1987) and her cult surfer flic **Point Break** (seen/discussed at Film Nite 1991), the latter opening with a choice piece of *mise en scene* - bank robbers wearing the masks of past US Presidents. Sadly no such scenes with similar ambivalent meanings are featured in **ZD30**. I must say the odd one or two would not have gone amiss.

Coincidentally a third film concerning the CIA came out later in the year. Unlike **Argo** & **ZD30**, it was low budget, made in Chile, and carried subtitles - three factors that instantly consigns it to a couple of week's run at an *Arthouse* cinema. Even though London has the largest multi-cultural population in Western Europe, its cinema going audience has an aversion to films that carry words at the bottom of the screen. Whilst **Argo** & **ZD30** give a lilywhite gloss to the CIA, the film **NO** harks back to 1988 when the Pinochet regime under International pressure, decided to hold a referendum on whether it should be given a further 8 years of dictatorship. Amazingly the **NO** campaign won, and Pinochet and his cohorts were rightly booted out.

During the **NO** discussion at Film Nite, extracts were screened from the documentary **Battle of Chile** (1978) & the Cost-Gavras film **Missing** (1982), the stars of which Jack Lemmon & Sissy Spacek convincingly inform us that the CIA was instrumental in destabilising the democratically elected Allende government in 1973. The film surprisingly was given the imprimatur of an Oscar the following year, and together with **No**, the two films offer a refreshing counterpoint to the over the top chauvinism of **Argo** & **ZD30**. (Check out the other Naomi, namely Naomi Klein in **The Shock Doctrine**.)

The final sting in the tail for Gillo Pontecorvo is the news that not only did Bigelow appropriate the opening scene from his **Battle of Algiers** for her **ZD30**, but also, the CIA now screens the whole of his masterpiece as part of its training programme for its **Rookie Spooks**. And to think that Americans don't do irony, huh? Poor Gillo must be turning in his grave.



Presidential bank robbers in Point Break (1991).



Zero Dark 30.



NO to another 8 years of Pinochet's dictatorship.

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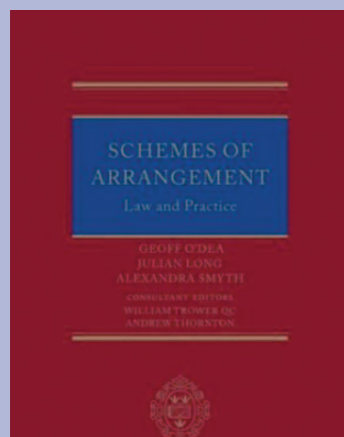
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### FOR CORPORATE LAW PRACTITIONERS – A PRACTICAL AND UP TO DATE ANALYSIS OF SCHEMES OF ARRANGEMENT PROCEDURES

One of the latest legal texts from the Oxford University Press, this is an excellent examination and analysis of schemes of arrangement and therefore particularly valuable for the practitioner involved with issues pertaining to corporate debt.

We would add that this book constitutes a useful statement for lawyers on how a company can avoid corporate insolvency using such schemes and explains why, or in what ways, schemes of arrangement may be preferable in a number of circumstances to entering a CVA (corporate voluntary arrangement).

A scheme of arrangement, as the authors explain, is simply 'a statutory procedure which allows a company to reach an arrangement or compromise with its members or creditors (or any class of them).' It's what you might call a developed creature of the Companies Act 2006 which currently provides for just this type of procedure.

The efficacy of such schemes has been alluded to, for example, in a case of 2001 in which the court stated that '*...the utility of the statutory mechanism is particularly obvious in a case where a company is in financial difficulties, but can persuade most, but not all the relevant creditors that the company's debts should be restructured rather than that those creditors should exercise their rights, including the right to put the company into liquidation.*'

Schemes of arrangement, therefore, are aimed at achieving a compromise position which can assist a company by allowing, for example, further time to pay, rather than resorting to the blunt instrument of bankruptcy.

In such a case, the consent of the majority of creditors (or shareholders) is required as well as, ultimately, agreement by the court, a process which can be protracted and complex. The possible or probable benefits for the creditors in this process is at least the expectation — or hope — of some recompense, which might be unlikely if a bankruptcy were regarded as the only solution.

The book is distinguished for its erudite commentary, which is supported throughout by numerous references to case law. Meticulously footnoted throughout, it provides extensive tables of cases and legislation and an extremely useful index.

And — as the contents are specific to schemes of arrangement, counsel involved in such proceedings can quickly turn to it for specific advice, (especially the Practice and Procedure section in Part V with its key documents list, timelines and so forth) without necessarily having to wade through the unwieldy standard texts.

We would regard this book as one of the most valued statements available on corporate insolvency practice — and certainly invaluable for counsel advising and/or representing corporate clients in schemes of arrangement matters at the Rolls Building. As schemes of arrangement are now becoming (since 2006) an increasingly commonplace solution to problems of corporate debt, this book should be acquired by every corporate practitioner. The publication date is 2012.



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