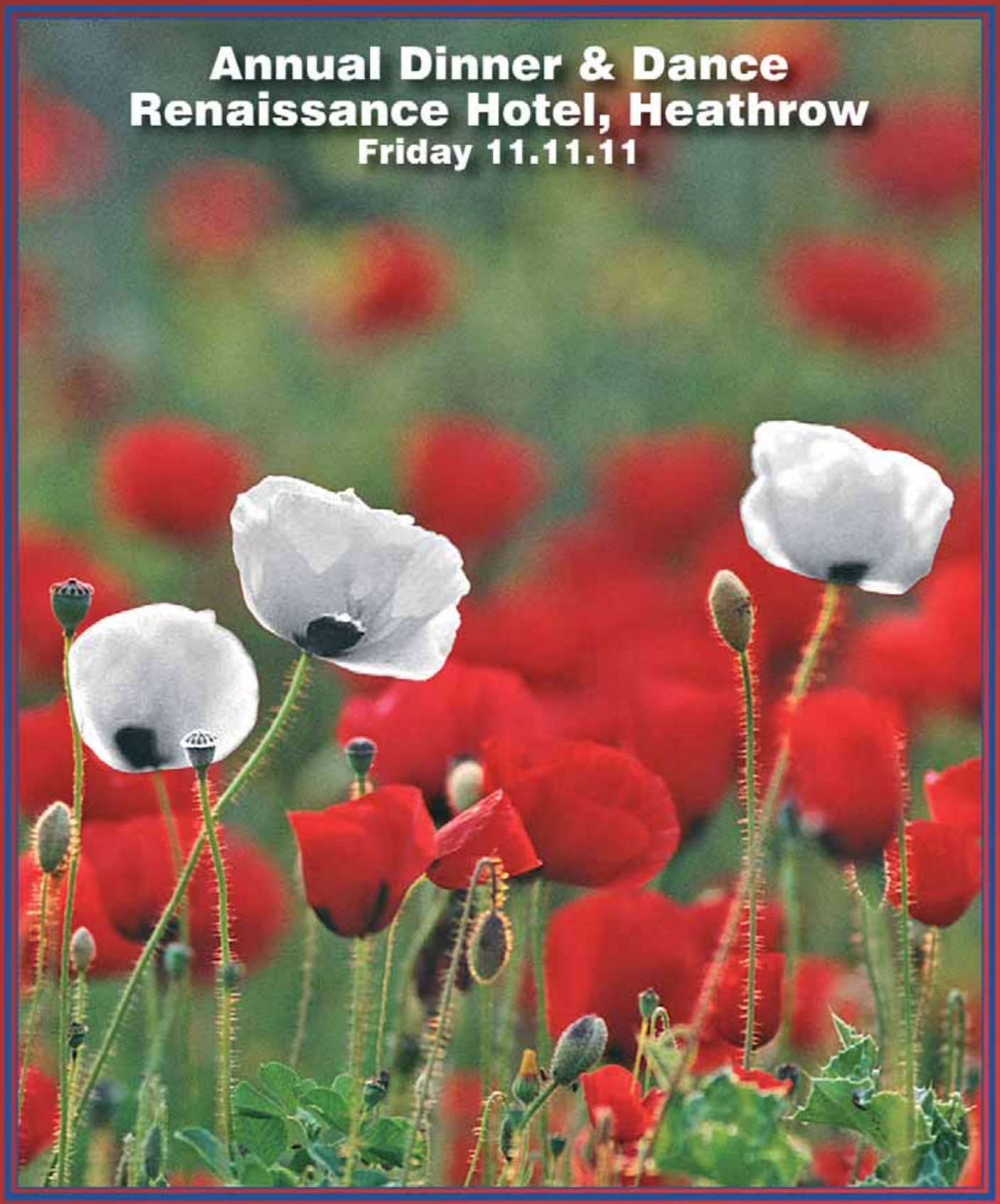
Autumn 2011

The Bill of Middlesex

Official magazine of Middlesex Law Society



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FUNCTIONS

16 April
5-a-side Football, Goals, Hayes
26 June
Middlesex CCC vs Gloucester CCC, Uxbridge CCC
June
5-a-side Football, Goals, Hayes
14 September
Charity Quiz Night, Drayton Court Hotel, W13
October
House of Parliament Event
11 November
Annual Dinner & Dance
18 November
Supreme Court Visit

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

11 May Insolvancy Update, Grange Tavern
18 May Conveyancing Update, UWL
25 May Crime Update, UWL
21 Sept Employment Update, UWL
TBA Alcohol & Drug Testing, UWL
TBA Family Law Update, UWL

Visit our website for details. UWL is University of West London (formerly TVU) - St Marys Road, Ealing Campus. MU is Middlesex University - Hendon Campus.

COMMITTEE MEETINGS

2011
18 April
16 May
20 June
18 July
19 September
17 October
21 November

2012
16 January
20 February

AGM

14 March 2012 - Ealing Cricket Club

Parliamentary Liaison

Robert Drepaul

www.middlesex-law.co.uk

President's Page

Dear Colleagues,

The anticipated big bang date of 6th October 2011 has come and gone. Members of the profession have geared up to face the new Code of Conduct to be fit and ready for the house warming on 31st March 2012. However, firms have reported that they are still unable to have access to hard copies of the New Code of Conduct, which came in to force on the 6th October 2011.

I do not know whether to call the arrival of ABS a big bang, a big opportunity, a Tsunami or nothing of such mammoth impact. We provide the best service and these big boys cannot blow us away or swallow us all because people are more vigilant and sensible. They will be with us and our client's loyalty will prevail. There will be many members in the profession in my constituency who may not agree with me. If so, please do not hesitate to write to me so that I can discuss your point of view in our committee meetings and also in the forthcoming workshop courses to be conducted by the Middlesex Law Society.

My dear colleagues, everything cannot be doom and gloom everyday. I am a strong believer that we must be able to defend ourselves since we are Lawyers. If we are unable to do that then we are not suitable to defend our clients. Therefore, cheer up and be ready for our 52nd Annual Dinner & Dance. Last year all the guests thoroughly enjoyed the event and did not want to leave the hall. This year, with the assistance of my social secretary, I am keen to take this event to an even greater level. Therefore, please contact and book your places in advance to avoid disappointment to hear that the hall is full and the tickets are sold out. (This happened last year and many were disappointed)

We are holding the Annual Dinner on a very important date being 11-11-11. I want to remember our Heroes. It is because of their sacrifices we are enjoying the freedom and democracy today. Whilst we will be remembering them on that day, we also want to kick start your Christmas mood.

May God Bless you all!

Kind regards,

Renuka Sriharan
info@sriharanssolicitors.co.uk

Editorial

Connecting the Dots

"If you live each day as if it was your last, someday you'll certainly be right"

This is the quote which inspired the late Steve Jobs (Apple CEO) when he looked in the mirror each morning. Call it destiny, karma or whatever, the Middlesex Law Society's 52nd Annual Dinner is taking place on the 11th Day of the 11th Month of Year 2011. The metaphysical significance of this date is that it is meant to be the opening of a 'Doorway' between worlds, presumably the living and the dead.

Whatever view you take of this date, be it insignificant or metaphysical, the fact is that for whatever reason tonight we find ourselves eating, drinking and being merry with the persons on your table on life's great journey. Enjoy the evening as if its your last even if the food and drink is not up to your expectations… particularly if its not to up to your expectations!

Steve Jobs, adopted at birth and a college drop out became a modern visionary with his iPad, iPod and iPhones. He stated in a speech to Standford University freshers in 2005 *"You can't connect the dots looking forward; you can only connect them looking backwards. So you have to trust that the dots will somehow connect in your future. You have to trust in something – your gut, destiny, life, karma…whatever."*

Life is indeed a journey so travel well, my friends.

Middlesex Law Society (est. 1959)
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Surname _____ Mr / Mrs / Miss / Ms
Forenames _____
Name of Firm or Organisation _____
Postal Address or DX no: _____
Telephone _____
Email _____
Status & Area of Work _____ Date of Admission _____
Would you be interested in joining the Committee? Yes/No
I wish to apply for FULL / ASSOCIATE / FIRM Membership of the Society (see below for details)
I enclose herewith my cheque for **£** _____ for the current year, made payable to "Middlesex Law Society"

Signature _____ Date _____

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Please return completed form and remittance to: The Membership Secretary, Middlesex Law Society, c/o Desor & Co, 768 Uxbridge Road, Hayes UB4 0RU or Middlesex Law Society DX: 44657 Hayes1 Tel: 020 8569 0708

Middlesex Law Society

52nd Annual Dinner & Dance

at the
Renaissance London Heathrow Hotel
Bath Road, Hounslow, Middlesex TW6 2AG

Friday 11 November 2011
Black Tie: Bucks Fizz Reception from 6.30pm

£55 per person
(including reception drinks, three course dinner & wines)
Dance the night away
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Contact the President
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Council member's report

The first meeting of the Council year took place on 5 October. A rich variety of information is available to member from the chief executive's Report and from the public agenda is posted to our Society website at www.middlesex-law.com. There is to be a change to procedure so that, following the meeting, a number of papers which were under discussion on a confidential basis, as amended in debate will be published and posted to the Society website for your information. This will show the position on a number of matters of current concern including the latest position on the work of the Joint Advocacy Group and developing scheme (QASA) and other policy development.

The reports of the SRA and non regulatory Law Society Boards indicated progress on current work plans and forward plans for 2012. The meeting received feedback on the recent publicity campaign for the profession and comment on other public announcements. Action is continuing in relation to legal aid, referral fees, lender panels and other issues.

There will be amendments proposed for the SRA Code and handbook which came into effect on the 6 October 2011 and we expect the first wave of amendments early in 2012. There are some constituents who are particularly concerned with areas of practice, such as local government and pro bono work which do need further consideration and I would be pleased to hear more of those issues.

The main topics under consideration around the meeting have been the introduction of OFR, delayed introduction of ABS and development of the QASA scheme. A recent report on ABS authored by an investment bank has appeared in The Times forecasting major change to the legal sector and there have been many alarm calls in that direction and having attended many conferences around this topic there is no crystal ball offering any fixed or certain answers. Many firms have devised a strategy for survival, even if it is simply one of watching the first movers. Given current market conditions new investors will need to venture with care.

It is a concern that the regulators may encourage the new models of business and permit standards of work lower than the standard to which many members are providing services at the moment. The vision of client care held by the profession does not match that held by the consumer bodies and this continues to give rise to tensions and mistrust. There are parallel issues in the current debate in the medical profession in relation to the internal market reforms that may similarly impact on traditional values and patient care.

The economists argue that the legal profession, for its selfish reasons, has an interest in 'overprovision', thereby maintaining higher prices than necessary. This is the driver behind the LSB consultation - Enhancing consumer protection, reducing regulatory restrictions (28 July 2011) to restructure the regulation of services away from the professions and towards approved providers of regulated services, which might in future include Will Writing, not currently one of the

activities reserved under the LSA 2007. The detailed work in relation to possible regulation of Will Writing is being progressed through a Call for Evidence: investigation into will-writing, estate administration and probate activities. This is an area of work that the Council is taking forward through the Regulatory Affairs Board that I chair and all contributions from those interested will be welcome on these current pieces of work.

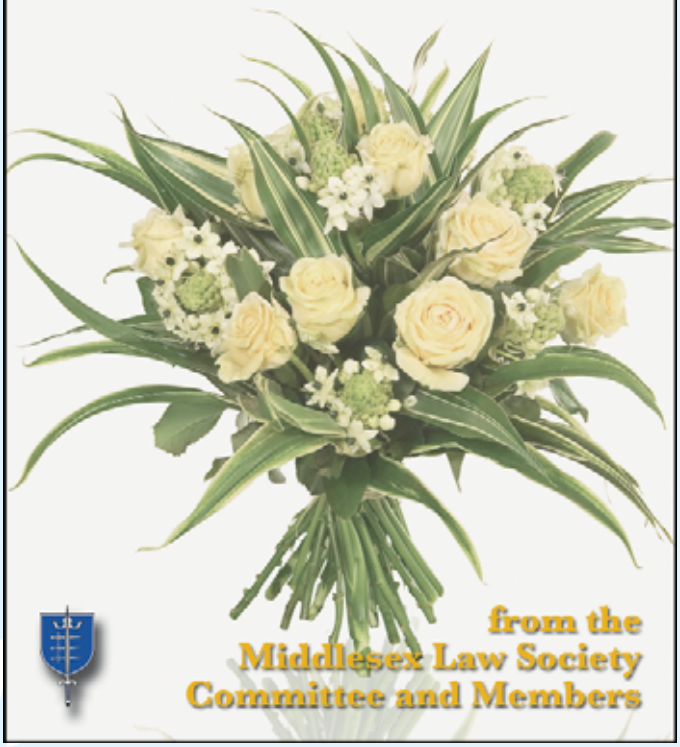
The proposed advocacy scheme for criminal lawyers was a topic of intense discussion as this involves professional competition between solicitors and the Bar. Under the scheme as required by the model proposed by the regulators there is a considerable degree of judicial involvement. Following a period of intense negotiations there will be a delay in the start of the scheme. The Law Society position is focused around maintaining the automatic rights of a solicitor to appear at court upon qualification, the levels of authorisation for various types of work such as mitigation pleas and specifically the adjustment of Youth Court work down to tier 1. The fundamental tension concerns the quality standard to be established. Whilst a common standard might be provided by an independent accrediting organisation or test, the alternative of judicial approbation patently lacks fairness. There is no indication that the judiciary are prepared, interested or appropriate to fill the role they have been awarded.

The recent Property Section annual conference focused on the new CQS accreditation scheme. It is likely to have approaching 1,000 firms in membership by the end of the year and has clearly now established its position in the market. The reputation of solicitors amongst stakeholders in the conveyancing market has been damaged and exacerbated by poor regulation and poor practice. This has resulted in action by lenders to reduce panels thereby restricting client choice and available business. The CQS aims to meet that challenge and appears to be having some success. The first test came with this year's insurance renewal, which appears to have gone much better than the previous two. In that respect, a very good start has been made. CQS is one example of the way in which firms have been able to address the dual challenge of both OFR and ABS. For outcomes focused regulation the scheme embeds the management of governance and risk that is necessary for all areas of practice. It thus provides a sound basis from which a firm is able to then compete in its chosen market and either operate as an ABS or in competition with new entrants to the marketplace.

The revolution to change the market structure is under way; it may not be the big bang that the Lord Chancellor expected but is happening every day around us. As a profession, we have constantly taken change on board and continue to do so; it is because we adapt and change that the profession has survived and grown. Whilst over time it may now consolidate and change its character it is unlikely that the reformers will succeed in what many see as their underlying objective 'to kill all the lawyers'.

Michael Garson
michael.garson@kaganmoss.co.uk

Our thoughts are with our
Past President,
Leslie Oliver
at this difficult time.



from the
Middlesex Law Society
Committee and Members

Isleworth Crown Court

Users Meeting

Tuesday 8 November 2011

Middlesex
Law Society

The next visit to
the Supreme Court
on the 18 November 2011

Contact Susan Scott Hunt
s.scott-hunt@mdx.ac.uk

Middlesex Law Society

Past Presidents and Committee Dinner

at the Pillars Restaurant, University of West London
22nd February 2012

Contact Social Secretary Robert Drepaul
07958 402626

Middlesex Law Society supports victims of Ealing riots at ABS Seminar at the Drayton Court Hotel

Photograph by Ravi Kennard Drepaul.

Paul Wilkinson (LawClient); Robert Drepaul (Middlesex Law Society); Susan Scott Hunt (Middlesex University); Julie Brannan (Oxford Institute for Legal Practice); Mr Sehal of Seba Electronics; Robert Pearson (Curwens).

Copy Deadlines 2011/12

Winter Issue	**2nd December**
Spring Issue	**9th March**
Summer Issue	**1st June**
Autumn Issue	**31st August**

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

Email: john@benhampublishing.com

Tel: 0151 236 4141

Transitional Justice in Colombia and the Victims and Land Restitution Law

14 November '11
6-8pm
Institute of Advanced Legal Studies, 17 Russell Square, London, WC1B 5DR

Colombian lawyer, Edwin Rubio, will look at the direction of current government policy regarding formal reconciliation of the forces present in the social, political and armed conflict in Colombia. Edwin will discuss the implications, critiques and challenges presented by the Victims and Land Restitution Law and analyse how this law relates to concepts of transitional justice.

Edwin Rubio Medina and human rights lawyer and social activist, working with the Southern Colombian Lawyers and Professionals Corporation, (CAPS by its Spanish initials) and other human rights platforms in the south of the country. Edwin is currently the president of the Colombian Association of Human Rights Defence Lawyers (ACADUEM by its Spanish initials), a national umbrella organisation of human rights lawyers. Edwin has represented victims of the armed conflict in the south of Colombia, in particular victims of state crimes including extrajudicial executions and forced displacement.

The seminars are open to all, so please forward this on to any colleagues that may wish to attend.

It is not necessary to register in advance however if you would like to attend the briefing sessions please RSVP to Nikki Evans by emailing **Colombian.caravana@googlemail.com** to give us an idea of numbers to expect.

Middlesex Law Society

Charity Quiz Night

16th November 2011
at the Drayton Court Hotel
The Avenue W13 @ 6.30pm

Reserve your team table in advance for £50
Teams of up to 10 players
Teams can be formed on the night
Pay at the door (£5 per head)
Raffle - Proceeds to Meadow House Hospice
http://meadowhousehospice.org.uk/
Register on 020 8280 1095 or fax 020 8280 1091

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Saturday 5th November - 1 pm to 3 pm
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Get into the festive spirit at our Christmas Bazaar.
We will have Christmas cards and gifts, tombola, bric-a-brac,
a home produce stall, soft toys, refreshments and much, much more.

Meadow House Hospice, Uxbridge Road, Southall UB1 3HW
0208 967 5179

Shifting sands

"What do lawyers do? The central thesis... is that business lawyers are engaged in managing uncertainty for both their clients and themselves. Managing uncertainty is accomplished through interaction, rather than appeals to the law."

This extract, from a 1991 article by John Flood, of the University of Miami's School of Law, is just one of over eight million hits Google throws up for "lawyer uncertainty". It summarises perfectly one of the major problems which still confront real estate lawyers, and it defines the most challenging area for insurers of the ownership and use of land.

The law, in any field, is not a fixed institution. Law changes by evolution – as the courts gnaw over the existing corpus – and by revolution – when the only perceived solution is legislation to enact new laws or codify what is already, in effect, in practice. In either case, the unintended short-term outcome for lawyers may actually be greater uncertainty. There are two obvious examples in the current property law of England and Wales. One is a highly topical issue – rights of light – while the other is a familiar part of the landscape – easements, restrictive covenants and profits à prendre.

Rights of light is a hot topic, because the consequences of getting it wrong can be disastrously expensive. It is an area which mixes ancient law with modern means of assessing the physical effects (or, as one commentator put, "It's part ritual and part pseudo-science"). Given the increasing trend for courts to look not only at bare law and facts, including assessments by surveyors, but also at the conduct of the parties, the lawyer now has to advise the client about tactics and risk management as much as about the law. The task is not made easier when the most recent evolutionary change is a case (Heaney) which was settled before it could reach the reasonably authoritative level of the Court of Appeal. If it, or another like it, ever does get that far, perhaps the judges will give force to the view that rights of light should be dealt with by way of the planning process, and not through the courts. Until then, it cannot be easy for a real estate lawyer to give clear advice without wanting to be able to transfer, in some way, the inevitable risk away from his (or her) client and the firm's professional indemnity insurance policy.

The Heaney type of uncertainty will eventually be resolved by a senior court, and relative clarity will return. For most lawyers, the uncertainty which the Law Commission's proposals about easements and so on will create should be of much greater practical concern.

The proposed reforms are, to my mind, eminently sensible, and they are most lucidly presented (and explained) in the commission's report. But however sensible they may be, the process of change itself will cause problems for lawyers for years to come. Substantial real estate transactions take a long time to complete; the actual development takes even longer. Developers, lenders and investors want some certainty that any legal conditions which affect how they can use the land, and any mechanisms they put in place to control how others may act, will be legally valid and readily enforceable when it matters. Major changes in basic law (the "grammar" of property law, as the commission puts it) cloud that view.

Major recodification causes three kinds of uncertainty. First come parliamentary acceptability and management: will the proposals ever become new law, and will the new law be well enough drafted not to confuse things even further? Second is timing: how long will enactment and implementation take, and could a development be caught by an intervening change in direction? Third, and most important, is effect and enforceability: will the interpretation a lawyer makes before the new law is enacted or brought into force, or while it is in its infancy, prove correct, and how will any challenges to a new law be resolved by the courts? No prudent lawyer wants to give his client the costly privilege of being a high-profile test case.

The Law Commission's report mentions Scottish law in passing, then moves quickly on. In fact, the practical results of very similar changes brought about by the Title Conditions (Scotland) Act 2003 are well worth an English or Welsh lawyer's examination, even though basic property law in the two jurisdictions is fundamentally different. The changes the commission proposes are, in many parts, strikingly similar to the Scottish reappraisal. While the new law enacted many simplifying (and needed) changes to Scottish property law, the period between enactment and implementation threw up many examples of real uncertainty about practical outcomes (and those, not the elegant juridical opinions, are the ones clients care about). Problems with interpretation persist still.

In these circumstances, it is more than ever important for risk – and uncertainty is a kind of risk – to be properly identified, stated and transferred. As insurers, we believe we can help lawyers and their clients to achieve this, and find firmer ground. It's also the most interesting part of the job.

Brian Chrystal
Underwriting Director
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Middlesex Law Society
Compliance Wo
at the University of West Lond
13th October 2011

Photography supplied by Anna Obruk, University of West London
e-mail: anna.obruk@gmail.com

rkshop
on

Should I accept those free tickets to Ascot or Wimbledon? You may need to think twice as the new Bribery Act has come into force

by Nick Richards, Member Partner at rhw Solicitors, Guildford

SMEs are likely to need help and guidance on principles and processes around the new Bribery Act which came into force on 1st July 2011. This new act is designed to ensure that companies are more diligent about the practice of hospitality.

What does the act do?

The Bribery Act creates offences of offering or receiving bribes or failure to prevent a bribe being paid on an organisation's behalf. There is a full defence for an organisation to prove that, despite a particular case of bribery, it had adequate procedures in place.

Bona fide hospitality and promotional expenditure which seeks to improve the image of an organisation, to present products or services better or establish cordial relations is acknowledged as an important part of doing business and should not be caught. However, it must be proportionate and hospitality and promotional expenditure can amount to bribes in some circumstances.

What does the act mean for businesses?

Businesses need to be aware that the act exists and put necessary procedures in place to ensure that they comply.

Smaller or medium sized organisations will probably require different procedures to large organisations especially those that trade overseas or internationally.

Joint Venture organisations may be particularly at risk. A Joint Venture partner may operate solely in this country but be part of an overseas Joint Venture – particular great care should be exercised particularly, with a newly formed joint venture or where negotiations are still ongoing.

Businesses should make sure that they adopt a risk based approach and procedures that are proportionate to the risks involved.

What businesses should do

- Carry out a Risk Assessment of your business and adopt procedures that reflect the level of risk with due allowance for what is practicable. The bribery prevention policies should be designed to prevent deliberate unethical conduct on the part of associated persons.
- Make sure you get top level commitment from CEO/Directors - The idea is that a "top down" approach will engender the sorts of disciplines and ethical ethos that are required.
- In your Risk Assessment – consider issues such as country of operation, business sector, transaction methods, business opportunity, business partnership and deficiencies in training, a bonus culture that rewards risk, lack of clear policies on hospitality, lack of clear financial controls and lack of a clear anti-bribery message from the top-level management
- Make sure you carry out Due Diligence procedures particularly in areas such as joint ventures, Service providers
- Provide appropriate training to staff on new procedures and checks
- Ensure that procedures are regularly monitored and reviewed

A factor that may well be relevant is what is "normal" in a particular industry or sector. However, regard must be had not just to whether expenditure might be "normal" but whether it was extravagant.

Background notes (for information)

1 The Ministry of Justice guidance sets out six guiding principles but they stress that the guidance is not prescriptive and that there is no "one size fits all" document or approach.

2 The guidance goes on to suggest that the defence is there first to encourage organisations to put procedures in place to prevent bribery and in recognition of the fact that no bribery prevention regime is capable of preventing bribery at all times.

3 Whether an organisation has adequate procedures in place will be determined, as always, on the facts of each individual case. But the guidance goes on to say that departures from the guidance procedures will not of itself give rise to a presumption that an organisation does not have adequate procedures.

4 Please also note that an organisation may be liable by association. There is a statutory definition in S.8 as a person who "performs services" for or on behalf of the organisation and so clearly this might extend to the supply chain. Again, caution should be exercised by way of due diligence checks on suppliers of services subject again to the common sense and risk based approach.

VAT Administration Update

HMRC have announced a number of changes to the way in which VAT is administered. Details of some of these changes are outlined below:

1) Electronic Returns
From 1st April 2012, all VAT returns will have to be filed online and all VAT due is required to be paid electronically regardless of the size of the business.

2) VAT payments
It has been reported that mistakes have been made and penalties applied in respect of electronic payments to HMRC in that a number of VAT registered businesses have made the assumption that the extra seven days grace with electronic payments means the funds need to be paid on the 7th. This is incorrect as the funds must be cleared in HMRC's bank account by the 7th. You therefore should allow at least 3 days for the funds to clear (except if payments are made by Direct Debit).

It is reported that one VAT registered business recently received a 'default surcharge' penalty for over £24,000 for being 2 days late with their payment (i.e. paid on the 7th but did not clear until the 9th), so it is well worth being mindful of these dates!

3) Penalties (for VAT returns and payments)
From 2012 (actual date still to be set) a new penalty system will be introduced. This will result in penalties being applied for late filing of VAT returns irrespective of whether any VAT is due (i.e. penalties will still be applied for late filing even if there is a refund due).

Late filing of returns (electronically) will result in a penalty as follows:
1st Default: Warning (and enters 12 month penalty period) then
2nd Default: £100 penalty
3rd Default: £200 penalty, up to £400 per quarterly return

Furthermore additional penalties will be applied for returns over 6 months and 12 months overdue based on the liability, plus further penalties for those who "deliberately" withhold returns of up to 100% of any liability.

Late payment (made electronically) will result in a penalty as follows:
1st Default: no penalty but "penalty period" starts for a period of 12 months, then
2nd Default: in the next 12 months, penalty calculated at 2% of tax due
3rd Default: 2%
4th: Default 3%
5th and subsequent default: 4% of tax due.

4) Registration Limits
From 1 August 2012 UK registered companies without a UK trading address will see the threshold for VAT registration reduce from £73,000 to £nil.

For further information please speak to Tommy White (email: **Tommy.white@wilkinskennedy.com**), or Bob Johnson (email: **Bob.johnson@wilkinskennedy.com**) at the Egham office of Wilkins Kennedy (telephone: **01784 435561**).

External capital and law firms – options and key considerations for tomorrow's legal business

Chris Marston, Head of Professional Practices at Lloyds TSB Commercial, offers some thoughts on the opportunities and the threats posed by the next stages of the Legal Services Act.

Over the past couple of years, a number of important changes have taken place in the regulatory and competitive environments for law firms. The Solicitors Regulation Authority has introduced entity-based regulation, and Outcomes Focused Regulation is about to follow. Legal Disciplinary Practices, allowing up to 25% of the equity in a firm to be owned by non-solicitors, have been permissible for just over two years. There hasn't exactly been a stampede towards LDPs, but there are a number of reasons for this. Economic conditions have no doubt ensured that many firms have more pressing priorities, and some firms may have viewed LDPs as merely a halfway house towards the 'real deal' of Alternative Business Structures. And of course a firm needs to have (and to keep) three partners in order to allow a fourth, non-solicitor individual to come in and own no more than 25%. That excludes maybe 70% of firms.

What are Alternative Business Structures and when will they come into play?

Let's start with the definition, taken from the Solicitors Regulation Authority website:

new types of law firm which will be permitted from about 2012, such as a firm with more than 25 per cent non-lawyer managers, or a company taken over by a non-lawyer enterprise, or a company floated on the stock exchange, or a firm which provides both solicitor services and non-legal services; an alternative business structure will need to be licensed by a licensing authority as a licensed body; note that the Clementi Report classified LDPs as a type of ABS, but we tend to use the term to exclude LDPs.

The Legal Services Board was determined to deliver more quickly and, as we know, the operative date has now been set as 6 October 2011. LSB chairman David Edmonds is clear about the benefits:

"Opening the market to ABS will help to transform the way in which legal services are delivered. It offers benefits to consumers of legal services, be they private individuals, small businesses or large companies.

More competition will be good for the legal services sector as it is has been in other sectors. I hope that lawyers, law firms, and their representative bodies will embrace change because ABS offers great opportunities to them too. But all firms will need to respond to the changing market, whether they adopt ABS or not.

The case for ABS has been well made by others over a number of years so I am glad we are now in a position to make it happen. It is a top priority for the LSB and we are driving the agenda forward. We are today making clear our commitment to the first ABS licences being granted in 2011.

We want to see the removal of regulations that act as unnecessary burdens on legal practices or as anti-competitive barriers to entry. Regulation should instead focus on addressing identified risks to consumers such as conflicts of interest."

How will this affect the financing of law firms?

The key difference is that external capital will be available.

Currently, most law firms are financed by such capital as the partners / members are able or willing to provide, plus debt, whether provided by banks, other specialist lenders or sometimes by LLP members. My own observation is that the majority of 'high street' law firms we deal with are under-capitalised for the level of business they transact, and the reasons are largely to do with the partnership model, which does nothing to encourage the retention of profits. It's bad for tax and bad for succession planning, so by and large partners are advised by their accountants to draw profits fully. Growth can be inhibited by the scarcity of additional capital and the understandable reluctance of lenders to have more at risk in a law firm than the owners do. Even firms which have converted to LLP are likely to have a balance sheet that is shaped by previous partnership status.

What does an external capital provider want?

A venture capitalist will be prepared to invest if he can see opportunities to make a significant return on his investment. The timescale would typically be fairly short – maybe three to four years, and the expectation would be that the investment would be at least doubled. To achieve the return requires a clear exit plan, either a sale or a float. So, given the range of investment opportunities available to an equity investor, why would he choose to invest in a law firm? As they are currently structured it is difficult to see the attraction. Unless there is a considerable upside to be gained by changing the way the business operates, or its scale, or the nature of the work it does, an investor might choose to invest elsewhere.

Whether a venture capitalist or a corporate entity that sees the provision of legal services as a sensible bolt-on to its core business (Co-operative Legal Services, for example), the provider of external capital will want to have the right structure in place. This means economies of scale, robust processes and management information systems and the optimum combination of lawyers and non-lawyers to undertake and supervise the work. Larger players with membership or affinity strengths (e.g. AA, Saga) have already taken the view that legal services are an additional offering to sell to customers who already trust their brand.

The areas of law most likely to be attractive to external capital are those than can readily be commoditised, and/or which are process-driven. The application of scale and the use of para-legals fundamentally change the profit opportunity.

Will we need as many lawyers?

The most recent statistics from the Law Society of England and Wales are as at 31 July 2009. These show the numbers of solicitors continuing to grow, from 139,666 solicitors on the Roll at July 2008 to 145,381. However, the story underneath these big numbers is interesting. Over the last ten years: -

- the number of solicitors with practising certificates has grown by 45% from 79,503 to 115, 475
- the number of women solicitors with practising certificates has grown by 87% from 27,906 to 52,162
- the number of solicitors employed outside of private practice grew by 96% from 15,477 to 30,347. Women are a majority in this group.
- women continue to be the majority for new admissions, at just over 60%. In addition, women comprise nearly 62% of those commencing training contracts.
- the profession continues to be highly fragmented. At one end of the scale, firms with 81 or more partners employ over a quarter of all solicitors, while sole practices, which account for 40% of all law firms, employ 8% of solicitors.

Can this last? There seems to be a trend among new entrants to the profession towards working as an employed solicitor, either in or outside of private practice without aspiring to equity ownership – at a meeting with a group from the Law Society's Junior Lawyers' Division earlier last year I was surprised that not one of a group of eighteen had any ambition to become a partner.

It is clear that there will always be a demand for legal services, but how many of these need to be delivered by solicitors? The Legal Services Act defines those areas of law which are 'reserved activities' for solicitors, and there are plenty of work types that are not reserved, and which therefore are open already to competition from non-solicitors. Conveyancing and will writing are obvious examples.

A similarity can be drawn with opticians. Twenty or thirty years ago who would have dreamt of buying glasses without consulting an optician, getting a prescription and buying the glasses from 'the professional'? These days, consumers (the very word David Edmonds, chairman of the LSB, uses in his quote above) will purchase glasses from a retail outlet with no professional input. There remains a smaller market for optometrists, ophthalmologists and orthoptists, but the vast majority of what people went to an optician for twenty years ago is now dominated by a small number of household names. What are the chances of an advert in a few years with the catchphrase "Should have gone to Will Writers!"

It is generally accepted that while demand for legal services will at least remain constant, the number of solicitors required to meet that demand may reduce.

Implications and practical considerations for law firms

Does all this mean the end of traditional law firms? Probably not, though firms wishing to remain independent will need to make decisions about their own structure, financing model and the type of work that they will undertake. Generally they will be at a disadvantage in work that can be commoditised, because larger competitors will have access to greater levels of finance and lower unit costs.

- It will be necessary to build 'brand loyalty' based upon any combination of geography, sector specialism, service levels, technical excellence, approachability and flexibility. Competing solely on price won't be an option. For many firms, this will require a shift of outlook, and maybe a move 'up market'. The challenge will be to persuade clients of the value of the legal solution that has been delivered, and move away from hourly charging wherever possible.

- The right level of gearing between owners and employed solicitors, and between solicitors and other fee-earners in firms will be critical. There are only a small number of 'reserved legal activities' described in section 12 of the Legal Services Act. If solicitors are doing work that is not reserved, there needs to be an excellent reason and associated profit margin.

- To compete successfully, firms will also need to re-invest in the business continually and adopt modern business practices. Financial management will be key, to ensure the right balance between borrowed money and the capital invested by the owners. Some corporate thinking will be necessary, with an emphasis on building value in the business rather than regarding it as a vehicle through which a number of individuals can make a very good living.

- A disciplined approach to managing working capital will be critical to minimise the enormous investment that firms make in their clients and thereby reduce borrowing needs. Some cultural changes may be necessary too, such as promoting an environment where all employees regard themselves as salespeople, and achieve better levels of internal referral of clients between fee-earners in different departments.

Successful firms will be characterised by a value-building philosophy, a client service paradigm and an ability to adapt and change in a competitive market. Owner-managers in such firms will be in a position to shape their future. Others will have it decided for them.

Chris Marston
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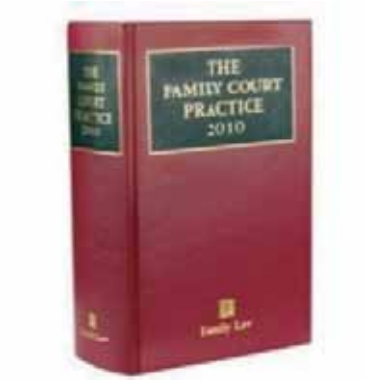
book review

THE FAMILY COURT PRACTICE 2011



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"WHERE DO I FIND IT IN THE RED BOOK?" HERE'S THE 2011 EDITION OF 'THE FAMILY COURT PRACTICE'.

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

Every year since 1993, 'The Family Court Practice' – the much valued 'Red Book' - has provided what has become the definitive work of reference in family law which Bracewell J eloquently described in her original preface to the work as 'the comprehensive and authoritative guide for practitioners… universally accepted as a standard book of reference for judges and practitioners throughout the jurisdiction.' It is what we see in court and fundamental for family practice.

This monumental, yet eminently accessible work of over 3,000 pages is updated annually and there are additional supplements. The 2011 edition reflects some quite enormous changes that have taken place since last year's edition. The most important change, with which all family practitioners are familiarizing themselves, is the coming into force in April 2011 of the Family Procedure Rules 2010, which extend to some 273 pages of text. There have been additional changes made as well, to the structure of the book hence its new size.

The Red Book, as we call it, is certainly a credit to its distinguished team of fourteen contributors headed by Editor in Chief Lord Wilson, a Justice of the Supreme Court, His Honour Judge Anthony Cleary, and the General Editor and Consulting Editor, Black LJ.

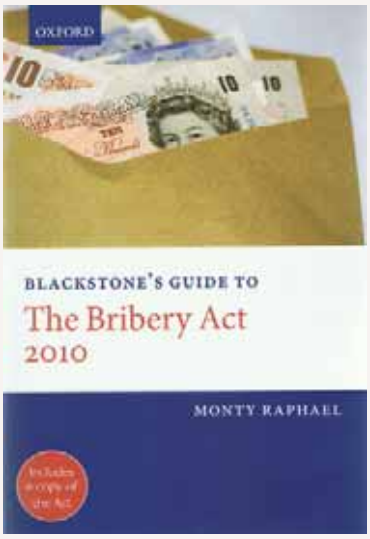
The fact that this work is published yearly keeps it topical and up to date, carrying on as it does, its laudable tradition of exemplifying — in the words of Wilson LJ as he then was — such attributes as its ease of use, compactness, clarity of presentation and the reliability of the text.

Logically structured, the book covers the full range of family proceedings in all relevant courts, from procedural guides and statutes in Parts I and II, to the Procedure Rules 2010 in Part III, (mentioned earlier), through to Statutory Instruments, Practice Guidance and European Regulations in Parts IV and V.

The lengthy and detailed index at the back is a useful tool for finding what you're looking for in this massive text and of course there are tables of cases, PDs and CPR, FPR and Supreme Court practice directions. If you find yourself stumped by an abbreviation, there is an extensive table of these. For your additional convenience, the book comes with an accompanying CD ROM which is really excellent as a development resource for the PC and its successor applications in the future.

"Where do I find it in the Red Book?" is, according to Wilson, a commonplace query on the part of judges and woebetide the practitioner who hasn't brought a copy along. So if you haven't bought this year's particularly important edition, better do it now. The publication date is stated as at May 2011 with immediate supplements.

BLACKSTONE'S GUIDE TO THE BRIBERY ACT 2010



Includes a copy of the Act

By Monty Raphael

ISBN: 978-0-19-957978-5

www.oup.com/uk/law

EXPANDING AND EXPLAINING THE MODERN LAW OF BRIBERY

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

Special Counsel at Peters and Peters, Monty Raphael, accurately describes the Bribery Act 2010 as fairly short for a radical measure which is designed to reform the law after 100 years of inactivity and inefficiency in tackling grand and petty corruption. The problem for lawyers is that this view could well cover a large number of legal areas.

Therefore, it's not surprising that Lord Woolf, in his Foreword, expresses immense relief for those who are concerned with Britain's reputation for probity that in the last days of Gordon Brown's government, the Act became law. Woolf accurately identifies the substantial improvements with this new piece of legislation which will have beneficial effects around the world- something which he and his fellow judges are well aware of because we are not dealing here with a local problem but one which infects every country. That's why we salute Monty Raphael for producing this excellent OUP/Blackstone guide.

Most practitioners find these Blackstone guides invaluable for their advice because they deliver concise and accessible commentaries on the latest legislative reforms, changes and amendments to statute law. The publishers have seen what we need which are publications soon after the legislative enactments with serious and experienced expert analysis by leading lawyers on the scope, extent and effects of the statutes.

In addition, the Blackstone Guides Series is always cost-effective giving us a copy of the Act plus key information needs quickly to act as the perfect companion for our main practitioner works to give us a unique additional updating service to compliment formal updates which often lack the depth we require without time-consuming legal research.

Raphael explains in 150 pages and 12 chapters how the Act reforms the law of corruption and introduces a controversial new corporate offence to enable the prosecution of companies associated with the individual or business accused of corruption. Of future interest to us will be the development of the defence of 'adequate provisions' for companies accused of committing the corporate.

This Guide is extremely timely although, as Lord Woolf suggests, it's clear that there will be demands for further editions as we see how the new law settles down, and whether it has worked or not. The bulk of the book covers an introduction and background to the general bribery offences and then looks specifically at the following important areas: bribery of foreign public officials; the failure of commercial organisations to prevent bribery; defences; facilitation payments, corporate hospitality, promotional expenditure, and commission payments; consent to prosecute; outcomes, penalties and remedies; investigation and prosecution; and international and domestic instruments.

Monty Raphael has set out a quick reference tool here which is logically organized and follows the structure of the Act which is set out in the first Appendix. Helpful explanations are given in their historical context which is a great plus factor for another excellent, welcome guide from Blackstone/OUP.

FILM AND THE LAW No 13:
What is the connection between Wappingate, Watergate & Terry Thomas?

Rupert Murdoch leaned over and in a fatherly fashion caressed the back of his son's hand. Later, he waxed with a touch of emotion about *his* father, and how he had inspired him to become a media mogul, although he didn't actually use such an expression. This seemingly rehearsed piece of theatre at the Parliamentary Select Committee triggered images from a whole host of films that have featured the father-son relationship at the heart of the story.

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The Tree of Life.

Whilst the mother-son relationship generally depicts mum as a living saint who inspires her son to do good in the world, the father's role is variable. The recent film ***The Tree of Life (2010)*** by latter day genius boy Terrence Malick, takes its inspiration from the Book of Job and has its religious father figure (Brad Pitt) as being high on discipline and drive but low on love and understanding. But then it was the 1950's mid-west America.

Distant Voices Still Lives

Similarly our very own Terence Davies in his ***Distant voices Still Lives (1988)***, has a father played by the late Pete Postlethwaite, who seemingly has no redeeming features at all. But then it was 1950's Liverpool. Borrowing from the story of Cain & Abel, ***East of Eden (1955)*** depicts Raymond Massey spouting the Bible in the scariest of fashions to the unloved but uncowed James Dean. On the other hand whilst most of Spielberg's films, have the father-son relationship as the starting point, the father is usually somewhat harmless albeit dysfunctional, with the son being more of a dreamer. One wonders where Rupert and James Murdoch fit in here? I don't detect much religiosity, particularly given that Rupert is into his third marriage with six children spread over three continents.

East of Eden

As deals are being struck over the financing of the film of WAPPINGATE, it is interesting to dwell on who should play some of the major roles. For example, Hollywood's most famous Dracula, Bela Lugosi, springs to mind, for Murdoch Senior, but unfortunately the former has already been dead for quite a number of years. Original genius boy Orson Welles who played media mogul William Randolph Hearst in ***Citizen Kane (1941)***, would of course be a shoein but he is a bit too affable and of course he's long since gone. For me it has to be Max Schreck who played the very first vampire in ***Nosferatu Vampyre (1922)***. Schreck always maintained that he was in fact a real vampire, and it is true to say that after the film had been shot, he disappeared, never to be seen again. So being dead is clearly not a handicap if you really are the Prince of Darkness himself and it could be that at this very moment the lad himself is being offered the part. Angelica Houston may be in with a shout for the role of Rebekah Brookes, although our very own Tilda Swinton, must be front runner. Given that this is the golden age of British actors, Mark Rylance and Tilda between them could cover all the roles in much the same manner that Alec Guinness achieved so memorably in Ealing's black comedy masterpiece ***Kind Hearts & Coronets (1949)***.

All the President's Men.

The film of course that springs instantly to mind is ***All the President's Men (1976)*** directed by Alan J Pakula, who single-handedly invented the genre of the ***paranoid political thriller***. The President's Men coupled with ***Klute (1971)*** & ***The Parallax View (1974)*** constitute one of the most influential trilogies in the history of Cinema. In ***Klute***, ex-cop Donald Sutherland gets entangled with hooker Jane Fonda as he searches for his missing pal, whilst ambitious journo Warren Beatty, with a propensity for the demon drink, enrols with a very dodgy organisation so he can get the inside story. Whilst both of these excellent films are fiction, **truth** forms the basis for ***All the President's Men*** where buddy Washington Post hacks Woodward & Bernsten played by Redford & Hoffman set out to discover who is behind the plot to steal Democrat party files located at the Watergate building. They follow the money and find that behind it all is not ***The Wizard of Oz*** but non other than the five o'clock shadow kid himself Richard Milhous Nixon. Bernstein recently in London at the invitation of the ***GUARDIAN***, sees a parallel between the two scandals with Murdoch senior as being not that dissimilar to the disgraced Nixon.

And Alan J Pakula? He died in a bizarre motor car accident worthy of one of his *conspiracy* movies.

Mario Zampi isn't a name that easily slips off the tongue but in the 1950's the Italian *emigre* film director was responsible for two of this country's funniest films – neither incidentally made at Ealing. ***Too Many Crooks (1958)*** has perhaps the best court room sequence of all time, whilst ***The Naked Truth (1957)*** comes closest to the plot of WAPPINGATE. Celebrity Terry Thomas has the misfortune of being regularly featured in a magazine that carries scandalous stories about his personal life. Ring a bell? No doubt Hollywood will be going all out for an ***All the President's Men*** type movie, but those with a more modest budget may gravitate to a homage type movie in the Zampi-style.

The Naked Truth.

Kind Hearts & Coronets.

Defusing the Elderly Care Timebomb!

John Kelly is a partner in Square One Financial Planning LLP, a firm of chartered financial planner specialising in later life financial planning. John is the author of the Inheritance Tax guide "Keeping the Taxman out of Your Home" *available for download from* ***www.squareonefinancial.co.uk*** *.The firm also specialises in providing joint venture financial planning models for firms of solicitors. Twitter:* ***squareoneifa***

With the debate current about who should pay for the cost of long term care, and with proposals to set a total cap on charges, the subject of cost of care for the elderly is once again very topical. Whatever the outcome of the current debate, three facts are inescapable. The population as a whole is ageing, particularly as the baby boom generation retires. At the same time life expectancy is increasing significantly. The Office for National Statistics recently estimated that each year of survival could add a further month to one's life expectancy. The third hard fact is the cost of providing care is rising. Putting these three together, the cost of long term care for the elderly is a time bomb waiting to go off.

For the majority of elderly clients who seek our advice, two issues stand uppermost. These are the cost of care and the effect of Inheritance Tax. Although Inheritance Tax is often the top priority, the cost of long term care could be seen as another form of estate tax, but with a rate of 100%.

Often we find these two worries combine to make the financial problem worse. Clients' fears over paying for long term care prevent them from taking steps to avoid Inheritance Tax. The most common comment we hear is *"I would like to do something to reduce the Inheritance Tax bill, but I am worried about what I might need later in life. What happens if I need long term care?"* In fact it is straightforward to arrange an Inheritance Tax plan with reversionary rights, which allow the client flexibility to recover funds should they go into care. Unfortunately most elderly clients do not seem to be told about these options, and instead get offered "discounted gift trusts" which are, in most cases, the worst possible option should care costs need to be found.

Once clients reach the point of paying for care there are two broad choices. The first of these is to use existing capital to make up the shortfall between the care costs and pensions and other benefits. With interest rates low, and investment returns also low, for most people this will involve a significant erosion of capital. For example, finding £30,000 a year with gross returns of say 3.5% a year would require around £1m of capital to avoid erosion. For most people, therefore, care costs will significantly erode their capital.

The other alternative is to buy a long term care annuity. A long term care annuity involves the exchange of capital for an income for life. The risk of longevity is therefore transferred to the insurance company but at a price. Care annuities are good value for those who live longer than expected but poor value for those who die early.

Each client is underwritten personally and reports are obtained from the client's doctor and care home. The cost of the care annuity takes into account health conditions and the ability of the client to perform their "activities of daily living" or ADLs. The income from the care annuity is a mixture of a return of capital and investment income, but if paid direct to a registered care provider the income is not subject to tax.

Once again we can see the interaction of care provision and Inheritance Tax. If the client's estate is worth more than the nil rate band (£325,000, or £650,000 if a widow or widower who received all their previous partner's assets) then the cost of annuity is effectively Inheritance Tax deductible. In other words buying the annuity will save Inheritance Tax at 40% of the cost of the annuity. This helps take away some of the risk that the client dies early. For clients who die beyond their life expectancy a care annuity which is partly subsidised with an Inheritance Tax saving is great value.

For all clients we would recommend a lasting power of attorney, a careful review of their investment strategy to maximise returns, an Inheritance Tax review, and a discussion about whether a long term care annuity is appropriate. In my view it would be worth spending up to half value of the estate to protect the other half although this is only a rule of thumb.

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