



Spring 2008

The Bill of Middlesex

Official magazine of Middlesex Law Society

Past Presidents Dinner photographs



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PUBLISHER

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Liverpool,
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Tel: 0151 236 4141
Facsimile: 0151 236 0440
email: admin@benhampublishing.com
web: www.benhampublishing.com

ADVERTISING AND FEATURES EDITOR

Roz Castellero Payne

DESIGN AND PRODUCTION

Fern Badman

ADMIN MANAGER

Lynn Noord

ACCOUNTS

Joanne Casey

MEDIA No.

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



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OFFICERS FOR 2008/2009

President:
MARIA CROWLEY
Crowley & Co.
72 Hammersmith Road, London W14 8TH
(020 7371 3177)(0790 6099171)
e-mail: crowleyandco@hotmail.co.uk

Vice Presidents:
PROFESSOR MALCOLM DAVIES
Head of Ealing Law School
Thames Valley University,
St. Marys Road, Ealing W5 5RF
(020 8231 2140)
e-mail: Malcolm.Davies@tvu.ac.uk

SIMON HOBBS
Iliffes Booth Bennett
Capital Court, 30 Windsor Street, Uxbridge UB8 1AB
(01895 207983) (DX 45105 Uxbridge)
e-mail: simon.hobbs@ibblaw.co.uk

Honorary Secretary:
MAURICE GUYER
Vickers & Co.
183 Uxbridge Road, Ealing W13 9AA
(020 8579 2559) (DX 5104 Ealing)
e-mail: MSherrard@vickers-solicitors.co.uk

Honorary Treasurer:
ELISABETH VAN DER WEIT
Hameed & Co
147 High Road, Willesden NW10 2SJ
(020 8830 1335)
e-mail: hameed@hameed.plus.com

Honorary Social Secretary:
ROBERT DREPAUL
Vickers & Co
183 Uxbridge Road, Ealing W13 9AA
(020 8579 3511) (DX 5104 Ealing)
e-mail: rsdrepaul@vickers-solicitors.co.uk

Honorary Membership Secretary:
DARRELL WEBB
Desor & Co
768 Uxbridge Road, Hayes, UB4 0RU
(020 8569 0708) (DX 44657 Hayes 1 Middlesex)
e-mail: darrell@desorandco.co.uk

Council Members for the Middlesex Area:
Central & South Middlesex
Michael Garson of Kagan Moss
22 The Causeway, Teddington TW11 0HF
(020 8977 6633) (DX 35250 Teddington)
e-mail: Michael.garson@kaganmoss.co.uk

North Middlesex
Michael Singleton of Singletons
36 The Town, Enfield EN2 6LA
(0020 8363 6671) (DX 90604 Enfield)
e-mail: msingleton@singletonsuk.com

The Law Society
Greater London Regional Office,
The Law Society,
113 Chancery Lane, London WC2A 1PL
(020 7316 5554) (DX 56 London/Chancery Lane)
Regional Manager: Morag Goldfinch
e-mail: morag.goldfinch@lawsociety.org.uk

COMMITTEE MEMBERS

IMMEDIATE PAST PRESIDENT:
Santokh Chhokar
Chhokar & Co
29a The Broadway, Southall UB1 1JY
(020 8574 2488) e-mail: santokh@chhokar.com

Sundeep Bhatia of Beaumonde Law Practice
1 Olympic Way, Wembley, Middlesex HA9 0NP
(020 8452 5151)
e-mail:blp_solicitors@hotmail.co.uk

Richard Bond of Ealing Magistrates Court
Greenman Lane, Ealing W13 0SD
(0845 6014753) (DX 5166 Ealing)
e-mail:simon.bond@hmcourts-service.gsi.gov.uk

Robert Borwick of ABV Solicitors
Kingshott Business Centre,
23 Clayton Road, Hayes UB3 1AN
(0844 587 9996) (DX 44650 Hayes (Middx))
e-mail:robert.borwick@abvsolicitors.co.uk

Alured Darlington of Veja & Co
593 Uxbridge Road, Hayes UB4 8HR
(020 8581 1502) (DX51756 Hayes 3)
e-mail:AluredDarlington@aol.com

Dave Debidin of Debidins
6 The Broadway, West Ealing, London W13 0SR
(020 8567 1381) (DX 39500 Hanwell)
e-mail: debidins.sol@virgin.net

Neeta Desor of Desor & Co
768 Uxbridge Road, Hayes, Middx UB4 0RU
(020 8569 0708) (DX44657 Hayes 1 Middlesex)
e-mail:neeta@desorandco.co.uk

Hardeep Dhillon of Desor & Co
768 Uxbridge Road, Hayes, Middx UB4 0RU
(020 8569 0708) (DX44657 Hayes 1 Middlesex)
e-mail:neeta@desorandco.co.uk

Maralyn Hutchinson of Kagan Moss
22 The Causeway, Teddington, Middx TW11 0HF
(020 8977 6633) (DX 35250 Teddington)
e-mail:maralyn.hutchinson@kaganmoss.co.uk

Edward Lock of Lock & Mariborough
3 The Broadway, Gunnersbury Lane, London W3 8HR
(020 8993 7231) (DX 80256 Acton)
e-mail: elock@lockandmariborough.co.uk

Juliet McCammon of the Home Office
10 Connaught Avenue, Ashford, Middx TW15 3HY
(01784 642630)
e-mail:Juliet.Mccammon2@homeoffice.gsi.gov.uk

Ariya Sriharan of Sriharans
223 The Broadway, Southall UB1 1ND
(020 8843 9974) (DX 119583 Southall 3)
e-mail:Sriharans.solicitors@virgin.net

Renuka Sriharan of Sriharans
223 The Broadway, Southall UB1 1ND
(020 8843 9974) (DX 119583 Southall 3)
e-mail:Sriharans.solicitors@virgin.net

Gillian Travers of Crown Prosecution Service
29a Cunningham Park, Harrow HA1 4QW
(020 8861 1791) e-mail:Gillian.Travers@cps.gsi.gov.uk

University Representative:
Penny Kent of Middlesex University
Chair of the Law Group
Middlesex University Business School
The Burroughs, Hendon NW4 4BT
(020 8362 5837) e-mail:PKent@mdx.ac.uk

Honorary Member
Tom Cryan
4 West Drive Gardens, Harrow HA1 6TT
(020 8954 1647) e-mail:tom@theyryans.fsnet.co.uk

PAST PRESIDENTS

R Garrod, J A S Nicholls, R C Politeyan, J Aylett, K Goodacre, H J B Cockshutt, W Gillham, L Lane Heardman, D Grove, L A Darke, C Beety, Mrs L E Vickers, H Hodge, E G B Taylor, A A M Wheatley, A H Kurtz, M J S Doran, H B Matthissen, G Parkinson, HHJ R D Connor, A Bates, J J Copeman-Hill, D B Kennett-Brown, S B Hammett, Miss F A Shakespear, HHJ P E Copley, A M Harvey, H R Hodge, G R Stephenson, B S Regler, W J C Berry, A S Atchison, L M Oliver, S W Booth, D D P Debidin, R E J Hansom, E H Lock, Mrs A Taylor, Mrs N Desor, Ms M Hutchinson, M Guyer, R S Drepaul, A Sriharan, Ms M Fernandes, A Darlington, S Chhokar

FUNCTIONS

Family Law Dinner

Annual Dinner

Charity Quiz Night - 13 November 2008

50th Anniversary Dinner - 6 February 2009

See Newsletter for ongoing events
*Working dinners for specialised interest groups and include 2 CPD hours for £50. Contact our Administrator or Social Secretary for details or visit our website.

COMMITTEE MEETINGS

2008
17 March 21 April 19 May
16 June 21 July 15 September
20 October 17 November
2009
19 January 16 February

AGM

Wednesday 11 March 2009

Parliamentary Liaison
Edward Lock

Contact the Middlesex Law Society Administrator,
Peter Hesom at 55 Brookbank Avenue, Hanwell,
London W7 1LA or DX 5104 Ealing
Tel mobile 07930 386798
e-mail: peterhesom@aol.com

www.middlesex-law.co.uk



President's Page



I would like to thank the *Middlesex Law Society* (MLS) Immediate, Past President **Santokh Chhokar** for all the hard work he has undertaken on behalf of the MLS last year. Amongst numerous achievements he has introduced a simplified membership structure and obtained corporate sponsorship from both **Barclays** and **HSBC** banks for which we are extremely grateful. I am extremely pleased Santokh has agreed to stay on the Committee and continue to obtain further corporate sponsorship.

I am pleased that the MLS Committee and Officers have agreed to stay on to assist me in trying to fulfil the aims set for our Golden Anniversary Year. I hope to be able to meet my obligations to the best of my abilities as your President this coming year. I would also like to thank the existing members of MLS for their continued support. Full details of our new Committee can be found on page 4.

In this our Golden anniversary year, it is my vision to fulfil the following aims with your help and support:

1. Increase the membership numbers of the society
2. Expand services to the Young Members Group
3. Increase corporate sponsorship
4. Launch an updated website for both the MLS and the YMG
5. Send questionnaires to all solicitors in the MLS area to find out how we can improve matters for them and how they can assist our YMG
6. Provide training and education courses on relevant topics
7. Investigate the possibility of providing courses on line
8. Forge links with community groups in the locality regarding pro bono groups
9. Provide social events which enable networking opportunities (see Dates for your Diary below)
10. Participate in consultation process with legal reforms

I would like to say a special thank you to our Administrator, **Peter Hesom** for going beyond the call of duty to ensure the smooth running of the committee meetings and training events. Lastly and certainly not least, I must extend my sincerest gratitude to Past President, **Alured Darlington** for being my mentor.

Yours
Maria Crowley, President 2008/09
crowleyandco@hotmail.co.uk

Dates for your diary

Charity Quiz Night

Thursday 13 November 2008
Ealing Town Hall W5
to raise funds for
the Solicitors Benevolent Association
(details on page 35)

50th Anniversary Dinner

Friday 6th February 2009
Law Society Reading Room, Chancery Lane
Guest: President of the Law Society

For further details or to reserve a table,
contact Social Secretary, Robert Drepaul
on 0208 280 0195
or rsdrepaul@vickers-solicitors.co.uk



Editorial

Leading up to the 50th anniversary of the first formation meeting of the then Central Middlesex Law Society on the 28 January 1959, it is worth revisiting our Society's original Mission Statement for a few minutes.

The first part of the Mission Statement was to *promote the interests of all solicitors in the Society's area*. Our Society's original area has expanded from the Boroughs and Urban Districts of Acton, Chiswick, Harrow, Uxbridge, Willesden, Brentford, Ealing, Ruislip-Northwood and Wembley to include South Middlesex and, since 2002, North Middlesex. Our Society's area is now the whole of the Ancient County of Middlesex. Membership categories now include a Firm's membership and extended Associate Membership categories [see below].

The Second part of the Mission Statement was to *make representations on behalf of those solicitors [in the Society's area] to the Law Society, Parliament and others*. The separation

of the regulatory and representative roles of the Law Society has consequentially resulted in our Society being able to actively campaign and lobby on its members' behalf. The 'Blind Justice' campaign of sending copies of the Bill of Middlesex to every MP in the House of Commons, not to mention our Parliamentary Liaison Officer's activities, must have given heart to the President of the Law Society, its CEO and Legal Aid Manager in their recent endeavours. The settlement with the Legal Services Commission and the Ministry of Justice sets a strong precedent for future representative campaigns. [Details can be found on pages 16 and 17]

The third limb of the Mission Statement to *support and encourage legal education and training* continues in a very competitive arena. Following a tenacious lobby by our Administrator, the Solicitors Regulation Authority has self-accredited our Society for future CPD courses. The Young Members Group

includes students and representatives from the three main academic organisations in our area, namely Thames Valley University, Middlesex University and Brunel University. Our Vice-President is no less a Professor of Law.

The final part of the Mission Statement to *work with similar organisations to organise social activities* has seen amongst others, a Grand Dinner at the RCJ with the Lord Chancellor, a Bollywood Ball, an Opera Evening for Past Presidents and Annual Charity Quiz Nights, the latter raising several thousands of pounds for good causes.

It's was not so much Mission Impossible but Mission Well Done!

Robert S. Drepaul





Middlesex Law Society (est. 1959)
APPLICATION FOR MEMBERSHIP

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

Signature _____ Date _____

Individual Subscription Rates:

Full Membership: £50.00 per annum - 3 years since admission
£30.00 per annum - less than 3 years since admission or Members in full-time employment in Local Government or Industry

Associate Membership: £15.00 per annum - Trainee Solicitors, ILEX members, Paralegals, caseworkers, fee earners and students of law

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

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

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

Council Members Report



Report filed by Michael Garson who is a member of the Legal affairs and Policy Board and Chair of the Property Section. Michael was not present at the Council as he was attending the National Association of Realtors Conference in the US. This report has been prepared by Linda Lee who is chair of the Legal affairs and Policy Board.

Council met on 19 March

Topics discussed were -

- Policy for the representative Law Society including an update on the negotiations with the Legal Services Commission in relation to ongoing litigation and discussions concerning our relationship with the SRA.
- An amendment to the Solicitors Accounts Rules imposing a specific obligation to return client moneys promptly at the end of a matter and permitting payment of residual client balances under £50 to a charity without prior permission from the SRA. While the rule change needs to be approved by the Master of the Rolls firms may want to start to review office procedures now.
- The SRA plans to move to 'entity based regulation' which will mean the Law Society can opt to represent entities or individuals.
- Future membership considering whether or not there should be an extension of associate membership (which is currently restricted to trainee solicitors) to non solicitor/non lawyer members.
- **The SRA** - The SRA announced they will be consulting on changes to the Compensation Fund including proposals that members of the society should continue to make contributions.
- Establishment of the **Office for Legal Complaints** - there will be one response to the plans for put forward for the new OLC from the Law Society as a whole, coordinated by the Chief Executive.
- **Legal Aid** - details of the settlement reached appear on page 17. Members are strongly recommended to read the full terms of the settlement deed which deals with different areas of work.

- **SRA Working Group** - A group has been set up to look at representation of black and minority ethnic practitioners in some of its regulatory statistics. The group comprises of representatives from each of the three key BME stakeholder groups and SRA representatives. The SRA has not granted a place on the committee to the Law Society .

- **Public perception of solicitors public opinion poll 2008** - The findings of the public opinion poll (interviews with 1004 people) carried out in January 2008 make interesting reading :-

1. 31% had used a solicitor within the past two years and 51% had used a solicitor but not within the past two years. Only 18% of respondents had never used a solicitor. The most common matters for using a solicitor were selling or buying a home or for making a will.
2. Reported levels of satisfaction with solicitors' service were highest for solicitor's knowledge of the law (92%), the outcome of the case (88%), convenience of the location (88%), and for customer service (87%).
3. Solicitors were perceived by over three quarters of respondents as being professional (84%), knowledgeable (84%), respectful 79%, and approachable (77%). A higher proportion of respondents who had the experience of using a solicitor gave a positive rating in relation to all qualities, compared to those who had never used a solicitor.
4. Only one third of all respondents (32%) perceived solicitors as being value for money, however, almost three quarters of respondents (72%) who had used a solicitor were 'very satisfied' or 'satisfied' with the cost.
5. Although almost three quarters (74%) of respondents considered solicitors in general to be trustworthy, when asked to rate solicitors' trustworthiness relative to other professionals, solicitors did not fair quite so well. Just over on quarter (29%) of respondents rated solicitors in their top three most trusted professionals. The most trustworthy professionals were doctors (78%), police officers (52%), vicars/priests (34%) and bank managers (30%)
6. Almost three fifths of respondents (57%) indicated that they would go to a solicitor for advice about legal issues whereas two fifths (41%) said they would go to a Citizen's Advice Bureau.
7. Solicitors were perceived as being essential for selling or buying a home (90%), for claiming compensation for injury or medical accident (84%) and for dealing with the affairs of someone who has died (84%)
8. Awareness of quality marks for solicitors was low (21%), however almost half of those who were aware indicated that these marks would strongly influence their decision to use particular solicitor or firm. This will be of interest in discussions for future accreditation schemes.

Education and training committee - This has been reconstituted and is still recruiting external members. It plans a June workshop on the new style legal practice course and will prepare a response to SRA consultation on the Qualified Lawyers Transfer Test.

Rules and ethics working group - I sit on this group that has now considered 7 documentation papers from the SRA on future changes to accommodate the LDP once the LSB is constituted.

Complaints handling Plans 2007-2008, 2008-2009 - the management board had reviewed the LCS's performance against the legal LSCC targets for 2007 and

2008. A group has been established to discuss issues concerning future relationships between the Law Society and the SRA, particularly in the area of support services which are under the control of TLS.

Miners compensation ex-gratia payment - the management board reviewed the scheme for ex-gratia payments and reported that there is a related SDT hearing scheduled for May which will determine the outcome of these claims.

Solicitors disciplinary tribunal; future arrangements - there was discussion about the structure which will give the SDT greater independence prior to full implementation of the Legal Services Act 2007.

Policy Compendium - Council sets policy and delegates some of the policy setting function to the Boards. Committees act within the constraints of existing policy and can recommend new policy. However in recent years it has been very difficult for committees (and indeed the organisation) to know what existing policy is as the policy compendium was abandoned some years ago. The old policy compendium has been located and is being updated.

The compendium is being circulated to the committees for their input and a review as to whether or not all of the policies are contained within that document and whether there are areas which now need revision.

The policy compendium will at this stage contain outward facing policy and a formula is being devised to enable new policy to be entered into the compendium as it is set.

Grey areas - There are a number of areas which have no obvious home following on from the split between the representative and regulatory functions. Some of these matters have been resolved but some matters were left outstanding. The LAPB would pick up the thread to develop a representative view of accreditation but recognised the need to involve the Membership and the Regulatory Affairs Boards at an early stage.

Review of the committee structure - the committees are currently engaged in completing information which will then enable the board to assess the work of the individual committees.

Collective Redress - the LAPB, on recommendation from the Civil Litigation Committee, sought approval from Council on a major new area of policy relating to collective Redress and Class actions as follows;

- a) The detriment to potential claimants caused by lack of a collective redress procedure has not, as yet, been fully quantified.
- b) In the absence of a proven need for a new collective redress procedure the introduction of any new system should be piloted.
- c) Any new collective redress procedure should not be restricted to consumers and should be available in respect of both follow-on and stand alone actions.
- d) In any collective redress system there should be a procedure allowing for claims to be resolved without recourse to litigation but which, nevertheless should be subject to court approval. This would prevent class actions being "catapulted" into legal proceedings unnecessarily.
- e) It is unclear at the moment whether it is possible to recommend that collective redress actions should all be opt in or opt out until there has been a review of the way costs are dealt with in such actions.
- f) The judiciary should adopt the role of "gatekeeper"
- g) If the Civil Procedure Rules are reviewed, they should provide one procedural rule for all class actions. The rules should also include a class action pre-action protocol together with pre-action settlement guidance and requirements.
- h) The cost rules should be reviewed, in so far as they are applicable to collective redress actions, for the mutual protection of both claimants and defendants but without stifling access to justice.

Law centres - a member's motion, as follows, was approved -

"The Law Society Council expresses its grave concern at the reports of funding difficulties for Law Centres following the changes in legal aid

funding and local authority funding. Such difficulties have led to the issue of redundancy notices in some cases, and even in extreme cases even possible closure, thus threatening the valuable service offered to vulnerable people in their locality.

Council members also pledged their support to do whatever they can to support local Law Centres in their constituencies."

Council size and composition - There was following the council consultation no consensus as to what the size of Council should be, although 75 was the single figure that attracted most approval from respondents. There was little or no support for a Council composed of solely of either geographical or sectoral members but equal support between those that wanted a mix of geographical and sectoral representation and those who favoured a primarily geographical Council but with special interest groups.

The substantial majority supported a proposal to exempt the office holders and immediate past president from the need to gain re-election whilst serving as such.

And, finally,
In coming weeks there is a busy programme of events preparing the profession for the challenge of LDP's and also to discuss the current changes and developments in relation to Legal Aid and to Conveyancing. The work of the E-Conveyancing task force has reached an interesting stage following the withdrawal of Land Registry plans for the chain matrix and electronic funds transfer both of which have engaged the attention of the profession over recent years.

I am as ever grateful to fellow Council Member Linda Lee for her report on which this is based and am delighted to report upon her successful election to the position of DVP for the year 2008/9.

I will be happy to provide more information on any of these matters that may be of interest to members.

Michael Garson
Council Member for Central & South Middlesex
michael.garson@kaganmoss.co.uk

BRENTFORD COUNTY COURT USERS REPORT 23RD JANUARY 2008



Since the last Court User Meeting the Court has consistently achieved the required Public Service Agreement (PSA) figure. Our year to date figure since April 2007 is 98.47% showing that we have dealt with a very high percentage of work within 5 days. Our Bailiffs continue to provide a good level of service and possession appointments are routinely listed within 5 weeks, despite a huge increase in possession work. All of the waiting times for the various types of hearings are generally within target and the Court is now successfully using both the electronic diary system and PCOL (Possession Claims on Line).

The Family and Possession Focus Groups meet twice a year and have succeeded in making improvements to various procedures. The next meeting of the Family Group will be on **15th May 2008** at 9.15 am and the next meeting of the Possession Group will be **17th September 2008** at 9.30.

If a fax is sent (only one copy please), then DO NOT then send a hard copy through the post. When this happens, it often means that two members of staff are dealing with the same item and can waste time. The Court will not deal with any faxes which require a fee for obvious reason.

Please remember we have 5 Customer facing e-mail addresses as follows:
bailiffs@Brentford.countycourt.gsi.gov.uk
e-filing@Brentford.countycourt.gsi.gov.uk
enquiries@Brentford.countycourt.gsi.gov.uk
family@Brentford.countycourt.gsi.gov.uk
hearings@Brentford.countycourt.gsi.gov.uk
The emails are checked at least twice per day. Anything urgent will be dealt with accordingly, any other emails will be dealt with in 5 working days.

Listings
Possessions are currently being listed in 8 weeks (PCOL). From the 7 April, local authority and housing association possession claims will be listed from 10.30-11.30am every Friday and private possession will be from 11.30-12.30pm. Short Civil are currently being listed in 14 weeks. Small Claims are currently being listed in 13 weeks. Children Act are currently being should be back to 10 weeks.

Bailiffs
In 2007 the bailiffs at this Court set 1957 possession appointments and attended 899 of those. This compares to 865 possessions attended from a similar number of appointments in 2006. The number of possessions attended by the court bailiff team are expected to rise again this year and would ask that customers be as patient as possible, when waiting for eviction appointments.

Ex-parte Orders
Some Ex-parte Orders are not being collected. If an application is serious enough to warrant an ex-parte hearing then it should be collected urgently. The Applicant is unprotected until the Order has been served, therefore if the order is left at Brentford it defeats the object of the ex-parte in the first place. If the order is not collected, then the order may be discharged.

Solicitors Removal from the Court Record
There have been cases where clients have turned up at Court without their legal representatives because they have either no longer instructed one or not funded. Legal representatives must attend. It is contrary to the rules of the court and a breach of duty if they do not attend and are still on record (CPR Part 42). Solicitors can only be removed if client gives notice to the Court or the Solicitor applies to the Court and their Client at least 2 clear days before the hearing. Solicitors will be removed from record once a Notice of Discharge or Revocation of Public Funding was received.

Date of next meeting
Wednesday 30th July 2008 at 9.15 am.

Sue Knight, Court Manager

Copy Deadlines

Summer Issue 08 20th June

Autumn Issue 08 19th September

Winter Issue 08/09 12th December

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

Email: rozpayne@benhampublishing.com

Tel: 0151 236 4141

Tribunals Service takes forward reforms

Actions to deliver a national, unified tribunals system with a strong local presence are outlined in the Tribunals Service's Business Plan, published today.

The Business Plan for 2008-09 outlines how the organisation will, over the coming year, drive forward its strategy to reform its 28 tribunals into a more efficient, independent and user-focused service.

This will involve:

- the opening of the Service's first

administrative support centre, providing effective back office case administration for a number of tribunals, and developing plans for two more;

- developing and starting to roll-out a new network of hearing centres designed to host a number of tribunals;
- setting up the first Chambers, plus the Upper Tribunal, for the new two-tier tribunals system outlined in the Tribunals, Courts and Enforcement Act 2007;
- delivering a common IT infrastructure across the entire Tribunals Service estate, enabling

more efficient working between tribunals; and

- developing new targets and customer service standards to drive up performance within tribunals.

Work will also take place during the year to bring eight new and existing tribunals, currently tied to other government departments, into the Tribunals Service family. They are the Estate Agents Act Appeals, Consumer Credit Appeals Tribunal, Family Health Service Appeals Authority, the Reserve Forces Appeal Tribunal, the Adjudication Panel for England, the

Agricultural Lands Tribunal, the Gangmasters Appeal Tribunal and the Agricultural Dwelling Houses Advisory Committee.

Peter Handcock, Chief Executive of the Tribunals Service said:

"Tribunals deal with more than half a million cases a year, often involving the most vulnerable people in society. We are committed to ensuring that the needs of those people are at the heart of our reform agenda.

"In the two years since we were formed, we have laid the foundations necessary to ensure a first class service to the public. We now look forward to building on this in the coming year in conjunction with our judicial colleagues, and in welcoming more tribunals to our family."

Important developments at Land Registry

Creation of a single Durham Office and Closure of Harrow and York Offices

From 1 April 2008, as a result of the Land Registration (Proper Office) Order 2007, the new proper offices for applications affecting land in the administrative areas for which either the Harrow and York Offices or either of the two Durham Offices was the proper office prior to that date will be as shown in tables below

Harrow and York

These offices are to close as part of a planned programme to reduce our office space. The first stage, as from 1 April 2008, is the transfer to other offices of the administrative areas for which Harrow and York are responsible, as shown below.

Administrative Area	Current proper office	Proper office from 1 April 2008
Brent/Harrow	Harrow	Land Registry, Swansea Office
Camden/City of Westminster	Harrow	Land Registry, Croydon Office
Islington/ City and County of The City of London/ The Inner Temple and the Middle Temple	Harrow	Land Registry, Stevenage Office
East Riding of Yorkshire	York	Land Registry, Kingston upon Hull Office
North Yorkshire/York	York	Land Registry, Durham Office (Southfield House)

For a period after the transfer of administrative areas, the offices at Lyon Road, Harrow, and James Street, York, will operate as sub-offices. Customers may, therefore, continue to receive correspondence from the Harrow and York addresses.

However, from 1 April 2008 customers will no longer be able to lodge applications at our Harrow and York sub-offices. From that date, any applications must be lodged at the new proper offices shown above, unless there is a written arrangement as to the delivery of applications between the applicant or the applicant's conveyancer and Land Registry that applications can be lodged at another office, whether another proper office or one of the sub-offices, as referred to in rule 15 (3) (b) of the Land Registration Rules 2003 (eg. as part of the arrangements for a voluntary registration project). Unless covered by such an arrangement, any applications delivered to the Harrow or York sub-offices will be rejected.

Durham

From 1 April 2008, the Durham (Baldon) and Durham (Southfield) offices will merge to create a single proper office to be known as Land Registry, Durham Office, but the existing Southfield House and Baldon House addresses will be retained for the delivery of all applications, as shown below.

Administrative Area	Proper office from 1 April 2008
Darlington/Durham/Gateshead District/Hartlepool/ Middlesbrough/Newcastle upon Tyne District/ North Tyneside District/Northumberland/ Redcar and Cleveland/South Tyneside District	Land Registry, Durham Office Southfield House, Southfield Way Durham DH1 5TR DX: 60200 Durham 3 Tel: 0191 301 3500 Fax: 0191 301 0020
Stockton-on-Tees/Sunderland District Cumbria/Surrey	Land Registry, Durham Office Baldon House, Wheatlands Way Pity Me, Durham DH1 5GJ DX: 60860 Durham 6 Tel: 0191 301 2345 Fax: 0191 301 2300

Home Information Packs – turn to the experts

All homes being marketed now need a Home Information Pack (HIP), but less than a year since they were introduced we are already hearing horror stories of inaccurate and incomplete HIPs causing problems for buyers and sellers. Whichever you are, to be sure a HIP is truly reliable make sure it is prepared by a solicitor.

The government hopes that HIPs give potential buyers the necessary information to make a decision as to whether or not to buy a property. The reality has sometimes been quite different, with examples of HIPs emerging which have failed to point out vital information, one example being that the property might be in the middle of a conservation area.

Sadly, we are hearing that some estate agents and other non-solicitor HIP providers are cutting corners to produce HIPs on the cheap, resulting in an incomplete and inaccurate HIP for the seller that the buyer might be reluctant to rely on.

The situation looks like it could get even worse. From May 31st, the government plans to make it compulsory to have the HIP complete and in place before you even put the property on the market, delaying the time you are able to market your home. So expect to see even more rushed HIPs emerging.

Many of the documents required in a HIP are of a legally complex nature but are vitally important to get right. For example, standard searches show important details, such as any charges linked to the property, building proposals in the surrounding area and water and drainage services for the property. So the best professional to produce your HIP is a qualified solicitor.

Not only is a solicitor best placed to provide a HIP, he or she can also explain what the contents mean and identify any problems associated with it or legal problems that might be unique to your property.

The cost of a HIP – from around £300 – is sometimes seen as an unwanted addition to the bill of selling up, and some estate agents are offering it free as part of their services. This might sound like a great deal, but there is no such thing as a free HIP.

An estate agent's commission might rise to cover the cost of their HIP, and if you choose to change estate agents, you will often be required to pay to take that HIP with you anyway. So if your agent offers a cheap HIP, be sure to ask them to explain their fees and charges so you are absolutely clear about what is involved.

If you go straight to a solicitor for a HIP, it is portable, so if you decide to change estate agents, you can use the same HIP. It is up to the seller to decide who produces their HIP. Despite this we are hearing of some estate agents insisting on their clients using third party HIPs providers as part of their terms and conditions, something you should be wary of.

The Law Society advises anyone who is selling a home to get a solicitor involved in the HIPs process right at the outset. Solicitors can provide a one stop shop for getting your HIPs documents in place and have the legal expertise and conveyancing experience to make sure everything goes smoothly.

Not only that, a buyer's solicitor is much more likely to rely on the accuracy of a HIP prepared by another solicitor, which will help speed up the conveyancing process.

Paul Marsh is Vice President of the Law Society of England and Wales

(continued)

Land Registry identity checks

Fraud - land registry identity checks for applicants and disponents who are not legally represented

As from 3 March 2008 Land Registry requires evidence of identity when an application is made to register a:

- transfer
- lease
- mortgage, or
- discharge of a mortgage in paper form.

This change will apply to all applications to register one or more of the above transactions lodged on or after 3 March 2008.

Colin Tate - Land Registry

Five facts you must know about Home Information Packs (HIPs)

HIPs are intended by the government to give home buyers the necessary information to enable them to make an informed decision about whether or not to buy. The Law Society says that homeowners looking to sell should keep these five facts in mind when obtaining a HIP.

1. All residential properties need a HIP once they are on the market. Anyone looking to buy a property can enquire with the seller's solicitor or estate agent for a HIP, which must be provided by law. Solicitors are currently the only HIPs providers to be regulated, so it is worth keeping that in mind when seeking a property's HIP and assessing its accuracy and usefulness.
2. HIPs must contain an Energy Performance Certificate (EPC) that gives an energy rating for the property, which buyers might find useful.
3. As well as an EPC, it is compulsory to include other documents in a HIP, such as an evidence of title and standard searches.
4. You can ask a solicitor to prepare your HIP. They will ensure all the necessary legal documents are correct and deal with any problems that might arise. A buyer's solicitor is more likely to rely on the accuracy of a HIP prepared by a solicitor, saving the seller time at the end of the conveyancing process.
5. Sellers beware! Some estate agents who offer a HIP as part of their services will increase their commission to cover the cost. Even where the HIP is offered free, a seller who wishes to change agents will sometimes have to pay to take their HIP with them. Get your HIP from an independent solicitor and you will be able to take it with you at no extra cost.



Divorce can be so unfair

My business partner and I have more than 40 years' experience of investigating fraud as a result of which we have learned a great deal about how dishonest individuals seek to conceal assets and misrepresent the state of their personal and business finances.

A recent trend has been the frequency with which forensic accountants are approached by matrimonial lawyers who suspect that their clients' spouses have not disclosed full details of their assets in their Financial Statements (Form E).

On some occasions, it is clear that no dishonesty was involved in the preparation of an incomplete Form E. It is a 28 page questionnaire which is understandably both daunting and confusing for those who are not financially aware. It is therefore not surprising that innocent omissions occur despite the clear guidance that a person completing Form E has a duty to the court to give full, frank and clear disclosure of all his or her financial and other relevant circumstances. Most of these innocent omissions would be avoided were matrimonial lawyers to ask appropriate questions of their clients and provide more "hand-holding" when their clients are completing their Form Es.

But what about situations in which there are suspicions that assets may have been deliberately omitted from the Form E completed by your client's spouse? It would obviously be unwise for any person to omit to record on Form E an asset of which his or her spouse has knowledge, so the chances are that your client knows nothing about the existence of the assets that have not been disclosed. So asking your client whether his or her spouse's Form E is complete is unlikely to be fruitful.

The best starting point is to examine with care the transactions shown on the bank statements which accompany the spouse's Form E. It is normal for these to cover the 12 months preceding the preparation of the Form E although, depending on such things as the state of the marriage over this period, it is usually sensible to request statements covering a longer period. This examination should enable you to identify transfers between bank accounts (which might reveal one or more undisclosed accounts) and payments that represent the acquisition of assets. However, do not overlook the receipts shown on the bank statements. These may represent income from assets that may not have been disclosed.

If suspicions of undisclosed assets remain once the careful examination of the bank statements has been completed, it is time to consider other alternatives. The usual starting point is the internet, but the use of search engines such as Google is seldom effective, although it may be worth using a metasearch engine such as dogpile.com which "crawls" other search engines. It is a question of knowing where to look, and how to search.

For example, the database of Companies House records details of all companies incorporated in England and Wales, and it is possible to search by the name of the company and by the name of a director. Unfortunately, it is not possible to search the Companies House database by the name of a registered shareholder. We have revealed undisclosed shareholdings in companies by examining the latest Annual Returns (Forms 363) of companies of which personal and business acquaintances of the spouse are registered directors. The website

www.snoop4directors.co.uk is also useful as this shows registered shareholdings.

There is a similar difficulty when searching the Land Registry database. It is simple to ascertain the current and former registered owners of a title if you know the address, but you don't. The remedy is to pay a fee of £10 and submit this to the Land Registry's office in Plymouth with Form PN1 completed with the name of the spouse. This will reveal all titles to registered land in the UK of which the spouse is the proprietor.

Do not overlook the possibility that the spouse may have interests in intangible assets such as patents, trademarks, designs and copyrights. These are easily searchable by the spouse's name on www.ipo.gov.uk.

If you would like a copy of our guide to using the internet to find undisclosed assets, please contact me at mark@ballamywoodhouse.co.uk.

And what about situations in which there are suspicions that assets may have been undervalued on the Form E completed by your client's spouse?

An area that is often problematic is determining the values of shares in unquoted companies and unincorporated businesses. If the spouse is a director of such a company, or is otherwise able to exercise control over the business, caution is needed before placing any reliance on recent financial statements as these may have been manipulated to suppress the true level of profitability.

It is not uncommon for unjustified provisions to be made against ostensibly doubtful debtors, revenue to be deferred for no commercial reason, and for expenditures of a personal nature to have been borne by the business as a means of reducing the reported level of profits. Manipulations of this nature may become apparent by examining trends between successive sets of financial statements, but more frequently they may only be revealed by an examination of the underlying accounting records.

Sight must not be lost of the effect such manipulations of a business's financial statements will have on the valuation of the company. By recording an unnecessary bad debt provision of say £30,000, the value of the company would be reduced by £200,000 if future sustainable pre-tax earnings were to be discounted at 15% per annum.

Another area which is often problematic is the value of pensions. Form E requires that the cash equivalent transfer values (CETV) be obtained from the trustees or managers of each pension arrangement. However, in some cases CETV does not represent the fair value of the pension to the spouse. Valuing certain types of pension arrangements is a highly specialised area, and I contact Peter Crowley at Windsor Actuarial Consultants Limited whenever I need advice.

Divorce settlements can only be fair if the parties' legal advisors, and the court if settlement cannot be reached through negotiation, are fully informed of the fair values of assets available for division. I have no doubt that many settlements would have been grossly unfair were it not for the involvement of forensic accountants.



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Albert Buildings, 49 Queen Victoria Street, London, EC4N 4SA
Telephone: 020 7653 1920 Web: www.ballamywoodhouse.co.uk



Sundeep Singh Bhatia
Committee Member of The Middlesex Law Society
Vice Chairman of The Society of Asian Lawyers
Committee Member of The London Criminal Court Solicitors Association

Surviving in a Post Carter World?

They said it would never happen. The majority of the profession turned away their eyes whilst Rome burnt. Yet the worst aspects of Lord Carters reforms have been implemented or are due to be implemented.

At the time of writing this article (February 2008) the criminal defence solicitor has been subjected to an avalanche of reforms that threaten the continuing viability and solvency of most solicitors firms and individual solicitors.

Thus the means test in October 2006 led to fewer defendants receiving publicly funded representation at the Magistrates' Court.

Fixed fees at the Magistrates' Court (introduced in 2007) destroyed the commercial viability of doing work at the Magistrates' Court.

Then in January 2008 fixed fees at the police station and the fixed litigators fee for preparation of cases at the Crown Court by solicitors were introduced.

The profession now awaits, with baited breath, the introduction of price competitive tendering. All firms both small and large in the criminal defence field are complaining about the reforms and the way that they have been implemented.

This is sure to be a year when a large number of firms go out of business.

Perversely this is exactly what the government and the Legal Services Commission want. There are also a small minority of larger firms who are also content at this state of affairs.

The idea is that smaller firms will be swept out of business and the largest firms will be able to make a profit on the basis of increased volumes of business caused by their competitors demise.

However this author would question whether that is possible and whether we are in the midst of a grand experiment that threatens the future viability of criminal defence work, access to justice for our clients and increasing miscarriages of justice.

For those who wish still to continue doing publicly funded criminal defence work the choices are stark.

Maintaining Quality

The profession is under great pressure to maintain quality standards. The Legal Services Commission have introduced peer review and the LSC throughout consultation papers have continued to put emphasis on quality. However it is surely not possible to continue to provide a quality service in the same way as previously.

The only way firms stand any chance of maintaining some degree of profitability is by means of deskilling.

Thus, instead of sending fully qualified duty solicitors to police stations firms will want to send accredited representatives who, although they have paper qualifications, will often lack the professional experience required to deal effectively with serious criminal offences such as murder, rape, manslaughter and serious assaults. This is bound to lead to a decline in standards at police stations and to more miscarriages of justice.

The Legal Services Commission are now consulting regarding reforms at police station level and one net result may be that firms will not need to employ duty solicitors in order to receive slots for duty work at police stations.

This will hasten the decline and will lead to a large amount of unemployment amongst solicitors qualified in this field.

Firms, in order to remain profitable, will also wish to use paralegals and non qualified staff in order to prepare cases at the Magistrates' Court and the Crown Court.

Crown Court

One area where firms can benefit from the reforms is by increased use of Solicitor Advocates.

Graduated fees paid to the bar are a lot higher than fees paid to solicitors.

Use of salaried solicitor advocates would enable firms to keep the fees paid to advocates in house.

Technological Assistance

(a) Video Links

Firms may wish to make use of the video links between courts and various prisons.

Most Magistrates' Courts will allow solicitors firms to use these facilities free of charge when they are not required by the court.

This would enable firms to travel to their local Magistrates' Court rather than a far off prison. In the absence of payment for travel this is an effective cost cutting exercise.

(b) Outsource of Typing

Digital dictating machines and transcribers mean that dictated sound files can be sent as e mails to countries such as India where they can be typed out and e mailed back to England at a fraction of the cost of employing staff to do the same in the United Kingdom.

Furthermore the 5 hour 30 minute (4 hour 30 minute difference in summer) means that sound files dictated and e mailed to India at the end of a working day can be there waiting when the office re opens the next morning.

As an ex colonial outpost English is spoken and written fluently by a thriving middle class.

Many firms offer this service and it represents one way of cutting costs without compromising on quality.

Being forceful at police stations

Solicitors also may feel that they need to take a more robust attitude when they represent clients at the police station.

In this authors experience officers will often ask a solicitor to attend at a police station some hours before they are ready. They would rather a solicitor waited around than themselves.

Thus, this author has been the victim of calls to the police station in circumstances where officers suddenly decide that they wish to go out on a search of a suspects dwelling.

This kind of behaviour on the part of custody sergeants and officers should no longer be tolerated.

When asked to attend the solicitor should ask several questions as to whether or not the officers are actually ready.

In the circumstances outlined above the solicitor should immediately leave the custody suite leaving his of her mobile phone number with the custody sergeant. However they should, of course, see the client for a least a few minutes in order to form the connection that is so important between solicitor and client.

Solicitors may also feel that they should not remain at the police station in order to deal with bail representations. Instructions can be taken from clients post interview and a telephone number can be left to make representations on the phone at the time of charging if applicable.

In relation to returns on bail, firms may feel that they should not attend. Unless they actually know from the officer in the case what is going to happen at the police station. In the event of a re bail matters can be dealt with by a phone call to the client. If a solicitors firm cannot find out what is happening at a police station prior to attendance then they may consider actually not attending until such time as they actually know what is going on. They should also perhaps convey that information to the client so that he or she is aware.

Revised Payment Packages

This is probably the most sensitive reform that any law firm will have to carry out. This is because if firms unilaterally change the terms of their employees contract of employment then they face the very real possibility of litigation before an employment tribunal.

Therefore firms should tread carefully and consult carefully before making any decision in this respect.

Expert assistance from an employment lawyer should be sought (this author is happy to offer his services in this respect).

However it may be felt that the days of fixed salaries are coming to an end and that one way forward may be to offer performance related packages on the basis of the money that the individual solicitors bring in to a firm with respect to the work that they do. This may include doing out of hours work and not being paid an additional fee for such work.

The above advice obviously applies to those firms that still wish to undertake criminal defence work.

Many solicitors may feel that such work is no longer viable and may wish to take on board some of the personal suggestions this author has put into practice.

Shutting down the firm

This is an unpalatable decision that many firms may have to make over the coming months.

The matters to be taken into consideration are what is going to happen to staff. If staff are made redundant then the firm will have to make redundancy payments to that staff.

Alternatively a new home for those staff may be found with another firm who are keen to take on other solicitors. Perhaps the criminal work of the firm can be handed on to that other firm. As well as saving the costs of making staff redundant it is also a way of showing compassion and consideration for the continued welfare of staff who have served the firm.

There will be many other matters partnerships and Limited Companies will need to consider for which they should seek specialist advice.

Branching Out

You or your partners may have other areas of law they are interested in, where private payment is usual.

If so then education in those areas is not difficult.

A whole industry exists to provide educational courses.

Reasonably priced text books are available as well as advisory internet sites.

This author has a passionate interest in employment law and after educating himself is practicing successfully in that field.

Scaling Down

A midway route between closing down and continuing in business is to downsize.

If staff is laid off then the firm may feel that it can operate from smaller premises. Negotiations can be undertaken with the landlord and perhaps the remnants of the firm can

move to serviced offices where there are shared administrative facilities and reduced rents. Some serviced offices have very impressive facilities in which to take instructions from clients. Others, in less desirable post codes, offer inexpensive office facilities.

Obtaining Higher Rights

All criminal solicitors must consider obtaining higher rights of audience. This will make themselves more marketable in the job market and less susceptible to redundancy.

Doing work as a consultant

If individual solicitors feel they no longer wish to be involved in running a criminal defence practice then they may feel that they would wish to do work as a consultant to such a practice whilst practicing in other areas of law.

Personal Life

Finally, particularly at times like this, solicitors should consider that there is more to life than work.

This author created a successful criminal defence firm called Brent Law Practice until December 2006 with his wife as practice manager.

Fourteen months later and solicitor and practice manager are the proud parents of four month old twins.

Whatever you decide I wish you the best of luck.

However much politicians enjoy running us down our work is important and noble.

We give people hope and dignity when they are at their lowest ebb.

We protect society from the worst excess of the legislature, and judiciary and the police.

Without our efforts this country would be an intolerable place to live in.

Editor's Note: Congratulations to Mr & Mrs Bhatia on the birth of their twins from Committee, Officers and Members of The Middlesex Law Society.

Legal aid: joint statement by the Law Society, Legal Services Commission and Ministry of Justice

2 April 2008

The Law Society (TLS), Legal Services Commission (LSC) and Ministry of Justice (MoJ) have reached an agreement to resolve their differences of view about the consequences of the judgment of the Court of Appeal on the civil legal aid contract. The agreement has been reached through a series of open, constructive and pragmatic discussions between the three organisations.

The agreement is designed to provide a significant period of certainty and stability for civil legal aid providers to enable them to adapt to the changes to the legal aid system that have already been introduced, and to consider and plan for the future. The agreement also addresses a number of specific issues that the Law Society has identified to the Commission and Ministry as being of concern to civil legal aid providers and, where these issues require further consideration, sets up joint mechanisms to address these collaboratively. The principal benefits for practitioners include an arrangement in respect of historic unrecouped payments (meaning generally payments on account made at least six years ago), a right to undertake remainder work on the no fault termination of a contract, increased rates for specific categories of legal aid work and a review of the practices and procedures relating to contract compliance audits.

The MOJ and the LSC accept and will not challenge the decision of the Court of Appeal in favour of the Law Society's (TLS) arguments that clause 13.1 of the Unified Contract is incompatible with the Public Contracts Regulations 2006 (the Regulations). They regret that the implications of those Regulations were not recognised earlier and acknowledge that TLS was justified in commencing those proceedings. MOJ and LSC further acknowledge and accept that the Court of Appeal judgment means that the only power of amendment which now remains in



the civil Unified Contract is the power in clause 13.2.

TLS issued further Judicial Review proceedings against the LSC on 12 February 2008 for a declaration by the court concerning the implications of the earlier judgment. However, under this agreement those proceedings will be discontinued on terms which are intended to provide tangible benefits for legal aid practitioners and which will establish procedures designed to ensure a closer and more constructive relationship between the parties in the future.

LSC, MoJ and TLS believe that this agreement represents the best way forward for legal aid providers and for the three organisations in the light of the uncertainty created by the Court of Appeal judgment. There is a strong commitment, on the part of the three organisations, to delivering the substance of this agreement. However, all consider that the process of reaching the agreement and the strong commitment to work together in this way in the future, are, in many ways, the most important outcome.

LSC, MoJ and TLS are pleased that further litigation and the uncertainty which would have been caused by early termination of the Unified Contract have been avoided. They look forward to working together and with other representative bodies harmoniously for the benefit of clients receiving publicly funded legal services and the providers of those services.

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Summary of settlement between the Law Society, Ministry of Justice and Legal Services Commission

2 April 2008

The settlement

It is important to understand the limits of what could have been achieved from success in the litigation. A hearing date for our case had been fixed for late June 2008. Had we not reached a settlement, the LSC would have terminated contracts with a view to introducing new contracts in the autumn in which the graduated fee schemes were unchallengeable. This means that there would have been no prospect of returning to hourly rates. The profession would have been left with a historic dispute over whether they should have been paid on a different basis during this one year, and a prolonged period of disruption and uncertainty.

Council approved the deal subject to satisfactory resolution of a small number of outstanding issues. These matters have been resolved. In respect of the amnesty for unrecouped payments on account, we are satisfied that most legal aid providers will see real cash benefits, both in terms of not having money recouped and being saved the administrative burden of the process. We have retained our right to submit a complaint of maladministration to the ombudsman, in order to ensure that we are able to represent any of our members who have justified complaints that are not addressed by the new approach.

It has also now been agreed that the settlement is not conditional on there being no further challenge. In the event of a challenge covering the same issues as in our case, which is deemed serious by a jointly-instructed QC, the LSC may terminate contracts early, but the profession will retain the other benefits delivered by this settlement. Financial benefits

- A revised approach to unrecouped payments on account from more than six years ago – subject to cases involving dishonesty and / or greater than £20,000 on an individual case.

- An increase of 2% on all legal help fixed fees and underlying hourly rates from 01/07/08
- An increase of 2% in the hourly rates only for Level 2 Family Help lower
- Care level 2 fee increased from £347 to £405
- 5% increase in CLR fees and rates for mental health (whether paid as standard fee cases or exceptional claims), plus 2% for remote travel payments
- 5% increase in CLR fees and rates for asylum and immigration cases covered by the standard fee scheme (whether paid as standard fee cases or exceptional claims)
- New rules on Standard Monthly Payments so that changes will not happen so often, so unpredictably and with such large variations

Stability measures

- A commitment by the LSC (subject to certain caveats, particularly relating to CLACs and CLANs) not to terminate the Unified Contract before it expires through effluxion of time in April 2010
- Deferment of the further changes to family fee schemes (including standard fees for private law family litigation, adjustments to the escape threshold for care standard fees, and a new advocacy fee scheme) which had been due this year, until April 2010
- Acceptance by the LSC that their right to amend contracts is significantly curtailed, and that therefore the historic approach of making significant structural changes during the life of a contract cannot continue
- The rule on remainder work will be changed so that firms are entitled to undertake it for two years after termination of their contract, so long as it has not been terminated for fault.

Certainty

- The LSC is publishing a route map for civil and family legal aid showing the way forward until 2013, in which it commits not to introduce price competitive tendering for civil and family cases before 2013
- The LSC is announcing a delay of six months to the earliest possible date for the introduction of best value tendering for crime, and will publish a full route map in its response to the BVT consultation
- The LSC is publishing (once purdah for the local elections is out of the way) a list of the areas in which CLACs or CLANs may be introduced before April 2010. No CLACs or CLANs will be launched outside these areas before that date.

Reviews

The following reviews are being set up, with terms of reference settled in the course of negotiations all reviews to be published.

- The setting up of a Consultative Group equivalent to the Criminal Contracts Consultative Group. An early task for this group will be a full review of the new fee structures.
- A joint review of peer review accreditation, the specialist quality mark and other quality assurance issues.
- A joint working group to address concerns about the contract compliance audit processes.
- A joint review of the immigration stage billing problem, with a report to be published by 30th June 2008.
- Law Society involvement in the evaluation of CLACs and CLANs, including our Head of Research to be on the advisory board

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Annual General Meeting 2008

Maria Crowley elected President



Darell Webb, Membership Secretary



Secretary, Maurice Guyer and Council Member, Michael Garson



New President, Maria Crowley and Past President, Alured Darlington



Speaker, Peter Williamson from the SRA



More photographs at www.middlesex-law.co.uk.

Past Presidents Dinner at the Grim's Dyke Hotel 24th February 2008



Peter Rutland & Richard Bearman from HSBC (right) with the Past Presidents of the Middlesex Law Society



Richard & Janet Palmer (centre) from Barclays with the Past Presidents of the Middlesex Law Society

Middlesex Law Society is supported by BARCLAYS and HSBC.

Photographs by Maria Crowley. Additional photographs at www.middlesex-law.co.uk.

Editor's note: The Middlesex Law Society extends best wishes to Past President, Alec Atchison on his retirement.

London Mothers receive worst maternity care

by Jane Measures, Associate & Head of Birth Injuries at Withy King Solicitors

A Healthcare Commission Report in January found that there was a huge variation in quality of maternity care across the UK, with women in London receiving the worst service. In London, antenatal and postnatal care were consistently found to be poorer, with expectant mothers not being provided with the recommended number of checks, and the quality of care around the time of birth found to be inconsistent.

The report also raised concerns about staffing levels, especially among midwives. The Royal College of Midwives (RCM) has estimated that London needs another 2,000 midwives.

The Health Secretary, Alan Johnson, last month outlined plans for the recruitment of 4,000 extra midwives in England by 2012, but the RCM considers this to be inadequate, arguing that at least 5,000 will be required, and that the figures do not take account of retirements.

Meanwhile, 1 in 4 women reported being left alone during labour or shortly after giving birth at a time that worried them, while 43% of women said that they were not given the choice of having their baby at home, as national guidelines suggest that they should.

How does all of this actually impact on outcomes for mothers and their babies? At Withy King we have a dedicated birth injury unit which forms part of our clinical negligence department. We are currently dealing with around 50 birth injury cases,

double the number we were handling two years ago. Our cases relate to births from all over England and Wales, but a substantial number relate to London hospitals.

Certainly, solicitors in our specialist team are finding that mothers in labour are often left for long periods of time without midwifery attention. Further, more and more cases seem to be arising as a consequence of a poor standard of midwifery care. Examples of such poor care include failure to deal properly with shoulder dystocia, (where the baby's shoulder becomes stuck during delivery), failure to call an obstetrician where the baby was showing signs of distress, and failing to ensure that a resuscitation team was available at birth when it was predictable that the baby would require immediate resuscitation.

(continued)

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We have also dealt with a number of claims where there has been a failure to diagnose intra-uterine growth retardation, and this can arise as a consequence of a failure to provide the requisite number of pre-natal checks, or because the quality of those checks is poor. Our experience bears out the suggestion that the quality of care around the time of birth is inconsistent.

Fortunately, on many occasions, a poor standard of maternity care does not result in injury to either mother or baby. Sadly, in the cases we see, babies sometimes do not survive, but more usually may suffer brain injury due to oxygen starvation, which frequently leads to a diagnosis of cerebral palsy. In the most serious cases, the child may then require a lifetime of full-time care, which means that there may be a claim for damages running to several million pounds. Recent cases which Withy King has concluded have resulted in settlements of £2.2million and £1.8million, and higher damages figures than these are not uncommon in such cases.

In recent times, it has become commonplace for claimants in such cases to be awarded "periodical payments", whereby instead of receiving a lump sum of several million pounds, the claimant will be awarded annual payments for life, designed to cater for their care and accommodation needs, and other regular requirements such as therapies. Because we specialise in claims of this nature at Withy King, we are familiar with the needs of claimants, and how to calculate the extent of the compensation necessary to provide a much improved quality of life for them.

It seems that the Government, assisted by the Healthcare Commission's recent investigations, has recognised that there is a significant problem with maternity services in England, and at least is trying now to address the chronic shortage of midwives. Across London, staffing levels remain dangerously low, and the standard of maternity care is frighteningly inconsistent. Where there has been substandard care, With King's specialist birth injury team are available to offer sympathetic and expert advice, and are able to help, in appropriate cases, to obtain damages which can change the lives of those affected by birth injury.



Malcolm Underhill
Head of Personal Injury, IBB

Malcolm is a personal injury specialist, particularly focusing upon high value and complex cases, including serious and long term head injury, spinal injury, hand arm vibration syndrome, work related upper limb disorder, child abuse, fatalities and psychological injury. He is listed as a leader in his field by Chambers UK legal directory.

Full compensation for the victims of head injury

It is trite law that an award of damages should be calculated so as to achieve, as near as possible, full compensation for the claimant. For those suffering injuries from which they recover within a short time, the issue is not paramount. However, for those suffering traumatic brain injury, requiring long term care on an intensive basis, the notion of full compensation is absolutely critical.

As was stated in *Wells v Wells* [1999] 1 AC 345 "the object of an award of damages for future expenditure is to place the injured party in nearly the same position as he or she would have been but for the accident. The aim is to award such a sum of money as will amount to no more, and at the same time, no less, than the net loss."

The traditional route to full compensation is the crude lump sum award. Until relatively recently this was the only way claimants were compensated. The risk of a lump sum was that if the basis of the calculation for future loss was inaccurate, the claimant could find themselves under compensated. If there was a substantial increase in care costs, then claimants would run out of money in the remaining years of their life. Conversely, if the claimant died prematurely, the claimant's family gained a windfall.

To counteract this crude form of settlement the Damages Act 1996 brought in periodical payments. By Section 2 (1) of the Damages Act (amended by the Courts Act 2003) the Court has, since 1 April 2005, been required to consider whether to make an order for periodic payments. Prior to this date the defendant (or claimant) could avoid a periodical payments order, simply by refusing to be party to it. However, from April 2005, whether *nolens volens* the defendant can be compelled, as the Court now has a duty to consider periodic payments in all cases.

The battleground has arisen out of the appropriate index to be used when assessing the amount of future periodic payments. The background lies in the Damages Act, as follows:-

"2(8) An order for periodical payments shall be treated as providing for the amount of payments to vary by reference to the retail price index at such times, and in such manner, as may be determined by or in accordance with Civil Procedure Rules.

(9) But an order for periodical payments may include provision-

- (a) disapplying subsection (8), or
- (b) modifying the effect of subsection (8)".

The Civil Procedure Rules (CPR) provide under Part 41.8(1)

"Where the court awards damages in the form of periodical payments, the order must specify-

- (a) the annual amount awarded, how each payment is to be made during the year and at what intervals;
- (b) the amount awarded for future-
 - (i) loss of earnings and other income; and
 - (ii) care and medical costs and other recurring or capital costs;
- (c) that the claimant's annual future pecuniary losses, as assessed by the court, are to be paid for the duration of the claimant's life, or such period as the court orders; and
- (d) that the amount of payments shall vary annually by reference to the retail price index, unless the court orders otherwise under Section 2(9) of the 1996 Act".

Claimants have argued that since the amendments to the CPR, adopting the retail price index (RPI) is not a realistic basis upon which to assess a future award for care. This is because the index does not reflect the true cost of care, which continues to increase at a rate in excess of RPI. Therefore alternatives have been put before the courts, with the Annual Survey of Hours and Earnings (ASHE) proving popular.

Expert evidence has been produced to assist the Court on a variety of indices, but all palpably demonstrating (in the claimant's eyes) that RPI is not an appropriate index.

At first instance the claimant's arguments have met with success, notably in *Flora v Wakom (Heathrow) Limited* [2006] EWCA Civ 1103. Brook L J accepted the evidence of the claimant.

In the Court of Appeal, in a number of conjoined appeals, the appellant respondents articulated a number of issues, arguing

- (a) why the court should only depart from RPI in exceptional circumstances;
- (b) if it was right to modify the approach then the only modifications were to either increase or decrease the RPI to take account of the specific circumstances (and not simply replace RPI with another index);
- (c) the claimants should be denied use of an alternative index on the principle of Distributive Justice, or corrective justice;
- (d) the claimant failed to discharge the legal burden of proof, by identifying and proving that a specific index on its own merits can displace the presumed index of RPI;
- (e) that any attempt to rewrite the multiplicand is an affront to the decision in *Cookson v Knowles* [1979] A C 556 and should be rejected.

In a very detailed judgement *Tameside and Glossop Acute Services NHS Trust and Ors* [2008] EWCA Civ 5 the Court of Appeal unanimously rejected all submissions from the Appellant Defendants. Waller L J gave the leading

judgement. Whilst not required to do so, the Court of Appeal addressed every submission with a comprehensive response. In doing so and setting out their reasons lucidly, the Court of Appeal hopes that defendants will now accept that the appropriateness of indexation on the basis of ASHE has been established after an exhaustive analysis of all the possible objections, in respect of care and case management costs. They went further to expound the hope that it will not be appropriate to re-open the issue in any future proceedings unless the defendant can produce evidence and argument which is significantly different from, and more persuasive than that deployed in the current cases. Judges were instructed not to be slow to strike out any defences that do not meet that requirement.

In consequence of this judgement, claimants can now look forward to recovering care and case management costs by reference to ASHE, rather than the inappropriate RPI. This will lead to claimants receiving care and case management throughout their life at the correct levels, rather than having to accept a reduced regime of care, due to diminishing funds. If the Court of Appeal had held otherwise, then awards for the victims of traumatic brain injury could end up little better than those receiving lump sum awards for all heads of damages.

With this judgement, full compensation comes closer to reality.

Tel: 01895 207972
Email: malcom.underhill@ibblaw.co.uk



Markets in a Spin

In the last few weeks we have seen significant turmoil across a wide range of markets with sharp daily movements in the price of bonds, equities, foreign exchange and commodities including oil and gold.

The trigger to this recent bout of market jitters was the bail-out of Bear Stearns, the 5th largest investment bank in the United States. Until now, it was possible to argue that although the US economy looks fragile, the US authorities have the right medicine to cure the patient.

That optimism has now gone. US interest rates have already been slashed to 2.25% from a peak of 5.25%, a \$200bn package of tax cuts is on the way, and the US authorities have injected much needed liquidity into the money markets. Despite all this, there has been no major sign of improvement in the US economy.

The UK is being tarred with the same brush as America, being seen as vulnerable on account of a strikingly similar steady rise in house prices and household indebtedness. On the currency markets, Sterling has fared badly, falling to a new all-time low of under ?1.27 by mid-March, and is the only major currency not to record sharp gains against the US dollar during recent weeks.

Perhaps even more worrying, is the effect of all this uncertainty on the UK banking system. Banks which would normally lend money to each other in the money markets are now taking a more cautious approach, hoarding their liquidity, which is pushing up short term interest rates (3-month LIBOR is 75 basis points higher than Base Rate)

This lack of available credit (a "credit crunch") could act as a brake on demand and higher costs of funds in the banking sector could prevent any Bank of England Bank base rate cuts being fully passed onto the consumer on the high street.

If you have concerns about how volatility in foreign exchange and interest rates impacts your business profitability, HSBC has a local team of risk management specialists to help you put solutions in place to protect your business.



David Winch is a forensic accountant specialising in crime and proceeds of crime and a director of Accounting Evidence Ltd.

Imagine this – your client has been convicted and you now receive a prosecutor’s confiscation statement showing a ‘benefit’ which is wholly disproportionate to his offence, and is a figure significantly larger than his total assets. What can be done? Is it even worth attempting to do anything, or should you simply let the prosecutor roll over your client?

Very seldom in legal matters are all the arguments on one side. Parliament has done much to tilt the scales of justice in favour of the prosecutor in confiscation proceedings, but the courts have taken some small steps to redress the balance.

If a very large ‘benefit’ figure is produced it is likely that the prosecutor is employing the ‘criminal lifestyle’ statutory assumptions. First, ask yourself whether the use of these assumptions is appropriate in your client’s case. Are the statutory criteria (in, for example, section 75 Proceeds of Crime Act 2002) satisfied?

In my experience prosecutors rarely address this point in their confiscation statement.

The McIntosh case

The case of *HM Advocate & another v McIntosh (Scotland)* [2001] UKPC D1 was a Scottish case decided by the Privy Council. Notably Lord Bingham said, “It is only if a significant discrepancy is shown between the property and expenditure of the accused on the one hand and his known sources of income on the

Confiscation – is it hopeless?

other than the court will think it right to make the section 3(2) assumptions”.

So the next question is, does the evidence point to such a discrepancy?

R v Benjafield

The potential injustice arising from the operation of the statutory assumptions was considered in *R v Benjafield & Others* [2000] EWCA Crim 86.

In the Court of Appeal Lord Woolf said, “While a defendant is required to show that an assumption in his case is incorrect, if he fails to do this, the court must still not apply an assumption where there would be a “serious risk of injustice in the defendant’s case if the assumption were to be made”. As to the weight that has to be given to the word “serious”, any real as opposed to a fanciful risk of injustice can be appropriately described as serious. The court, at the

end of the confiscation process, has therefore a responsibility not to make a confiscation which could create injustice.”

So ask yourself if the result is unjust.

Consider the evidence


There are a number of potentially useful aspects to the Court of Appeal decision in *R v Green* [2007] EWCA Crim 1248. One of these concerns the misuse of the statutory assumptions by prosecutors where an individual is involved in a course of criminality in which monies from one crime are used to fund another. The Court referred to the statutory assumptions as “a tool” and implied that they were not to be regarded as an end in themselves. The application of the assumptions should be checked against reality!

In particular the court held, “it should be noted that, although section 4(3)(b) requires the court to assume that money used to finance expenditure was derived from drug trafficking, it does not require the court to assume that such money was derived from sources other than those to which the evidence naturally points”.

The default sentence

At the end of the day if a confiscation order is made the court will also specify a default sentence to be served in the event of non-payment. Sometimes courts are inclined to automatically hand down the maximum sentence permitted under the statutory scale.

In a recent case *R v Olumba* [2008] EWCA Crim 408 the Court of Appeal held, “It is to be emphasised that such periods of imprisonment are intended to be roughly proportionate to the default of compensation, a separate matter from the original offence giving rise to the compensation proceedings, although no doubt the judge in setting the period can and should have regard in general to the circumstances of the case. This is an exercise of discretion for fixing an appropriate default period within the relevant band”. In that case the maximum default sentence of 3 years had been imposed in respect of a confiscation order of £110,000. This was reduced to 2 years on appeal.



Confiscation?

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

The firm acts in cases throughout the United Kingdom.

Contact Us:
David Winch, B.Com., F.C.A.
Accounting Evidence Ltd
Well House, Broughton in Furness
Cumbria LA20 6HS

Telephone: 01229 716651
Email: d.winch@accountingevidence.com
www.accountingevidence.com

Paralegals – cost effective or down market?

Jeanette A Lucy - Programmes Director of CLT's Centre of Professional Practice

Jeanette Lucy is currently the Programmes Director for CLT's Centre of Professional Practice, where she is responsible for paralegal and all Solicitors Regulation Authority accredited programmes. Prior to joining CLT she was a Compliance Manager and Money Laundering Reporting Officer for a large conveyancing firm in the North West and previously had been a Senior Ethics Adviser (for 15 years) with the Law Society's Professional Ethics Division, dealing with a diverse range of conduct enquiries as well as assisting in producing several editions of "The Guide to the Professional Conduct of Solicitors".

For law firms wishing to provide excellent legal services at competitive rates, the answer may be to use paralegal staff to undertake the more routine legal work. There is no definition of what a paralegal is, but commonly the term is used to refer to staff within legal firms who are not legally qualified but who assist in providing legal services to the firm's clients. Often not called paralegals, many have job titles such as secretary, administrator, clerk or manager, but essentially they are involved in fee earning work.

Paralegals come from many backgrounds some have taken law degrees and the LPC, but have failed to secure a training contract, others have qualified as Legal Executives and some have simply worked for firms over a long period perhaps starting in a secretarial or administrative role and moving into fee earning. Others have no formal training and little experience.

In some firms, paralegals are the backbone of the firm's legal provision such as in the high volume conveyancing market, the sector sometime referred to as "conveyancing factories". In smaller firms, it may be the legal secretary that undertakes the bulk of the conveyancing work.

Paralegals can make a valuable contribution to the work of the firm, but often do not receive any formal training. The training they do receive is often on the job training, which gives them an understanding of the work they have to do, but means that they are not aware of the wider issues, the reason they take the steps they do or the underpinning law. A fully trained member of staff is able to make a much better contribution to the work of the firm as/he she may then spot issues that could give rise to complaints or claims rather than simply acting as a processor of information.

For paralegal staff to provide a valuable contribution to the work of the firm they need to be fully trained. Indeed, the provisions of Rule 5 of the Solicitors' Code of Conduct provide that one of the factors that contribute to a firm being properly managed is having fully trained competent staff. A further added benefit of well-trained and competent staff may be lower

insurance premiums, if a firm can demonstrate to its insurer that all its staff are skilled in their area(s) of practice.

There are no prescribed qualifications for a paralegal, but many firms look for a law degree or BTEC qualification, coupled with some legal experience. A fully trained paralegal can free up qualified legal staff to deal with more complex cases or to put more effort into winning business and dealing with your clients' more complex legal needs.

Sadly, in some firms paralegals are used as 'cheap labour', a news item in the Law Society's Gazette of 13 March 2008 highlights the very low pay of paralegals involved in legal aid work, such reports may give rise to regulation in respect of the employment of paralegals. It is therefore in firms' interests to treat paralegal staff fairly to avoid additional regulation.

Well-trained paralegal staff are an asset to a firm as they can ensure firms can provide cost-effective legal services to their clients. Given the challenges that will face firms over the next few years with the liberalisation of the legal market that will come with the Legal Services Act firms should embrace the use of paralegal staff and use them to build a business which will have a sustainable future in what may become the brave new world of "Tesco Law".

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Are good HR policies worthwhile?

by Hilary Tilby

Based on the LawCare case files, a lot of interesting points emerge in relation to the way firms treat their staff.

Sound HR management is non-existent in some firms. Partners are too busy with client work to give management the time it needs and, also, this is rarely an area that interests them. They enjoy legal problems, yet find themselves forced to manage a business, something for which they have little enthusiasm and even less training.

But there are two very important reasons for adopting sound HR policies. Firstly, the law makes heavy demands on employers and those who get matters wrong can land themselves in expensively hot water. Secondly, and of just as much importance, well-managed staff will be loyal, motivated, cost-effective and productive.

A stable workforce is essential to a firm's profitability. Frequent staff changes are debilitating; bring heavy recruitment agency fees; cost time and money in training; result in poor productivity, as people "get up to speed". There is also a drain on staff morale as others are seen to leave, perhaps in a bad atmosphere. A successful firm makes staff satisfaction and retention a priority.

The Key Elements

Induction

Few firms take this seriously. Starting a new job is terribly stressful. Good induction shows the newcomer immediately that they matter to the firm, plus the entrant becomes productive far faster.

Training

We frequently hear of firms who have spent tens of thousands of pounds on new systems / equipment and mere hundreds on training, leaving staff demoralised and struggling to cope. This huge investment is wasted because people simply do not know how to function and productivity falls dramatically. Thorough and appropriate training more than justifies its cost in terms of good morale and increased efficiency and productivity.

Pay

Pay is surprisingly low on many people's list of priorities when it comes to choosing where to work. The atmosphere, proper support, work/life balance, good relationships with colleagues, volume of work, pressure, etc. matter almost more than anything else.

Appraisals and Career Development

Avoid the "dialogue of the deaf" i.e., a firm and its staff should ensure that each knows and agrees exactly what is expected of an individual and how performance is assessed, otherwise one thinks a great job is being done whilst the other thinks the performance is rubbish. In such circumstances, neither hears what the other is saying and problems then develop.

The Social Side

"Those that play together stay together" was coined about couples, but is just as apt in relation to working teams. A strong working relationship requires an element of closeness and mutual support that is strengthened when people do things together outside work. Good employers should encourage such events and help meet the cost.

Personal Support

Even lawyers have problems and a good employer will actively look for the signs and support staff when they occur. Partners and departmental heads will often say they have an "open door" policy, but have the reputation of always being too busy or distracted to provide assistance, so those in trouble will not approach them. Good staff are lost because the first the employer knows of an issue is when the employee leaves.

Employment Policies

The best employers are consistent. They have clear and reasonable policies set out in their Office Manuals and apply them evenly and fairly.

Absenteeism

Back-to-work interviews are helpful after periods of sickness, so that the individual sees that it is being taken seriously. Note the cause and the treatment undertaken on the individual's file – it may be valuable in dealing with a malingerer but, more importantly, may also enable identification of a real cause for concern e.g. bullying or excessive pressure.

The Work / Life Balance

Some firms have a "long hours culture". Anyone seen leaving before 7.00 pm is frowned upon and seen as lacking commitment, and contribution is measured in number of hours put in. This is a real mistake. Refreshed, happy, well-balanced staff are far more productive and exercise more reliable judgement than over-worked, exhausted and stressed people.

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LawCare also offers support from a network of volunteer lawyers who have personal experience of issues of stress, depression, alcohol abuse etc and who will befriend another lawyer in trouble.

LawCare also offers free (except for expenses) CPD accredited stress recognition and management training, at the firm's premises and at a time to suit them.

www.lawcare.org.uk

The knock at the door – how to handle a visit from the Solicitors Regulation Authority

Sabina Rinker

Sabina is a partner specialising in solicitors compliance work at GUISE, the niche business disputes and regulatory Practice and a member of the Solicitors Assistance Scheme.

With our regulator becoming increasingly robust in pursuit of its stated objective of protecting the public from mis-behaving solicitors the best defence is: “be prepared”. This article looks briefly at the different types of visit and how best to manage the process.

Intervention

Without any notice the Solicitors Regulation Authority (SRA) authorises one of their Panel solicitors to step into a firm and assume responsibility for client files and monies so as to prevent loss to the public.

Although interventions were fewer in 2006 (50, down from 60 in 2005 and a high of 113 in 2000) this is still the nuclear option in terms of regulating the profession.

The most notice you will have of this action may be a fax that morning, if you are lucky.

The intervened upon firm ceases trading, the practising certificates (PCs) of all partners are immediately suspended (both equity and salaried). Intervention can arise from a report by a member of the public, the Police, your local Law Society or a member of the profession; under rule 20.04 of the Code of Conduct 2007 (the Code) we each have a duty to report any misconduct we find in other members of our profession.

Intervention can be challenged although very prompt action is required since the application must be issued within 8 days of the service of a notice about intervention taking place (para 4, Part II of Schedule 1 to the Solicitors Act, 1974). There has been no successful challenge to any intervention.

Costs associated with the intervention are payable by partners (both equity and salaried) and vary considerably but assume little change from £100,000.

The Intervention Agent does not assume responsibility for your firm's overheads or collecting in debtors. All partners remain jointly and severally responsible for those matters.

Practice Standards Unit (PSU)

The PSU is tasked with visiting every firm in England and Wales to assess their compliance in order to make recommendations for improvement.

This is obviously an ambitious target so in practice this means that certain firms are prioritised for visits. Initially this was complaints driven but has changed to focus on firms relying on referral arrangements. These being the areas where most issues have arisen in recent times

Forensic Investigation Unit (FIU)

This is the most common type of visit and starts with a letter from the FIU investigating accountant enclosing a list several pages long of the documents that the visiting SRA officer will wish to see. Usually one has 7 days' notice of such a visit.

The purpose of the visit will be to assess your firm's compliance with the Code of Conduct 2007, the Solicitors Accounts Rules, 1998 and other, associated rules. A visit may last one or more days and can lead to further visits by either one or two officials.

Typically when the visits are concluded an interview will be arranged with principals to discuss issues arising from the visits. These can take place with your representative and should be regarded as akin to a Police interview although they do not take place under caution. One of my firm's clients has referred to the interview in these terms:

“...the meeting was not a discussion but more of a question/interrogation exercise, approximately 30-40 questions at least must have been asked.”

This is not unusual and in such circumstances it is vital that one does not say anything which could jeopardise one's position in any later proceedings. The golden rule is – if in doubt ask for time (e.g. 14 days) to refresh one's memory from the file and to write with a considered response possibly prepared with the assistance of a solicitor specialising in this field. Remember, always treat the SRA in a friendly, co-operative way – but never forget, they are not your friends.

Following the interview (probably many months later) a letter will arrive sending a report and asking you to answer questions about issues arising. This letter is the start of a process which can last several years and may end in the Solicitors Disciplinary Tribunal. Any reply to that letter needs to be carefully prepared with the benefit of specialist advice.

Special Projects

This essentially means claimant personal injury practices about which there is much furore at present as a result of the controversy surrounding the miners' compensation scheme run by the DTI of which it is alleged some firms have taken advantage.

In particular the issue of referrals and payment for those referrals is under the spotlight.

If your firm undertakes such work it would be prudent to review the firm's compliance with the Code of Conduct (take a look at rule 9) and ensure that, if referrals are paid for, that the firm's record-keeping is up to date and in place.

Investment Business Unit (IBU)

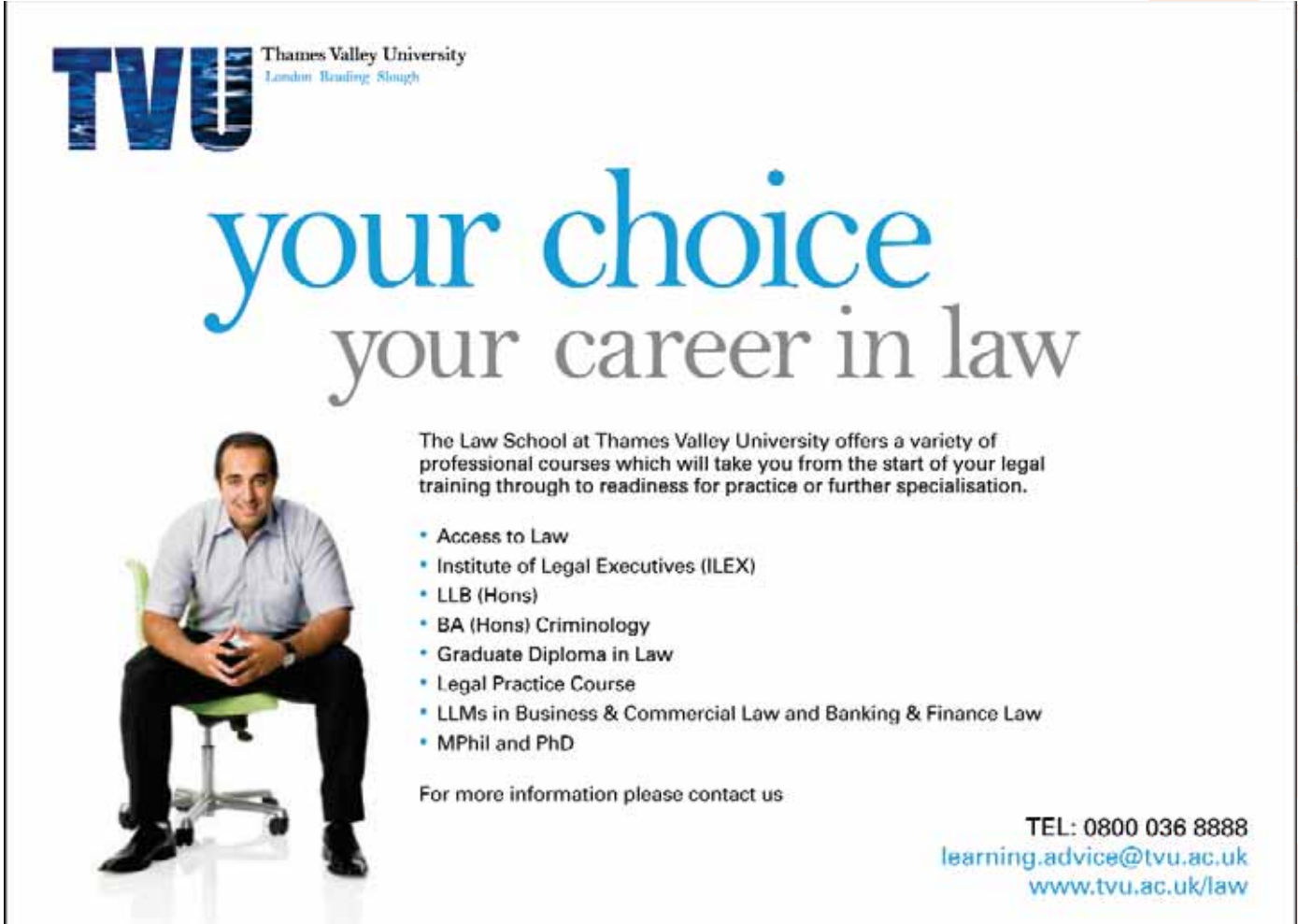
Does your firm share commission with an independent financial adviser (IFA) or other professional adviser e.g. an accountant? If so there are 2 sets of rules with which your firm will need to comply in order to show the IBU that your firm is compliant.

Those are the Solicitors Financial Services (Scope) Rules and the Solicitors Financial Services (Conduct of Business) Rules otherwise known as the Scope rules and the CoB rules respectively. These remain in force following the Code

of Conduct being implemented on 1 July 2007. Failure to comply could be very costly in terms of managing any continuing SRA inquiry which can last up to 3 years or more. The cost of investing time in putting in place appropriate systems to ensure compliance and/or seeking appropriate advice is tiny in comparison with the costs associated with managing an enquiry let alone the cost of the reputational damage to your firm if an adverse finding is reached and published.

I strongly recommend that you review the state of your firm's compliance today. If a visit is about to take place seek advice from a specialist in the field urgently.

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J&C Investigations Limited

J&C Investigations Limited is a privately owned company who has been trading for nearly twenty five years. What do we do and is it really as exciting as the name conjures up?

As with many things in life the reality is that J&C has experience in all aspects of the investigation and collection field but unfortunately the name Investigation does not accurately reflect the nature of the business. Much of our work is achieved due to diligence and experience. To be a good investigator you need to be methodical and prepared to visit the same properties or subject time and time again.

Fortunately for J&C our employees have been working in the industry for many years. They are aware that it is not about car chases or being the next Hercule Poirot or Miss Marple.

Many of our clients are solicitors within the matrimony or insurance industries. We are often instructed to obtain evidence in divorce, child custody, alimony or marital property disputes. A certain level of discreet investigation is required in these matters. We carry out work for insurance companies where they ask us to investigate suspicious claims. This may be as diverse as losing a watch on holiday to claiming several million pounds due to a traffic accident. This will involve covert camera work. Again this sounds exciting but being locked in the back of a Transit for two days whilst trying to film a subject is far from exciting.

We also undertake work that is not usually associated with the industry in the mind of the public. J&C are successful because we have several fields of expertise. We can trace a subject and then serve papers on them. We can also investigate the subject in relation to their assets. There is no point in suing a subject if they are already bankrupt!

We often work irregular hours because of the need to contact people who are not available during normal working hours. If not we are usually to be found at a desk conducting computer searches and making phone calls. We work across the country and keep our own Travel Guide when it comes to good Bed & Breakfasts.

Some of the work will involve confrontation so the job can be stressful but at all times it is important to keep a sense of humour. The Private Investigator has been frequently portrayed as a hero archetype who stumbles into detective stories to solve a mystery case. This is what keeps us going as we all tend to think we are Petrocilli whilst carrying out a presue report on a debtor in windy Swindon late on a Friday afternoon!

Understanding the City, from the College of Law

Helping young lawyers ask the right questions



When young graduates embark on a career in a law firm, the environment can seem intimidating in so many ways. All too often that dissuades even the brightest trainees from asking questions beyond what they need to know on a day-to-day basis to please their superiors, and their broader knowledge base becomes limited.

By contrast, the clients that those young lawyers will ultimately deal with want rounded lawyers who understand a lot more than just the legal technicalities of their transactions and cases. When companies turn to law firms for advice, they are no longer happy to accept a list of options or an array of reasons why something can't be done. They want solutions, commercial guidance and, above all, advisors who understand their long-term objectives.

With that in mind, The College of Law has introduced a new course to the range of PSC electives called Understanding the City, aimed at helping young legal minds to understand the broader environment in which both their businesses and their clients' businesses operate. An interactive, one-day course, the programme is designed to teach attendees in simple terms about how London's financial markets work, who the principal participants are, and what types of financial instruments are traded.

A solid grounding in, and familiarity with, the corporate finance environment in the UK and internationally is important to lawyers whatever their practice area and wherever they are based, and this course gives them the tools they need to read and understand the financial press, and to ask intelligent questions of their clients.

By using four fictional transactions, and exploring the roles of the participants and the contributions that legal advisors might play, delegates will build a greater understanding of the deals being handled by their colleagues as well as a better comprehension of the issues facing the firm's clients.

For trainees who need to know why a management team might contemplate an IPO on the London Stock Exchange or a private equity-backed management buyout, this is a great starting point. For others who just want the confidence to engage with clients and discuss news stories when they appear on the front page of the Financial Times without the fear of saying something silly, this provides an opportunity to swat up on terms like bonds, derivatives, swaps and options, futures and synthetics, securitisation and structured finance.

Knowing your private equity funds from your hedge funds, and your commercial banks from your investment banks, can be the difference between an embarrassing blunder and the ability to ask a sensible and insightful question. Using current affairs and high-profile transactions to bring this complex subject matter to life, the new Understanding the City course from The College of Law gives a thorough grounding in who does what and why in London's financial markets and beyond.

For more information, please call us on 01483 216216, or email psc@lawcol.co.uk.

Junior Lawyers

Today's law student faces more challenges than they ever did in the past what with higher fees and a general want of all things technological, it is a booming era for the would be employers who, literally, have the pick of the bunch. The up and coming law student is either too young or inexperienced in life or maybe, simply ill-informed to take in the future problems of attaining the Golden Fleece that is so hard sought.

We are all too aware of the alleged discrepancies in the admission process of the most desirable universities in the land, however, this, in truth, is just a glimpse of the tip of the iceberg which faces aspiring lawyers. It is to my chagrin and dismay that I recently discovered a law student (admittedly, in her first year) who thought that immediately after graduating from university she would be classed as a solicitor. I, thankfully, brought her daydream to a sudden conclusion. Better now than later.

The hurdles may be listed as, but not exclusive to, evidence of extra-curricular work, pro bono activity, evidence of legal advice, mini-pupillage or just work experience in a relevant field. The idea is that although one may graduate with first class honours, one is still profoundly stupid in the ways of the law but has imagination in the idea of it. The first class student may be bright on paper but when told to sit for an interview for a prospective job, has social mannerisms which, quite frankly, leave a lot to be desired. The employer seeks not only academic qualification but also an evidence of interest, drive and ambition in your chosen field. Ones choice must be made fairly early into the degree such that the decision with what field to develop ones acumen is what needs to be tuned.

It is my suggestion that prospective and first year students are told of the gigantic task ahead of them so that they start to find their calling as soon as is practicable so that they will not flounder at the final hour. It is not my intention to give students the heeby- jeebies but only to make them aware of the potential minefield in which they are about to walk into blindfolded. There is only one avenue for the person who wanders forth blindfolded- TESCO!

It is with great flourish that I say to all ye students, go forth and put in some extra work by obtaining a post within the your respective law societies, do some mooting, some debating, write articles, work in chambers (mini-pupillage), work in a firm of solicitors etc. Do anything that makes you look more experienced than the other man beside you at that interview you're both sitting for. It could mean the difference between getting a further interview for the job or being shown the door. The motto: SELL YOURSELF!!!



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Example of some letters received by us from Lloyds syndicates.

"We refer to the above claim and confirm we have settled this claim for the sum of £10,000. In view of the hard work and constant danger you put yourself in surveillance of this man we would like to congratulate you on helping us to settle this claim in such a favourable way."

"In fact, in total Mr. Judge received just over £2,000 as we had already made a small interim payment to him. However, we have to say it was a most satisfactory conclusion to this particular claim."

Book Review

OXFORD DICTIONARY OF LAW ENFORCEMENT

First Edition
Oxford Paperback Reference

By Graham Gooch & Michael Williams

Oxford University Press (www.oup.com)
ISBN 978-0-19-280702-1
Paperback £10.99

A review by PHILLIP TAYLOR MBE
Awarded an honours degree in law at London University and then Called to the Bar of Lincoln's Inn in 1991. He has a busy county court practice specialising in RTA/PI matters and he presents a number of CPD courses for practitioners covering conditional fee agreements. He was awarded an MBE for public service in 1993.

A GREAT DICTIONARY TO DIP INTO FOR BILL OF MIDDLESEX READERS

This new publication is an adaptation of what many lawyers will remember as 'A Dictionary of Law' some years ago. Oxford University Press have excelled with this practical, succinct pocket dictionary which is an essential reference resource to dip into involving all matters criminal.

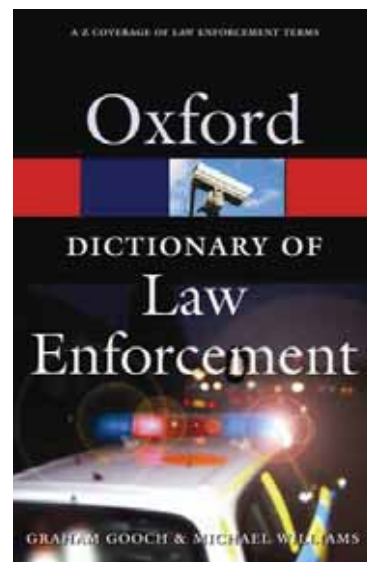
The Oxford Paperback Reference series remain the world's most trusted reference books. This new title on law enforcement fits in nicely with current trends in the criminal justice process at whatever level of involvement. The reader encounters words they may be unfamiliar with regularly as law enforcement becomes increasingly a multi-agency activity

Graham Gooch and Michael Williams have, between them, over sixty years' experience of the investigation and prosecution of serious crimes which meets the new needs of our law enforcement community. The original law dictionary has now been expanded to meet the needs of those enforcing the law. Gooch and Williams succeed with their aim in providing a clear definition of the terms which are new and specific to law enforcement. There are also more detailed explanations where necessary with key cases and statutory provisions cited where appropriate.

This dictionary has a very wide application because so many potential readers will find it of use as law enforcement becomes a major significant area of applied criminology. Years ago when I wrote a number of textbooks on Criminology and lectured the subject at University I was in need of a pocket book of this size and detail to assist myself as well as the students whenever I needed to find a definition of worth. Gooch and Williams have come up with a work of worth which blends the difficulties of terms with an ease of understanding which clients and all associated with criminal justice management would welcome.

The scope of the book is also wide, providing a key reference source for students in further and higher education, with those studying for professional or vocational qualifications and the wider public. I was particularly taken with the clarity of explanation of what I term the 'scientific solutions' where I can be confronted with trying to explain in very simple English what DNA is, or what, say, 'fingertip bruising' is.

The work put into this dictionary should not be underestimated. It caters for the professional and the novice and it shows the way forward for a modern reference manual covering the framework we now have for law enforcement in all its new guises as regular bouts of criminal justice legislation are passed and alternative methods sought to deal with the perennial problems affecting criminal justice which tend to repeat themselves throughout the ages.



This is a book for the twenty-first century and has excellent supplementary material including abbreviations and acronyms, recordable offences, disclosure code and disclosure guidelines. For instance, just take a quick flick through it and go to 'diving licence' which gives the reader exactly what he or she may be looking for regarding factual content when the memory can sometimes play tricks during a pressured conference, and you get the countries where our valid licences apply- not a piece of information I would normally have at my fingertips.

The new direction in which this and, I hope, other OUP dictionaries will go in the future offering the one stop shop for criminal justice definitions is to be welcomed. The unique team of a policeman and an intelligence officer compiling such a work is to be commended as the work of the two agencies tend to become ever closer because of the shrinking of the old 'splendid isolation' of our international bodies tasked with law enforcement towards a new age of threat which is far more legal than military in its makeup and needs good legal resources for assistance.

It is to be hoped that the dictionary will be regularly revised with new legislation and it becomes popular as an e-book which readers can view by visiting this website:
www.askoxford.com/shoonline/ebooks.

Thank you, Messrs Gooch and Williams for setting a modern precedent with your endeavours- Dr Johnson would be very proud of you!

FILM AND THE LAW No2: Two films that changed the law



by Vincent McGrath
Vincent McGrath has run the sociable FILMNITE Group for over 14 years at the exclusive SOHOHOUSE Club in the heart of the London West End. Guest speakers/soirees/meals. For details of the next course see www.filmnite.co.uk or email: filmnite@tiscali.co.uk or tel: 0208 579 5339

Whilst Ken Loach has quite rightly become something of a national treasure, Basil Dearden (1911-1971) on the other hand is the forgotten man of British cinema.

Thanks in the main to Carol White's searing performance in CATHY COME HOME, Ken Loach's 1966 BBC Wednesday Play on the plight of homeless families, was transmuted promptly into SHELTER and later in 1977, THE HOMELESS PERSONS' ACT.



Cathy Come Home

In what must surely be one of the great moments of cinema, the young actress painfully tries to keep a grip on her kids, as they are wrenched from her by the powers that be on a darkened windswept platform at Victoria railway station. Her piercing screams haunted members of parliament to such a degree that questions were being asked in the house the following day.

Basil Dearden's films are often described as dull and worthy. Yet he was the man who in FRIEDA (1945) was taking on the anti-German feeling that was endemic in war-torn Britain. A young German nurse who saves the life of David Farrer polarizes a cosy English village when she arrives as his wife. In 1950, he more than touches upon racism in POOL OF LONDON, and this theme is later elaborated upon to a much greater degree in SAPHIRE (1959). But his piece de resistance is surely VICTIM (1961), where Dirk Bogarde,



Dirk Bogarde and Sylvia Syms in Victim

whose dazzling elegance spawned a generation of dapper young barristers, plays a successful brief with an ambivalent sexuality. When blackmail raises its ugly face, he resolves to fight it, even though it will mark the end of his glittering career.

Like Carol White, Bogarde's intense performance struck a chord with the British public and in many ways was instrumental in enabling the law on sex between consenting adult males pass more smoothly through Parliament.

Whilst lionized abroad, Loach tends to split opinion at home. People either admire his championing of the underclass, or mock his attempts to represent ordinary people with dignity. Yet he is the man who taught the younger generations of Spain (LAND AND FREEDOM 1995) and Ireland (THE WIND THAT SHAKES THE BARLEY 2006) about their recent history. Dearden, on the other hand, who was addressing racism and homophobia over 40 years ago, is now



Basil Dearden

mainly a footnote in cinematic history.

Audiences today would find Dearden's style a little stilted and dated, whilst Loach's films still retain a freshness. The use of Nigel Patrick as a leading man in SAPHIRE perhaps doesn't help, but then Dearden was working within the studio system whilst Loach has always been a free spirited independent.

However you respond to Dearden's films it has to be accepted that he always had his heart in the right place and his attempts to open audience's eyes to injustices was prescient to say the least.



Ken Loach

Ken Loach is still going strong I'm happy to say, and long may he continue to do so.

As a footnote Carol White, the Battersea Bardot, who moved a nation to tears as Cathy, died prematurely at the age of 48 having succumbed to the effects of drugs and booze, largely as a result of attempting to make it big in Hollywood. A sad ending for someone who's touching performance was instrumental in housing countless homeless families.

Open-ended Liability for dangerous trees?



Genevieve Hardy
The Chambers of John Ross QC
1 Chancery Lane, London WC2A 1LF
0845 634 6666
www.1chancerylane.com

In what circumstances can you be held liable in damages for something which happens to a third party on land you previously owned? And how likely are you to have insurance cover in place to indemnify you against that liability? These were two questions which arose in a recent case at trial and subsequently on appeal.

In *White v Zitouni* (2007) the Claimant's husband was killed in his front garden by a tree which fell during a storm from the garden of his neighbour, Z. The widow, W, sued Z, and Z brought contribution proceedings against the former owners of his property, Mr and Mrs A.

The trial judge found Z liable to W in nuisance and negligence for the accident, and held that Mr and Mrs A should contribute to the extent of 40% of that liability. Yet Mr and Mrs A had never known of any problem with the Tree at their former home, they had sold it to Z and moved out 2 months before the accident and they were uninsured for such a loss. How did the judge arrive at this surprising result?

The agreed expert evidence was that the Tree had been dead for 2-5 years before it fell and that it should have been inspected annually. It constituted an obvious hazard in a dangerous place. It was clearly dead to anyone who looked at it: no specialist knowledge was needed to see that. However, the judge accepted that neither Mr and Mrs A nor Z ever noticed that the Tree was dead or a danger.

It was accepted at trial that Mr and Mrs A could not be liable to anyone in nuisance after they had sold and left the Property.

Mr and Mrs A's liability in negligence was held to persist notwithstanding the sale of the property and the finding that the new owners and occupiers were liable to W for failing to remove

the Tree within a reasonable period of taking over ownership of the Property.

As far as could be discovered, this was the first time a former owner of a property had been found liable for damage caused by a tree which fell after he had surrendered ownership, occupation and control of the property on which the tree had stood. Both Z and Mr and Mrs A were given Permission to appeal. Three central points were put forward for Mr and Mrs A on the appeal.

First, one real problem for them was that, having sold the property, their home insurance cover which had been in place during their ownership no longer applied. They faced a £300,000 claim and had no cover in place at the time of the accident, because this was not a risk that most people would consider that they had to insure themselves against. Public policy pointed against the imposition of a duty of care in such circumstances.

Second, their liability in negligence was based on their ownership and occupation of the Property on which the Tree stood but their ability to remove it ceased on the sale of the Property. (Nuisance could not succeed against them for that very reason: see *L E Jones v Portsmouth CC*)

Third, this meant that Mr and Mrs A can only have been liable because they were negligent during the time they lived there but no loss or damage had been caused by the time they left. All that existed before they left was the potentiality for a nuisance, and after they had gone they were powerless to remedy any danger posed by the Tree.

These were very forceful arguments for overturning the first instance judgment. The appeal was compromised on very favourable terms for Mr and Mrs A, and an authoritative decision will have to await another case. But in the mean time you may want to check the status of your existing insurance cover in relation to new occurrences at properties you owned years ago.

New Charity Tribunal opens for business

A brand new tribunal, set up to make it easier for charities to appeal against decisions of the sector regulator, starts work today, administered by the Tribunals Service.

The Charity Tribunal has been created by the Charities Act 2006 and is designed to provide a more informal, cheaper and easier independent route of appeal against decisions of the Charity Commission.

Before today, charities in England and Wales wishing to appeal a legal decision of the Commission had to apply to the High Court. Now they can, free of charge, bring cases before the Charity Tribunal.

Peter Handcock, Chief Executive of the Tribunals Service, said:

"I am delighted to welcome another tribunal to the Tribunals Service fold, joining the 27 already in place. Our staff are looking forward to helping those who bring cases to the Charity Tribunal to ensure their experiences are as positive as possible, with cases administered in a fair, efficient and professional manner."

The President of the Charity Tribunal is Alison McKenna. She said:

"The Charity Tribunal will provide an easier, cheaper route for charitable organisations, particularly smaller ones, to independently challenge decisions of the Charity Commission. It will be unique among the Tribunals Service tribunals as it will also have the power to consider questions of charity law referred to it by either the Attorney General or the Charity Commission. The Attorney General will also be able to intervene in any case to argue in the interests of the general public."

Mrs McKenna will be supported by five legal members and seven non-legal members. They are currently being recruited by the Judicial Appointments Commission for appointment by the Lord Chancellor. The Tribunals Service expects legal members to be in place in the spring and the latter in the summer.

Both the President and legal members have the ability to progress and hear cases alone, though the first cases are not expected to reach an oral hearing until the summer, once papers have been filed and responded to by each side.

It is anticipated that up to 50 cases will be made to the tribunal each year, with oral hearings taking place in Tribunals Service buildings throughout England and Wales.

Appeals can be made on final decisions made by the Charity Commission from today onwards and application forms are available from www.charitytribunals.gov.uk where judgments will be posted in due course.

Decisions of the tribunal can be reviewed by them or, on a point of law, appealed to the High Court.

Solicitors Benevolent Association Celebrates 150 Years of Caring

On 3rd of April, representatives of all areas and levels of the legal profession gathered at the Canary Wharf offices of Clifford Chance to celebrate the 150th anniversary of the Solicitors Benevolent Association.

The Association was founded by the enlightened Victorian solicitor James Anderton in 1858 to ensure that all solicitors and their dependants were given financial help in times of need.

Throughout 2008 the SBA is celebrating 150 years of supporting solicitors in England and Wales by holding events to raise its profile and funds.

Clifford Chance's spectacular 30th floor in Canary Wharf was the venue for an evening reception on Thursday 3rd April where members of the profession came to mark this momentous milestone.

The Senior Partner at Clifford Chance, Stuart Popham welcomed guests and highlighted the importance of an organisation such as the SBA as life becomes more stressful particularly in the legal profession. SBA Chairman, Colin Lee used the occasion to announce the introduction of the associations Corporate Membership scheme and announced that Clifford Chance was the first Gold Corporate Member with their generous annual donation of £15,000.

Paul Marsh, Vice President of the Law Society said in his speech that with so much competition – both in and out of the profession – on the horizon we can be sure the need to promote pastoral care for solicitors will increase: the SBA is the flagship.

He continued by saying that more must be done to ensure that all solicitors know about the SBA and promised to continue to raise the profile of the association when he becomes Law Society President

later this year. "I'm passionate about ensuring that absolutely everyone in our great profession knows who you are, what you do, and where they can find you."

The SBA is hosting a number of events throughout 2008. If you would like to find out more about the 150th anniversary, how you can help the SBA or if you think may need help you can visit the website www.sba.org.uk or telephone the SBA offices on 020 8675 6440.

Solicitors Benevolent Association
1 Jaggard Way, Wandsworth Common
London SW12 8SG
Tel. 020 8675 6440
Fax. 020 8675 6441
Web. www.sba.org.uk
Email. Sec@sba.org.uk
Registered Charity No. 208878
DX 41608

150 YEARS OF CARING

"We make a living by what we get, but we make a life by what we give."

WINDSOR CHIBBELL

SBA

Proceedings of the FIRST ANNUAL MEETING of the SBA held at the 15th January 1858

Mr. J. How Shaw - in the Chair

If you would like to find out more about the SBA's 150 Year Anniversary please visit the website at www.sba.org.uk or contact the SBA office.

SBA, 1 Jaggard Way, Wandsworth Common, London SW12 8SG
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