



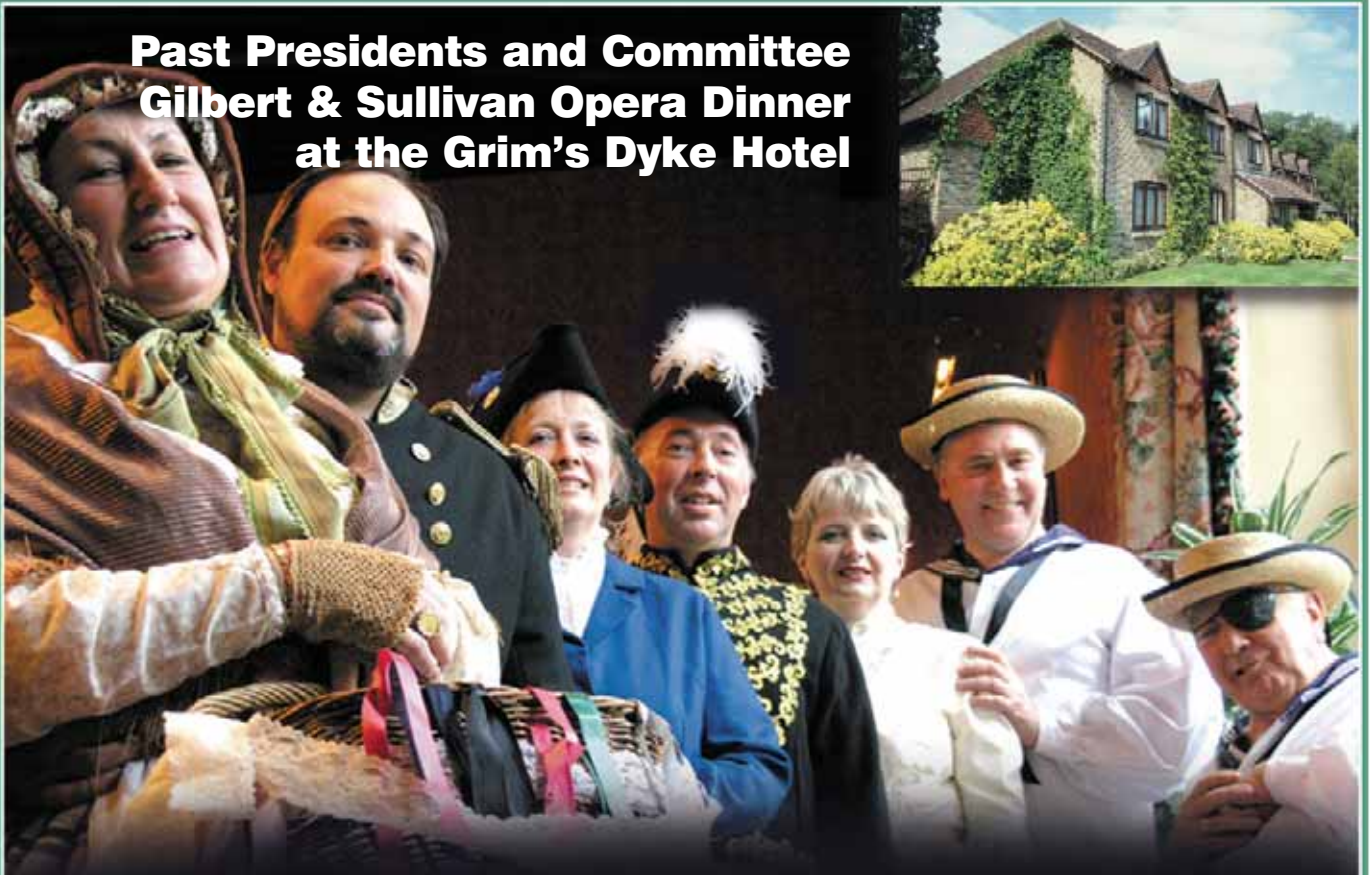
Winter 2007/8

The Bill of

# Middlesex

Official magazine of Middlesex Law Society

**Past Presidents and Committee  
Gilbert & Sullivan Opera Dinner  
at the Grim's Dyke Hotel**



**Elvis Lives  
at the  
Charity Quiz Night**



**Peter Williamson,  
from the SRA  
to speak at the AGM**

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All views expressed in this publication are the views of the individual writers and not the society unless specifically stated to be otherwise. All statements as to the law are for discussion between member and should not be relied upon as an accurate statement of the law, are of a general nature and do not constitute advice in any particular case or circumstance.

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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A Darlington

#### FUNCTIONS

Family Seminar & Buffet Dinner\* 31 January 2008 –  
Ramada

Past Presidents & Committee Dinner – 24 February  
2008

Annual General Meeting – 12 March 2008

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

2007  
20 March 17 April 14 May  
18 June 16 July 17 September  
15 October 19 November  
2008  
14 January 18 February

#### AGM

Wednesday 12 March 2008

Parliamentary Liaison  
Edward Lock

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# President's Pages



#### Victory on Unified Contract for Legal Aid Solicitors

As all of you will by now know, the position of the Law Society was fully vindicated by the recent decision of the Court of Appeal. MLS is proud that it played its role in the 'Defending Legal Aid' Campaign by lobbying MP's and by organising and participating in Meetings and Demonstrations. You will be pleased to know that MLS received letters of congratulations and thanks from both Des Hudson, Chief Executive and Andrew Holroyd, President of the Law Society.

#### Financial Stability Programme (FSP)

I have some generally good progress to report on our efforts to secure the long term financial stability of MLS. The advantages of FSP are obvious – we become less dependant upon individual member subscriptions and unpredictable and sporadic 'one off' sponsorships and donations for particular Events or functions as well as making the best use of the capabilities and talents of our Administrator. There are three components to FSP – Corporate Sponsorship, Firm Membership and Membership Benefits.

**Corporate Sponsorship Scheme** – I am pleased to inform you that we are making good progress with this Initiative to secure structured external funding to help provide MLS with some degree of financial stability. Since the last edition of the Bill of Middlesex, when I welcomed Barclays Bank as our first Corporate

Sponsor I am delighted to announce that HSBC have made a similar commitment to support MLS over the coming year. We look forward to working with HSBC in providing high quality and value for money Events, Activities and Services. I can also tell you that MLS is in negotiations with other potential Corporate Sponsors – so watch this space .....

**Firm Membership Scheme** – Yes, we have our first Firm Member. No prizes for guessing that it is Chhokar & Co.! I am convinced that this really is the way forward. So I make no apologies for giving the Scheme another plug. Just to remind you: The Firm Membership rates represent substantial savings as compared with the cost of Individual membership subscription rates. I would urge Managing Partners of all Firms (but especially those who do not yet have any MLS members) to take up this opportunity to link yourself and your colleagues into your local Law Society. We want MLS to be representative and reflective of all Middlesex lawyers. So, please join us.

**Membership Services Scheme** – Regrettably we have not managed to make as much progress on this Scheme (aimed at increasing benefits, services and value for money provided by MLS) as I would have liked by now. However, rest assured that hard work is being done (by your Membership Secretary Darrell amongst others) and I hope to report to you soon with some exciting news of exclusive discounts on all MLS Events and Training and discounts on Third Party Goods and Services provided by Approved Suppliers.

**Annual Dinner ('Bollywood Ball')** – You will be aware that the Annual Dinner was a stunning success. Thank you to all of you who helped make it such fun. You will be pleased to learn that in his 'thank you' letter the Law Society President Andrew Holroyd pronounced the MLS Annual Dinner as 'one of the best occasions so far of my Presidential year ...the evening .... On any measure seemed a great success'. A lot of hard work went into the Event and Robert Drepaul, Peter Hesom and Mr and Mrs Sriharan can hold their heads high.

**Young Members Group** – Although our YMG members were a little thin on the ground at the Annual Dinner (attributable to various logistical issues I am informed) they more than made up for it with a splendid show of competence, organizational panache, cooperation and sheer hard work at the MLS Charity Quiz (see below and later in the Magazine). I hope that we will see many more similar Events where members of our YMG do us proud. The Committee has requested that YMG members must reserve and pay for the YMG Social Events table of half price tickets at least 10 days prior the date of the Event. If insufficient places have been taken by YMG members out of their allocation, the places will be released to the general list.



**Quiz Night** – Held in support of the charitable work of the Variety Club of Great Britain this year's Quiz Night took place at Ealing Town Hall on 14 November 2007. A separate Report by MLS Social Secretary Robert Drepaal appears later in the Magazine. I just want to acknowledge the tremendous work of Robert Drepaal, Lesley & Janice Oliver, the YMG and Barclays Bank for their splendid support in making the night enjoyable and profitable. Robert even managed to get coverage in the Law Society Gazette !

**TVU Law Careers Fair** – Along with other Committee members and Officers I helped 'man' the MLS stall at the Careers Fair on 8 November 2007. Whilst it was certainly a worthwhile exercise, we do need to develop our 'Exhibition' and 'PR' tools and skills. Specific shortcomings identified included – lack of proper display stands, absence of P R material, lack of handouts and insufficient volunteers. Your Committee has addressed the issues raised (see below)

**MLS Exhibitions and Public Relations Kit** – After reviewing recent experiences - for example at the Law Careers Fairs at Brunel University and at TVU your Committee has decided to acquire and put together a Professional Kit. This will comprise MLS Exhibition Display stands, MLS Banner and MLS Promotional leaflets. This Kit will be utilised at all MLS Events as well as Third Party Events and Functions at which MLS is invited to 'sell itself'. Be on the look out for it ...

**Annual Calendar of MLS Public Relations Events** – As you will know we already produce and circulate widely the MLS Annual Programme which lists Functions, Education and Training Programme, Committee Meetings, Officers and Committee Members and Past Presidents. To link in with the MLS strategy of increasing its profile by participation in and having a 'presence' at external Events and Functions (such as Law Careers Fairs) and to allow members (and prospective members) to 'get involved'. MLS will produce and circulate (and also publicise through the Bill of Middlesex and the MLS web site) a Calendar detailing all such Events and inviting volunteers to assist in 'manning' and promoting MLS.



**Community Advice Programme** – This is a joint TVU Law School and EREC project which provides free legal advice and assistance at Ealing Town Hall Annex fortnightly between 11 am to 2 pm. MLS has been requested to support the project by encouraging our members to participate. Areas of law include Employment, Housing, Welfare Benefits, Family. If you are able to spare a couple of hours or so on a Saturday please contact Hilary Panford, Lecturer at TVU. On 020 8231 2340 and hilary.panford@tvu.ac.uk

**Website** - Our programme to update and revise our Website – headed by Maralyn and Maria – is continuing. We shall shortly be launching a completely revised site as well as a new YMG section. To keep track of MLS news and events please log on regularly to [www.middlesex-law.co.uk](http://www.middlesex-law.co.uk).

**'Past Presidents' & Committee Dinner** – Our Social Secretary will provide full details of this major Event later in the Magazine. I will simply urge you to book your places in advance for what will, I am sure, be a very enjoyable evening.

And finally ....

Best wishes for a Happy, Peaceful and prosperous New Year.

Santokh S Chhokar  
E: [santokh@chhokar.com](mailto:santokh@chhokar.com)



## 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.

### SUMMARY of Meeting on 14TH NOVEMBER 2007

The Council were shocked that the SRA had granted a waiver to Bostalls Limited, a non-solicitor owned business that would provide advice and representation at police stations under the CLS Direct scheme. Certain types of offenders would have no option but to be represented by employees of this company which is owned by former members of the Metropolitan police service. The Law Society has made further representations to the SRA as they are very concerned that granting this waiver cannot be in the public interest and that there are concerns about the lack of regulation and how solicitors employed by Bostalls will be properly supervised.

The Legal Complaints Service (LCS) indicated that they would be reviewing their policy in respect of 'Reasonable offer made'. Complaints are not investigated if the firm complained of has already made an appropriate offer to settle. The LCS Board feel that this is not a fair outcome for the complainant.

### Waiver to Bostalls Limited

Bostalls Limited has won a contract for the Criminal Defence Service scheme known as CDS Direct. CDS Direct is a telephone advice service funded by the Legal Services Commission for clients who are eligible for publicly funded services. In recent years the service has operated under a waiver granted on the basis that the accredited representatives and solicitors running the service were seconded to and directly supervised by solicitors employed by the Commission's Public Defender Service. The Commission is now intending to extend the service in a number of ways.

The service will be a permanent service rather than a pilot and for certain categories of offences publicly funded clients will have no option other than to use CDS Direct for advice, assistance and representation at police stations. The service will extend beyond telephone advice to

the provision of assistance and representation to police station detainees in the form of liaising and negotiating with the police. The solicitors employed by Bostalls Limited will be directly employed by a non solicitor commercial company which is believed to consist mostly of former members of the Metropolitan Police service and it is believed that some of the owners may be serving officers.

The Law Society has made written representations to the SRA in relation to Bostalls' application for a waiver.

Andrew Holroyd, the President of the Law Society has written a letter to the SRA Board Chair protesting against the decision to grant a waiver. The waiver will allow this entity to offer legal advice ahead of the introduction of alternative business structures being introduced by the Legal Services Act 2007.

The Society has a number of concerns particularly the supervision arrangements and the lack of regulation for this type of structure.

### Report of the Legal Complaints Service(LCS)

This was presented by Professor Saggar and Deborah Evans. They confirmed that following negotiations between the Legal Services Ombudsman and the Law Society no fine will be levied that the LCS are working hard to improve working practices so that the targets will be met next year.

Deborah Evans had given a presentation on publishing complaints to Council prior to the Council meeting and she confirmed that she was aware that there were problems with certain types of clients finding representation. She stated that if it could be demonstrated that publishing complaints would further reduce access to justice, the LCS would not publish complaints. She indicated that the LCS were currently researching as to whether there was a lower proportion of complaints upheld made by this type of client although she accepted that a large proportion of complaints were made by this type of client.. However, perception by firms of the difficulties to be encountered may well persuade them not to take on this type of client.

The Rother Valley Coal Health pilot exercise has been concluded. 3,489 letters were sent out and 394 complaints received. On average, the complainants received £620 per person.

The Service was continuing to have difficulty in applying special payments consistently.

Professor Saggar indicated that on an LCS Board away day, the Board had been concerned at the concept of a "reasonable offer made". At present, if a reasonable offer has been made by a firm, the complaint is not investigated but an adjudicator is asked to confirm that the award is in line with that an adjudicator would award had the complaint been investigated and the complainant is persuaded to accept the offer. However the Board were concerned that this closes down the possibility of investigation of a complaint for a complainant and breach the concept of a fair outcome for the complainant. The Board are relooking at this.

In response to a question regarding the LCS handling of negligence claims, it was confirmed that at the present time, the LSC will only deal with simple negligence claims with a clear loss although pressure has been put on the LCS to do more. The LSC has resisted this as they would need highly trained and expensive lawyers to deal with claims of this type.

In response to a question about the mean cost per complaint, they confirmed that it was £1,600 at present but this was a very crude figure and they were looking at ways of refining this which would show the true cost as being lower than this

figure. This cost will be published from April 2008. The LCS would prefer to move to a unit cost and compare adjudicated complaints against conciliated complaints and also compare the costs of complaints of different work types and compare the cost of different teams settling complaints.

**Report of the SRA Board**

**Publication of Regulatory Decisions**

The policy regarding publishing regulatory decisions will shortly be published and the policy will take effect in relation to cases where investigations commence after the 1st January 2008.

**Equality & Diversity**

There had been recent allegations by Keith Vaz MP as to the disproportionate effect of regulatory decisions on black and minority ethnic solicitors. The SRA has published research findings which show that BME practitioners were over represented in regulatory decisions in 2004-2006 and further work is being undertaken to understand this very complex issue. Mr Vaz requested and was sent statistical information. The Chief Executive has met with Mr Vaz and BME practitioner groups including the Black Solicitors Network and the Society of Asian Lawyers.

It is hoped that these specialist groups will support the SRA and help in understanding the issues facing them and their members. Nwabueze Nwokolo the new Chair of the Law Society's Equality and Diversity Committee indicated that she would be willing to assist with this.

**Release of Solicitors' Indemnity Fund (SIF) Surplus**

The Chief Executive of SIF Limited has indicated that a maximum of 1.5 million of the available surplus is no longer needed for indemnity purposes and that the amount can now be released subject to the appropriate direction of Council.

It was agreed that surplus be released, the fund rules are that the Society may use a surplus for the purpose of providing indemnity in any other way

permitted by Section 37 (2) of the Solicitor Act 1974 and otherwise for the overall benefit of the solicitors' profession in such manner as it may decide.

**Governance Review Update**

**Council size and composition**

The target date for changes is the 2009 AGM. The Council Membership Committee are taking this work forward.

**Board Chair Compensation**

The Management Board concluded that no compensation should be paid to the firms or employers of representative Board Chairs but the matter should be reconsidered as part of a review of remuneration of all Council members alongside the review of the Council size and composition. The Management Board is not therefore bringing recommendations to the Council at this stage.

**Equality and Diversity Committee General Regulations Changes**

Following the decision to establish a new Equality and Diversity Committee with revised membership and terms of reference, general regulations changes were made to enable the Committee to operate. Nwabueze Nwokolo has now been appointed as Chair and arrangements have been put in hand to appoint Committee members.

**Chief Executive Report**

Possible sources of support for law firms and the Law Society were set out in the Chief Executive's report.

Tesco's Chief Executive met with a representative of Tesco Legal Services to express the Law Society's concerns about information which had recently appeared on a Tesco website under their Law Pack initiative which contained misleading information about licensed conveyancers and solicitors and was detrimental to solicitors. The information in question has now been changed and Tesco's has indicated that there was no intention on behalf of Tesco's to criticise solicitors.

Tesco confirmed that it has no current intention to move into the legal services market beyond the DIY solutions provided on their website through Law Pack although interest was shown engaging with the Law Society more closely on equality and diversity issues.

Tesco's indicated that their area of interest was estate agency services but they were uncertain of the impact on their proposed business model as a result of revised regulatory advice from the Office of Fair Trading.

**Lasting Power of Attorney - Practice Notes**

Enduring powers of attorney (EPA) were replaced by lasting powers of attorney (LPA) on the 1st of October. The Law Society has produced a Practice Note for solicitors wishing to draw up an LPA as well as solicitors who are acting as an attorney under LPA. The note also covers ongoing arrangements for EPAs and is available on the website.

**Council Member Motions**

Deborah Ball moved the following motion which was passed by Council:-

That candidates for election as Deputy Vice-President should be invited to make oral presentations to and answer questions from Council Members prior to the voting period.

That the forum, format and duration, and procedure for the making of presentations and dealing with questions be settled by the President in consultation with the Immediate Past President and the Chair of the Scrutiny Committee.

Dafydd Jones brought the following motion:-

"The Council urges that consideration be given by the SRA and the LCS to a requirement that every complaint that is made to the Legal Complaints Service be accompanied by a £50 returnable deposit".

We would all agree that we are today living in a customer-complaint society. It appears that the customer must be protected at all cost. The legal profession has not escaped from such a culture, and many of us have heard of solicitors facing more claims than they have ever done before. This is not an indication that solicitors are performing any worse today than they did in the past.

The effect that complaints and claims have on individual solicitor's lives is damaging and considerable. Knowledge that the insurance indemnity fund will cover the claim does not alleviate the pain. At times all a wily client will need do is to mention to his solicitor that he is dissatisfied with a particular aspect of the solicitor's service and that will be enough for the solicitor not to pursue his or her costs.

As a small step of redressing the balance, and this would not prevent the disgruntled client from making a valid and proper claim, I suggest that every complaint that is made to the Legal Complaints Service be accompanied by a £50 deposit. Should the complaint be upheld then obviously the deposit would be returned to the complainant together with the appropriate compensation sum.

It was felt that there was no realistic prospect of success in putting forward such a point of view and that there were the more important battles to fight on behalf of the profession. It is known that the SRA would prefer to be a totally separate entity and it was felt that this could be used in evidence to the LSB. Accordingly, the motion was rejected.



**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:**

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

## Golden Year

One of the reasons that the *Middlesex Law Society* has remained such an active local law society since its formation meeting on the 28 January 1959 is the courage of an individual member to take up the hot seat of President. In many cases, the individual had previously served many years as a Committee member or an Officer, the latter usually being a thankless task.

In addition to having to deal with current issues affecting the profession on a local level and the unnerving task of having to chair the monthly committee meetings, each President brings their own idiosyncrasies to the position. This is

usually reflected in the type of Annual Dinner which takes place during the Presidential year. The Annual Dinner has ranged from the grand Lord Chancellors Last Supper at the Royal Courts of Justice or an intimate Dinner in Middle Temple Hall to most recently, a Bollywood Ball.

In recognition of their service to the Society over the years without charge, a Past Presidents and Committee Dinner takes places each year prior to the AGM. As well as reminiscing about the 'good old days', this is an opportunity for prospective Presidential candidates to canvass support. The President who is elected (or re-elected) at the AGM on the 12 March, will be steering the good ship,

*Middlesex Law Society* into its golden anniversary year and will have to commemorate it accordingly. A dinner at the Society's spiritual home at the Middlesex Guildhall might be an idea as well as a set of new ties and scarves for members!!

*Alured Darlington & Robert Drepaul*  
Joint Editors



## FINDING AND USING A FORENSIC ACCOUNTANT

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

**Solicitors may be reluctant to use a forensic accountant; even in cases where instructing one might significantly strengthen their client's case.**

**David Winch, of Accounting Evidence Ltd, explores the potential benefits and costs of using one.**

### What is a forensic accountant?

The short answer is that a forensic accountant is an accountant who assists with the financial elements of cases being prepared for, or heard in, court. He may act as an expert witness at trial.

### When should a forensic accountant be used?

There will be a variety of situations in which a solicitor could make use of a forensic accountant. One might be required, for example, where a valuation is required of a business, or an asset, or even a lost opportunity. This could be in relation to matrimonial proceedings, personal injury, an insurance claim for damage or loss, infringement of a patent or copyright – the list is endless.

Alternatively a forensic accountant might be used by a solicitor in relation to alleged crime, proceeds of crime or confiscation. This is the field in which I specialise.

The common factor in all these situations is that there is litigation involving money or value. An expert opinion from a seasoned professional forensic accountant can carry substantial weight in such cases.

### Why should a forensic accountant be used?

A forensic accountant is able to provide a professional, objective and independent opinion on matters within his field.

The documents and evidence relevant to a case may be number-intensive and might require skills not ordinarily found amongst solicitors and barristers. A forensic accountant, using his accountancy skills, can examine the evidence, draw appropriate conclusions and present those conclusions in writing and in person at trial.

Not only is a forensic accountant able to give evidence directly in court, in a way in which the client's solicitor and barrister are not, but also, where public funding is being obtained, the work done by the forensic accountant can be funded without risk to the solicitor or his client.

### What will it cost?

Initially the forensic accountant is likely to be able to give you a certain amount of assistance without cost at all. Exploratory discussions can help establish the scope and nature of the contribution from the forensic accountant which would be most cost effective in the particular situation with which you are faced.

Then a charge for future work will be agreed. In publicly funded cases authority can be obtained for the forensic accountant's fees before they are incurred.

### A good forensic accountant

A good forensic accountant is much more than just a good accountant.

Any good accountant will certainly be competent in accountancy matters, will produce accurate information compiled under generally accepted accounting principles, will act with integrity, and will respect confidentiality.

In addition a good forensic accountant has a particular aptitude for this type of work. This includes an inquisitive mind, tenacity and attention to detail, excellent communication skills both written and oral, an ability to deal with a large amount of documentary

evidence whilst working to a tight deadline, a knowledge of relevant law and experience of court procedures.

### Selecting a forensic accountant

When selecting a forensic accountant for a particular engagement it is important to consider the particular areas of expertise and past experience of the individual to be instructed. No two forensic accountants are the same.

The geographical location of the forensic accountant is unlikely to be a deciding factor. In most cases the bulk of the forensic accountant's work will involve examination of documents or computer records which have been copied to him either on paper or in electronic form.

### Instructing a forensic accountant

It will greatly assist the accountant if you can initially let him have a summary of the main facts and issues in the matter and copies of a few key documents. At the same time it is useful at the outset to advise him of any deadlines and other constraints.

### Finding a forensic accountant

The Network of Independent Forensic Accountants, NIFA, is a grouping of qualified and experienced forensic accountants which acts as a centre of excellence.

NIFA members pride themselves on producing reports which illuminate key facts and issues and which can readily be understood by persons not experienced in accountancy matters.

Further information about the Network of Independent Forensic Accountants, its member firms, the services provided and particular specialisms is available on the NIFA website [www.nifa.co.uk](http://www.nifa.co.uk) or by telephoning NIFA on 0845 609 6091.

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## Accounting evidence



## 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.

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# Unfair Dismissal

Justin Govier  
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**In most unfair dismissal cases the fact of the dismissal is not in dispute as there is a letter from the employer confirming the dismissal. The question is usually whether or not there was a potentially fair reason for the dismissal and whether the dismissal was reasonable in all the circumstances. However, there are occasions where the fact of the dismissal is in dispute. Perhaps the most common is a claim for constructive unfair dismissal, whereby the employee resigns and claims as if he/she were dismissed. A constructive unfair dismissal claim may be brought where there has been an actual or anticipatory breach of contract by the employer that is important enough to justify the employee resigning (or the last in a series of incidents) and that the employee leaves in response to the breach without unreasonable delay. Those are the “ingredients” for a successful constructive unfair dismissal.**

However, this article is not concentrating on constructive unfair dismissal scenarios but other terminations of employment which may possibly catch the employer unawares leading to it having to defend a claim of which they have had no forewarning and, which could be automatically unfair as the statutory disciplinary procedures are unlikely to have been used.

## Language

The first issue is when an employer uses words which it did not intend to constitute a dismissal but which the employee understands to be one. This could occur where, for example, an

employer is giving the employee a “telling off” and the employee leaves. The exact interpretation of the words used is crucial to the issue; if it is a dismissal then it is likely to be unfair, however, if it is resignation (pending the constructive unfair dismissal point discussed above) then there will be no claim.

There have been a number of cases over the years, many involving some fairly colourful language used by employers, which the employee has taken to constitute a dismissal. The dilemma for the tribunal over the years is how they should approach the matter of construing the words; should it be what the employer intended, should it be what the employee understood or should it be what a reasonable employee would have understood from the words? It is generally accepted that it is not the intention of the employer that matters because, of course, there may be no way that the employee will be at all aware of the employer’s intention, having only the words to go by. If the words are ambiguous then the test is how a reasonable listener would have construed them, regardless of the intention of the employer. The test is therefore objective rather than subjective and one must look at all the circumstances of the case rather than just the ambiguous words used.

Indeed, it has even been held that when the language used is unambiguous, it may still be appropriate to use an objective test e.g. when words are used in the heat of the moment or in temper or under extreme pressure. This is more often cited when an employee resigns in the heat of the moment. The tribunals have held that if words are used in the heat of the moment, even if they are unambiguous, they will not necessarily constitute a dismissal or resignation if they are withdrawn almost immediately. It is, of course, an objective approach, confirming that the words must be considered in the light of all surrounding circumstances (including those after the dismissal). This is a rather difficult concept. It seems to imply that although a dismissal takes place and a contract is therefore at an end, it can then be re-instated. If, of course, an employee refuses to accept the employer’s subsequent submissions that it did not mean to dismiss the employee at all and that it was all done in the heat of the moment etc, then the Employment Tribunal would be able to make a nil award on the basis that it would be “just and equitable” to do so.

## Timing

We now turn to the question of the timing of the dismissal. In order to constitute a notice of dismissal, the notice must specify a date of dismissal. It is not enough that the notice warns that the dismissal will occur at some future date, and indeed such a warning is unlikely in itself to constitute constructive unfair dismissal (although the surrounding circumstances may well do). Where an employer gives notice to an employee to terminate his/her contract and the employee then gives notice himself to terminate the contract on an earlier date, the employee will still be deemed to have been dismissed. In practice, of course, it is likely that the employee will have given counter notice because he/she has found alternative employment and this will have a large impact on their inclination to bring a claim for unfair dismissal and/or compensation that the Tribunal will award them.

However, if the employee has given notice of termination of employment and the employer summarily dismisses them during that period, then that will also constitute a dismissal. However, in those circumstances, the employee will struggle to prove any financial loss after the date on which their notice period expired.

It must be noted that if the employee gives notice to resign and the employer makes a payment in lieu of notice (assuming it has a contractual right to do so) then this would not “convert” the resignation into a dismissal. If there is no such

contractual right, then the employer should obtain the employee’s agreement before making any such payment.

There are caveats and statutory provisions concerning an employee’s counter notice in situations where the employer has already given notice, which are generally invoked if the employer does not agree to the employee giving such notice. This is a complicated area of the law and we would urge you to seek advice if an employee requests termination of his/her employment before the termination date you have imposed.

Employers should also be aware that a substantial variation in contract may amount to termination of that contract of employment with a re-engagement on different terms. Most notably this can occur when there is a demotion for whatever reason. Employees will often prefer to run that argument rather than leave and claim constructive unfair dismissal because, of course, it ensures they will still receive an income pending the Employment Tribunal finding. This makes it even more crucial for an employer to go through all the correct procedures before considering any substantial detrimental variation to an employee’s contract of employment.

## “Resign or be sacked”

Next we turn to the problems that occur when an employer tells an employee to “resign or be sacked”. If there is clear unambiguous language, it will be deemed to be a dismissal. Although some feel that this ignores the principle that a notice must be at an ascertainable date, the tribunals have held that the date is in fact “forthwith” if the employee does not resign and therefore that potential problem is overcome (albeit, we might suggest, with rather a creative solution). Clearly, there is a large overlap here with the concept of “without prejudice” conversations where there has been considerable development in the law.

Of course, the forced resignation

scenario may come under scrutiny with many terminations of employment that are labelled as being by mutual consent. In such cases, the Tribunal will look at the facts of the matter to conclude whether there has been a resignation or dismissal. However, if in any doubt, a compromise agreement is often a useful tool to ensure that the employer does not have 3 months of anxiety waiting to find out whether or not the employee is going to bring a claim.

It should be noted that where an employee is reinstated by means of an internal appeal, there is no dismissal. In the case where that was decided, the employee had actually brought a claim for unfair dismissal before the successful appeal took place. This is a point of some interest to employers because, in effect, it means that an appeal process (if an unfair dismissal claim has already been brought) can be used as the ultimate defence to the claim, as long as the employer is willing to take back the employee and pay any loss in salary.

We hope that the above gives you some idea of scenarios in which the termination of employment may constitute dismissal, even when it may not appear to be the case. The overriding advice is that if an employer is in any doubt as to whether or not a termination of employment will constitute a dismissal, then they would do well to seek expert advice before an unfair dismissal is brought against them.

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#### A.S. BOURNE – BIOGRAPHY

Tony Bourne is Senior Partner of Glovers Solicitors LLP and is also Head of its Employment Department. He specialises in employment law within the financial services area, acting for both Companies and senior executives.

# Employment law and the fraudulent employee

**The Department for Social Development in Northern Ireland has provided the following statistics which make it clear that fraud is a significant, and growing, issue in employment: -**

- Over £40million is lost every day to fraud in the UK.
- 80% of corporate fraud involves an employee.
- 90% of fraudulent employees have been with their employer for more than one year (and therefore are able to take advantage of most employment law protections).
- 20% of fraudulent employees have been with their employer for more than 10 years.

Fraud can cover a variety of things, from straightforward theft to falsification of company records and can involve all types of property, including intellectual property.

#### The employment contract as a deterrent

The employment contract is a key document that will be looked at in detail should any dispute arise. It is important therefore that the employer ensures that the position is clear in each employment contract with regard to fraud and the penalties that will be invoked if it is found that fraud has been committed. The following clauses are a good place to start:

- A clause clearly outlining the company's position on fraud so that the employee will have little or no scope for arguing that they were not aware that what they were doing was wrong in the eyes of the company.
- A clause requiring employees to attend detailed fraud awareness training. This will also equip honest employees with the knowledge to be able to identify fraudulent activities being carried out by their colleagues.
- A clause detailing the company's fraud monitoring policy, which should include monitoring of email and internet access and phone calls and should reserve the right to search desks and bags if necessary.
- A clause detailing the steps that will be taken if fraud is suspected, including details of the type of investigation that will take place and the fact that the police will be involved from an early stage.
- A clause stating that, if fraud is suspected, the employee will be suspended without pay whilst the allegations are investigated.
- A clause stipulating that, should fraud be uncovered, the company will be

entitled to "claw-back" the value of the loss by setting it off against any contractual payments owed to the employee on termination of his or her employment.

- A clause stating, in no uncertain terms, that if fraud is proved against an employee they will be dismissed immediately and without notice for gross misconduct.
- A clause stating that notes of all meetings will be taken and a summary given but that transcriptions will not be used. This is to avoid this being used as a delaying tactic by the employee who may unreasonably question the accuracy of the transcript.

#### Employment law – potential challenges

The employee could claim unfair dismissal as long as they have been employed by the company for a continuous period of more than 12 months – the most likely basis for this claim would be if the employer has not followed the correct procedure when carrying out the dismissal.

There is a risk that they may try and claim that they have been discriminated against on the grounds of disability, sex, race, age, religious belief, ethnic origin, or sexual

orientation. It is vital to follow the disciplinary procedures set out below very closely in order to avoid any suggestion that something other than fraud was the underlying reason for dismissal.

#### Disciplinary procedures

The company's disciplinary procedures should be laid out in their contractual documentation, and the statutory position is contained in the Employment Act 2002 (Dispute Resolution) Regulations 2004. Even where the conduct of the employee amounts to a very serious fraud, the disciplinary procedures must be closely followed and, at the very least, the steps below must be taken.

1. Prepare a disciplinary letter, outlining the allegations that are being made against the employee. The letter should also:
  - Provide any witness statements.
  - Tell the employee that he or she has a right to be accompanied at any meeting by a colleague or trade union representative.
  - Inform the employee that, if the claims are found to be true he or she faces dismissal on grounds of gross misconduct.
2. Consider whether legal action should be taken in order to preserve assets using search and seizure orders and freezing injunctions.
3. Suspend the employee, without notice and in accordance with the provisions of the contract.
4. Ask the employee to leave their desk and ensure that they leave everything behind that could allow them physical or remote access to the company or its IT systems.
5. Escort the employee from the building.
6. Set a date for a disciplinary meeting (at a neutral venue) and inform the employee who will be conducting the meeting.
7. If the employee is unable to attend, keep re-arranging dates until the employee is able to attend or, if three alternatives have been suggested and the employee has not yet agreed a date, inform him or her that the meeting will take place in his or her absence.

Assuming that the employee does attend a meeting, the following procedure should be followed:

1. Make sure that the employee is aware of their right to be accompanied and if the employee is unaccompanied get them to confirm that they are happy to proceed.
2. Ensure someone takes notes of the meeting and provides a summary afterwards.
3. Ensure that the employee's points are considered and be sure not to enter the meeting with a pre-judged outcome in mind.
4. Resist the temptation to provide a decision at the end of the meeting. Take your time so that the tribunal can see that you have considered the points that the employee has made before reaching your decision.

After the meeting has taken place:

1. Prepare a decision letter, which should give the decision and reasons for it and should refer to any comments made by the employee at the meeting.
2. If the decision is termination, ensure that it is immediate and without notice or payment in lieu of notice.
3. Refer to the right of set off if this is contained in the contract and inform the employee that they will therefore not be receiving some (or all) of the sums due to them under the contract.
4. Tell the employee that he or she has a right to appeal and that he or she has a right to be accompanied at that appeal.
5. Give a time limit within which the employee must lodge his appeal (five days is a fairly common limit).
6. Inform the employee that benefits that have been lost will be reinstated if the appeal is upheld.

#### Criminal law

There are potential money laundering issues here. An employee engaged in fraudulent activity may well be involved in laundering the proceeds. Penalties for involvement in money laundering activity are severe and, by suspending an employee and investigating him for fraud there is an argument that an employer may be "tipping off" within the meaning of the Money Laundering Regulations and, if this is found to be the case, the employer could potentially face a prison sentence.

Think carefully about taking disciplinary action if you suspect that money laundering is involved. If, during the disciplinary process, evidence of money laundering appears, notify the police immediately.

The criminal law burden of proof is "beyond reasonable doubt" which is a far tougher test than in employment law (i.e. the balance of probabilities). Therefore, an employee may legitimately be dismissed for fraud and then be found not to be guilty in a criminal court.

#### Practical considerations

Make sure that every procedure is followed to the letter. Don't give the employee ammunition with which to bring a claim.

Report the fraud to the police. You may feel that this takes control of the situation away from you, but in particular if there is any question of money laundering activity, it is important that the police are involved as soon as any fraud is suspected. You are also demonstrating to the employee (and to any other employees) how seriously the company views fraud.

Avoid using a compromise agreement, which may suggest that you are not confident that the employee's conduct is sufficiently serious to warrant instant dismissal. In terms of publicity, an employee would be unwise to advertise the fact that they have been accused of fraudulent activity by way of the media.

You may read this and think its like walking through a minefield. Sadly, in this day and age, all I can say is that what is set out above is the best way of crossing it safely.



# Elvis lives at the Charity Quiz Night

## IBB win from Prince Evans and 7 New Square Chambers

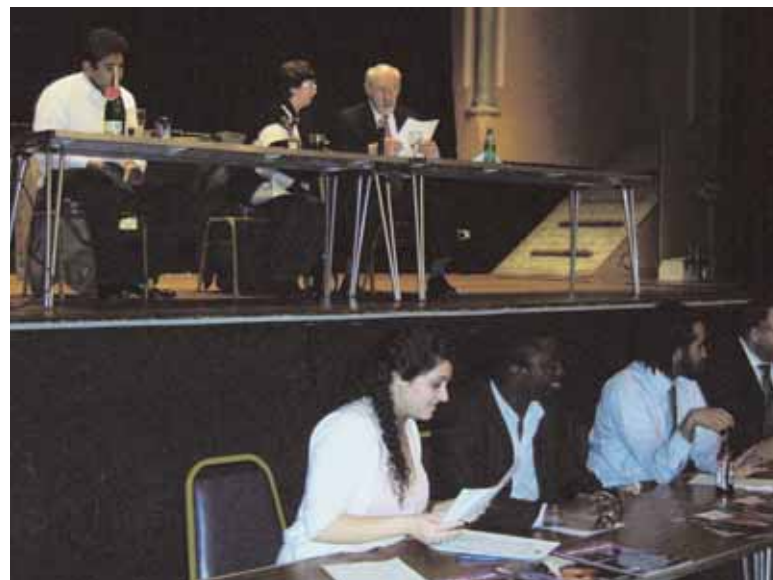
Once again, as the Christmas Lights on the New Broadway illuminated Ealing Town Hall on the 14 November, 15 teams huddled around tables in the Victoria Hall trying to get their hands on the **Middlesex Law Society (MLS)** Charity Quiz Cup.

Current holders, **Vickers & Co.** were there in strength as were inaugural winners, **Lock and Marlborough**. There were teams from **Bana Vaird, Bird & Lovibond, Chhokar & Co., Court Services, Desor & Co., Illifes Booth Bennet (IBB), Montague Lambert & Co., Nichols Christie & Crocker, Prince Evans, 7 New Square Chambers, Scully & Co., Thames Valley University Law School, Vijay & Co.,** and newcomers **Sriharans**.

Quiz master, **Leslie Oliver** set the first half general knowledge questions with the assistance from **Nick Smith** of **Barclays**. The **Barclays** team worked tirelessly marking answer sheets, ably assisted by **Fedra Mardani** and **Tutu Akinlosotu** from the **MLS Young Members Group**. Other members of the **YMG**, **Peter Redmond, Beecham Koonjah, Tanya Boyce-Clark, Raghubire Sandhu, Jay Powers** and **Helina** also assisted selling raffle tickets and pizzas, putting the scores up, and providing technical and security assistance. A little less conversation meant that everything went on schedule. No wooden hearts but **Variety Club Golden Hearts** for the **YMG** and with every pizza purchased!



Who needs Las Vegas, this is the Victoria Hall, Ealing!



Robert Drepaul, Janice & Leslie Oliver (on stage) Fedra Mardani, Tutu Akinlosotu and the Barclays Team marking the answers.



Heads or tails. Nick Smith from Barclays.



Elvis with a very pleased Laura Murphy of IBB holding the winner's cup. Also Steve Chapman (Prince Evans), and Zeeshan Dhar (7 New Square Chambers).

At half time, President **Santokh Chhokar** read a letter from the Chairman of the Wills & Legacies Committee at the **Variety Club**, **Richard Freeman** explaining how important the income stream from legacies was to **Variety Club Children's Charity**. **Richard Freeman** thanked the **Middlesex Law Society**, in particular **Vickers & Co.** for supporting the **Variety Club** and the wonderful work it does to help disabled children. [For details see [www.varietyclub.org.uk](http://www.varietyclub.org.uk)].

The flavour of the second half musical rounds was set by the **Elvis** tribute act singing the **Hawaiian Love Song**, which was obviously a favourite with the Adjudicator, **Janice Oliver**. 'Elvis' was again on the stage with his wife, 'Priscilla' setting the musical questions. **Elvis** sang the answers to the final round, **First Lines**. Everyone who attended was once again winners as the evening raised £750 for the **Variety Club Children Charity** (see letter on page 30). This sum was matched by **Barclays**.

An overwhelmed, **Laura Murphy** collected the winner's cup for the **IBB** Team. **Steve Chapman** and **Zeeshan Dhar** also collected bottles of champagne for **Prince Evans** and **7 New Square** respectively, who took the other podium places.

As **Elvis** sang his final numbers, members and guests filtered out of the Victoria Hall wondering who were the real 'Elvis' and 'Priscilla'. Suspicious Minds!!

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Is that Mr Strong, Mr Bump or Mr Tickle, Prof!



What did Leslie say?



Steve would have got the Rock of Ages answers!



Hand it over, I'm the Membership Secretary!

# 2008: A New Beginning

**A new year, a new start, new opportunities and new challenges. A chance to right the wrongs of a difficult year or a chance to flourish after mitigated success in 2007's adversity?**

This is the case for everyone in the residential property market, from conveyancing solicitors to estate agents to Home Information Pack Providers. Ah, the Home Information Pack, a wonderful new legislation that this government has got behind whole-heartedly. Everyone has an opinion about their validity, both current and moving forward – from a solicitor's perspective, it contains the information one would expect to provide anyway, albeit earlier on in the process, and so changes little in the way your business is conducted. For estate agents, it is a hindrance to their marketing process. Their existence and the manner in which they have been brought to the market has been criticised daily by both RICS and the NAEA, leaving a sour taste in many an agents' mouth when one and two bedroom properties were introduced to the scheme just before Christmas. In fact, the inclusion of these properties, the majority of which are flats, serves a double-blow for the end user. Not only are these properties worth less, and so the cost of a HIP accounts for a greater percentage of their property value, but the necessity to procure Managing Agents information not only means the HIP takes longer to compile, but also, especially when dealing with Local Authorities or professional landlords, but also costs substantially more. A leasehold HIP for an ex-council flat worth £150,000 could easily come in at £500, whereas the freehold HIP for a four-bedroom townhouse worth £1,000,000 only costs the vendor £300.

Uch.

But a word of warning to you all. Following a huge amount of time spent speaking with the independent estate agents of our fine county, a worrying trend has emerged: the use of national corporate firms for not only Home Information Pack provision, but also conveyancing services. It is astonishing how many small agencies see these services as suitable solutions for their clients, given that independent agencies are those best placed to offer their vendors a personal and bespoke service. What appeal is there to pass clients (who buy into that personal service) on to faceless marketing firms who, in turn, pass on the conveyancing to a factory firm up North.

Hardly a rhetorical question – the answer is money. Secondary to that is the flashy window sticker, the branded calendar, and the all-singing, all dancing website that discourages personal contact, rather than embellishes the need for it.

But of course it would. They are designed to handle big contracts with national and regional chains of estate agents, the corporates, not the independents. Maybe the small agencies of the area feel that an association with these firms adds credence to their service offering, maybe they like the commissions, which are healthy, sufficed to say.

How do you combat the increase in use of corporate firms – after all, if these agencies didn't send conveyancing to them it would be another client for you. Can you afford to pass up business? Are you at capacity? Is there a way of incentivising your local estate agents to pass on conveyancing to you? Yes, of course there is, estate agents like to deal with solicitors that answer their calls; but what about referral commissions? Law Society rules are Law Society rules and they must be adhered to.

Would you even like to have more referrals from estate agents? Can you deal with their hunger for deal progression? If the answer is yes then there is a solution. The independent firm, OrderHips.com, part of L.E.L. operates a marketing service to its client base of local independent agencies and conveyancing firms. Not only do they provide premium and personal Home Information Pack provision, (notable at this time for its wonderful pricing structure starting at just £255 for freehold properties with up to 6 bedrooms), but they also receive conveyancing referrals to pass on to their panel.

If you can offer them a standardised pricing structure on your conveyancing services, then they can market your firm to local agencies. As if that wasn't enough, they even offer a white label service, so that, should it suit, you can even offer a HIP service to your already-affiliated agencies. In order to ensure both their success and yours, each client of OrderHips.com is provided a personal account handler, who will ensure that all matters progress smoothly, and moreover to ensure that you receive the support you need when you need it, not a few days later when you finally reach a telesales executive in a far-off land.

It is on this basis, accompanied with the colourful but impeccably simple ordering platform, that the firm has had a huge amount of success in procuring clients in North-West London. There is an offline company using the Web as a communication tool, and nothing more, and therefore retain the dedication to personal relationship management that you, as solicitors will respect and respond to. Whilst we are all aware of the advances of legal e-services, good business is cultivating the right relationships with the right people, and not staring at computer screens all-day-long. Am I a out of touch, or am I aware that there are a huge number of traditional solicitors still not au fait with modern IT solutions?

In essence it is a no-brainer for those wanting to increase their business interests: you provide them with search and HIP instructions, and they provide you with an opportunity to receive more cases than you would otherwise.

Most important is the fact that a trilateral partnership is formed, from local business to local business to local business. Synonymous with such a partnership is the ease of

communication between the three. As all parties are personally known to each other, problem solving is a matter of picking up the phone and speaking directly to your account handler, as opposed to writing letters and emails aplenty and waiting days for a resolution.

For more information regarding any of the services on offer, I suggest giving James Williamson a call in the Client Services department, as he is not only a stand-up guy, but also 100% committed to boundless enthusiasm. If you know of a more attractive service, please let me know, as it would certainly be a business I would like to be involved with.

*Alastair Bangham  
Marketing Manager L.E.L.*

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# SearchFlow helps law firms to fulfil their anti-money laundering obligations

SearchFlow, the UK's largest property search information provider, has recently introduced AML Search – a fast, effective, anti-money laundering solution that enables solicitors to meet the demands of new legislation which was launched at the end of last year. As part of these new Anti-Money Laundering Regulations, solicitors will need to ensure that they are following a number of specific rules which include certain checks into the business dealings of their clients.

AML Search, available from SearchFlow, requires no specialist training, and is available to anyone in the legal profession who needs to carry out a financial transaction for a client, such as conveyancing, real estate, probate, and/or company formations. The solution is competitively priced, and fully compliant with the Law Society as well as the latest guidelines from the Joint Money Laundering Steering Group.

The AML search solution has also been endorsed by two leading AML specialists, David Winch, Director of MRLO Support, and Michael Hyland, founder member of the Joint Money laundering steering Group.

"AML Search is a simple, easy to use tool that can play an important role in a firm's customer due diligence measures required under the new Money Laundering Regulations 2007," says David Winch, Director of MRLO Support.

The 'due diligence' that Winch mentions is a critical requirement of the latest Anti-Money Laundering regulations, as it enables law firms to confirm that all of their new or existing customers – whether an individual or an organisation – are truly who they say they are. This information underpins all anti-money laundering procedures, and provides the most effective way of ensuring that law firms aren't inadvertently helping their clients to launder the proceeds of crime.

AML Search allows any suspicious activity to be recognised very quickly. Without appropriate risk management procedures in place, legal professionals face the possibility of fines or imprisonment, and will also be putting their firm's reputation on the line. However, according to Michael Hyland, a founder member of the Joint Money Laundering Steering Group, "AML Search provides a complete suite of Know-Your-Customer Anti-Money Laundering tools that are invaluable to any organisation."

The easy-to-use search tool allows the user to interrogate a wide range of approved data sources, and to receive both individual (Personal) and organisational (Non-Personal) searches within seconds. The service is available 24 hours a day, 365 days a year, which means that results can be consistently returned in just a few seconds to any computer with an Internet connection, in or out of the office.

In addition, each search will be given a clear "Pass" or "Refer" result, leaving no grey areas and nothing open to interpretation. A "Pass" indicates that the individual has been verified, whilst a "refer" requires additional data which can be entered from hard copy proof-of-identity documents.

Once the search is completed, the AML Search solution, introduced by SearchFlow, produces a detailed PDF report that displays every record that has been uncovered. Financial, public and electoral roll records are all presented individually with dates, account status, and reference numbers where appropriate.

"The reasons for anti-money laundering regulations are quite simple: they help to deter criminals and terrorists from trying to use the UK's legal and financial networks for their own benefit, and to make it easier to catch and punish those who do," says Mark Riddick, CEO, SearchFlow. "The changes to legislation in this area will achieve these goals by helping to deter, detect and disrupt crime and other serious security threats. By working alongside other businesses, law makers, and law enforcers, SearchFlow is committed to playing a key role in this area."



## Don't be hung out to dry

A new anti-money laundering solution so that you don't put your firm's reputation on the line.

Tougher Anti-Money Laundering regulations have now come in to force. Without appropriate risk management procedures in place, legal professionals face the possibility of fines or even imprisonment.

The UK's number one property search provider introduces AML Search – a fast, effective anti-money laundering solution. It is competitively priced, fully compliant with both the Law Society and Joint Money Laundering Steering Group guidelines and maintains a full audit trail to help you manage your risk.

You can interrogate a wide range of approved data sources and receive all your individual and organisation searches within seconds.

All you need is a SearchFlow account to manage both conveyancing and anti-money laundering searches in one easy cycle.

Requiring no specialist training, this service is open to any legal professional in advance of carrying out a financial transaction for a client, such as conveyancing, real estate, probate and company formations.

**The best way** to assist you in your compliance with these regulations is to open a SearchFlow account today and sign up to the AML Search. For more information call 0870 460 0031, email [aml@searchflow.co.uk](mailto:aml@searchflow.co.uk) or visit [www.searchflow.co.uk](http://www.searchflow.co.uk)



...the best way



## NOTICE OF ANNUAL GENERAL MEETING 2008

Notice is hereby given that the Middlesex Law Society's Annual General Meeting will be held on **Wednesday 12th March 2008 at 6.30 pm** at the Ramada Jarvis Hotel, Uxbridge Road, Ealing Common W5

Speaker: **Peter Williamson**  
Chair of the Solicitors Regulation Authority

*Come and have your say or join the committee!!!  
Members and non members welcome*

**Maurice Guyer**  
Honorary Secretary  
Vickers & Co. 0208 579 2559



Peter Williamson



I am delighted to have accepted your invitation to speak at your forthcoming annual conference in March. It is reassuring that the name of the Solicitors Regulation Authority has become well enough known for you to want to hear from me.

As you may remember, it was the end of January 2007 that the SRA came into existence, having spent a year as the Law Society Regulation Board. We launched our new name and logo to help solicitors identify us as the new and independent regulator.

Our first year proved to be a busy and eventful one. One of our first tasks was to prepare for the launch of the new Code of Conduct. The code was much more than just an updated guide to professional conduct. It reflected the many changes that had taken place in practice since the previous guide and also changes in clients' expectations and the way business is generally conducted.

The launch took place on July 1st. This coincided with the introduction

of the smoking ban in England but we still managed to get our message across about the changes. It went very smoothly and I have been pleased to see many solicitors have been attracted to use the code online at our website [www.sra.org.uk](http://www.sra.org.uk). Here you can be sure that the code is kept up to date and any changes to the rules will be highlighted.

The code also exemplified our new approach as an independent regulator acting in the public interest. The rules were formulated with the idea of identifying where real risk to clients lay and providing public protection, but avoiding unnecessary regulation. We aim to be proportionate in our approach.

The other major event of 2007 was the passing of the Legal Services Act. For the whole profession, the Act will bring about significant changes. It will allow new types of legal practices and outside ownership and investment in law firms. For us as the regulator the Act poses a number of challenges. At the moment we are preparing for the

new regime in which non lawyers will be allowed to take on managing responsibilities in law firms which will come into effect in 2009 - although many of the other changes will not take place until 2012.

There are many firms who will welcome the opportunity to involve and reward those non-solicitors whose work is important to their business. It is the first step in what will be big changes to the restrictive practices that have existed. It will be our role to maintain public confidence in the profession while these changes are taking place.

I am looking forward to meeting many of you at your annual conference in March. It is important for us to hear your opinions during this period of transition. As well as our formal consultations, we hold a series of road shows around the country where we talk to solicitors about our work and aims. We plan a number in the South East during this year and I hope you will take the opportunity to come along.

# A relevant and effective PSC for your trainee solicitors from The College of Law



**For many lawyers, the College of Law is fondly remembered as the alma mater, the provider of their route into legal practice. Many of you will also have taken your PSC with the College - and possibly also some of our wide range of professional development courses.**

Although often perceived as a hurdle that we all have to undergo before we qualify, the PSC provides valuable training in transferable skills. For example, within PSC Advocacy, delegates are trained in how to make a persuasive presentation, how to structure a cogent argument, and how to elicit information from others effectively.

"So often, in the feedback we receive on the Advocacy course, the delegates comment on the considerable benefits they derive from the training in this respect; that they have learnt skills that they can utilise in all areas of practice". Fran Pryor PD Head of Dispute Resolution Training at The College of Law and former partner of Herbert Smith

As you would expect The College of Law's PSC courses are based on interactive and participative learning - designed to make the experience enjoyable, and yet at the same time challenging. Our trainers are all experienced practitioners and they ensure that the trainee solicitor leaves our courses with a realistic and robust understanding of the application of course content to the workplace.

We regularly introduce new courses to meet the changing demands of law firms, and recently added courses on Corporate Drafting and The Companies Act 2006 to our schedule. Available from February 2008 we start another course entitled Understanding the City. This one-day course teaches how London's financial markets work, who the principal participants are, and the types of financial instruments that are traded. The course is designed to encourage participants to think about the deals being handled by law firms for clients that operate in the City of London, and to familiarise them with the types of organisations they are likely to be working with in such a context.

We also introduced a new PSC elective recently which is designed to equip trainee solicitors for the commercial environment. Many law firms complain about the lack of business or commercial awareness in their trainee solicitors. But what are the essential skills they need to deal with an ever complex environment?

Every law firm is first and foremost a business and as such has to compete for clients in a competitive market. Trainees dealing with clients need not only to be able to explain complex legal issues but also need to do so in the context of the client's business. Trainees must grasp basic business principles to ensure they play a part in moving the business forward, gaining and retaining customers, and aiding revenue and profit growth.

To address the need for trainees to be more commercially enterprising, the new course, entitled The Law Firm as a Commercial Enterprise, provides an introduction to aspects of commercial awareness. In particular it focuses on the business of law - what clients want, how to meet their expectations, pricing alternatives, the importance of strategy and marketing, making a pitch and effective written communication.

Our website has full information on our full range of PSC programmes, as well as a downloadable e-brochure. But, please do not hesitate to call us on 01483 216216 if you would like to ask some questions.

Debbie Shortland  
Director of Trainee Programmes





# Celebrating Excellence

**A human rights lawyer with an unwavering commitment to access to justice, groundbreaking conveyancers from Wiltshire, Magic Circle, Top 100 and high street firms. Our recent inaugural excellence awards were certainly a celebration and a showcase of the sheer diversity of talent right across our great profession.**

What's more they were by all accounts an overwhelming success. Held at the Honourable Artillery Company in Central London and compered by Jeremy Vine, of Newsnight, Panorama and Radio 2 fame, winners came from every single part and every single geographical area of the profession.

As one of the judges I had hoped the task to whittle down the entries to a shortlist, and a shortlist to the winners, would be an easy one. I was proven wrong. Very wrong indeed. I joked at the awards that I used to groan at the saccharine TV award show clichés, 'you're all winners' and 'it was so hard to choose', but it really was, and it took us literally days to get through the 150-odd entries.

But while judging was no easy feat, it was both truly inspiring and filled me with great confidence about the future of our profession. The awards were divided into seven categories: Lexcel Award for Excellence in Practice Standards; Innovation in Business; Quality of Life; Excellence in Equality and Diversity; Excellence in Social Responsibility; New Solicitor of the Year; and Solicitor of the Year.

The award winners were understandably ecstatic and I know all the firms that were nominated and short-listed are proud of what they achieved. The night culminated in the Solicitor of the Year award to Phil Shiner who has been fearless in his defence of the rule of law, taking on many controversial cases that others might have balked at. He is not just a gifted solicitor but is also very modest and unassuming about what he has achieved.

There was no award for biggest and best, for turnover or for profit. These can be found by flicking through the FT or the latest top 100 list. Our awards were all about excellence and innovation because it doesn't matter if it's private practice, in-house, local authority or a multinational, these are the intangibles that make a tangible difference.

Promoting excellence is the key priority, theme and mantra for my year as President. And it is twofold. It is about promoting excellence both within and outside the profession.

So first, the 'within'. The passage of the Legal Service Act underlines just how much and how fast our profession will continue to need to change in the future. Whatever sector we work in we should all be asking ourselves the same questions. Will we be able to compete with new competitors? Will we thrive and take advantage of the new opportunities or will we see them as threat and struggle to survive?

The answers, I believe, are simple. The best will thrive. The market will continue to flourish. But as sure as I am of that, I am certain there will be no place whatsoever for mediocrity or inefficiency. Look at any successful business big or small world-wide. They all excel in areas such as innovation, equality and diversity and social responsibility. These will all be ingredients for success in the new legal landscape and there's no reason why firms of any size with a clear strategy, together with a determination to meet what their clients want, will not thrive.

But what of outside the profession? I am an avowed and passionate cheerleader of our profession. We can rightly boast some of the most talented, intelligent and dedicated professionals in the land. Whenever I can – be it a Ministerial meeting or media interviews – I use the platform of the Presidency to promote all that is good about our profession.

The awards were not just about our winners. They were promoting our winning profession and the contribution we make to both UK plc and UK tlc. And there is no better example of our wider contribution to the social fabric of the nation that pro bono week. This year we calculated that the aggregate contribution of private practices alone is nearly £350 million – a quite astounding figure – and the overall contribution must be approaching half a billion pounds.

Quiet pride is admirable but in the face of an oft unfavourable press I believe we should do all we can to promote the profession and try and bridge the divide between public, media and political perceptions and the professional reality we all know.

*Andrew Holroyd  
President of the Law Society of England and Wales.*

# Short work experience placements for Legal Practice Course students

**The Legal Practice Course team at Thames Valley University runs a short work experience and student mentoring scheme for students taking our LPC. Some of you may even have taken advantage of this scheme when you were law students if you came through TVU! If so, you will appreciate what a valuable opportunity this can present to someone keen to enter the legal profession.**

We are currently looking for new firms to join the scheme. The students are all enrolled on the Post Graduate Diploma in Legal Practice at TVU. This is a course which is validated and monitored by the Solicitors' Regulation Authority and taught by solicitors. Upon successful completion of the course students will be eligible to apply for training contracts. Please be reassured, however, that there is no further expectation that the firm will provide extended work placements or training contracts for the student/s.

The SRA encourages all course providers to develop mentoring schemes with local solicitors. From your firm's point of view, it will keep you in touch with the development of this modern, professional course and your views on the improvement or otherwise of the training of tomorrow's solicitors can be fed back to us. The views of the profession will be of particular interest to us in the next year or two as training for solicitors changes.

By the time the students participate in the scheme they will have taken their examinations in Business Law and Practice, Property Law and Practice, Criminal and Civil Litigation. From March in each year until June they study three elective subjects. We think that this period is the most appropriate time for students to gain practice experience. The elective subjects available to students are: Housing and Residential Landlord and Tenant, Family Law, Immigration Law, Commercial Leases, Personal injury and Employment Law.

There are no onerous guidelines for mentors and there is no reporting to be done. We simply ask you to allow a student to visit your office for two days, at mutually convenient times, to observe a solicitor who will act as the student's mentor for that particular period. Students may sit in your office and read client files, attempt to draft a simple document or letter or, with clients' consent, sit in on interviews or court appointments. If you can offer the student further guidance or work experience then this is a matter for you.

On our part, we will ensure that students are told to arrive promptly, dress appropriately and not to pester you for a job or training contract!

If your firm is willing to participate in the scheme please email Julie Hine ([julie.hine@tvu.ac.uk](mailto:julie.hine@tvu.ac.uk)) or Jane Stevens ([jane.stevens@tvu.ac.uk](mailto:jane.stevens@tvu.ac.uk))

*Jane Stevens  
LPC Course Leader  
Thames Valley University*

# Junior Lawyers

**Invitation to the launch party of the Junior Lawyers Division on 28 February**

**The Junior Lawyers Division (JLD) of the Law Society has been launched!**

The JLD takes over representation of junior lawyers in England and Wales from the TSG and YSG on 10 January 2008. To celebrate, the JLD is running a series of launch events across the country in January and February. Come along to the event near you to meet the JLD executive, and to mix and mingle with junior lawyers in your area. The JLD is an exciting new body which represents enrolled law students, trainees, NQs and qualified solicitors, with up to 5 yrs PQE.

The JLD website will be launched on Friday 11 January, so go to [www.lawsociety.org.uk/juniorlawyers](http://www.lawsociety.org.uk/juniorlawyers) for more information from that date.

**The events are FREE and if you bring along a printed copy of this invitation, you will get a free drink (or two). So what are you waiting for? Come along to Pagliacci, 77a Kingsway, London WC2B 6SR on the 28 February 2008 at 18:30. To RSVP, please e-mail [juniorlawyers@lawsociety.org.uk](mailto:juniorlawyers@lawsociety.org.uk) giving your name and contact number.**

*Maria Crowley & Darrell Webb, Chairs  
Middlesex Law Society  
Young Members Group*



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# Book Review

## DEALING WITH DNA EVIDENCE

A legal guide by  
Andrei Semikhodskii  
Director, Medical Genomics Ltd

ISBN: 978 1 84568 049 7 - Price: £65

Routledge-Cavendish ([www.routledgecavendish.com](http://www.routledgecavendish.com))

A review (originally sent to 'Policing' ISSN 1752-4512 – Oxford Journals OUP) by Phillip Taylor MBE LL.B (Hons) Barrister-at-Law, Abbey & Richmond Chambers Book Reviews Editor, The Barrister

**We do really need this book as the law of evidence is becoming one vast DNA test in many fields where the defence insists on challenging basic factual statements (on instructions from the client, of course).**

The questions really are – what use is this book and does it help me with my work?

The answer to both questions is a resounding 'yes'. DNA is now the indispensable weapon in the fight against crime because it allows both the unambiguous identification of the defendant from traces of biological material left at the scene of a crime, whilst acquitting the innocent.

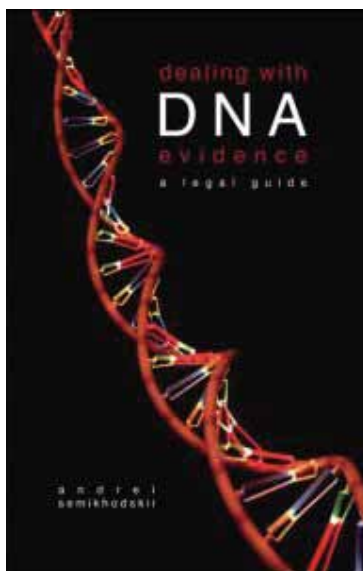
In plain English, 'Dealing with DNA Evidence' states how DNA evidence is actually obtained – something many of us are totally unfamiliar with. Semikhodskii describes the various types of DNA test which are available and what the weaknesses of DNA testing are. For the benefit of both the judiciary and the defence, the author explains how DNA evidence can successfully be challenged in the courts so that the impact of such evidence can be minimised, or even dismissed completely.

The defence advocate is given even greater assistance with strategies for refuting DNA evidence when presented and discussed during any stage of the criminal justice process. However, readers should note that the emphasis is squarely placed on DNA evidence so that it can be treated as just another piece of evidence which, of its own volition, would be insufficient to convict the defendant of a particular offence.

### Who should bother reading this book?

Most students I remember from my Bar Vocational Course would run a mile rather than read something like this book. However, the book must be essential reading for students and practitioners of criminal law and practice, for forensic science and law, and for all practitioners within criminal justice management at whatever level because it is a unique sourcebook for twenty-first century advocacy which no professional criminal justice manager should be without today.

Whilst the cases, statutes and regulations are relatively sparse for detail, I came away with the impression that 'Dealing with DNA Evidence' presents a fair balance of the tasks confronting advocates in this new frontier of proof. I always remember hearing a devastating question posed by the great Norman Birkett KC when he asked a hapless witness (allegedly expert) "what is the coefficient of the expansion of brass?" This expert didn't know – round one to Birkett, even if the question was a bit unfair, and possibly irrelevant.



What Semikhodskii goes on to say is that when an advocate is faced with scientific evidence, he "has to understand it and the prosecution scientist who presents it, as well as the scientist who is working for the defence team". Counsel will know that their defence job is to highlight the drawbacks of the prosecution analysis presented to a jury and also have the ability to question experts about the subtleties of their supposed scientific expertise. It is right to say that such questioning is undoubtedly true for DNA evidence because it will be possibly the most scientifically demanding types of evidence available to the Crown.

There are eleven chapters in the book covering the following detailed areas of DNA law: An introduction to Criminal DNA Analysis; Forensic DNA Testing; Interpretation and Statistical Evaluation of DNA Evidence; Criminal DNA Databases; Pitfalls of DNA Testing; DNA Testing Errors; DNA Evidence Interpretation Errors; DNA Evidence During Trial; Challenging DNA Evidence in the Courtroom; Post-Convictional DNA Testing; and Ethical Aspects of DNA Testing.

The book concludes with a detailed set of references and a splendid glossary which I feel any person involved in the criminal justice process will find extremely useful. Readers will find the index detailed and content-heavy which really sums up the subject matter nicely for the subject is technical.

### The Balanced DNA Pocketbook

Lawyers may wonder why this book is relatively slim at about 150 odd pages plus the referencing material. I felt that this book is actually more of a slim pocketbook on DNA for the advocate for both sides. "Always know your enemy" has been used a standard tactic for centuries so do not underestimate your opponent's DNA case. Semikhodskii writes in his preface that the understanding of how DNA evidence is obtained and evaluated allows lawyers to find pitfalls in evidence and in data interpretation, and to use their skills when dealing with other 'id' evidence to highlight them to a jury, concluding that "providing lawyers with such information is the main goal of this book".

Well, he has scored with that one! The author goes on to say that a match between the accused and a biological sample recovered from a crime scene 'does not and should not automatically mean conviction, even if it is a complete match'. This is why the subtlety of the book strikes such success – it is the balancing act which Semikhodskii achieves for both sides of the argument so that fairness will prevail.

### Cases and References

Clearly, this is a book about detail. However, the case law is somewhat thin at present although R v Doheny and Adams [1997] 1 Cr. App.R. 369 features well on the conflicting sides to expert evidence in the courtroom. I am sure more cases will follow as they are reported. The book mainly succeeds with its well constructed writing style which is to explain complicated scientific and statistical issues in simple terms for all.

However, there are additional detailed sources referred to such as "Forensic DNA Evidence Interpretation" (Buckleton, Triggs and Walsh 2005), "Forensic DNA Typing" (Butler 2005), "Weight-of-evidence for Forensic DNA Profiles" (Balding 2005), "Statistics and the Evaluation of Evidence for Forensic Scientists" (Aitken and Taroni, 2004) "Interpreting Evidence" (Robertson and Vignaux, 1995) and the invaluable "Genetic Testing and Criminal Law" (Chalmers, 2005). These sources give tremendous additional gravitas to an already highly competent book which will clearly become a classic as the century's new discoveries unfold.

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# Film and the Law

by Vincent McGrath



F W Murnau

## No 1: How the Law gave us DRACULA

One of the few things I've learned after more years in the law than I care to remember is that the less you have to do with it, the better. However it's right to say that without three infringements of the law involving the jurisdictions of England & Wales and Germany, we would probably have never had the phenomena of what we know today as DRACULA.

Conveniently overlooking the basic tenets of intellectual property law, the German film director F W Murnau made what he quaintly believed to be an undetectable plagiarised version of Bram Stoker's failed novel. Changing the names of the characters and using the title NOSFERATU, he produced such a successful film that its reputation even reached the ears of the wronged author's widow Florence eking out a living in 1920's London.

She went to law and obtained an injunction which incredibly she managed to enforce in a German court ordering the destruction of the negatives and all prints of the film. However, as you would expect, pirated versions which were clearly in breach of the order, started to surface at film societies around Europe and North



Florence Stoker



Bram Stoker

America with the result that NOSFERATU acquired cult status. The cat was out of the bag and poor Florence who would soon become rich Florence, quietly gave up the ghost, so to speak. Hence, the first rule of film-making was inadvertently invented by Murnau: *A banned film is a good film.*



Max Schreck as Nosferatu



In 1984, after 8 years of painstaking work involving prints from Switzerland, France and East Germany, the film as Murnau had originally conceived it was finally screened to universal acclaim. The film is definitely worth seeing on the big screen, particularly for the chilling performance of Max Schreck, as the very first DRACULA. It was put about - one suspects by Schreck himself - that he was in fact a real vampire, and this formed the basis of a recent film featuring Eddie Izzard.

Generally considered to be a genius of early cinema, Murnau inevitably was lured to Hollywood where he made the legendary SUNRISE, prior to his early demise at 42, not with a wooden stake in his heart but in a common and garden car crash. No conspiracy theories there, yet.

The irony of course is that if Murnau hadn't decided to disregard the law and make the film, Florence hadn't decided to litigate, and film buffs hadn't decided to subvert the court order, then Bram's manuscript would probably have lain undisturbed in a trunk in Florence's loft at St Leonard's Terrace, Chelsea, and we would never have had all those nightmares. Loft? Trunk? Manuscript? The ingredients of yet another DRACULA film, surely? And the law?

Next Film Night course starts 1st April 2008  
For details email: [filmnite@tiscali.co.uk](mailto:filmnite@tiscali.co.uk)  
website: [www.filmnite.co.uk](http://www.filmnite.co.uk)



## What is Film Nite?

### FILM NITE is an independent film education class.

Film Nite is for people who love movies. It is for people who enjoy going out to the cinema and who want to talk about what they have seen with like-minded enthusiasts over a drink and/or a meal afterwards.

This is not an academic course. The aim is to explore what it is that we like or dislike about particular films and film-makers.

By exploring how film constructs and conveys meaning, we are able to understand the vocabulary and express our views in a more coherent fashion.

In order to achieve our aim, we see films on current release in the West End, and then attempt to locate them within a framework of film theory the following week.

The aim of the class is to inform and educate its members about film in a relaxed, non-academic environment.

### Fees

New members £99.00, former/existing members £95.00 for an 11 week term.

Film Nite activities also include occasional theatre visits and trips abroad (not included in the fee).

### Who we are?

Guest speakers are film directors, producers, screenwriters, actors, historians and critics.

### Classroom sessions

7-9pm at  
Soho House  
21 Old Compton Street  
W1D 5JJ

Soho House has a luxurious film theatre with video projection operated by experienced personnel.





## PAST PRESIDENTS & COMMITTEE DINNER 2008

24 February 2008 at 6.30pm

Grim's Dyke Hotel,  
Harrow Weald, Middlesex HA3 6SH  
www.grimsdyke.com

The evening will include a performance of  
Gilbert & Sullivan's Opera 'Iolanthe'  
performed by the Grim's Dyke Opera Company

Past Presidents - £30, Committee & Members - £40 and Guests - £50  
Dress Code: Black Tie

Contact Social Secretary, **Robert Drepaul**  
0208 280 1095  
rsdrepaul@vickers-solicitors.co.uk

# 150

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

WINSTON CHURCHILL

As the principal nationwide charity for solicitors it is the SBA's (Solicitors Benevolent Association) aim to provide financial support for solicitors and their families who find themselves in need, whether through illness, accident, or bereavement. Beneficiaries range from elderly men and women in residential care to students but the majority are young or middle-aged, either temporarily or permanently unable to work through illness or accident. A substantial proportion are sole practitioners who do not have the support of colleagues or administrative back-up of a large firm, and often cannot afford to employ a locum if they fall ill.

The SBA has been supporting solicitors and their dependants for 150 years. The SBA founder, solicitor James Anderton commented in a letter in 1857 that "The want of such a Society will be apparent, when it is considered that in the Profession of Law, unlike other professions, no comprehensive Benevolent Institution exists".

150 years on, the SBA still has an important and necessary role in modern society, where compassion and understanding can sometimes be lacking.

To celebrate 150 years, the SBA will be hosting an evening reception with Clifford Chance on the 30th floor of their stunning Canary Wharf offices on Thursday 3rd of April 2008. If you would like to attend the event or find out more please email [Katie@sba.org.uk](mailto:Katie@sba.org.uk) or visit our website at [www.sba.org.uk](http://www.sba.org.uk) or contact the SBA office.

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The Variety Club of Great Britain  
The Variety Club Children's Charity  
(a company limited by guarantee)  
Variety Club Events Ltd  
Registered Office:  
Variety Club House  
95 Bayham Street  
London NW1 6AG  
Tel: 020 7428 9100  
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Email: [info@varietyclub.org.uk](mailto:info@varietyclub.org.uk)  
Web site: [www.varietyclub.org.uk](http://www.varietyclub.org.uk)

Mr Robert Drepaul  
183 Uxbridge Road  
Ealing  
London  
W13 9AA

2007 Crew  
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Russ Kane

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Carole East (Caretaker)  
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Past Int. Vice Presidents: Lloyd Bell  
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The Honorary Silver Card Life Members: Lord Birt  
The Honorary Bronze Card Life Members: Lord Birt  
The Honorary Life Members: Lord Birt  
The Honorary Gold Card Life Members: Lord Birt  
The Honorary Silver Card Life Members: Lord Birt  
The Honorary Bronze Card Life Members: Lord Birt

20th December 2007

Dear Mr Drepaul

Dear Mr Drepaul

Donation from Children with Leukaemia

I am so thrilled that one of the last things for me to do as Chief Barker of The Variety Club this year is to write to thank you for the most generous donation of £750 from your fabulous Quiz night towards our much needed funds to help Sick Disabled and Disadvantaged children.

We are immensely grateful for your support, without such generous donations as that made by you and your members our work would not be possible and so I would like to say thank you on behalf of everyone here at Variety Club.

Have a very Merry Christmas and here's to a successful and healthy 2008!

Very best wishes

*Russ Kane*

Russ Kane  
Chief Barker 2007

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Web site: [www.varietyclub.org.uk](http://www.varietyclub.org.uk)



Attendance  
Mr. J. Anderson London  
" A. N. Bower " "  
" W. S. Cookson " "  
" W. H. E. Duncan " "  
" E. Banner Liverpool  
" W. Evans Birmingham  
" W. C. Hall London  
" W. J. Manning London  
" Shaw Smith " "  
" W. Shaen " "  
" H. S. Wainwright " "  
" W. K. Wainwright " "  
" J. Shaw " "  
" W. C. Wainwright " "





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