



THE REPORT

CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY NEWS

NO.57 MAY/JUNE 2008

THE PRESIDENT'S COLUMN



MICHAEL GILLMAN

Over the years I have supported the Solicitors Benevolent Association by purchasing their Christmas cards. Frequently when I have done so I have been scoffed at by my good friends who regard the idea of a Benevolent Association for Solicitors as being something of an oxymoron.

Having recently attended a conference organised by the Solicitors Benevolent Association, LawCare and the Solicitors Assistance Scheme in celebration of 150 years of service to the profession by the Solicitors Benevolent Association, I am left in no doubt of the great value to the profession of our own charity. The work which the Solicitors Benevolent Association does makes a real difference to the lives of solicitors and their dependents who require assistance when ill health and other misfortune has befallen them. In 2006 the Solicitors Benevolent Association made loans and grants totalling nearly £2 million to over 400 beneficiaries. The work of LawCare in providing counselling for lawyers with alcohol, stress and other work related problems is also providing an invaluable service to the profession. The final part of the afternoon was given over to presentations by Andrew Hopper QC and Greg Tiverton Jones QC on behalf of the Solicitors Assistance Scheme, which assists solicitors facing investigation by the Solicitors Regulation Authority and hearings before the Disciplinary Tribunal. The stress and strain placed upon solicitors when faced with such difficulty is not to be underestimated, and the help afforded under the scheme is real and effective in assisting them with problems often not of their own making.

The Solicitors Regulation Authority came under attack for the length of time which it took them to conduct

investigations and the manner in which they were conducted, and calls were made for the Regulator to be able to deal with less serious cases not involving dishonesty expeditiously and using a less expensive process, with much more proportionality involved. Worryingly, Andrew Hopper had come to the conclusion that "there can be decisions which can be shocking. There can be complete misunderstandings by caseworkers who aren't legally qualified". He further stated that there were problems with the decision making which were "endemic".

It is worrying that such strident criticism is being made of the Solicitors Regulation Authority so swiftly after it has been established, particularly where the Regulator has indicated that it will regulate with a light touch and a sense of proportionality. If the Solicitors Regulation Authority does not have the confidence of the profession as a Regulator, then that will be to the detriment of both the profession and society at large. I hope that the Law Society in its representational capacity will ensure that it speaks when it is appropriate to do so on behalf of the profession, now that the representational and regulatory functions of the Society have been separated.

Having praised the work of the Solicitors Benevolent Association, LawCare and the Solicitors Assistance Scheme, I hope that as many members of CWHLS as possible will attend the Legal Charities Garden Party to be held at 6:00pm on 11 June 2008 on the north lawn of Lincoln's Inn. An application form for tickets will be found elsewhere in this edition of The Report.

The Wig & Pen Prize recognises the contribution to pro bono work done by

young lawyers and is open to solicitors and trainees from the City of London and Holborn and Westminster. Last year there were no submissions from any firms in the CWHLS area: this has been reflected in the past and the winners usually come from the City of London. I hope that this year firms will feel willing to put forward their own employees for consideration for the pro bono work that they are carrying out, as I cannot believe that there are no eager and dedicated solicitors and trainees carrying out valuable charitable and pro bono work in our area. It would be good if members of the Society could be represented.

The opening of nominations for this year's Junior Lawyers Division Pro Bono Awards, which includes the Wig & Pen Prize, will be launched on 4 June at BPP Law School. The awards presentation ceremony will be held on Thursday 13 November at the Law Society.

DIARY

2008

MAY

28 Committee meeting

JUNE

3 Lecture: Contributory Negligence and Failure to Mitigate

4 In Conversation with Lord Bingham

11 LEGAL CHARITIES GARDEN PARTY

23 CWHLS lecture

25 Committee meeting

JULY

14 CWHLS lecture

23 Committee meeting

24 JLD event

CONTENTS

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PRESIDENT'S COLUMN _____	1
REVENUE COMMITTEE _____	3
COUNCIL MEMBER'S REPORT _____	4
ON THE ROAD TO BOGOTA _____	5
LCGP _____	5
IS STRESS A DISABILITY? _____	6
JLD EVENT _____	6
IN CONVERSATION WITH LORD BINGHAM _____	7
CWHLs LECTURE _____	8
TAX DEDUCTIBILITY _____	8

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is **4 July 2008**

Copy to be sent to The Editor – rl Lester@lesting.fsnet.co.uk

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REVENUE COMMITTEE

JEREMY DE SOUZA



The publication of the Finance Bill has been a more important event than usual this year because, in places, its text differs considerably from the various draft sets of provisions published for consultation before the Budget and, indeed, from the changes announced in the Budget (as to which it had become known, through STEP, that these would themselves be subjected to further amendment before Royal Assent). This is not a satisfactory state of affairs, especially for property and private client lawyers.

Stamp Duty Land Tax

Gerald Moran has played a major role in persuading HMRC of the need for administrative changes, not least the total abolition of SDLT60 (the form which had to be sent to the Land Registry when a land transaction return did not need to be made) and the extension of the scenarios in which no return needs to be filed. There are, however, problems with the published text of the new section 77A and Schedule 5, paragraph 9A, albeit ones which it may be possible to resolve during the passage of the Bill through the House of Commons.

Professional pressure led to the abolition of the change in partnership share charge for farming and professional partnerships in Finance Act 2007. The quid pro quo was the imposition of an open market value charge under Finance Act 2003, Sched 15, para 14, where such changes were made in gratuitous circumstances in relation to property partnerships. It has been possible to negotiate a relaxation of the relevant provisions, albeit at the option of having to abandon the injection charge exclusion (para 10).

Fixtures allowances

When the substituted list of property fixtures which were to qualify for the lower 10% writing down allowances was published, the Government indicated that it was undecided whether the then-existing opportunity for the parties to a property sale to elect, under Capital Allowances Act 2001, s.198, for a specified part of the price to be attributed to fixtures, should be extended into the new regime. We lodged a strong representation, based on the likely compliance cost to the parties in the event of those arrangements not being retained.

Nevertheless it is unclear, on the basis of the inserted s.33A, setting up the (substituted) integral features concept, being dependent upon the word "provision" what final decision was taken on this point. However, the fact that no amendments have been proposed either to the definition of "fixtures" or to the sections governing the making of the election suggests that our representation has been heeded.

It may, nonetheless, be necessary to consult Hansard to discover what Ministers actually intend.

Early repairs to new integral features

Where a contractor pays compensation for bad workmanship and the client carries out repairs with that money, the normal accountancy and tax consequences are a fiscal "nothing". However, where integral features are involved and the repairs constitute half or more and are carried out within the year, then an inserted s.33B (and a connected change to the income tax legislation) are likely to have the effect of bringing the compensation into charge to tax in full, whilst allowing the trader only a 10% per annum reducing balance writing down allowance.

It hardly needs to be said that this is a profoundly unsatisfactory state of affairs and that practitioners are likely to have to seek ways of structuring the installation contract to avoid any compensation money having to pass through the hands of the trader before being applied by way of restoration.

The non-dom package

The original draft legislation was disavowed by the Chairman of HMRC and then changed in the Budget Notices before the Finance Bill text was published. The offshore trust capital gains tax distribution code, as it emerged on Budget Day, was particularly obscure and, even before the Bill's publication, HMRC let it be known that the first text of the Bill would not be the Government's final position.

All this is making it very difficult indeed for private client lawyers to give definite advice at the moment, particularly as the changes will take effect retrospectively from 6 April, so that many taxpayers will have to contemplate making substantial changes to investment structures before there is any certainty as to the exact terms of the new rules.

Environmental Taxes

It is clear from the Budget that the Government are looking for a higher take from these. Nonetheless, one has to express surprise at the terms of Notice ET1 (setting out policy in relation to a requirement to give security), from which it is apparent that HMRC consider that it is acceptable in principle to prosecute those who have appealed against such demands.

COUNCIL MEMBER'S REPORT

JEFFREY FORREST



Forrest Gump (no relation) observed that life is like a box of chocolates. My observation is that a Council meeting is like a bowl of ice cream with two scoops, strawberry and vanilla. A good strawberry ice cream is more interesting than a bland vanilla one. On the other hand a good vanilla ice cream, perhaps with fresh Madagascar vanilla pod flavouring, can be very interesting indeed. But when there's a lot of pink in our Council papers, that means confidential Part II business and – for the time being anyway – for Council's eyes and ears only.

The Council meeting on 19 March was a one day affair, as has become the norm, and both the strawberry and the vanilla parts were not without interest. In order to have an all day meeting, it is necessary for further flung Council members to travel to London the day before. On the previous evening there was an innovative hustings meeting, giving candidates for Deputy Vice President their opportunity to make individual presentations and for us to question them. Under the present Council structure, he or she who is elected DVP will become President three years hence. There were six people standing this year – Peter Adams (City of Westminster), Lucy Scott-Moncrieff (West London), Derek French (Birmingham & District), Tim O'Sullivan (Bournemouth & Dorset), Linda Lee (Leicestershire & Northants) and Helen Davies (West Country & Gwent). Depending on when this issue of The Report appears, the outcome may already be known by the time you read this.

Much of Council's strawberry Part II business consisted of discussions of policy direction for the representative Law Society and the ongoing topic of the size and composition of Council. Earlier this year CMs had been asked to respond to a questionnaire, which had been discussed at the March CWHLS Committee meeting. About half of Council responded and most of the respondents favoured a Council of between 50 and 70, i.e. at least 30 less than at present. It should be remembered that the present size of Council is the consequence of the "Napier" reforms. Many of those who supported the increase in Council's size

now seem sure that its size should be reduced again. As Michael Franks has pointed out elsewhere, it had been thought that there might be a return to the old system where Council's office holders were directly elected by the profession. Most Council members would not consider this to be a good idea but it is a question that may need to be addressed again if the Law Society claims to be truly representative of the profession.

A Council of about 100 combines geographical representation with representation for those who might otherwise be under-represented, either specialists – Commerce & Industry, Government lawyers, Legal Aid, residential conveyancing, etc., – or, for want of a better expression, special interests – solicitors with disabilities, junior lawyers, the voluntary sector and, indeed, women. Each of these can make a powerful case to be represented. This must be taken into account if Council's size is to be reduced. The whole profession is likely, however, to be consulted before any decision.

At the time of the 19 March meeting, we were informed confidentially of the current delicate state of negotiations regarding legal aid and the Legal Services Commission. Since then, those negotiations have concluded with a settlement of the litigation. Legal Aid lawyers may still be unhappy and concerned for the public's access to justice but they should be in no doubt that their representatives on the Law Society have served them well, even if they have had to accept "best in the circumstances" settlement terms. Best Value Tendering has been delayed – but not for long – and any firms threatened with recoupment of on account legal aid payments over six years old and totalling less than £20,000 will probably be able to sleep easier.

Council debated the future of the Law Society and its future membership. The SRA will move to entity based regulation and the Law Society may choose to represent entities or individuals. There was also debate as to whether or not there should be an extension of associate membership (currently restricted to trainee solicitors) to non solicitors and/or non lawyers.

Sara Chandler tabled a motion expressing Council's grave concern at reports of funding difficulties for Law Centres, following changes in legal aid funding and local authority funding, approving the support offered by the Law Society to the Law Centres Federation and its member Law Centres, and pledging support for Law Centres in their constituencies. The motion was carried.

Peter Williamson, as Chair of the SRA, proposed an amendment of the Solicitors Account Rules, requiring the return of client moneys "promptly" at the end of a matter, "promptly" not being defined. There will be many occasions when it is necessary to continue to hold client funds. Council agreed the amendment, which must first be approved by the Master of the Rolls. It will permit firms to pay residual client balances under £50 to a charity, without the SRA's prior permission. Pending formal introduction of the new rule, firms may wish to review their office procedures, in anticipation.

Des Hudson, the Chief Executive, reported on the findings of a "*Public Perception of Solicitors*" opinion poll, conducted by ICM Research in January 2008. Apparently, this showed that solicitors were held in high esteem, but without being perceived as value for money. There was very little public awareness of quality marks for solicitors but those who were aware indicated that such marks would strongly influence the use of a particular solicitor or firm. This may be of importance to the Law Society in considering the future of accreditation schemes.

Residential conveyancers may be glad to hear that the survey showed that solicitors were perceived as essential for selling or buying a home. The research did not explore whether or not the public can distinguish between solicitors and others offering conveyancing services.

After the May Council meeting, the next meeting, in June, will be in Cardiff, by way of an occasional reminder that the Council is of the Law Society of England and Wales – and, perhaps, to add another flavour to our deliberations.

ON THE ROAD TO BOGOTA

CWHLs TWINNING VISIT TO HUMAN RIGHTS LAWYERS' ORGANISATION

SARA CHANDLER

On May 12 a large group of lawyers met at the Law Society to plan the forthcoming trip to Colombia from 23 to 31 August. CWHLs International Committee members will be part of the delegation. If there are members who are keen to join but are deterred by the cost there may be a possibility of funding flights and accommodation and we would be delighted to hear from you.

Liliana Uribe, a Colombian human rights lawyer, has recently visited the UK and CWHLs co-hosted a packed meeting at Amnesty International on April 15 when she spoke passionately about the situation of human rights defenders in Colombia. Rebecca Cox, a solicitor who was sponsored by individual members of CWHLs, also addressed the meeting, about her participation in a mission last autumn to review 100 cases of extra-judicial killings which were submitted subsequently to the Inter-American Commission on Human Rights. CWHLs members also attended a meeting with parliamentarians in the House of Commons, where MPs and members of the House of Lords heard about details of extra-judicial killings, carried out by paramilitaries. Liliana and other human rights lawyers act for the victims' families and she gave the meeting an in-depth account. Her last event in London was the launch of the Human Rights Defenders at Risk fund at Herbert Smith, also attended by CWHLs members. The fund has raised



A Colombian Human Rights Lawyer with a PBI volunteer.

£12,000 in its first few days. The fund will be used to assist lawyers who are threatened or attacked in the furtherance of their professional work.

During her visit to the UK and Europe, Liliana Uribe was accompanied by members of Peace Brigades International. Liliana explained how important PBI's work is in Colombia, where she and her colleagues would be unable to carry on their work without the help of PBI accompanists. Those CWHLs members who have met the Colombian lawyers who have visited us, Eduardo Reyes and Reinaldo Villalba,

will remember how important PBI volunteers are to them. The level of threats and attacks they have endured is a testimony to their courage as they go about their work in the face of constant threat. The presence of a PBI volunteer gives protection to the lawyers and enables them to meet their clients, often in remote areas, and to represent their clients in Court.

Any member of CWHLs who would like to join the international delegation in August will be very welcome, and should contact me as soon as possible – sara.chandler@lawcol.co.uk

AN ANNIVERSARY YEAR

The Legal Charities Garden Party celebrates its 40th anniversary this year on Wednesday 11 June on the north lawns of Lincoln's Inn. In 1968 the Holborn Law Society held a Garden Party where the members, who came from all over the Home Counties, could get together and more importantly the members' wives, who seldom met, could socialise. The first Garden Party was held on 6 June 1968 in Gray's Inn with the President, Dick Ritchie, presiding. Money was raised through the sale of tickets and the proceeds went to the solicitors' two charities, the Solicitors Benevolent Association and the London Solicitors and Families Association.

In 1858 an enlightened Victorian solicitor, James Anderton, founded the Solicitors Benevolent Association, one of the six legal charities that benefit from the funds raised at the Garden Party.

For 150 years it has been the principal nationwide charity for solicitors in England and Wales and it is the SBA's aim to provide financial support for solicitors and their dependants who find themselves in need, whether through illness, accident, or bereavement.

The SBA awarded almost two million pounds last year through grants and loans, helping over 400 beneficiaries. Apart from income from investments, all

money comes from membership fees, donations and fundraising events like the Garden Party.

Last year the Garden Party broke all records by raising over £36,000 to help the six legal charities, including the SBA, to continue supporting the profession. We do hope that it will be another record-breaking year in 2008!

To book tables and order champagne, please contact Katie Wylie at the SBA at katie@sba.org.uk or telephone 020 8675 6440. Tickets costing £15 can be obtained from Nichola West, Denton Wilde Sapte, One Fleet Place, London EC4M 7WS or LDE 242.

IS STRESS A DISABILITY?

LAWCARE



• Do you feel you're running just to stand still?
• Is the pressure getting to you?
• Do you feel guilty for not being able to do everything, or taking it out on your family?
• Are you drinking too much to relieve the stress?

For free confidential help and advice on stress and other health issues call the free helpline.

LawCare
0800 279 6888
www.lawcare.org.uk
Health Support and Advice for Lawyers

Up to 60% of those absent from work at any one time are suffering from stress – related illnesses. The Freud Report on welfare reform focuses on the 2.7 million people on incapacity benefit – many of whom are suffering from stress and depression. Government Ministers are stated to believe that up to a million of those on incapacity benefit should be able to return to work, and during 2006 the NHS rolled out a scheme to stress and depression sufferers offering them dancing lessons – to cheer them up, help them socialise and help them to exercise. If only it were that simple!

The medical profession is concerned that the true impact of mental health problems in Britain is being masked and that it is a sleeping giant waiting to be roused. Stress can have an impact on mental and physical health – both in the short term and the long term. Stress should not be feared, but it should be respected. It is because of the huge impact it can have on sufferers

that LawCare offers free (save for expenses) presentations to the legal profession on stress recognition and management, as it believes that early recognition of the problem is vitally important. Realising that you are under stress gives you the opportunity to address the situation you are in, together with how you are reacting to it and so to take some control over the stresses in your life.

Long term stress can lead to feelings of lethargy, lack of concentration, poor judgment, lack of enthusiasm and guilt – to name but a few of the symptoms. When not addressed, stress may lead to an inability to cope at work and having to have time off on sick leave. This illness also has an impact beyond that on the sufferer, with the depleted department left one person short and co-workers being caused additional stress as a result. Some sufferers are able to return to work after a short period of recharging their batteries, but others will not return for a very long time, and some never return to their original career at all. They may need to depend on state benefits.

Does this make stress and the symptoms which accompany it a disability? Unsurprisingly, this can be a grey area. The legislation's definition of disability does not necessarily include an inability to work. Where does stress feature when deciding if someone is suffering from a disability? Depression is recognised as a disability but stress, despite the dire physical and mental effects it has for some people, may not be so recognised. It is not until the stress has deteriorated into clinical depression that it will be dealt with as an illness, which has consequences for stress sufferers. Those suffering from a disability can expect to be treated by

their employer in a particularly sensitive way according to current legislation, but not necessarily those suffering from something as subjective as stress.

Some law firms are stating on their web sites that stress is not classed as a disability. Others are less certain. What is clear is that all employers should be far more aware of employees with stress related illnesses and that they have a duty, both on legal and moral grounds, to provide as stress-free an environment for them as possible. However, whether those suffering the effects of stress will have the protection of disability legislation to further enhance their position remains untested and until there has been some authoritative case law, their position will remain uncertain.

What is entirely clear is that the legal profession has high levels of absenteeism through stress – related illnesses, which is why LawCare (a charity funded by the professional bodies for most sections of the legal profession) offers a 365-days a year, confidential helpline to assist troubled lawyers. LawCare also offers presentations to training centres, law schools, societies and firms, emphasising the importance of stress recognition and management. These are free other than expenses and carry CPD points. LawCare is anxious to reach out to all sectors of the profession to help in preventing stress or, at least, to assist in recognising and dealing with it in better and more appropriate ways.

For further information on LawCare's range of presentations call 0870 774 3663.

For confidential support and assistance, call 0800 279 6888.

JUNIOR LAWYERS DIVISION

The City of Westminster and Holborn Law Society's JLD and Dixon Wilson are hosting a joint networking event on Thursday, 24 July. It is hoped that this will be an excellent opportunity for young lawyers to socialise with accountants and forge new links.

The event will be held at the offices of Collyer Bristow LLP at 4 Bedford Row, London WC1R 4DF between 6.30 and 8.30. Please let me know if you are interested in attending on 020 7470 4441 or richard.broadbent@collyerbristow.com.

RICHARD BROADBENT



PROFESSIONAL EDUCATION®

BPP presents

In Conversation with...

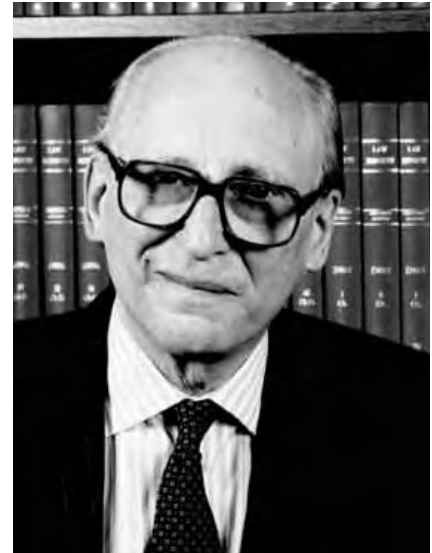
Lord Bingham

Senior Law Lord and “most influential lawyer in the country”



The Law Society

junior lawyers



04 June 2008 - BPP Law School (Waterloo)

We are delighted to invite you to be our guest at the second in a series of exciting evening events we are holding this year, in conjunction with our award winning Pro Bono Centre and the Law Society's Junior Lawyers Division.

Our Presenter and Solicitor Advocate, Jason M Hadden, will be In Conversation with Lord Bingham at the BPP Law School, Waterloo. The event which will allow the audience to ask questions to Lord Bingham will be followed by a free drinks reception. The evening will also mark the opening of nominations for the Junior Lawyers Division 10th Anniversary Pro Bono Awards to be awarded in November. This will include the Wig & Pen Prize judged by the City of Westminster and Holborn Law Society and the City of London Law Society.

Join us at the second in a series of exciting evening events we are holding this year, in conjunction with our award winning Pro Bono Centre.

Our Presenter and Solicitor Advocate, Jason M Hadden, will be In Conversation with Lord Bingham, the only person who has occupied three of the highest judicial offices in England and Wales and is considered the country's most distinguished judge. The event, which will allow the audience to ask questions, will be followed by a complimentary drinks reception.

Lord Bingham has been a popular and sometimes controversial Law Lord and as such the topics will range from his views on the Human Rights Act, Terrorism, Torture, Government intervention and Rendition. In the past he has been involved in issues such as the legalisation of cannabis; indefinite detention without trial and the case of Derek Bentley who was wrongly executed.

With Lord Bingham's retirement due in September 2008, why not join Jason for this unmissable event?

This event is free of charge. **BOOK NOW** with one of our Reception staff to secure your place or book online by visiting www.bpp.com/cpd, alternatively you can also email enquiries@bpp.com

(Places will be allocated on a first come, first served basis)

Location

BPP Law School (Waterloo), 137 Stamford Street, London, SE1 9NN.

Time

6.30pm - 9.00pm

Registration from 6.00pm onwards.

CWHLS LECTURE

Tuesday, 3 June 2008

CONTRIBUTORY NEGLIGENCE AND FAILURE TO MITIGATE

CWHLS are pleased to announce that a duo of leading personal injury barristers from 1 Chancery Lane, Matthew Chapman and Julian Waters, will be speaking on the subject of 'Contributory Negligence And Failure To Mitigate', focusing on both claimant and defendant perspectives in this important area for personal injury solicitors. The panel will address a number of short topics on this area on **Tuesday, 3 June 2008** at the Chambers of John Ross QC, at 1 Chancery Lane from **6.30 p.m. Please note the change of usual day and location for this lecture.**

The speakers will address members of the Society on the following:

Contributory Negligence

Consideration of the contributory negligence defence, from a Claimant and Defendant perspective, in the following settings:

- Road traffic accidents (Julian Waters)
- Accidents at work (Matthew Chapman)
- Accidents on the Public Highway (Julian Waters)
- Accidents on private premises – including accidents involving child Claimants (Matthew Chapman)

Failure to mitigate

- The Defendant's burden of proof and the importance of pleading (Julian Waters)
- The Claimant's duty to act reasonably (Matthew Chapman)
- Failing to undergo medical treatment (Julian Waters)
- Failing to mitigate a claim for loss of earnings (Matthew Chapman)

Julian Walters: Called in 1986, Julian Walters has acted for defendant insurers, local authorities and emergency services in substantial personal injury actions, as well as appearing for the Claimant in *Van Colle v. Hertfordshire Police*, the first successful claim for breach of the state's positive duties under Article 2 of the European Convention on Human Rights (the Right to Life). He has also acted for the claimant in personal injury actions involving serious head injuries, paraplegia, mesothelioma and asbestosis.

Matthew Chapman: Called in 1994, Matthew Chapman has considerable experience of personal injury litigation (with particular emphasis on negligence by public authorities and employers' liability), as well as being a recognised specialist in travel/holiday matters (including claims and recovery proceedings with a cross border element, together with claims made under the international Conventions for the carriage of passengers). He has also written and spoken regularly about these aspects of practice previously.

This lecture will begin at **6.30 pm** at **1 Chancery Lane, London WC2A 1LF**. The price is £20 for members of this Society, £32 for non members and £10 for students and includes a drink from 6.15pm. One hour of CPD is available (ref JC/CWHLS) - please give your roll number when attending.

CONTRIBUTORY NEGLIGENCE AND FAILURE TO MITIGATE: TUESDAY, 3 JUNE 2008

Please send me _____ tickets @ £32 for the above lecture

Please send me _____ tickets @ £20 for members of CWHLS

Please send me _____ tickets @ £10 for students

Please return to Mrs E J Beesley, CWHLS, 25 Rotherwick Road, London NW11 7DG DX 33801 Golders Green

I enclose a cheque for £ _____ payable to the City of Westminster and Holborn Law Society

Name _____ Name of Firm/organisation _____

Address _____

_____ DX _____

Signature _____ Date _____

TAX DEDUCTIBILITY OF SUBSCRIPTIONS PAID TO CWHLS

This is a reminder to members in salaried posts that they are able to deduct the amount of their subscriptions to the Society to arrive at their taxable income. The Society is approved under Section 344 of the Income Tax (Earnings and Pensions) Act 2003 (formerly Section 201(c) of the Income and Corporation Taxes Act 1988). The reference which should be quoted is 951/C1314WW.

Timothy Drabble (Honorary Treasurer)