



THE REPORT

CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY NEWS

NO.66 NOVEMBER/DECEMBER 2009

THE PRESIDENT'S COLUMN



PETER ADAMS

The postman (or postwoman to be more accurate) has not delivered the Gazette to me for a few weeks, and it fell to colleagues to draw my attention to the results of the Legal Excellence Awards. I looked through the results in some detail, but regrettably I could find no Westminster or Holborn firm on the list; nevertheless I am sure that is no reflection on the excellence of lawyers in our area. We work in the heartland of legal services and our members have a long and successful history of service to the public and the profession, but some of the contributions to the Excellence Awards started me wondering whether the model of legal service provision that has got us to where we are today will suffice for the future?

Every solicitor's business will be different from his neighbour's and it would be impertinent to use this column to preach a particular model, but it does seem fair that I should take a little of your time to promote different ideas and promote thinking about the currently accepted market models and some of the new ideas. I was pleased to see, for example, the recognition given to the Law Shop in Bristol. For those of you who have not seen it (www.lawshopbristol.co.uk), it is a professional organisation offering support to those who want to handle simple matters for themselves. The first problem we all face is how to get new clients across the doorstep, when we are competing with sources of free legal advice such as the CAB and the internet, and this seems to me an innovative

approach. There is a similar, but different, approach from the Legal Café in Haverstock Hill, which welcomes potential clients across the threshold with the lure of a café environment.

As one of your committee members put it to me a few days ago (in a conversation about conveyancing) the solicitor tends to be at the end of the food chain; accountancy practices have been successful in moving out of pure accounting to get themselves "up the food chain" and perhaps there is a model – necessarily different for each firm's target market – to be developed from that example.

The principles are equally true for our Society. The recession has taken its toll, so we shall be bringing forward some ideas over the coming months to provide attractive opportunities to get more value from your membership. Chancery Lane plays a vital role in the protection of what "Solicitor" means and our Society is a key link with what is going on in Chancery Lane: I hope to add ways in which members can interact with their Law Society Council Members. In doing so, I hope to build stronger links between our members and our committee. Of course, a great deal of work goes through our subcommittees – particularly the case at the moment with so many changes and consultations – and members are always encouraged to contribute as a way of becoming more involved and having greater influence. To anyone who feels they have something to say on their particular area of expertise, I say come and join the

most appropriate subcommittee: it is where the real work of the Society is undertaken and the opportunities to influence are at their greatest.

Effective influence has always appeared to me to be the vital role for our Society. I said at the AGM that when I qualified, solicitors were professionals generally highly regarded in society at large. The meaning of the word "profession" has been devalued somewhat over the years and, with it, that high regard for us as practitioners. There is no useful purpose in looking back with nostalgia, but there is every purpose in looking forward and doing everything we can to restore the high regard in society for our work. The status reflects the value that society in general places on our services and that value translates directly into the health, wealth and happiness of future generations of solicitors.

I look forward to an interesting year ahead and to working with many of you on the health, wealth and happiness of our Society and of current and future generations of our professional colleagues.

ANNUAL DINNER

The Annual Dinner 2010 will be held in the Long Room at the Honourable Artillery Company's Headquarters at Armoury House on Monday, 12 April. The Recorder of London, HH Judge Peter Beaumont QC has accepted the President's invitation to attend the Annual Dinner and will respond on behalf of the guests. Details will follow in the next edition.

DIARY

2010

JANUARY

- 20 Committee meeting
- 25 CWHLS lecture
- 26 Welcome Drinks

FEBRUARY

- 22 CWHLS lecture
- 24 Committee meeting

MARCH

- 22 CWHLS lecture
- 24 Committee meeting

APRIL

- 12 ANNUAL DINNER
- 19 CWHLS lecture
- 28 Committee meeting

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The deadline for all copy for the January edition of THE REPORT
is **6 January 2010**

Copy to be sent to The Editor – rlester@lesting.fsnet.co.uk
Previous copies of The Report are available on the Society's website:
www.cwhls.org.uk

THE WIG & PEN PRIZE

The winner of this year's Wig
& Pen Prize was Michael
Spencer of Freshfields
Bruckhaus Deringer. The
presentation took place at the
Junior Lawyers Division Pro
Bono Awards on 12 November
by Matthew Claxson from
CWHS and Vince Kearney
from the City of London Law
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FBE VALENCIA

OCTOBER 2009

SUSANNA HELEY



It is rather nice to be with people who genuinely believe in the legal profession; who uphold the rather idealistic notion that lawyers, across Europe, have a key role to play in maintaining the very fabric of society. So I enjoyed my first experience of the Federation of European Bars at the intermediate conference in Valencia.

The Valencia Bar was delightfully hospitable and the conference, although not as well attended as it might have been, was informative and entertaining. Day One focussed on the subject of mediation. Although I came to the conclusion that mainland Europe is somewhat behind the UK in terms of the emphasis on and availability of Alternative Dispute Resolution in general and mediation in particular, the subject was dealt with enthusiastically and a resolution was prepared to the effect that the legal profession in Europe is generally in favour of mediation provided that unfair advantage is not taken and provided that it is not forced on people. It should be regarded as a genuine option but not a replacement for litigation. The key conclusion was that lawyers should be involved in the mediation process. For my part, I think there is nothing controversial in the conclusions reached and they merely reflect a path which has been followed in England and Wales for some time.

Day Two concerned Conflicts of Interest and dealt with the philosophy of conflicts; what they are and why they are harmful, and then turned to how individual countries deal with the issue, the general idea being to work out whether we all have common definitions and prohibitions in order to try and establish a common rule for Europe.

As I had volunteered to speak on the position in England and Wales, I was slightly alarmed to learn that all eyes were on the UK, given the SRA's recent consultations on the subject. As probably the most junior person in the entire conference, it was somewhat daunting for me to share the stage with the great and the good of Europe.

The speakers were generally very impressive and raised numerous interesting questions. For those who are interested, copies of all speeches are on the FBE website - www.fbe.org.

When all was said and done, it seemed that most countries regarded conflicts of interest as a bad thing. Rules and, in particular, enforcement procedures vary widely across Europe. Ultimately the decision made on conflicts of interest was that a recommendation will be promulgated and voted upon at the next FBE meeting, in Aix-en-Provence in May next year. It seemed that the problem was not the rule itself, indeed it is likely that the CCBE rule will be adopted by the FBE as its proposal; the difficulty lay in enforcement, and it was recommended to the conference that a proposal as to effective (and uniform) enforcement should be included in the draft to be considered at Aix.

The conference part of the FBE is, of course, only a very small part of the value of the conference. From a personal perspective, I was keen to learn about professional discipline in other jurisdictions and was interested to note the vast differences in approach from country to country. Many countries in Europe do not have anything akin to our accounts rules, some are looking for a model upon

which to base rules, others simply do not deal with client money. As far as I can make out, none of the other member countries have a centralised regulator; all regulation is carried out at a local or regional level and there are vast differences between local bars, even within the same country. The involvement of the Court varies tremendously too...

I could go on in this vein for some time but the purpose of this report is not to regale you all with the results of my conversations!

On a final personal note, I think that the FBE has an enormous amount of potential to unify and represent the legal professions in Europe. Somewhat prophetically, a topic of conversation during the conference was the Irish "Yes" vote to the Lisbon Treaty. In a time when all indications are that Europe is drawing closer together, it is helpful and, in my view, necessary to encourage strong links with our European colleagues and forge a meaningful understanding of the differences and the relative strengths and weaknesses of our regulatory and professional systems.

I would encourage people to get involved in the FBE (and in local Law Societies); we are facing unprecedented change in our illustrious profession, on all fronts, and it is important to make sure that our voices are heard. And, of course, it is a great way to see the world! I would also encourage as many people as possible to attend the conference in Aix next May and, for the younger members of the profession, I believe that there are plans afoot for a junior lawyers' conference in December.

CONGRATULATIONS

Congratulations to Past President Sara Chandler on her recent appointment as Professor of Clinical Legal Education at the College of Law. This appointment recognizes the enormous effort Sara has put into legal education and the deep knowledge she brings to the subject.

CWHLs MEMBERS DEFEND HUMAN RIGHTS DEFENDERS AT RISK

SARA CHANDLER



Meeting with Miliband: Eduardo Carreno, who has visited London before and is known to many CWHLs members, was in London for three days recently. He had a significant meeting with Foreign Secretary David Miliband, who has publicly stated his support for human rights defenders in the battle against impunity, the practice of allowing state officials, police, army and para-militaries to get away with attacks.

Parliamentary support: On 28 Oct 2009, CWHLs members attended the All Party Parliamentary Group on Human Rights in Westminster and heard Eduardo Carreno speak to a packed meeting of parliamentarians and human rights defenders. The occasion was the launch of the International Campaign for the Right to Defend Human Rights in Colombia. 229 organisations, including the Caravana Colombia Lawyers' Group, as the group who went to Colombia in 2008 is known, signed the Declaration of Support for Human Rights in Colombia.

Continued persecution: Evidence of systematic surveillance, phone tapping and e-mail tapping of human rights lawyers has been exposed during the ongoing trial in Colombia of former DAS Director, General Jorge Noguera. The Colombian Attorney General's team raided the offices of the intelligence agency DAS in April 2009. The documents seized showed that since 2004

a special group within DAS was gathering intelligence. The documents clearly state that one of the objectives was to gather material for use in bringing baseless criminal charges. Not only were the lawyers followed but also their family members, including young children. Among the several defendants General Noguera is standing trial for the murder of five civilians.

Extend the spotlight: Alirio Uribe, Colombian human rights lawyer and member of the Jose Alvear Restrepo (Ccajar) lawyers' collective, commented in June: "The threats I receive by phone or through the post not only affect me but also my family. They think I am putting their lives at risk. The worst thing about threats is that they often lead to killings. They are trying to silence our voices." During his last visit to London Alirio Uribe met with CWHLs members and discussed the help needed by human rights defenders in Colombia. The international legal world should provide a spotlight on Colombia and monitor constantly the situation of human rights lawyers. This is why we have been invited to visit Colombia in August 2010 in the second international Caravana of lawyers, to investigate the situation of human rights lawyers.

Caravana Coordinator starts work: Thanks to the financial assistance of the Law Society Charity, CWHLs has

received a grant to pay for a consultant to organise the Caravana Colombia Lawyers' Group. Fourteen CWHLs members form the largest single group amongst the UK lawyers who went to Colombia. The new **Coordinator, Anna Musgrave**, started work on 21 October. She spent over two years in Colombia as a Peace Brigades International volunteer, accompanying human rights defenders at risk of attack from para-militaries and others. She has worked for a number of charitable organisations in this country, and currently works part time for the Refugee Council. She has considerable experience as a coordinator, and speaks and writes excellent Spanish. She was selected from a high calibre field by Colombia working group members of CWHLs International Committee (Kim Archer, Jeffrey Forrest and Sara Chandler) following an intensive period of selection meetings and interviews.

Colombia 21 to 30 August 2010: All members are invited to join the Caravana 2010 delegation. It is a very worthwhile way to visit a very beautiful country, and to meet fellow lawyers and to understand their situation. We received a very warm welcome in 2008. We need you or lawyers you know, so please pass the word on. You don't have to speak Spanish; interpreters will help you. If you are interested please contact: annamusgrave@fastmail.fm and sara.chandler@lawcol.co.uk.

THE GAMLEN LAW PRIZE 2009

This year the Society awarded the Gamlen Law Prize to Sarah Cowlshaw who attended BPP and has a training contract with Covington & Burling. The runner up was Edward Parkes who was nominated by the City Law School and has a training contract with Marcus-Sinclair.

This Prize is awarded to the most promising student on the Legal Practice

Course within the area of the City of Westminster and Holborn. Each course provider nominates a suitable candidate for consideration by the Society for award of the Prize.

The Prize was presented at the Society's AGM by Rodney Stubblefield, one of the Gamlen Trustees. In nominating a candidate, the course provider must, *inter alia*, have regard to the candidate's



ability to reduce a complicated subject into simple and lucid language, able to be understood by a lay client.

LAW SOCIETY COUNCIL REPORTS SEPTEMBER



ADRIAN **BARHAM**

September Council Meetings always have that 'new term' feeling about them, being the first meeting of the new Council year. This year was no exception, with 10 newly elected Council members attending their first meeting, and the new President presiding over his first meeting. Sadly, it also meant that the agenda was uninspiring and focussed on the year ahead rather than the here and now.

We discussed the Council's work plan for the 2009-10 year, and considered the topics that would be the subject of debate at future meetings. A number of Council members quite rightly wished to discuss as a matter of urgency the current position on the difficulties with professional indemnity insurance and whether or not changes should take place to the assigned risk pool (ARP). It was agreed this would be added to the work plan for debate on a further occasion.

A desire for discussion on the impact of Alternative Business Structures was expressed, as not much had been heard from the SRA on this topic. It wasn't clear who in the Society was leading on this. It was agreed that Council could direct the Society's Boards to consider various issues around ABSs, but it had to be remembered that there were difficulties in persuading the SRA or the Legal Services Board to agree with our point of view.

It was noted that commercial entities were at something of an advantage in that they could start to prepare and plan now for the advent of ABSs, whereas

solicitors' firms could not, because of the stern warning from the SRA that if they tried to anticipate ABSs too early they would be disciplined.

On other matters, the Vice President of the Society, Linda Lee, presented a paper on judicial appointments, and explained the work that the Society has done since the creation of the Judicial Appointments Commission (JAC), in April 2006.

Although the JAC has been relatively successful in focussing on minority groupings, there is still concern that solicitors fare poorly as opposed to barristers. In particular, the number of applicants for appointment from solicitors is disproportionately low in terms of the available pool, as is their success rate. In a recent competition, the eligible pool of lawyers with the required professional experience comprised 85% solicitors and 15% barristers. However, the shortlist was made up of 28% solicitors and 70% barristers, and those appointed were 15% solicitors and 84% barristers.

The Society has been lobbying Government and the JAC to improve the processes, and has been working with the JAC, the judiciary and firms to address issues which make it less attractive for solicitors to apply. The Law Society has also worked with JAC and practitioner associations to seek to widen access to the judiciary, and has promoted opportunities for solicitors to seek judicial appointments.

It was pointed out that part of the difficulty for solicitors applying was the attitude of firms to judicial appointments. Firms are very interested in their solicitors doing pro bono work and see this as part of their role, but do not see that allowing solicitors to take part time judicial appointments is the same. In addition, the requirement for a part time member of the judiciary to make themselves available for 30 days in a consecutive period was a problem for someone who is currently in practice. This was not such a problem for the Bar, and the court system needed to be more flexible.

Council agreed that further work should be done to increase the opportunities for solicitors – particularly by running further training courses and developing guidance for solicitors who wished to apply for appointments. It was suggested that what was needed was more skills training, on a sort of 'judgcraft' course, so that solicitor applicants could look and sound like judges when they applied. It was also felt that the Society should work with firms to encourage their solicitors to see judicial appointment as a desirable and prestigious achievement which throws glory on the firm as well as the individual.

One Council Member suggested the radical approach of stopping judicial appointments of barristers for a while, so that the number of solicitor judges could increase to their proper proportions – not an option that I think the JAC will be adopting any time soon!

NOVEMBER

Much of the meeting on 4 November was taken up with addressing regulatory matters. First topic to be addressed was the Hunt Review and its recommendations. For the most part, these were welcomed by the Council. The implementation of any recommendations which affect regulatory activities would have to be carried out by the Solicitors Regulation Authority (SRA), but The Law Society (TLS) can make

representations to the SRA. As the composition of its Board changes on 1 January 2010, it is hoped that it will be more receptive to new ideas.

While broadly supporting Lord Hunt's proposals, TLS is referring the different recommendations to a variety of Boards and Committees for more in depth examination. The devil lies in the detail, as they say. The Hunt Review

may be accessed on the web at www.legalregulationreview.com. The Review has also been welcomed by the Legal Services Board (LSB).

The next major agenda item involved Professional Indemnity Insurance (PII). With the hardening of the PII market, there have been several reports of the difficulties which solicitors have been encountering in securing indemnity



DAVID **MORGAN**

cover, resulting in an increase in the number of solicitors seeking cover in the assigned risks pool (ARP). It was felt by many that the problem is exacerbated by the single renewal date (SRD). The Council therefore supported its replacement by a variable renewal date (VRD) and will be advocating for this.

During the debate on this, I heard that there was a suggestion being put forward that ARP cover would only be available for 90 days. This could be catastrophic for some solicitors and, if true, I have no doubt that we will be saying something about it. More heartening was a proposal

that solicitors seeking to close their practice might have the option of seeking run-off cover rather than transferring all liabilities to the successor practice. This followed a discussion between Michael Garson and myself about exiting the profession. His proposals covered a wide field but as Chairman of the Solicitors Assistance Scheme I was – and am – concerned with making it easier for practitioners to take over another without having to worry about picking up the tab as successor to his practice.

Lastly, Sue Carter of the Sole Practitioners Group proposed an

amendment to the Law Society's policy on referral fees; first that representations be made to Government and the LSB that referral fees do NOT have a place in markets for legal services; secondly that the Law Society is urged to "press the Legal Services Board to require all Approved Regulators to ban referral fees by those providing legal services as being contrary to the regulatory objectives contained in section 1 Legal Services Act 2007". It was passed overwhelmingly.

All in all, I felt that it was one of the Council's most constructive meetings.

"JUSTICE" FOR THE POOR

JOANNA KENNEDY

Did you know that failure to pay for a TV licence is both a strict liability and an imprisonable offence, or that bailiffs have a right to break in to your home to enforce a fine, or that there is absolutely no legal cap on interest rates in this country so that those on low incomes are regularly charged 180% interest in totally legal credit transactions?

Until this time last year I was a commercial litigator and indeed head of dispute resolution at Collyer Bristow and didn't know anything about these issues. However after more than 30 years of fighting battles on behalf of the relatively prosperous and powerful I decided to see whether I had learned anything or developed any skills that could be deployed on behalf of the poor and powerless.

I am now chief executive of a small new charity called Z2K (for Zacchaeus who was a wicked tax collector in the Bible who saw the error of his ways). We help those on very low incomes to negotiate the justice system when they face demands for payment from statutory authorities for e.g. council tax, overpayment of benefits/tax credits, arrears of rent in social housing or fuel payments, or face small fines e.g. for non-payment of TV licence. We act as

McKenzie Friends, not as legal representatives, and we train volunteers in communities to do this work.

One of our recent cases perfectly illustrated how difficult it can be to enforce the rule of law on behalf of unrepresented defendants in the lower courts. Our clients were an impoverished elderly couple for whom English is not their first language, who opened the door one day to some bailiffs who threatened to break in unless they paid £500 to settle an unspecified judgment. Bailiffs acting for Magistrates Courts are all outsourced and are entitled to carry out enforcement procedures without any requirement to serve or show any form of order or authority. They paid with huge difficulty and were referred to us.

We discovered that the enforcement was of a fine for a failure to pay a TV licence fee for premises which they had long since left. The summons and all other documents, including an initial letter from the bailiffs, had all gone to the old address. The correct address had only been tracked down by the bailiffs. The evidence on which the fine had been issued was a thoroughly confused witness statement prepared by the licence enforcement authority, allegedly recording an interview with the husband

but signed by the wife. That statement made it plain that the couple were about to move.

We took it back to court, using two lawyer volunteer McKenzie Friends, and after four separate hearings involving all kinds of mistakes and confusions on the part of the Magistrates Courts, the fine was overturned and all the money, including court costs and bailiffs' fees, was repaid.

This kind of fiasco is a regular feature of the Magistrates Courts, which is of course where well over 90% of all court proceedings take place, and one of the reasons is that so few people in those courts are represented or have any kind of help, so mistakes and absurdities are able to proliferate unchallenged.

This work is immensely rewarding because a very small amount of knowledge and effort can save someone in great difficulties from an unmanageable outcome which would inevitably lead to a downward spiral of debt and despair and ultimately sometimes suicide.

If you would be interested in learning more or helping in any way please contact me on joannakennedy@z2k.org

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THE CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY A COMPANY LIMITED BY GUARANTEE REGISTERED IN ENGLAND AND WALES NUMBER 5467334 THE DIRECTORS REPORT – YEAR ENDED 31ST MAY 2009

The directors have pleasure in presenting their report and the unaudited financial statements of the company for the year ended 31st May 2009

PRINCIPAL ACTIVITIES

The principal activity during the year was the management of the affairs of the local law society in the area of its predecessor association known as The City of Westminster and Holborn Law Society.

DIRECTORS

The directors who served the company during the year were as follows:

P G Adams (appointed 1st June 2005)	J P Cornthwaite (appointed 1st June 2005)	M Heathcote (appointed 14th October 2008)
A A Barham (appointed 17th October 2006)	T H Drabble (appointed 1st June 2005)	R A Lester (appointed 1st June 2005)
M J Claxson (appointed 14th October 2008)	M J Gillman (appointed 11th October 2005)	S J M Chandler (resigned 14th October 2008)

DONATIONS

During the year the company made the following contributions:	2008	2007
	£	£
Charitable	0	0

SMALL COMPANY PROVISIONS

This report has been prepared in accordance with the special provisions for small companies under Part VII of the Companies Act 1985.
Approved by the directors on 23rd September 2009

A A Barham
Director

Registered office: 25 Rotherwick Road London NW11 7DG

CWHLs LECTURES

The Shifting Sands of Professional Negligence Law at the beginning of the 21st Century

Lecture by Nick Bird

Monday, 30 November 2009

In this lecture Nick Bird looks at some of the factors that are moulding our professional negligence law at the beginning of this century. What is the effect of increased regulation on the fundamental duties that professionals owe to their clients and who is responsible for policing them? Are some laws too firmly rooted in antiquated notions of the place of the professional in modern life. And are the days numbered for certain causation defences. The lecture will also include some practical advice with tips on how to minimise the risks of practising.

Nick Bird is a partner in the well known Professional Risks Group at Reynolds Porter Chamberlain LLP. He acts for many of the leading legal practices and financial institutions on regulation and liability claims.

Controlling the beast – how to manage the media around a case

Lecture by Paul Cheston and Clare Rodway

Monday, 25 January 2010

Paul Cheston, Court Correspondent for the Evening Standard and Clare Rodway, Managing Director of Kysen PR, will look at how litigators can manage media interest around cases and ensure that court room success translates into column inches. They will address the impact of different types of cases on media strategy- the journalist's perspective and what makes a good story- classic routines and neat tactics- choosing the right spokesperson- how to use court documents without being in contempt, and how to target the right publications at the right time.

These lectures will begin at 6.15 p.m. at the offices of **Nabarro LLP**, Lacon House, 84 Theobald's Road, WC1X 8RW. One hour of CPD is available (ref JC/CWHLs). The cost is £22 for members of this Society, £36 for non members and £10 for students.

	Members - £22	Non Members - £36	Students - £10
PROFESSIONAL NEGLIGENCE: 30 November	_____	_____	_____
MANAGING THE MEDIA: 25 January	_____	_____	_____

Please return to Mrs E J Beesley, 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

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