

Liverpool Law

The Magazine for the legal sector
in Merseyside and the North West



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for you...



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Future



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Welcome

to the October edition of Liverpool Law

Hello and welcome to the latest edition of Liverpool Law.

Summer appears to be well and truly over judging by the falling temperatures, weather, school rush bringing chaos back to the roads and the pending closure of Lime Street Station which will no doubt add joy to the days ahead for many commuters!

Still, if you are stuck on the train, or in a traffic jam, there is plenty to read in this month's edition (when it's safe and legal to do so, of course!).

It has been fairly quiet on the legal developments front given the summer break and no doubt the ongoing game of "How do I actually get out of Europe?" occupying a considerable amount of the government's time. Notably though there have been developments around the bringing of claims within the employment tribunal and we have a very informative article from Nicky Benson around that.

Other notable mentions this month are to David Flood for bringing back memories of many a sleepless night to some more "experienced" members of the profession with a very interesting article referencing that golden oldie, Order 17 r.11. Sleep well. Also to Dr James Organ for his review which secures this month's bottle of wine from our supporters at R&H Fine Wines and also of course to our regular contributors whose continued efforts and support are greatly appreciated. In that regard, a very warm welcome to Jennifer Powell who has taken up the mantle of managing the Charity and CSR issues so please support Jennifer in her efforts.

On the subject of support, this month's edition also contains articles around how the Liverpool Law Society might look in the future and how you can provide your thoughts around that and also outlines how to consider supporting the LLS via its General and other Committees. Please partake!



In other news, I think it is safe to say that the start of the football season has not been all that had been hoped for at Fortress Prenton. Twelve games in and Tranmere sit in a rather uncomfortable position at 18th place in the National League – sadly nearer out. Still, it's very early days and it's a marathon not a sprint as they say and they are only 9 points away from the top of the division. Keep the faith!

Continuing on the subject of football – and I have to say it was news to me – but it seems that tickets have to be made available by Liverpool FC to the local communities as part of the agreement behind the recent development to the stadium. Whilst we have not been able to publish the full article, it is available via our websites and there is a link to it <http://www.liverpoollawsociety.org.uk/society-news/latest/how-get-liverpool-fc-tickets-%C2%A39-each> Many thanks to Daniel Fitzsimmons for the article.

Meanwhile, in contrast to current goings on at Tranmere, I'm delighted to report that with just 7 games of the 162 game season remaining, the Boston Red Sox have qualified for the playoffs in a wild card position at least and with any luck, should win the American League East. If they do, it's highly likely that they will face the Houston Astros over a best of 5 game series, made all the more intriguing by the fact that in the last 4 games of the regular season later this week the Red Sox play, you guessed it, the Astros.

I know, you just can't wait for the next instalment..... Until then, keep those articles coming and keep safe.

Peter Holland
Editor
editor@liverpoollawsociety.org.uk

Liverpool Law Needs YOU!

Liverpool Law Society Magazine is produced by and for Liverpool Law Society Members. This is our opportunity to share our news, events and celebrations with our friends in the legal community.

All members' contributions to Liverpool Law are warmly welcomed. Please send your article (and photo captions where possible) or request for further information, or assistance to the editor at editor@liverpoollawsociety.org.uk

Photographs should be provided in the highest resolution possible to ensure a good reproduction.

The views and opinions expressed in Liverpool Law are those of the individual contributed and not those of the Liverpool Law Society.

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- 16TH OCT FOR NOV
- 13TH NOV FOR DEC

Charity spotlight...

Historically, the James Bulger Memorial Trust (registered charity no 1141125) has operated in the North West of England, and has provided assistance to over 175 families (815 people) with FREE respite holidays. With its new idea of presents for families in the Christmas period, over 2 years the charity has helped 400 families with over 1000 presents being handed out. The charity is also offering families monthly trips out to various places like cinemas, restaurant meals, and nights out at the Echo Arena (Panto, Horse riding shows). The Trust has recently commenced operation in North Wales. The charity holds various events during the year with the latest one (KIDSFEST) which happened on Sunday 20th August in Stanley park and over 12,000 people attended over the whole day.

Apart from the Christmas presents, the next event will be in March for the annual Black Tie & Tiara Ball. More details can be found on the charity's website.

www.forjames.org

President's Mentions

Good day to you all, I trust you are all well.

We are well into the Autumn and speeding through the Michaelmas term when most of the heavy business has traditionally taken place in the Courts of Law.

This year is no different and at Helix we are busy with various events to keep you all up to speed.

I attended the Joint V meeting in Birmingham when we discussed the running of the Societies and the help & guidance that we can give to you our members.

We have now undertaken a consultation paper asking you all to give us your views on membership of this society. I hope you all have a copy of the Survey Monkey and will take a little time to complete the same. We are conscious that the profession is changing and we need to keep up. We now have accountants, managers, trainees and paralegals and wish to serve all professions in the business. Please therefore look at the survey and provide you answers by 17th October. We propose to give the results in November once we have analysed the same.

We have also been discussing the Legal Education Foundation which is an organisation assisting within the social welfare section. Since the demise of a considerable amount of the legal aid system there are a great number of clients we are now unable to serve due to lack of



resources and lack of skilled personnel to cover the work. Thus the Universities and the Foundation - a spin off from the College of Law have devised a scheme whereby funds can be made available to finance personnel to train and supervise. I hope to provide further information once we have considered all the opportunities and report back - watch this space.

We are also pursuing action for Pro Bono work with the annual

week approaching and would ask you to give some thought to the same and any ideas you have would be welcome. We need to cover the Cinderella departments not sufficiently catered for such as housing, welfare benefits, debt and other social problems.

On a lighter note I was pleased to join with Cheshire & North Wales Law Society on the annual walk this time in Cheshire. Walking the Peckforton Hills from Beeston



Castle ending at the Pheasant for a delightful lunch. I would certainly recommend both the walk and the Pheasant Inn to you all and trust that you can join us again next year when we may be rolling in the Welsh hills.

I am about to embark on the gastronomic delights of the Presidential year over the next three months and no doubt come out at the end far larger with Bristol, Birmingham, London and Liverpool - I will report back to you next month.

Do not forget the Annual Dinner on 9th November at Hilton Hotel see details further in this magazine.

Please keep in touch via LinkedIn Twitter and Facebook.

**Best Wishes
Your President
John Ballam**

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Diary Dates

Tue 10 Oct	Social with University of Liverpool celebrating new legal & academic years
Sun 15 Oct	Service to mark the beginning of the New Legal Year
Wed 18 Oct	Employment Law Conference
Thu 9 Nov	Annual Dinner
Wed 22 Nov	Legal Cashiers and Managers Conference
Mon 27 Nov	Annual General Meeting
Wed 6 Dec	Occupational Disease Conference
Wed 13 Dec	Commercial Litigation Conference

Photographs for Liverpool Law

If any member has photographs of Merseyside or surrounding areas and would like them to be featured on future front covers of Liverpool Law, please email editor@liverpoollawsociety.org.uk.

Creating a sustainable Liverpool Law Society

Liverpool Law Society is embarking on a consultation with its members to ensure that it has a robust and sustainable future, fully engaged with the widest possible constituency of professionals involved in the law.

As the legal world undergoes continuing significant change, the Society's constitution has fallen behind modern practice and law firm structures in terms of its membership criteria. Following a debate at General Committee, it has been decided to seek the views of members on some proposed changes.

The General Committee feels strongly that the Society should represent a broad constituency and effectively be the representative for "the law" in its region, representing all lawyers, not just solicitors. To achieve that, the categories of membership need some updating.

What's the issue?

Currently, the Society's membership is divided into three categories (full, affiliate and associated). All members, of any category, are entitled to all the benefit of all the Society's services, including attending training and social events at discounted prices, and to stand for election to the General Committee. Only full members have voting rights at general meetings.

Full members are limited to **solicitors** residing, practising or employed within Merseyside, Widnes (but not Runcorn) or Neston (but not Ellesmere Port) (known as "Area A").

Affiliate members are (essentially) **solicitors** outside Area A. The process for election to membership is slightly different from that for full members.

Associated members comprise any other member of, or person connected with, the legal profession including judges; magistrates; other officials of the "local courts"; barristers; bar students; trainee solicitors employed by members or members' firms; legal executives; and others approved by the General Committee, for example, those who are teaching legal topics at an academic institution.

In modern law firm structures, senior personnel responsible for running practices are often not solicitors. In order to carry out their function, however, they have to be approved by the SRA. Those who fall into this category are not currently classed as full members. It seems incorrect that that should be the case.

Trainees are currently classed as affiliated members which acts as a barrier to trainees being fully engaged with the Society. The Society needs closer engagement with the younger generation who will be the future of the legal profession locally. There are similar concerns about entrants to the profession through the new apprenticeship route.

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The consultation is also seeking views on some changes to corporate membership through which firms can obtain membership for everyone in the firm (not just those legally qualified) as a bulk purchase, so obtaining a discount on subscriptions.

What's the proposal?

Full details of the proposals are in the consultation paper but in a nutshell it is intended to extend full membership to those in senior management roles within corporate member firms and other solicitor equivalents as well as to trainees, legal executives and apprentices.

It is hoped that any changes can be carried out without increasing subscriptions for members - the review is not about raising money for the Society but rather about engaging with the widest range of lawyers and practice leaders in the region for the greater good of all. The consultation is open to all members of the Society of whatever status and we encourage your thoughts and feedback. Our email with details of the proposals should be in your inbox now. If you have not received it and wish to participate, please contact Sarah Poblete at the Society's office (sarahpoblete@liverpoollawsociety.org.uk) and she will send you a further copy. Please do let us know your views. Consultation closes on 17 October. All respondents' names will be entered into a prize draw.

Philip Rooney
Hon Treasurer

Liverpool Law Society

Beauty is the Beast:

A guide to handling cosmetic claims

with Ana Samuel

Wednesday 1st November, 1.30pm - 3pm

This seminar will provide delegates with an understanding of the nuisances of cosmetic surgery claims

The session will cover:

- Definition
- Regulation/Guidance
- Factors specific to cosmetic surgery/treatment claims
- Commonly encountered types of claim
- Legal Basis of claim
- Defendants (surgeon, clinic, provider)
- Duty of care
- Consent
- Causation
- Damages



Venue: Liverpool Law Society, 2nd Floor Helix, Edmund Street,
Liverpool, L3 9NY

Ask not what Liverpool Law Society can do for you...

The time is coming around for this year's AGM and the Society is always looking for new committee members to share ideas, contribute to the society and its activities and represent our members. But what does it mean to be on the committee?

As the name suggests, Liverpool Law Society exists to support solicitors and the legal profession in Liverpool and Merseyside and in doing so we lobby the national Law Society as well as councillors and MPs on issues that affect us and our clients on a local basis. Our area covers Liverpool, Wirral, Sefton, Knowsley, St Helens, Widnes and we have good contacts with firms, councillors, MPs, chambers of commerce and the other professional bodies and societies in all of those areas to promote the work that we, as a profession, do.

Actually, being a committee member entails becoming a director of the Liverpool Law Society. LLS is a company limited guarantee and – contrary

to popular belief – a completely separate entity to the national Law Society. We are not a branch or an outpost. We can form our own views and policies based on what our members locally want.

At any one time there can be up to 27 directors of LLS. At every AGM at least 4 vacancies are created by the retirement of directors. So this year four more places, four more opportunities to get involved and shape our profession, are available.

The term runs for three years and there is a minimum requirement that we ask of directors and that is to attend the monthly general committee meeting where we share reports of our activities and look at new ideas for how the society can engage with and represent members as well as the management of our business. We ask you to be a conduit of information to and from your firm and to others in your practice area and in the wider community.

After the GC commitment, you

can make as much or as little out of your directorship as you wish. There are several specialist practice sub committees as well as management committees for finance and policy and future planning. These include planning events and looking at the sustainability of the society from an income and a membership perspective. On the subject of sustainability and succession, new directors can develop the skills to become office holders. This is the equivalent of our executive management team including finance, policy and secretarial and includes the two Secretaries, the Treasurer, the Vice President, the President and the Immediate Past President.

So please, look at nomination to the committee differently: Do you want to be a director of a not for profit organisation? Do you want to broaden your commercial or management experience? Do you want to be involved in promoting Liverpool and Merseyside as a centre of legal excellence? Do you want to broaden your network of legal and other professional and business contacts?



If the answer is yes, then becoming a director of LLS could be what you are looking for. Nominations close on 27th October 2017. Forms are available from the LLS office by emailing committees@liverpoollawsociety.org.uk. What are you waiting for?

Nina Ferris
Vice President

Employment Law Conference 2017

Wednesday 18th October, 9.30am - 4.30pm

Venue:

Liverpool Law Society, Helix, 2nd Floor, Edmund Street, Liverpool L3 9NY

Covering:

How to Conduct Judicial Mediation ~ Simon Gorton QC

Subject Access Requests: tactical uses in employment cases
~ David Flood

Immigration, Compliance Issues for employers and Brexit
~ Elaine McElroy & Mandy Higgins

Employment Status and the Gig Economy ~ Tom Linden QC

Apprenticeships: what employers need to know
~ Emma Tegerdine

Keynote: Unison fees judgment and its implications
~ Regional Employment Judge Jonathan Parkin

A Round-up of what's coming up ~ Nicky Benson

This event is FREE to 2017/18 Training Season Ticket Holders

To see more info or to book, visit: www.liverpoollawsociety.org.uk



****NEW** The Complete Legal Aid Supervisor**

with Vicky Ling

on Friday 20 October, 2017, 9.30am - 4.45pm

This course covers everything supervisors need to know. It will qualify a new supervisor who hasn't supervised before under Standard Contract Specification requirements for both Civil/Family and Crime. It is also a useful refresher for experienced supervisors.

You will learn about:

- Latest developments in legal aid
 - ◊ including tips for successful civil/family contract bids
- Relevant SQM and Lexcel provisions
- SRA Competence Statement requirements for supervision
- How supervisors qualify and maintain status
- What supervisors need to look for in file reviews
- The main types of legal aid audit, including Contract Manager visits and peer review
- The inter-personal skills supervisors need; listening and feedback
- Different approaches to supervision
- Finding the time to supervise

Venue: Liverpool Law Society, 2nd Floor Helix, Edmund Street, Liverpool, L3 9NY

The Parliamentary Session 2017-19

This first Session of the newly-elected Parliament is to last for two years, perhaps intended to coincide with the timetable leading to Brexit on 29 March 2019, just ahead of the Session's prorogation.

The Parliamentary website sets out a total of 211 pieces of legislation Bills. My usual process is to review Government bills rather than those introduced by Private Members. The Government Bills did not emerge until some time after the Queen's Speech, and there are not very many of which practitioners might need to be aware currently.

The most significant piece of legislation is the European Union (Withdrawal) Bill, which provides for the repeal of the European Communities Act 1972 and its consequences. The wholesale importation of EU jurisprudence, and the wide powers which the Government seeks for secondary legislation, are too elaborate to summarise here but should bear monitoring.

Other legislation to note is that Claims management and financial services should be affected by the Financial Guidance and Claims Bill. Employment Solicitors need to be aware of the Armed Forces

(Flexible Working) Bill. The Telecommunications Infrastructure (Relief from Non-Domestic Rates) Bill will relate to phone masts.

There is as always a Finance Bill. It remains to be seen how this might be affected by the instigation of an Autumn Budget which will be presented later in 2017. A more technical piece of Budgetary legislation has already received Royal Assent. It is the Supply and Appropriation (Main Estimates) Act 2017.

I do not usually refer to Private or Hybrid Bills. This time I make an exception because there is the Hybrid Bill relating for HS2's connection with the North West. It is the High Speed Rail (West Midlands-Crewe) Bill. Local practitioners with clients in the Cheshire area might want to monitor the progress of this Bill and be



aware of how it impacts Planning and other Conveyancing issues.

As the 2017-19 Session progresses, I shall keep "Liverpool Law" readers updated from time to time.

Jeremy Myers
LLS Parliamentary Liaison Officer

The High Sheriff of Merseyside, Stephen Burrows DL invites you to:

A Service to mark the beginning of the Legal Year

at 10.30am on Sunday 15th October 2017
at Liverpool Cathedral, St James Mount, Liverpool, L1 7AZ

The theme of the service for this year is 'Justice in the Community' University students and youth groups from across Merseyside region are particularly encouraged to join this special service and they will be given the opportunity to meet the various members of the judicial system over light refreshments afterwards.

Her Majesty the Queen, at her coronation, promised to serve her people and to ensure justice was delivered in the Kingdom. Following her example, once a year, for one hour, Her Majesty's Judges and others attend the Cathedral and by so doing acknowledge a higher authority than themselves, one recognised by all faiths as a merciful Judge.

The Address will challenge all present as to the meaning of true justice and will urge all to consider how it might be worked out in the communities which we serve. Although the Cathedral service is a specifically Christian one, those of other faiths and none are very warmly welcomed.



Liverpool Law Society

Occupational Disease Conference

Wednesday 6th December 2017 9.30am - 3.30pm

Liverpool Law Society, 2nd Floor Helix, Edmund Street, Liverpool, L3 9NY

ACCREDITED BY APIL TRAINING (5 CPD)

Sessions include:

Expert Evidence: The Range of Opinion and the Right Tool for the Job
David Boyle, Deans Court Chambers

An update on asbestos-related lung and pleural disease – a medical expert's perspective
Dr John Corless, Wirral University Teaching Hospital

The changing face of asbestosis exposure
Martin Stear, Workplace Environment solutions Ltd

Update on low level asbestos exposure cases: the post-Williams' picture
Daniel Easton, Leigh Day

Strategies for developing work in Occupational Disease
Steve Cornforth, SC Consultancy

Handling Deafness Claims
Lisa Fletcher & Elizabeth Wilson-Lagan, Hill Dickinson

Update on Limitation
Ruwena Khan, Zenith Chambers

This event is FREE to 2017/18 Training Season Ticket Holders

Back to the Future

You know you are getting old when you see history begin to repeat itself.

In the 1991 a rule was introduced to the old County Court Rules with the aim of reducing unnecessary delay in civil proceedings. Order 17 Rule 11 (9) created an automatic strike out for cases that had not been set down for trial within 15 months from the close of pleadings. Cue carnage. The Court of Appeal upheld a draconian approach to reinstatement in the case of **Rastin v British Steel (1994)**. Following it both the Courts and Court of Appeal were jammed with cases on the issue until the provision, or any equivalent, was conspicuous by its absence in the CPR. And for a generation all remained calm, until these sage words of one Judge about Ord 17 were forgotten:-

“No doubt those responsible for Prd 17 r 11 had the best of intentions,...but the practical results of the automatic striking out provisions and the Rastin principles seem to me to be highly unsatisfactory to say the least. The cure has proved to be much worse than the disease”.

Then, in **Mitchell v News Group Newspapers Ltd [2013]** “the best of intentions” started again. The root of Mitchell’s draconian approach was that when addressing the Overriding Objective, two factors; the need for litigation to be conducted efficiently and at proportionate cost and the need to enforce compliance with rules, practice directions and court orders, should be given primacy over other considerations. Cue carnage. In **Denton v TH White Ltd [2014]** after what the notes to the White Book describe as “an avalanche of new cases on the principles it laid down and substantial criticism and debate among practitioners and academics” the Court of Appeal gave guidance. Apparently the problem was that Mitchell had been “misunderstood”. In reality the writing had been on the wall since it had been noted by Davis LJ in **Chartwell Estate Agents Ltd v Fergies Properties SA [2014]** that:

“As has been said by the Master of the Rolls (in his 18th Lecture), enforcing compliance is not an end in itself. In the well known words of Lord Justice Bowen: “The courts do not exist for the sake of discipline”.

What those two practices had in common, the writer suggests, was in preventing cases coming to trial in the service of the greater gods of costs and efficiency. In short, they put administration before justice.

The latest incarnation of this tendency was the **Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013**, SI 2013/1893, (“the Fees Order”), that required those who wished to bring claims in the Employment Tribunal (“ET”), to pay a fee, at issue and before hearing amounting to either £390 or £1200 in the Employment Tribunal or £1600 in the Employment Appeal Tribunal, (“EAT”).

Once again the rationale behind the introduction of such fees sounded laudable. In the 2011 Government paper “*Resolving Workplace Disputes: A Consultation*”, charging fees was considered desirable for three reasons; they would transfer some of the cost burden from general taxpayers to those who used the system, they would incentivize earlier settlements and they would disincentivise the pursuit of weak claims. A subsequent MOJ consultation paper proceeded on the basis that the consumption of ET and EAT services without full cost recovery from the users resulted in a “deadweight loss” to society.

The Fees Order was made by Parliament on the 28th of July 2013. Its effect was immediate and profound. It produced a long term reduction of claims accepted by ETs of the order of 66-70%. The biggest drop was in low value claims, such as claims for unpaid wages, unpaid annual leave or claims in which a financial remedy was not sought, such as claims for entitlement to breaks.



However the available research also clearly demonstrated that whilst reducing the number of claims, the Fees Order had conspicuously failed to achieve any of its stated objectives. Whilst it was anticipated that the introduction of fees would achieve a cost recovery rate of about a third, the actual figure, taking into account remission, was 13%. Whilst it was anticipated that fees would increase the number of claims that were settled, in fact the percentage of settled cases fell slightly from 33% to 31% (falling in one year to 8%). Whilst it was anticipated that fees would reduce weak and unmeritorious claims, the evidence showed that the proportion of unsuccessful claims had been consistently higher.

Two applications for Judicial Review were made by Unison seeking the quashing of the Fees Order. The second of those applications came before the Supreme Court having been dismissed by the High Court and Court of Appeal in the recent case of **R (on the application of Unison) v Lord Chancellor [2017] UKSC 51**. The decision of the Court, primarily set out in the Judgment of Lord Reed, was to allow the Union’s appeal and quash the Fees Order as unlawful ab initio. The result is that there will be no issue fees payable in the ET or EAT forthwith and that all fees paid during the currency of the Fees Order, being unlawful, must be repaid to the Claimants who paid them.

The retrospective nature of the ruling may have important consequences. Lord Reed found that the Fees Order was unlawful because it had the effect of preventing access to justice as soon as it was made and was therefore unlawful ab initio. The obvious question then is: what about all those who would have made claims but did not because of fees?

Most such claims would now be out of time. But if a Claimant could demonstrate that the requirement to pay a fee was the reason for not issuing their claim, would they now be able to proceed? The test for extending time in discrimination cases is a wide one; “just and equitable”. However the test for unfair dismissal claims, that it was “not reasonably practicable” to issue the claim within the primary limitation period of 3 months is more tightly drawn and applied. It remains to be seen how the Tribunals apply these

provisions that were designed to focus on the behavior of the potential Claimant rather than on the effects of an unlawful act of the Government. It is certainly arguable that the imposition of an illegal barrier between a Claimant and ET would satisfy both tests and the Judgment appears to provide plenty of ammunition for those who will seek to bring their claims out of time in its general observations, discussed later, but also in its approach to fee remissions.

The evidence before the Supreme Court was that the number of Claimant's qualifying for fees remission had been lower than anticipated. Further, looking at two hypothetical Claimants, working 40 hours a week on the minimum wage, their wages would already put them below the amount required to achieve acceptable living standards according to a report of the Joseph Rowntree Foundation, whilst simultaneously putting them above the level of earnings at which fee remission is available. In both cases the hypothetical Claimant's would have to "sacrifice all other spending, beyond the matters accepted by the Lord Chancellor to be necessities, for a period of two months to bring a Type A claim and for three and a half months in order to bring a type B claim". The problem here, it was noted, is that facing a limitation period of 3 months, the money to issue has to be saved in a period less than the time allowed to issue. It was further noted that some savings suggested by the Lord Chancellor could not be made, but only postponed, such as the buying of new clothes for growing children.

The effect of this is that a Claimant wishing to bring a claim out of time may not have to show that they simply did not have the money to pay the fee, but only that they could not have paid the fee without it having an impact on their ability to enjoy acceptable living standards.

A further interesting possibility is the effect of any future decision allows claims to be brought substantially out of time by Claimants. Where does that leave the Respondent who would have been in a position to defend the claim had it been brought in time, but is now hopelessly compromised in its ability to do so because the documents and staff they would have relied on being no longer available? Such a scenario raises the possibility of claims being brought against the Government either by disgruntled Respondents compelled respond to claims in relation to which they are now prejudiced or by Claimants on a "loss of chance" basis. Would the Government be able to protect itself and businesses against such claims by legislation? The wording of the Judgment suggests that only the clearest primary legislation could do so, and it is difficult to see any such Act being politically attractive.

Of even greater potential importance than its retrospective effect is the fact that the Judgment has at its heart a restatement and reassertion of a constitutional common law

right of access to justice. This Lord Reed traces all the way back to Chapter 40 of the Magna Carta of 1215, through Sir Edward Coke's "Institutes of the Laws of England" in 1642, Blackstone's "Commentaries on the Laws of England" in 1769 and right up to the present day. It rejects utterly the Government's contention behind the Fees Order that cases are of value only to those "service users" using the Courts stating:

"Access to the courts is not, therefore, of value only to the particular individuals involved. That is most obviously true of cases which establish principles of general importance. When for example, Mrs Donoghue won her appeal to the House of Lords (Donoghue v Stevenson [1932]), the decision established that producers of consumer goods are under a duty to take care for the health and safety of the consumers of those goods; one of the most important developments of in the law of this country in the 20th century. To say that it was of no value to anyone other than Mrs Donoghue and the lawyers and judges involved in the case would be absurd".

His Lordship also remarked that on this point it was not always desirable that claims should be settled; some cases are of general importance and require a ruling so that:-

".....every day in the courts and tribunals of this country, the names of people who brought cases in the past live on as shorthand for the legal rules and principles which their cases established".

He noted that the Lord Chancellor's written case in the appeal cited over 60 cases, each of which bore the name of the individual involved, thereby refuting, "the idea that taxpayers derive no benefit from the case brought by other people". Access to justice is therefore essential to the rule of law as:-

"Without such access, laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade".

It is this restatement of the common law right of access to justice, enshrining both its antiquity and its central role in the rule of law, that makes this Judgment have potential consequences beyond the simple issue of the Fees Order. It appears, the writer suggests, putting the need to have cases litigated and decided before any provisions that are made under the influence of a zeal to have claims settled early or litigated with an emphasis on their cost and time. Justice appears to have been put before administration. It is speculation, but this may be the Supreme Court signaling its intent, pre "Brexit", to re-establish the common law as the principle guardian of citizen's rights in a post European/ ECJ world.

David Flood
St John's Buildings
Members of Liverpool Law Society

UNISON appeal against Tribunal Fees

Following the recent decision of the Supreme Court in the appeal by UNISON against the introduction of fees in the Employment Tribunals, the fees order has been found to be unlawful and from the date of the judgment, fees have no longer been charged for anyone wishing to file a claim in the employment tribunals.

When the government was first challenged about the introduction of fees they committed to reimbursing any fees which may ultimately found to be unlawful. They are now in the process of setting up a process to do this. It is estimated that some £32million will need to be reimbursed. It will however be a complicated process as not only have claimants paid fees but in many cases successful claimants had their fees repaid by respondents, either because they were ordered to be paid by the Tribunal or because they were part of a settlement. How this is to be achieved will be subject to an announcement by the government later this month.

It is anticipated that there will a number of applications made to commence Tribunal claims in respect of matters which are out of time, but where individuals claim that they were deterred from claiming by the unlawful fees regime. There are likely to be a number of test cases brought before the Tribunal. It is likely to prove easier for claimants to succeed in this argument for discrimination claims, where the tribunal can apply the "just and equitable" test, rather than asking whether it was not reasonably practicable for the claim to be brought in time. There may also be applications for reinstating claims which claimants may say that they had to withdraw part way through because they couldn't afford to pay the higher hearing fee. These are all matters which will come before the Tribunals to determine in the coming months. The Tribunals are anticipating that there will be an immediate increase in claims but most commentators do not expect the number of claims to get back to the pre fees levels.

The Supreme Court judgment may have implications which are wider than just in relation to employment claims. Practical Law summarised it as follows:

"This is a momentous decision; it is, without doubt, the most significant employment case for many years, because of the impact it will have on virtually every aspect of employment law. In a remarkably expansive judgment, which eloquently explains the rule of law and its fundamental importance, the Supreme Court has schooled the government on the purpose behind accessible courts and open justice. In this regard, the ramifications of this judgment go far beyond the realms of employment law. Simply put, where access to justice is blocked, society loses out. In the employment context, where barriers are erected to enforcing workers' rights, such rights are effectively worthless, and where employers know that claimants are unable or unwilling to bring claims, the whole system of employment protection is undermined."



Although the Employment Committee hasn't had a meeting since the Judgment, from previous discussions, the vast majority, if not all of our members, both those who represent claimants and respondents consider that this is a just decision.

We are anticipating an increase in Tribunal work as a result.

Nicky Benson
Chair
LLS Employment Law
Sub-Committee



Contract & Commercial Update

with Chris Beanland on Friday 20th October, 1.30pm - 4.45pm

This course provides busy practitioners with a practical update on contract and commercial developments over the last couple of years. **The course is aimed at both contentious and non-contentious lawyers and will give attendees practical pointers to use in their practice areas**

The course will cover:

- Law Society guidance on electronic signatures
- How effective are anti-oral variation clauses?: *Globe Motors Inc v Lucas Varity Electric Steering Ltd* [2016] EWCA Civ 396
- Husband signing purchase contract on behalf of wife but with no authority: *Marlbray Ltd v Laditi* [2016] EWCA Civ 476
- Party to a contract failing to sign signature block: *Reveille Independent LLC v Anotech International (UK) Ltd* [2016] EWCA Civ 443
- Offer and acceptance and compromise agreements: *Gibbs v Lakeside Developments Ltd* [2016] EWHC 2203
- Bespoke terms, standard terms and priority clauses: *Alexander v West Bromwich Mortgage Co* [2016] EWCA Civ 498
- Application of the new test for implied terms: *Irish Bank Resolution Corp v Camden Market Holdings Corp* [2017] EWCA Civ 7
- Are meals served on an all inclusive holiday subject to an implied term that they should be of satisfactory quality? *Wood v TUI Travel plc* [2017] EWCA Civ 11
- Meaning of 'consequential loss': *Star Polaris LLC v HHIC-Phil Inc* [2016] EWHC 2941
- Literal construction of contracts: *Dooba Developments Ltd v McLagan Investments Ltd* [2016] EWHC 2944
- Application of the new law on penalties: *Vivienne Westwood Ltd v Conduit Street Developments Ltd* [2017] EWHC 350
- Extension of 'Wrotham Park' damages: *Morris-Garner v One Step (Support) Ltd* [2016] EWCA Civ 180

Venue: Liverpool Law Society, 2nd Floor Helix, Edmund Street, Liverpool, L3 9NY



Criminal Law Update with Anthony Edwards

on Thursday 19th October, 1.30pm - 4.45pm

This course enables criminal law solicitors to keep up to date with developments in the law. It covers all aspects of the criminal process from investigation to final review. It includes examination of all developments in legal aid and costs, criminal investigations, criminal law, procedure, evidence and sentencing. A review of all relevant case law will be included.

The course will include consideration of:

- New legislation for 2017 including the Criminal Finances Act 2017
- Legal Professional Privilege in criminal investigations
- New Law Society guidance on SFO interviews and rejecting un-remunerative publicly funded work (and s38 appointments)
- New Criminal Procedure Rules and Criminal Practice Direction 2017
- Local Authority prosecutions
- Time limits
- Defence case statements
- Self defence and defences to murder
- Factual basis for plea
- Sentencing Guidelines including all breach proceedings
- Evidence: hearsay; sexual history; and vulnerable witnesses
- Defence costs orders
- Legal aid issues; Graduated fees including page count

Venue: Liverpool Law Society, 2nd Floor Helix, Edmund Street, Liverpool, L3 9NY

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"Dr. Tribe's Vignettes of Liverpool Legal History"

(4) David Maxwell Fyfe: The Earl of Kilmuir – the Second Liverpool Lord Chancellor

Introduction

This is the fourth column in the vignette series. We can now move away from our treatment of the Earl of Birkenhead and progress to the second Liverpool Lord Chancellor, namely, David Patrick Maxwell Fyfe GCVO, PC, QC, 1st Earl of Kilmuir (29 May 1900 – 27 January 1967, pictured) a man of whom the Northern Circuit once apparently sang:

**"The nearest thing to death in life,
Is David Patrick Maxwell Fyfe,
Though underneath that gloomy shell,
He does himself extremely well."**

Is that a fair reflection of his life and contribution as the holder of five of the great offices of State and a "[politician] of the first importance and potential leader of [his] party"? This column will attempt to address these questions. At first blush readers may however wonder why this Edinburgh born barrister and politician, whose peerage title forever links him to a small Scottish village to the east of Invergordon, warrants inclusion in a series of vignettes on Liverpool's legal history. There are two answers. First, David Maxwell Fyfe's pupillage and first tenancy were conducted in Liverpool at the Chambers of George Lynskey. Secondly, Maxwell Fyfe sat as a Member of Parliament for the West Derby division of Liverpool from 1935 (elected unopposed) until his elevation to the peerage in 1954. These factors merit his inclusion in our vignette series. This is fortuitous as the Earl of Kilmuir's legacy is most closely related to his having been responsible for drafting the European Convention on Human Rights (ECHR) amongst other noteworthy contributions to national and international law reform. He was also a keen European in a broader context, noteworthy in our own troubled times. He also produced the Kilmuir Rules. These rules contained the background to the judicial convention that judges should not speak to the press about their legal opinions so as to ensure judicial impartiality.

David Maxwell Fyfe will be referred to by that nomenclature until he was elevated to the peerage on 19 October 1954. He will then be referred to as the Earl of Kilmuir, his final title in the nobility. As Dutton has noted Kilmuir is the name of the village, "near where his mother was born."

It is the habit of these vignettes to pose a novel question or thesis to test. With David Maxwell Fyfe we will examine his contribution to the common law generally and touch on similarities between the two Liverpool Lord Chancellors (Birkenhead and Kilmuir) and test whether the Earl of Kilmuir was familiar with, and inspired by, the life and career of the 1st Earl of Birkenhead, Gray's Inn's second Lord Chancellor after Sir Francis Bacon (Viscount St Albans). Most importantly though, we will examine Maxwell Fyfe's Liverpool connections.

(1) The Earl of Kilmuir – a biographical sketch

As noted above, David Maxwell Fyfe was born in Edinburgh in 1900. His father, William Thomas Fyfe, was an inspector of schools and former headmaster. His mother, Isabella Campbell, was a school teacher. The young David received his initial education at George Watson's College. Balliol College in the University of Oxford soon followed when he went up in Autumn 1917 to read Greats, Oxford's classics degree. His studies were not a success. He obtained a Third class degree in 1921, politics and the Oxford Union proving formidable distractions. This performance is perhaps at odds with what one biographer has referred to as "his enormous industry and apparently insatiable appetite for paperwork..." Or, alternatively, Maxwell Fyfe's University performance may have laid the foundations for the hardworking ethos that emerged in later life. Indeed, reflecting on this time at University, his "undistinguished Degree" and his prioritisation of Conservatism and the Union, above College work and fitness, he noted, "I wish I had worked harder – but there it is."



David Maxwell Fyfe then progressed along similar lines to his predecessor on the Woolsack, namely, Lord Birkenhead, following in his footsteps to the same Inn of Court as a pupil barrister. Maxwell Fyfe was called to the bar on the 28th June 1922 by the Honourable Society of Gray's Inn. He would successively become a Bencher in July 1936 and the Treasurer in 1943. On his election as a Bencher the Gray's Inn's periodical GRAYA noted, "He is a member of the Northern Circuit from which so many great lawyers have succeeded to the Bench of Gray's Inn."

The 15th of April 1925 was a happy day for William Harrison, a Liverpool engineer and his actor son Rex Harrison, not least because Rex's sister Sylvia Margaret (who died in 1992) married David Maxwell Fyfe and in so doing would become the future Countess of Kilmuir. The union begot three daughters (Lalage, Pamela and Miranda, "the eldest of whom died when still at school as the result of a tragic cycling accident."). Following Maxwell Fyfe's death Sylvia would go on to marry Herbrand Edward Dundonald Brassey Sackville, the 9th Earl De La Warr. In so doing she would become a "Double Countess" in addition to being a Dame in her own right, the honour being awarded to her for her services to the Conservative Party.

Again much like his predecessor Lord Birkenhead, David Maxwell Fyfe embarked on a career in both politics and the law and just like his FE he was full of ambition. At the end of his legal career (discussed below) Lord Rea paid tribute to the recently sacked Lord Chancellor by recalling a conversation that occurred in Liverpool some decades before in which the then David Maxwell Fyfe revealed his aspirations to "take silk in his early thirties, be a Minister of the Crown in his early forties, and to be top of the legal profession...in his early fifties." Success was indeed swift. Maxwell Fyfe took silk on 16th February 1934, at the tender age of 34, an incredible achievement judged by contemporary norms as well as the present day, purportedly the youngest King's Counsel in 250 years. His youth certainly made an impression on the Lord Chancellor, Lord

Sankey, at the swearing in session. Lord Sankey remarked "You are very young."

Eleven and a half years earlier Maxwell Fyfe went to Liverpool at the age of twenty-two and a half. By that stage he had already met a great number of eminent political men through his time at Oxford (e.g. Balfour, Asquith, Baldwin, Churchill). Crucially, he had also met a number of luminaries in his own profession, including Lord Reading (Rufus Isaacs) and FE Smith whom he had also heard speak. Of FE he was later to observe, "They [FE and Churchill] were so actively conscious of their force and dialectical ability. No one could equal FE in the spontaneously incisive phrase..."

So how did Maxwell Fyfe end up in Liverpool? Was it because of the City's attraction as a "magnet for the Irish and Welsh in particular, but also for the Scots" (of which Maxwell Fyfe was one) as Bryce has opined, or, is the reason a familiar one with vestiges that survive to this day. On this formative period Maxwell Fyfe noted:

"...Again there occurred one of the turning points of my life. An old friend, Judge Dowdall, whose acquaintance I had made at Oxford, had become County Court Judge at Liverpool. He was a Liverpool man and had been at the local Bar there...He...suggested to me that, as I was short of money, it would be a good thing to go to a local Bar where there was a chance of an earlier acquisition of work."

So it was that Maxwell Fyfe entered Chambers in December 1922 at 25 Lord Street (the same address FE Smith had occupied) with Harold Lynskey (later Mr Justice Lynskey – a future vignette) and his pupil master designate Howard Jones, aided by a Gray's Inn pupillage award of 100 guineas and £5 per month from his mother. He joined the Northern Circuit in January 1923. Maxwell Fyfe described the workings of the Northern Circuit "one of the greatest of legal institutions" in the following way:

"At the beginning of the 1880s junior barristers began to settle in Liverpool...whose enormous concentrations of population required immediate attention for their law cases and men on the spot to whom solicitors could go for advice. The Liverpool Bar, although of that comparatively recent growth, had had a very distinguished crop of men."

Some reflections on his early career in Liverpool can be garnered both from his memoirs but also from other sources such as Hansard. Speaking in the House of Commons in 1948 he recalled his contact with the criminal elements and how these sustained his belief in the death penalty's continued use:

"For the first five or ten working years of my life, I came into contact at short intervals with the criminal population of Lancashire...I believe...the ordinary runs of these fellows, the thing that keeps them from giving an old lady a crack over the head...is fear that if they go too far then 'the 8 o'clock 'walk' may well await them."

Maxwell Fyfe's early case load involved subjects as disparate as defending in Sefton Park indecent assault cases, County Court briefs for tenants trying to prevent eviction through the Increase of Rent and Mortgage Interest (War Restrictions) Act 1915, murder cases at the Manchester Assizes, prosecuting Whitehaven rioters, defending moneylenders, defending Edge Hill kidnappers, defending sadistic stranglers, and defending in the famous Ruxton murder case.

Maxwell Fyfe's judicial career, such as it was (see (2) below), commenced with appointment as the Recorder of Oldham in 1936. On the outbreak of the Second World War he joined the Judge Advocate-General's department. A post he held until 5th March 1942 when he was appointed Solicitor-General. He joined the Privy Council and received the customary knighthood. Promotion followed, albeit briefly, on 29th May 1945 with appointment as Attorney-General. During Maxwell Fyfe's first appearance in the House of Lords as Attorney-

General Lord Simon, sitting with Lord Russel of Killowen, said, "Sir David, we observe that you have become Attorney-General. This House takes no cognizance of such changes of office. On the other hand, we also observe that today is your birthday. We have pleasure in wishing you 'Many happy returns'". As is well known Churchill was unceremoniously swept from power by a Labour landslide in July 1945. So as to solidify the non-political nature of the Nuremberg trials Sir Hartley Shawcross KC (as he then was, later Lord Shawcross QC – the subject matter of the next vignette) appointed Maxwell Fyfe as the deputy Chief British prosecutor. As one biographer has noted this shone a light on Maxwell Fyfe's qualities as a "capable lawyer, efficient administrator and concerned housemaster."

With peace came a period in opposition. Government, with a ministerial post as Home Secretary, followed in 1951. His period in office was controversial, as Duxbury has noted in relation to opposition to legalising homosexuality, the handling of the Suez crisis, and the abolition and use of the death penalty. In relation to the later the Bentley case and the John Christie murders (recently dramatised in the BBC series 'Rillington Place' featuring Tim Roth reprising Lord Attenborough's 1971 portrayal of the villainous Christie) stand out as inauspicious periods in Maxwell Fyfe's Ministerial career. Timothy Evans was hanged for his wife and child's murder in 1951. He was given a posthumous pardon in 1966 as Christie was held responsible for their deaths out of a total of eight murders. Christie has been a prosecution witness at Evans' trial. In another controversial brush with the death penalty Maxwell Fyfe refused to reprieve the troubled Derek Bentley who was hanged for the murder of PC Sydney Miles in January 1953, whilst the juvenile perpetrator Christopher Craig, was merely imprisoned despite having fired the fatal shot into the married policeman and father of two. These episodes were not however sufficiently damaging to preclude elevation to the Woolsack. Indeed, Bryce has noted, perhaps at odds with Duxbury, of Maxwell Fyfe's tenure as Home Secretary, "I think that Fyfe compared very favourably with any Home Secretary of modern times." Taking the title Viscount Kilmuir he succeeded Lord Simmonds as Lord Chancellor on the 19th October 1954. Gray's Inn gave a dinner in his honour on the 9th December 1954 which was attended by, inter alia, the HRH the Duke of Gloucester, Sir Hartley Shawcross and Mr Justice Devlin.

The Earl of Kilmuir had three impactful relationships in the wider European sphere that go beyond his Nuremberg work. This is a particular theme of Duxbury's recent biography. The Earl was one of the draftsmen of the ECHR. He was also both a member of the committee of the United European Movement and a member of the assembly of the Council of Europe. In was in the latter capacity that he contributed to the drafting of the ECHR. Duxbury, who has called the Earl of Kilmuir a "committed European" goes on to spend a significant part of his biography discussing the Earl of Kilmuir's forward looking European stance. Recent idiotic attempts by senior members of the Conservative party to repeal the Human Rights Act 1998 would perhaps have the Earl of Kilmuir spinning in his grave. The bonkers Brexit fiasco would perhaps cause those grave revolutions to quicken!

In terms of character Duxbury has noted that Maxwell Fyfe was, "adept at domesticating disputes and getting divergent parties to compromise, loyal to colleagues, courteous to his adversaries, hard-working, mild-mannered, calm under stress, an indefatigable political networker, and he was willing to make, and take responsibility for, some tough legal and political decisions." He also had a reputation for being dull and gloomy as the poem cited in the introduction (above) demonstrates. He did however have a self-deprecating sense of humour, noting in his biography his change in physical appearance since his Rugby playing days at Oxford; "I was only too conscious that my waist-line had by then commenced a career of its own." Bryce, who knew Maxwell Fyfe, has noted that "In so many ways he [Kilmuir] was the exact opposite of Liverpool's other Lord Chancellor, Lord Birkenhead....Fyfe was solid, unathletic, slow moving, slow talking, kind at all times, and patently sincere." In terms of physicality Bryce continues, "He

Continued overleaf

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As Remerrez, aka Dick Johnson, Peter Auty also excels himself. I've never seen him act with such energy and his vibrant, somewhat mushy tenor finds a grand sweep for Ch'ella mi creda, one of Puccini's most seductive inspirations.

Rupert Christiansen
The Telegraph

”

Brabners receives Gold Standard Award for quality of service

Commercial law firm Brabners has been awarded the Investor in Customers (IIC) Gold accreditation for delivering exceptional levels of customer service.

The award follows a rigorous independent assessment by IIC, the customer experience agency, where the business was benchmarked across four key areas. This includes understanding and meeting clients' needs, delighting clients and creating loyalty.

The research combines feedback from more than 370 of Brabners' clients, employees and senior management and Brabners achieved an overall score of 8.30 out of 10, resulting in the Gold accreditation.

It is the highest IIC accolade and is awarded to those organisations that consistently deliver an outstanding client service.

Janet Pickavance, Chief Executive of Brabners, said: "We place clients at the heart of everything we do and to be independently recognised for consistently delivering high-quality service demonstrates the hard work and commitment of our teams, which is something they should be proud of.

"We're continually looking for ways to go above and beyond for clients, and taking part in independent assessments such as Investor in Customers is a vital part of how we do this. It's not just great recognition for our people, but a tool we will use to ensure continuous



Janet Pickavance

improvement."

Tony Barritt, Managing Director of Investor in Customers, added: "We are delighted that the senior partners at Brabners have actively responded to their feedback from clients and put in place a number of key business improvements.

"Their latest Investor in Customers assessment clearly indicates the benefits of focussing on client experience and employee engagement, with scores increasing against all our key metrics. We are pleased to present Brabners with our Gold award for delivering an exceptional customer experience."

IIC is a comprehensive program through which hundreds of businesses have been independently recognised as offering remarkable customer service. The result builds on Brabners' previous score of 7.88 out of 10.

Hill Dickinson Strengthens Construction Offering with Four New Hires

Leading international commercial law firm Hill Dickinson today announces the appointment of four new members to the firm's Construction and Engineering team in Liverpool, cementing its position as one of the largest Construction teams in the North West.

The team of four join Hill Dickinson from Systech Solicitors and bring a wealth of both legal and advisory experience and contacts in the construction sector, particularly in the contractor-led market which Hill Dickinson has identified as a key growth area for the firm. Additionally, the new appointments will further enhance Hill Dickinson's existing dispute resolution offering and international profile in construction and engineering work.

Joining Hill Dickinson are:

Brian Quinn, previously (founding) Partner at Systech Solicitors, solicitor, chartered quantity surveyor and mediator, who joins as a Legal Director

Nick Connor, previously Partner at Systech Solicitors and a legally qualified quantity surveyor, who joins as a Consultant

Ron Farrell, who joins as Consultant, with considerable experience in both the contentious and non-contentious aspects of construction law

Phil Gazzola, a dual qualified solicitor and chartered quantity surveyor who joins as a Senior Associate.

Hill Dickinson's Construction and Engineering team continues to grow year on year, reflecting the firm's investment in that sector. The latest additions mean the team now numbers 16; a significant specialist construction and engineering resource. The incoming team have specific experience of large infrastructure projects across the UK, Europe, the Middle East and Asia. The existing Hill Dickinson team has particular expertise in the transport, infrastructure, industrial, developer led residential schemes, oil and gas, energy and renewable sectors, and is also seeing increasing instructions from the sport and leisure industry. The experience of Brian, Nick, Ron and Phil will support and complement Hill Dickinson's work across these sectors as well as adding further depth in large project experience and capability.

Alan Pugh, Partner and Head of Construction and Engineering at Hill Dickinson commented: "I am delighted to welcome Brian, Nick, Ron and Phil to our team in Liverpool as we expand further and take on new clients. They bring a wealth of experience and contacts in the contractor-led market which is a key focus of our growth strategy. Their expertise across both legal and advisory construction matters will be of great value to our clients and lifts our position as the leading construction and engineering team in the North West. We very much look forward to working with them."



Ron Farrell, Brian Quinn, Alan Pugh, Philip Gazzola & Nick Connor

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Articles wanted for Liverpool City Region Local Growth Hub website

Liverpool Law Society has been approached to see if our members would be interested in providing guest articles for the Liverpool City Region's Local Growth Hub website: localgrowthhub.com. The proposal is for the articles to provide advice / guidance on topical legislation for growth businesses and would be between 500 and 800 words in length. Included in the post would be an introductory line about the topic and the author (with a link to your company profile page or LinkedIn profile)

If you are interested in this, please contact Sarah Poblete at sarah@liverpoollawsociety.org.uk.



SRA Accounts Rules for Finance Staff & COFA's

with Joanne Morris

Tuesday 31 October

9.30am - 12.45 pm

This course will take you or your staff back to basics by covering:

- Setting the scene – a history of the accounts rules and an update of the risks in the SRA Risk Outlook 2017/18 relating to the finance department
- What makes accounting in law firms so different
- The role of the COFA and the recording and reporting of breaches
- Double entry book keeping principles
- A refresher of the key rules including:
 - Rules 13 – 21 Client money and the operation of the client account including:
 - Rules 22 -25 interest rules
 - Rules 26 – 30 accounting systems and records
 - Rules 31 – 52 monitoring and investigations by the SRA and the Accountants Report
- The future – SRA and the proposed new accounts rules

Venue: Liverpool Law Society, 2nd Floor Helix, Edmund Street, Liverpool, L3 9NY

The 2017 Residential Property Conference

Liverpool Law Society hosted the 'sell out' annual Residential Property Conference on 13 September attended by a full range of conveyancing practitioners across Liverpool and the North West.

It was an excellent opportunity to catch up with others in the profession and to refresh our knowledge on recent case law. The opportunity to get busy conveyancers away from their desk and networking is a chance not to be missed.

The event was chaired by Angela Hesketh, Group Head of Property, at Jackson Lees and had an impressive line-up of speakers including Eddie Goldsmith informing the group of the potential future development for conveyancing procedure, Alistair Guthrie (consultant) lending his extensive knowledge on public and private rights of Way, Angela Hesketh providing an update on the SDLT maze surrounding second homes, Chris Goodwin (Titlesolv) representing our sponsor and providing an insight into all things title and indemnity insurance.

The afternoon started with a very relevant talk from the infamous Richard Snape regarding Cyber Security, Leasehold – is it the new PPI? and of course Snapegate.

The day was brought to a close by Jamie Winch (Land



Alistair Guthrie, Angela Hesketh, Eddie Goldsmith, Jamie Winch & Chris Goodwin

Registry) providing an update on all things Land Registry and inviting as many conveyancers as possible to their event at St Georges Hall on 22 November 2017.

All in all a great day full of invaluable updates, handy tips and many likeminded, forward-thinking conveyancers. Thanks go to our sponsors TitleSolv & Index PI.

The role of technology in probate

Peter Baverstock, CEO of LEAP UK, looks at how the role of technology in probate has evolved over time to provide a better service for users, and gives his opinion of how he sees probate technology developing in the future

Traditionally, the probate department is the last to become automated in law firms. This is for a variety of reasons and is often not viewed as a fast-paced and profitable part of the business. In fact, a lot of firms don't use automation in probate when they should, especially given the high level of document production involved.

There is also a perceived fear that by using a practice management system you lose that all-important personal touch when practising probate and that handling matters and dealing with clients appropriately under difficult circumstances may be lost with automation.

However, innovative technology is allowing law firms to perform complex transactions efficiently and at minimum cost, improving service for clients and helping to build a healthy probate offering.

Automation of legal forms and precedents is making life easier for law firms as it prevents errors and delays in correspondence and

enables greater collaboration between solicitor and client. Adopting a cloud-based practice management solution means solicitors can bring all their matter details into a single estate account document, saving themselves hours of reconciliations and also reducing the labour-intensive time involved in heavy document production. Lawyers can also manage matters via their smartphone or tablet, enabling complete mobility and helping them to meet their clients' needs efficiently and with all the relevant matter information to hand.

Looking forward to the future of probate within law firms, I believe solicitors will be required to submit all forms for Inheritance Tax through online solutions and government portals. So, inevitably, more law firms will be adopting cloud-based practice management solutions to allow them to do this, streamlining their process from start to finish.

Also, I would expect to see a greater reliance on document management systems such as LawConnect for future wills handling. This will remove the need to store large archives of wills, gathering dust within law firms. Instead, they will be held in the cloud, organised and accessible 24/7 for both the client and solicitor.

Charles Feeny joins Mediation Panel as first Liverpool based Mediator



Charles Feeny, based at Complete Counsel, Old Hall Street, Liverpool has been invited to join the CEDR mediation panel following his recent qualification as a mediator. He is the first Liverpool based individual to be engaged by CEDR as a mediator.

CEDR, the Centre for Effective Dispute Resolution, is based in London and has been recognised for a number of years as a leading provider and developer of mediation and other alternative dispute resolution services. In 2016, CEDR successfully tendered to the NHS LA, now NHS Resolution, to perform mediation services. NHS Resolution is committed to much greater use of mediation in preference to more traditional and protracted litigation.

Charles qualified as a mediator by attending a course run by CEDR at Sitges near to Barcelona in Spain in August 2016. After assessment on the course he has been invited to join the CEDR panel and completed his training as required by the Civil Mediation Council by attending three mediations as an observer.

Charles said, "Like many litigators, I was initially pretty

sceptical about mediation.

However, my view was radically changed by attending the CEDR course and getting a full and accurate appreciation of the advantages of mediation.

Mediation approaches the attempted resolution by listening to all the parties and taking into account what is important to them in the context of the dispute as opposed to letting the dispute being resolved by legal principles which often appear to the parties to be excessively technical and difficult to understand. It is important that the mediator listens to and understands all the parties' points of view but also attempts to get the parties to understand each other's point of view and the clear advantage of a consensual settlement as opposed to entrenched litigation. If the mediation works well, the settlement is truly consensual. I am not so naïve as to believe that mediation always results in the parties leaving the dispute without any regrets but I think it is to be favourably contrasted with litigation to trial which, whilst it provides a resolution, can often leave both parties disappointed and one or other embittered perhaps for the rest of their lives."

Charles was surprised to be told that he appeared to be the first individual in Liverpool who had become a member of the CEDR panel.

"There is a perception that mediation has been slow to take off in Liverpool and perhaps more generally in the north of England. I think that everyone is recognising that we are going through a period of unprecedented change in the provision of legal services. It is important to recognise the need for change and to be able to adapt to it in the most appropriate way. I have seen the advantage of being prepared to address the inevitability of working differently by transferring the support for my practice to Complete Counsel which is an innovative, digitally based business providing services to barristers on a contractual basis. I found this way of operating much more

efficient and much better value as the resources are directed towards the areas which make a difference in relation to your practice. I think there is a clear analogy with mediation as a different way of resolving disputes and my feeling is that these alternative ways of operating will likely become the norm over a relatively short period of time."

John Munton, Director of Dispute Resolution Services at CEDR: "We are proud of the quality of the existing members of the CEDR panel, who have created a high bar by which newcomers are judged. It is therefore gratifying to see new excellent mediators join us. The backgrounds in our latest intake tells the real story to clients of the innovation and professionalism available to the market."

In addition to Charles, Professor Gus Baker has been asked to join the CEDR panel and will shortly complete his training. Gus Baker is the emeritus Professor of Neuropsychology at the University of Liverpool and therefore will become the second Liverpool based CEDR mediator.

Both Charles and Gus also provide mediation services through Complete Mediation which is a sister company to Complete Counsel and aims in particular to provide mediation services to the local business community in Liverpool.

www.completecounsel.co.uk
www.completemediation.co.uk
Claire.labio@completecounsel.co.uk

Thursday 2nd November
 R&H
 Fine Wines
 5TH
 ANNIVERSARY
 TASTING
 - Liverpool Town Hall -
 Presented by Marie Carrin
 Tickets available at R&H Fine Wines £20
 Event sponsored by Roundtable - www.roundtable.co.uk



Annual Dinner 2017

Calling all members of Liverpool Law Society...

Celebrate being part of a strong, proud and vibrant legal profession at the Society's 190th Dinner.

Guest Speakers

Sir Brian Leveson

President of the Queen's Bench Division

&

Max Steinberg CBE

Chief Executive Liverpool Vision

Thursday 9th November 2017, 6.45pm for 7.30pm

Hilton Hotel, 3 Thomas Steers Way, Liverpool, L1 8LW

Includes a welcome drink on arrival followed by a three course meal, speeches and music.

A table of 10 is £750.00 + VAT (£900 inc vat) Individual reservations £75.00 + VAT (£90 inc vat)
Limited tickets available for Merseyside Junior Lawyers Division members for £40 + VAT (£48 inc. vat) per person

Dress code: Black Tie

For more information & to book visit: www.liverpoollawsociety.org.uk/socialevents



Council Member's Report

The latest news from Charlie Jones, Council Member for Merseyside

First of all, credit where credit is due. At the time of preparing this report, it has just been announced that the MOJ has decided to postpone the pilot trial for extending court opening hours which would have created additional pressure on many.

The Law Society has campaigned hard against this. In particular, the Civil Justice Committee have campaigned hard, with assistance from many Local Law Societies. In Manchester, where a pilot was proposed, Jeff Lewis, Council Member for Manchester and a member of the Civil Justice Committee, has worked hard to provide evidence as to why it will not work. Well done Jeff. The Government say it has been postponed until a 'robust efficient valuation system' is in progress. Of course, they said this in 2013. What the Government considers a 'robust efficient valuation system' is probably not similar to a lawyer's definition of that phrase or the person on the Clapham Omnibus.

Incidentally, showing their sense of humour, our friends at Manchester Law Society have suggested that there are more legal pilots in Manchester in the Manchester legal world than there are Airline pilots at Manchester Airport!

Since I last reported I have been to a Council Meeting and a Civil Justice meeting, together with a meeting of the Law Society Education Strategy group, chaired by Peter Liver (who kindly came to Liverpool to consult locally). It should be noted that this is not an attempt to eat into local Law Societies' training systems, but is rather an effort to establish a strategy for the future education of our profession, guiding those before they become involved in the law, whilst they are studying, when they are a trainee and junior lawyer, and also thereafter. This is something we need to take control of before the SRA completely mess things up. The strategy at the moment is being put in place, and involves working with stakeholders. I am

hopeful that it will bear fruit in the future.

The MOJ are of course pressing on with the online court proposals. The Civil Justice Committee at Chancery Lane are keeping a close eye on this, and many firms are working with the group who have been appointed by the MOJ to look into it. There are many aspects of it which the Civil Justice Group is unsatisfied with. Hopefully, these can be put to right. One problem is that the appointees are not lawyers, but rather, are IT experts. It is therefore refreshing that they are working with Lawyers so that hopefully we can steer them in the right direction, if this initiative is ever to come to pass with success.

In our Council Meeting we had a briefing on the considerable amount of work that the Law Society is doing relating to Brexit. Your Society is being very active in this. I understand there are to be regional consultancy sessions in relation to the advice the Law Society is giving in relation to Brexit, the effect it will have upon our profession, and where our profession can help society generally.

We also had an interesting debate about the standard of proof in relation to the Solicitors Disciplinary Tribunal. As most of you will know (I hope) the standard of proof currently is the criminal standard of proof ie, 'beyond reasonable doubt'. There is strong pressure to lower the standard to the civil standard, ie, upon the 'balance of probabilities'. Such pressure comes from not only the SRA, but also the judiciary. Leveson LJ has said that 'the need for a re-evaluation of the approach in disciplinary measures are intended to protect the public' is necessary. In our profession, an adverse finding at the SDT is likely to result in loss of one's ability to hold down a job, and may even result in a whole firm going under. For someone to be found guilty in the SDT is a very serious matter. Counsel's view is that the criminal standard should be maintained. However,

this is a matter for the profession and there may be other views. Accordingly, a consultation is to be put out to the profession by the Law Society to try and assess the feeling of the profession. It is interesting that other professions seem to adopt the civil standard, although the Bar maintain the criminal standard. Overseas jurisdictions in New South Wales and New Zealand, for example, adopt the civil standard. At the New York Bar the standard is the 'preponderance of the evidence'. What is your view? I would be interested to know.

We took part in an interesting culture discussion to try and identify how Council Members can work closer and better with the Staff and Executive at Chancery Lane. This was an interesting debate, and will be continued, and, I hope, developed.

In the Civil Justice Committee, the question was raised as to whether or not, in the light of the Government's defeat in relation to the hike in employment fees, the Government could be challenged with regard to the hike in court fees. This is to be looked into. We also discussed the onset of the GDPR, and the oncoming Jackson consultation, in relation to what appears to be a climb down from him in relation to the imposition of fixed recoverable fees on certain cases.

We have also had discussions relating to our relationship with the SRA and the LSB. This is ongoing. If anyone wants to discuss this, they are welcome to contact me.

Your own local Law Society are working very hard as well. It was a privilege to be at the September meeting, a meeting at which just about every seat around the table was filled. Great discussion. This is credit to the team who are guiding you currently. Well done.

Finally, in relation to the Governance review, I hope you will have seen an advertisement for the position of Chair of the Main Board. The Main Board



is proposed to sit below and report to Council and whilst the expression 'Main Board' is not yet cast in stone, the aim of the Main Board is to delegate certain roles and responsibilities from the two slightly lower Committees which will report to it: dealing with policy and regulation, and membership and operations. The Chairmanship of the Main Board is open to a Solicitor who may or may not be a Council Member, so, YOU. The person will be appointed by Council on the recommendation from Selection Committee. YOU are available to stand if you like. This will be an influential position, so please give consideration to applying. In my view, it would be far better if this role was filled by somebody who is not a Council Member.

THIS IS YOUR CHANCE.

Enough from me. As usual, please contact me if you want to discuss any aspect of this report or anything else. I am very keen to help if I possibly can.

Charlie Jones:Co Council Member Merseyside and District. 01512427919.
Charlie.jones@weightmans.com



Newbuild Issues 2017 including Starter Homes and other forms of affordable housing

with Richard Snape

Friday, 13th October

1.30am - 4.45pm

The newbuild market is becoming a major area of conveyancing and is undergoing various fundamental changes.

The course aims to look at current issues and update the busy conveyancer. In particular, Help to Buy is a complex area which is being met frequently and is in the process of change. In addition, developers will start to build starter homes for first time buyers in 2017.

Topics include:

- Help to Buy documentation for conveyancers
- The new starter homes initiative
- The future of Section 104 Water Industry Agreements which are due to undergo fundamental changes
- Planning permission issues
- Problems in relation to easements and transfer of part
- Current issues in relation to NHBC
- Community Infrastructure Levy and its effect on the purchaser
- Issues in relation to planning conditions
- Extended completion dates
- The validity of professional consultant certificates after Hunt v Optima
- The New Starter Homes Initiative for implementation in 2017
- Shared ownership issues

Venue:

Liverpool Law Society,
2nd Floor Helix,
Edmund Street,



Mental Capacity Update inc drafting LPA's

with Helen Clarke

Wednesday, 1st November

10am - 12.45pm

Covering:

- Awareness of recent guidance and news from OPG
- Increased knowledge of duties and obligations for Professional Attorneys
- Updated their knowledge of Court of Protection decisions
- Drafting points relating to LPAs

OPG Issues

- Round up of guidance and news from OPG
- Analysis of obligations for Professional Attorneys under the OPG PN1
- When can/should you disclose the Donor's Will to the Attorney?
- When and why should you include additional clauses in an LPA?
- The increasing importance of welfare LPAs

Court of Protection matters

- Case law update including OH v Craven 2016, SAD and ACD v SED 2016, N v ACCG 2017] UKSC 22
- Professional Deputies and Attorneys managing care packages- pitfalls and problems.
- Round up of information and news about the CoP

Venue:

Liverpool Law Society,
2nd Floor Helix, Edmund Street,
Liverpool, L3 9NY



NIHL 2017: An update for experienced lawyers

with

Steve Cornforth & Paul Currie

Wednesday, 11th October

9.30am - 12.45pm

A course to update more experienced NIHL Lawyers on recent developments and to explore some of the more technical issues that can arise in NIHL cases.

This should be of interest to practitioners who represent both claimants and defendants

- Understanding audiograms – knowing your notch from your bulge
- CLB/LCB
- Super additive loss
- De Minimis
- Fundamental Dishonesty in disease cases
- Legal Update – recent cases

Venue:

Liverpool Law Society,
2nd Floor Helix, Edmund Street,
Liverpool, L3 9NY



Holiday Claims: Sun, Sea & Setbacks

with Tom Goodhead

Wednesday, 11th October

2pm - 3.30pm

Holiday Claims are a feature of heated debate in the press. What has been hailed as a new growth area of work by some, has been tinged with the label of fraud by others.

In a seminar suitable for both Claimant and Defendant practitioners,

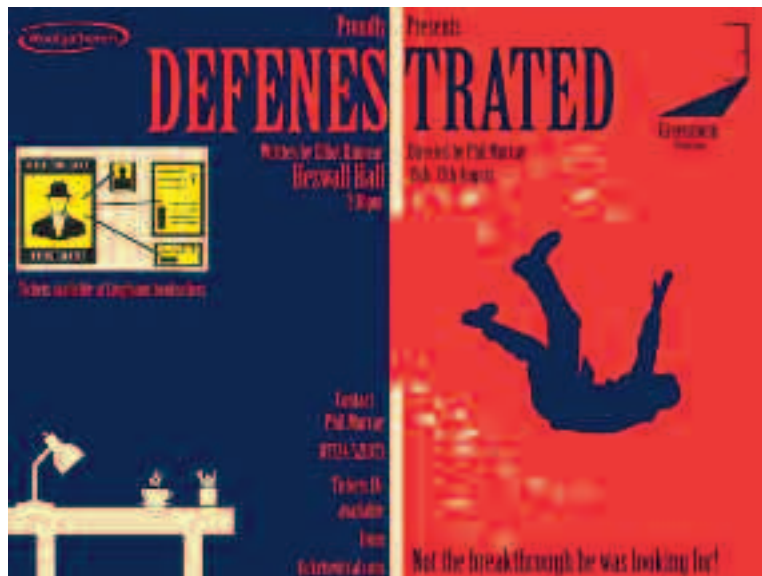
Tom will cover:

- (i) The law in respect of Holiday Claims
- (ii) The role of experts in Holiday Claims
- (iii) Trial tips and tactics
- (iv) Non package-tour Claims

Venue:

Liverpool Law Society,
2nd Floor Helix, Edmund
Street,
Liverpool, L3 9NY

Defenestrated



By Elliot Kinnear, performed at Heswall Hall by Greenroom Productions

Review by Charlie Jones, Weightmans

Attending a theatrical performance is always full of trepidation and anticipation. What will it be like? Expectation is even greater when the playwright is a colleague: in this case Elliot Kinnear, a Paralegal in the Motor Team at Weightmans LLP, Liverpool Office. The play – ‘Defenestrated’ was performed at Heswall Hall on 15,16,17 August 2017. I attended on the 16 August with some friends.

The plot focuses on DCI Richard Muller, for whom things are not going well. It’s his first day at Morbiton Police Station and he’s been handed the one case his predecessor, the genius DCI Jerry Young, couldn’t solve – indeed, the case that was so impossibly complex that it drove DCI Young insane and caused him to commit suicide by throwing himself out of the office window (hence the title – Defenestrated – (throw someone out of a window). As if having that looming over him wasn’t enough, he’s not going to get much help solving it – his only allies in catching the mysterious serial killer known only as The Man In The Bowler Hat are a sinister superintendent, an insipid receptionist, a spineless lawyer, and two charming-yet-imbecilic fellow detectives. Chaos ensues as every line of investigation leads to a madcap cavalcade of dead ends and contradictions, and it is not long before DCI Muller starts moving slowly ever closer towards an exit via the very same window that took his predecessor...

‘Defenestrated’ is a dark-comedy which seeks to tweak the nose of stereotypical murder-mysteries whilst blending fast verbal comedy with sincere examinations of determinism and the protagonist’s fear of



On the left, DCI Muller. On the right DCI Jerry Young (also The Author)

failure in the face of the seemingly inevitable.

It exhibits a less than flattering view of lawyers (Elliot tells me that he was 18 when he wrote the work and it was first performed, while at University, and although studying law with a career at the Bar in mind, had not decided for sure upon a legal career), and psychologists (no comment). It is fast moving, entertaining, keeps you thinking, and is fun. The acting was of a high standard, and some complex character studies were considered and convincing. Indeed, some of the manic lines and sketches would, some may say, be readily identifiable in many a solicitors office.

Well done Elliot. A great achievement, (and I urge any readers to go if it is performed again by Greenroom Productions). I hope that your legal career blossoms, but does not get in the way of your creative writing skills!

Romeo and Juliet by Oddsocks Theatre Company

Review by Dr James Organ, Lecturer in Law, University of Liverpool

Newly formed Citizens Advice Liverpool and Oddsocks

Romeo and Juliet and giving legal advice may not seem like natural companions. Renowned theatre company Oddsocks did just that, 2 weeks ago, in a raucous event to celebrate the formation of Citizens Advice Liverpool and to raise funds for this important new charity.

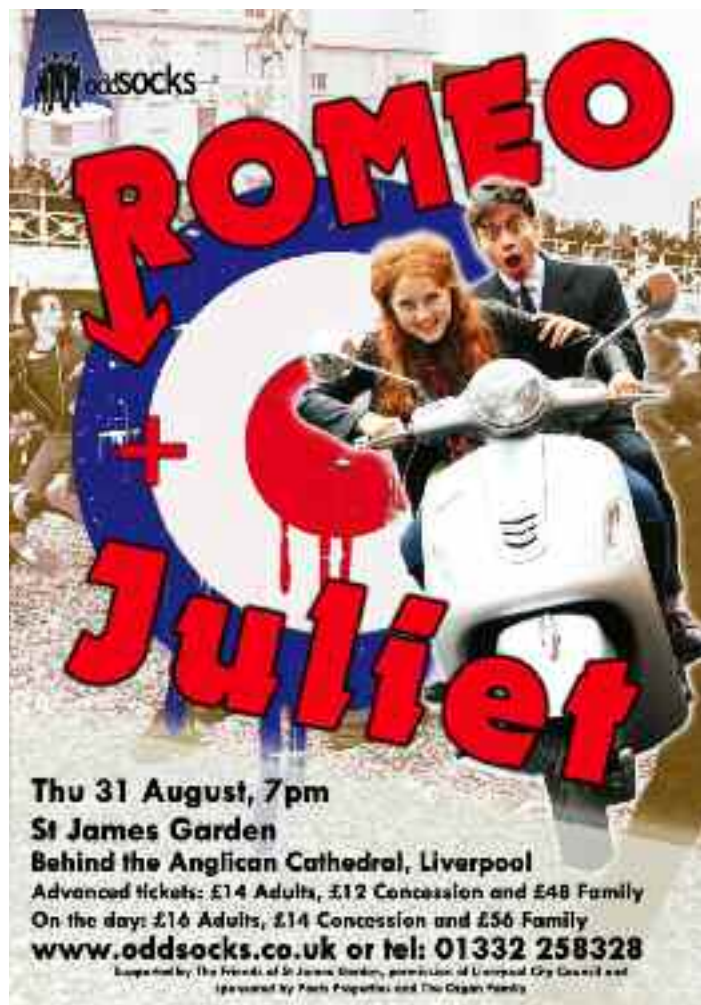
The mods and rockers version of Romeo and Juliet filled St James Park by the Anglican cathedral and entertained a sell-out audience. With clever use of Shakespeare's original script and some great music this was not the usual solemn Romeo and Juliet. As one audience member said: "I absolutely LOVED it! We all laughed a lot ... Tragedy can sometimes be very hard going but Oddsocks know what to do with it. I think Shakespeare would thoroughly approve of all the adlib."

The serious side of the evening was to raise awareness of the changes to Citizens Advice in Liverpool, and to raise some much needed funds. Austerity has led to a major loss in funding for Citizens Advice budgets. The swingeing cuts to civil legal aid brought in by LASPO in 2012, for example, have led to Citizens Advice offices seeing tens of thousands less clients in Liverpool.

Repositioning the organisation as a charity that needs support from the community it helps is essential, if the negative impact of Government policy on access to justice, particularly for the most disadvantaged, is to be reduced.

In response to the changed funding environment, Citizens Advice charities in Liverpool are in the midst of a major reorganisation. At the heart of these developments is the formation of Citizens Advice Liverpool. This brings service delivery opportunities that will help maximise the provision of free legal advice across the whole of Liverpool to all Liverpool citizens. They are developing new services, such as for children in Alder Hey, and new partnerships, such as with the University of Liverpool Law School, to help them give more advice to more people. Traditionally they have had great support from the legal sector in Liverpool. The access to justice committee in the Law Society is strongly supportive of Citizens Advice's work, and many solicitors run essential pro bono surgeries in their offices.

Thanks from Citizens Advice Liverpool go specifically to the Liverpool Law Society for help with publicity for Romeo and Juliet, and to all the legal professionals that came to the show. They look forward to building on these relationships and seeing you all next year at an even bigger fundraising event, culminating in a '2001: a space odyssey' version of The Tempest.



Don't forget to submit your reviews
 You could win a bottle of wine or prosecco

All you need to do is write a review of a movie, gig, festival, book, concert, play, album or favourite box set and each month one will be rewarded with their choice of a bottle of prosecco, red or white wine, very kindly supplied by R&H Fine Wines of 12 Queen Ave (just off Castle Street) Liverpool.

Please give it a go!

Send your entries to
editor@liverpoollawsociety.org.uk

Congratulations go to Tom Sutherland, an Associate Solicitor at Canter Levin & Berg Solicitors for his review of the book "100 Days of Solitude" in the September edition of 'Liverpool Law'.



Charity and CSR Matters

Hi everyone!

You may have seen in last month's edition that I have taken over from the lovely Matt Smith as editor of this section. I'm actually quite nervous to take on the task, especially as Matt did it for so long, but I'm going to give it my best. If you could all please send any submissions you have to me at Jennifer.powell@weightmans.com.

The monthly deadline is around the 14th of every month. Articles should aim to be 400 words with a logo and photographs where possible. Any queries please just ask.

Many thanks.
Jennifer Powell
Solicitor
Weightmans



Yummy's Scouse Christmas

On Friday 15 September 2017 I had the honour of attending the Liverpool Echo awards evening at the Rum Warehouse. I was involved in an amazing project last year - 'Yummy's Scouse Christmas' and we were shortlisted for the community event of the year award.

Together with the other organisers we arranged to feed 1,000 people on Christmas Day. Thanks to the help of Liverpool organisations and law firms we were able to pull it off! Everyone who attended was given a 3 course dinner, a gift, entertainment, but most importantly some company on what can be a very lonely day for some.

It really was a community event, everything was donated, including volunteers giving up their time on Christmas Eve and Christmas Day. There were some outstanding donations from law firms, Weightmans provided £1,000 worth of gifts and Carpenters provided many rucksacks full of essentials for the homeless attendees and selection boxes for everyone on the day. In the build up to the event I also arranged a wrapping party at Weightmans offices and it was lovely to see everyone come together and really get stuck in.

Sadly we didn't win our award, but it was a an emotional night. Some truly inspirational people were also shortlisted, such as Denise Fergus, who many will know is James Bulger's Mum. Denise launched The James Bulger Memorial Trust to support victims of crime, hatred or bullying in 2011 and does lots of work to raise funds for the charity.

Without any doubt the star of the night and winner of the outstanding achievement award was 14 year old Alex Manning. There was a standing ovation after hearing how Alex pulled injured victims of the Wirral explosion from a local restaurant right near the gas explosion. Despite believing it to be a bomb explosion Alex ran into the heart of the commotion and helped reunite families and treat many injured.

Congratulations to everyone who was shortlisted and, of course, to the winners.

Preparations have started again for Yummy's Scouse Christmas 2017, so if any firms are interested in assisting again please contact me on Jennifer.powell@weightmans.com



Law Works seeks your award nominees

Law Works are seeking nominations for their biggest event of the year- the annual pro bono awards. The deadline for nominations is October 9th.

The Awards recognise and celebrate achievement in legal pro bono undertaken by organisations and individuals and the dedication and commitment of the legal sector to positively impact individuals and communities.

Past winners have included well known firms that have developed new legal advice clinics in partnership with charities like Centrepont, children's hospices and small refugee support charities. The award categories cover the contribution of small firms, regional firms, City and International firms, in-house legal teams, Junior Lawyers Division award, best contribution by an Individual, a LawWorks Cymru award and the most effective Pro Bono Partnership.

To be eligible, nominees need to be a member of LawWorks (joining as of 6th October 2017), but the pro bono work does not have to be delivered through a LawWorks project, programme or member of their Clinic Network.

An independent judging panel will decide on who gets the awards. The awards are sponsored by Lexis Nexis, and this year will be held at the Law Society on December 5th. Law Works combine the awards with an annual lecture. On this occasion the lecture will be delivered by Hilarie Bass, President of the American Bar Association. The awards are a highlight of the legal year for Law Works- the pro bono equivalent of the Oscars, with guests from across the pro bono, advice and legal aid sectors.

Often the pro bono work of lawyers goes unnoticed and unrecognised. In a legal system that depends on participation of all citizens for its legitimacy, pro bono service ensures such participation and is deserving of greater recognition. And whilst pro bono should never be considered a replacement for legal aid, its role in supporting access to justice in challenging times is rightly worth celebrating.



For more information on the awards see <https://www.lawworks.org.uk/solicitors-and-volunteers/get-involved/lawworks-annual-pro-bono-awards>

Will Aid are calling for Solicitors to join fundraising drive

Solicitors across Merseyside are being urged to sign up now to a campaign which raises money for charity and targets people who do not have a will.

In November, Will Aid is running a month-long drive for firms to pledge a portion of their time to write basic wills in return for a charitable donation. The recommended donation is £95 for a single will and £150 for a pair of mirror wills.

Now in its 29th year, Will Aid raises money for nine charities: ActionAid, British Red Cross, Christian Aid, NSPCC, Save The Children, Sightsavers, Age UK, SCIAF (Scotland) and Trocaire (Northern Ireland). It has raised more than £19 million since it launched, with an estimated £95 million extra raised in legacy pledges. In that time, over 300,000 wills have been written through the scheme.

Figures for Merseyside are worse than the national figure with 68% of respondents

stating they haven't made a will. Therefore there is a demand for more solicitors to get on board so Will Aid can try to reduce the amount of people without a will. A poll conducted in 2017 by Will Aid has shown that across the UK, 61% of people who have a will, used a solicitor to create it.

Peter de Vena Franks, campaign director for Will Aid said: "Solicitors raised an incredible amount of money in 2016, but we need more solicitors if we are to satisfy demand. We are urging more solicitors to sign up and donate time in 2017. Being part of Will Aid will raise the profile of your firm in your local community and bring new clients to your door, and all whilst supporting nine of the UK's best loved charities."

To sign up visit the website and fill in the registration form. You pledge some of your time and skills and Will Aid will do the rest. For more information about Will Aid visit the website at www.willaid.org.uk





A 2017 Criminal Law: Legislation Update

with Colin Beaumont

Friday, 3rd November

9.30am - 12.45pm

Topics include:

1 – The Psychoactive Substances Act 2016 – both the offences created and the Civil Orders available

2 – The Policing and Crime Act 2017 and amongst other things, amendments to pre-charge bail

3 – Legislative amendments to PACE
4 – Drug driving and an examination of the 'guidance' published by the Sentencing Council in November 2016

5 – Credit for a guilty plea and an examination of the Guidelines published by the Sentencing Council and operative from the 1st June 2017

6 – Overarching Principles – the sentencing of children and young people – an examination of the Guidelines published by the Sentencing Council and operative from the 1st June 2017

7 – Amendments to the law in relation to those who cause injury or death whilst driving whilst disqualified

8 – Cautions for adult offenders – involvement of Inspectors and Superintendents

9 – The Offender Rehabilitation Act 2014 – the new release provisions for both Adults and Youths

10 – Adult offenders who commit 'offences of particular concern' – the new concept created by the Criminal Justice and Courts Act 2015 and its relationship to 'dangerousness'

11 – The Criminal Procedure Rules 2015 (as amended) – we now have 4 further amendment documents

12 – An examination of the various 'strikes rules' created by legislation

Venue:

Liverpool Law Society,
2nd Floor Helix, Edmund
Street,
Liverpool, L3 9NY



Easements Problems & Pitfalls

with Richard Snape

Friday, 13th October

9.30am - 12.45pm

Easements continue to give rise to much litigation and present many traps for the unwary conveyancer.

This course aims to point out some of the pitfalls and how to avoid them.

Topics include:

- Identifying the dominant and servient land and intensification of use
- Encroachment of rights of way
- Easements in relation to newbuilds
- Land Registry practice in relation to easements
- Prescriptive easements
- Problems in relation to access, rights to light, drainage and other miscellaneous easements

Venue:

Liverpool Law Society,
2nd Floor Helix,
Edmund Street,
Liverpool, L3 9NY



Fatal Accident Claims

with Nicky Carter

Thursday, 12th October
12pm—3.15pm

**All you need to know about Fatal accident claims from start to finish
Covering dependency and the arguments, how to use Ogden 7 to calculate losses and the Fatal Accident Act claims and Law reform (Misc Provisions) Claims**

- Liability
- The Law Reform (Miscellaneous Provisions) Act 1934
- Fatal Accidents Act 1976
- The new approach to Calculations
- Knauer (Widower and Administrator of the Estate of Sally Ann Knauer) v Ministry of Justice [2016] UKSC 9
- The 6th Edition Ogden Tables – A Different Approach
- Drafting the Proceedings
- Procedural Points

Venue:

Liverpool Law Society,
2nd Floor Helix, Edmund Street,
Liverpool, L3 9NY

S CODE	DATE	TIME	OCTOBER 2017	SPEAKER
S4074	11th	9.30-12.45	NIHL 2017: An update for experienced lawyers	Steve Cornforth
S4104	11th	2-3.30	Holiday Claims: Sun, Sea & Setbacks	Tom Goodhead
S3950	12th	12-3.15	Fatal Accident Claims	Nicky Carter
S3926	13th	9.30-12.45	Easements Problems & Pitfalls	Richard Snape
S3927	13th	1.30-4.45	Newbuild Issues 2017 including Starter Homes and other forms of affordable housing	Richard Snape
S4008	18th	9.30-4	The Employment Law Conference 2017	Various
S3904	19th	1.30-4.45	Autumn Criminal Law Update	Anthony Edwards
S4013	20th	9.30-4.45	**NEW** The Complete Legal Aid Supervisor	Vicky Ling
S3878	31st	9.30-12.45	SRA Accounts Rules for Finance Staff and COFA's	Jo Morris

S Code	Date	Time	NOVEMBER 2017	Speaker
S3979	1st	10-1	Mental Capacity Update inc drafting LPA's	Helen Clarke
S4082	1st	1.30-3	Beauty is the beast: a guide to handling cosmetic claims	Ana Samuel
S3913	3rd	9.30-12.45	A 2017 Criminal Law Legislation Update	Colin Beaumont
S3914	3rd	1.30-4.45	The pick of the 2016/2017 Criminal Case-Law	Colin Beaumont
S3879	7th	9.30-4.45	The New General Data Protection Rules	Jo Morris
S3852	10th	1.30-4.45	Insolvency for litigators	Chris Beanland
S3863	15th	9.30-12.45	Spotting Fraud & Cyber Crime 2017	Richard Snape
S3864	15th	1.30-4.45	Building Regulations & Planning	Richard Snape
S3961	16th	9.30-4.45	Litigating Commercial Contract Disputes	Helen Swaffield
S3946	17th	12-3.15	Fixed Costs	Nicky Carter
S4078	21st	2-4	Death in Paradise (well, Spain & France): Administrating Deaths Abroad	Antonio Guillen & John Kitching
S3951	23rd	12-3.15	2017 PI Liability Update	Nicky Carter
S3855	24th	1.30-4.45	Corporate Update	Chris Beanland

For full details & to book, visit: www.liverpoollawsociety.org.uk

News from the MJLD



FUTURE EVENTS TO LOOK OUT FOR

- Games Night at Gino D'Acampo's
- Ghetto Golf
- Charity open mic night
- And many more ...

All details will be released soon by email and on Social Media so keep your eyes peeled!

See next month's edition for photographs from our first event on 28 September 2017 at Red Door sponsored by Thornton Legal!



LLS & University of Liverpool Reception

On Tuesday 10th October 6pm-8pm is an evening drinks reception at the University of Liverpool to celebrate their new academic year. This event offers the chance to mix with other professionals, academics and current students. This is a free of charge event but for catering purposes please kindly register below.

<https://www.eventbrite.co.uk/e/liverpool-law-school-joint-social-event-tickets-35780965832>

Charity Events- October 2017



In aid of our chosen charity, Clatterbridge, a number of our members are taking part in the following events. If you fancy a challenge and would like to get involved please email merseysidejld@hotmail.co.uk or sign up using the following links:



Hell Runner

Wanted: Enthusiastic participants to take part in raising money for our chosen charity, Clatterbridge in this year's Hell Runner!

When: Saturday 14/10/2017

Where: Delamere Forest

For more information and to sign up, please visit: <http://hellrunner.co.uk/hellupnorth/>

Scouse 5K

When: Sunday 15th October 2017

Location: Liverpool City Centre Route

A few members of our committee are taking part in this year's Scouse 5k and we are keen to get as many members to sign up as possible to help raise funds for Clatterbridge! If Hell Runner isn't your thing then join the crazy Scouse 5k, or do both if you dare!

For more information, please visit <http://www.merseyraces.co.uk/echo-scouse-5k.html> and don't forget to choose your wig!

If you are unable to take part then please donate what you can using our JustGiving page: <https://www.justgiving.com/Merseyside-Junior-Lawyers-Division1>

News from the WLD



Thank you to everyone who attended our Self Defence Class 7th September 2017 and an extra special thanks goes to our Amelia Hayden for co-hosting the session. We have received some fantastic feedback. We hope everyone enjoyed it as much as we did and learnt some useful skills along the way!



@MerseysideWLD Womens Lawyers Division –
Merseyside

W: www.wldmerseyside.co.uk

General: merseysidewld@gmail.com

Events: wldevent@gmail.com

Membership: wldmembership@gmail.com



AN EVENING WITH BEAUTY BAZAAR, HARVEY NICHOLS

Discover industry tips and techniques from the best of brands at Beauty Bazaar, Harvey Nichols ahead of the party season

Your evening will start with bespoke canapés and drinks at the WOW Bar before enjoying beauty masterclasses and expert gifting advice from leading luxury names in makeup, skincare and fragrance

THURSDAY 30 NOVEMBER 2017
6PM - 8.30PM

For more information please email wldevent@gmail.com

BEAUTY BAZAAR

MANESTY'S LANE LIVERPOOL L1 3DL +44 303 123 7014

Women in Law

Speakers included:

- District Judge Doyle – discussing the route to becoming a District Judge
- District Judge Campbell – discussing expectations of Advocates in Court
- Fiona Fargher (Programme Leader of the LPC at LJMU) – discussing cross qualifying into teaching
- Gemma Ellison (Former LLS Trainee of the Year) – discussing how our attitude can affect our progression

The WLD would like to thank everyone who attended and special thanks to our wonderful speakers.



Regulation Update

The latest regulation news from Michelle Garlick of Weightmans LLP



The past month or so has been a busy one for guidance and warning notices issued by the SRA and Law Society. Here's a round up of all things regulatory....

PPI and Holiday sickness claim warning notices

The SRA has issued 2 warning notices recently, the first in relation to PPI claims and the second on holiday sickness claims. It is clear that both have been issued in response to concerns identified by government departments, lenders and holiday tour operators.

Both notices identify concerns that firms handling such claims are failing in their duties to act in accordance with their Principles and Outcomes in a number of respects including:

- acting in matters without first investigating whether there is a valid claim
- making claims without knowledge of the policyholder/consumer
- failing to properly identify clients and confirm client instructions
- submitting false claims in the hope of a settlement without further investigation by the defendant
- charging unreasonable costs for a limited amount of work contrary to their fiduciary and regulatory duties

The PPI warning notice interestingly states *"Where you have agreed to be paid a percentage of the client's damages that are greatly in excess of fees that would have been payable had your usual hourly rate been charged or are not proportionate to the work undertaken, it is unlikely that you would be acting in your clients interests or treating them fairly..... CMCs that become alternative business structures to avoid the capping of costs [proposed by the Claims Management Regulator to be 15%] should be aware that when we are investigating any complaints regarding unreasonable fees in PPI matters, we are likely to consider anything above the 15 percent to be unreasonable, unless the work involved and the risk to the firm clearly demands a greater percentage of the damages."* The suggestion appears to be that any firm (not just a CMC licensed ABS) which charges more than 15% of clients damages in such cases is likely to be found not to have treated clients fairly. But is this too simplistic an approach? What if the charges to clients and their options (including that they can deal with a PPI claim themselves without any cost by complaining to the Financial Ombudsman etc) have been very clearly spelt out to the client and the client enters into the agreement with eyes wide open and is fully informed but decides that they want to instruct the solicitor to avoid the hassle of making the claim themselves? Will that still be a misconduct issue?

The Holiday sickness claims warning notice is a response to the concerns raised by the Association of British Travel Agents (ABTA) that there has been a 500 per cent increase in holiday sickness claims in the last four years.

While the SRA acknowledges those who genuinely suffer illness as a result of standards of holiday accommodation should be appropriately compensated, it has concerns regarding the authenticity of some claims and the potential referral fee arrangements in place, which are banned in such cases.

The warning notice confirms the SRA is investigating a number of firms regarding their links to claims management companies and those who are pursuing claims without instructions from claimants. The Chief Executive of the SRA, Paul Philip said: "Our new warning notice makes it clear that any solicitor handling holiday sickness claims must carry out proper due diligence and make sure they advise clients properly and are dealing with a genuine case where the client is seeking legal help of their own accord."

Any firms conducting either (or both) types of such claims will need to carry out a full risk assessment and review of their processes, sources of work and client care letters.

Joint Law Society/HM Land Registry Property and Title fraud advice note

Sticking with the theme of guidance, the Law Society and HM land registry have combined their experiences to issue an advice note which sets out the various ways that fraudsters try to trick solicitors, buyers, sellers and lenders. I encourage everyone involved in property work to read it and discuss within your teams to raise awareness of the ways that property fraud can occur and offers useful lists of red flags and ways to mitigate against the risks.

Solicitor Struck Off for Misappropriating Fees from Estate

Christopher Greenman, an equity and senior partner at Dews Whitcomb Solicitors in Leicester, has been struck off and ordered to pay £10,000 in costs as the Solicitors Disciplinary Tribunal found him to have dishonestly overcharged for probate work.

The tribunal heard Mr Greenman overcharged his fees by 574 per cent, amounting to 26 per cent of the entirety of the estate, and by doing so deprived a charity that was the main beneficiary of money bequeathed to them.

Mr Greenwood denied breaching conduct and accounting rules claiming he administered the repairs of a house that made up apart of the estate.

It was found that Mr Greenman's misconduct amounted to "a considerable departure from the standards expected of solicitors" and "caused considerable harm to the reputation of the profession".

SDT Asks SRA for Clarity in Respect of Solicitor – Client Relationships

The Solicitor's Disciplinary Tribunal has requested the SRA to provide more clarity regarding the guidelines around intimate relationships between solicitors and their clients.

The call for such transparency was made during a tribunal hearing involving Richard Harbord, a divorce solicitor who entered into an intimate relationship with a client.

The tribunal heard how Mr Harbord called the SRA's ethics advice line, where he was informed his relationship with his client would not affect his ability to provide impartial advice and he could continue to act for her. However, Mr Harbord subsequently received a fine of £8,500 (plus £9,483 costs) from the tribunal as a deterrent to solicitors in similar situations.

During the tribunal, the SDT criticised the advice given by the SRA's ethics help line and requested they re-visit their guidance. The SDT stated the SRA should have informed Mr Harbord to cease acting for his client in accordance with information published in February 2015 by family lawyers group, Resolution.

BSB's Burden of proof proposals backed by Consumer Panel

The Legal Services Consumer Panel has backed the Bar Standards Board's proposal to reduce the standard of proof in disciplinary proceedings from the criminal to the civil standard. "[It] will be fairer on consumers, and it may act as a positive incentive for barristers to deliver good services," the panel said. The SRA will no doubt be pleased to see this – for some time, it has been calling for the burden of proof to be reduced in solicitor disciplinary cases.

Michelle Garlick
Weightmans LLP



BUILDING FUTURES, BY RECRUITING LEGAL PROFESSIONAL TALENT

FAMILY HEAD OF DEPARTMENT

A Liverpool practice, is looking to recruit a head of Department for their busy Family Team, management skills would be an advantage.

Contact Lauren Connors: l.connors@clayton-legal.co.uk

LIVERPOOL

PRIVATE CLIENT

A traditional high street practice that deals with high network clients, is looking for an additional Private Client Solicitor, Recent experience is essential.

Contact Lauren Connors: lc@clayton-legal.co.uk

LIVERPOOL

CRIMINAL DEFENCE SOLICITOR

An established Merseyside practice is looking for an additional Duty Solicitor with experience of handling a varied caseload of criminal matters.

Contact Simon Scott: ss@clayton-legal.co.uk

LIVERPOOL

EMPLOYMENT SOLICITOR

A well known Liverpool practice is looking to recruit an ambitious and bright Employment Solicitor to join the team, providing advice on a wide range of employment matters.

Contact Simon Scott: ss@clayton-legal.co.uk

LIVERPOOL

PERSONAL INJURY

A thriving PI firm in Liverpool is looking for a number of Claimant RTA Fee Earners. The post will consist of solely litigated and quantum files. Great Salary, benefits and bonus

Contact Simon Scott: ss@clayton-legal.co.uk

LIVERPOOL

CORPORATE/COMMERCIAL SOLICITOR

One of the largest law firms in North Wales are seeking a Commercial Litigation Solicitor, with a mixed caseload of general commercial litigation, civil and property litigation.

Contact Simon Scott: ss@clayton-legal.co.uk

WALES

SENIOR PROCLAIM DEVELOPER

Joining as an IT Manager responsible for smooth running of their IT systems and full Proclaim Development. The ideal candidate will have 2 years experience in a similar role.

Contact Grace Bolton: g.bolton@clayton-legal.co.uk

LIVERPOOL

IT ASSISTANT

A Law Firm based in Merseyside is looking to appoint an IT Support assistant. You must have experience working with Proclaim to be considered.

Contact Grace Bolton: g.bolton@clayton-legal.co.uk

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LAW COSTS DRAFTSMAN

An experienced Law Costs Draftsman is sought by a well-established national firm. This young and dynamic Costs consultancy, is looking for a Law Costs Draftsman with a minimum of 3 years experience dealing with own caseload of claimant costs files. You must be able to draft Bills/Schedules of Costs and Points of Replies and be a proficient negotiator.

Contact Matt Walwyn: m.walwyn@clayton-legal.co.uk

LIVERPOOL

LAW COSTS LAWYER

A superb new opportunity at a Law Costs Consultancy has opened. They are looking to appoint a Law Costs Draftsman/Costs Lawyer with a minimum of 2 years experience dealing with civil and commercial Costs files (claimant or defendant). The successful candidate will carry demonstrable experience of drafting formal Bills of Costs.

Contact Matt Walwyn: m.walwyn@clayton-legal.co.uk

LIVERPOOL

SENIOR PROPERTY SOLICITOR

An accredited firm are seeking to appoint a Senior Property Solicitor to join their Property department. The successful applicant will be a Qualified Solicitor with a minimum of 3 Years PQE. The role will involve handling your own caseload of Residential Property & Commercial Property matters and dealing with; Sales & Purchases & Leases on behalf of small businesses from instruction to Post Completion.

Contact Dannie Moore: d.moore@clayton-legal.co.uk

LIVERPOOL

COMMERCIAL PROPERTY SOLICITOR

A long established law firm is seeking to appoint a Commercial Property Solicitor. This is an excellent opportunity for an experienced Commercial Property Solicitor to deal with a variety of matters such as, Acquisitions & Disposals, Lease Negotiation, Commercial Mortgages, Planning Applications and Dilapidations on behalf of a variety of clients from Property Developers & Investors, SME's and Corporations.

Contact Dannie Moore: d.moore@clayton-legal.co.uk

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