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PRESIDENT'S COLUMN

RICHARD FISHER, PRESIDENT

The Leadership Summit at Chancery Lane turned out to be a little more worthwhile than I had anticipated given its pretentious name and fairly unexciting programme. The morning opened with a panel session with Andrew Holroyd and Desmond Hudson, amongst others, which covered a wide range of topics such as the Law Society Services, education and training and current legislation affecting the profession.

This was followed by a question and answer session; I managed to get in a question as to what the Law Society intended to do to make it more representational especially in the context of representation and support for the Profession in its dealings with the Solicitors Regulation Authority; I made the mistake of saying the Law Society now had an opportunity to become much more of a trade union which meant that Desmond Hudson spent most of his answer explaining why, because of the Competition Act etc, the Law Society had not been able to be more "militant" in the Legal Aid battle. He did however go on to deal with my question concerning the SRA. The Law Society's position seems to be that, although the SRA takes every opportunity to trumpet its fierce independence from the Law Society, the Law Society still has to regard it as one of its own creatures and, indeed because of the Legal Services Act, it is not therefore possible for the Law Society to be too confrontational or to be in litigation with the SRA. He also voiced the feeling that the Law Society should not seem to be protecting dishonest solicitors; one sees the point but shouldn't the maxim "innocent until proved guilty" still apply to solicitors who may or may not be guilty of dishonesty or, even more so today, of a wide range of "misconduct"? Mr Hudson did confirm that The Law Society is working to develop an Advisory Helpline.

Another President from the Midlands expressed concern that one of his members who has been charged with dangerous driving, had been told that the SRA are treating this as a conduct matter and would be taking disciplinary proceedings; this is an horrendous example of the SRA

overreaching itself if it is taking that type of case on as a routine matter and shows, in my view, how we do need a strong body to represent us.

The "break-out" sessions were not particularly appealing and, in the afternoon, I attended the one on Supporting Solicitors, mainly by default, although of course I do have a great interest in the Solicitors Benevolent Association. As well as the SBA, there was a speaker from LawCare which does invaluable work helping solicitors with stress and personal problems but the most illuminating speaker was one from the Solicitors' Assistance Scheme, which I have to admit I was pretty ignorant about. This is a Scheme of a quite large network of volunteer solicitors over the country who are prepared to give some initial advice and guidance to solicitors who have professional problems. It does not however provide pro-bono advice or representation although certain of its members are experienced in representing solicitors in disciplinary proceedings. I understand that a small amount of funding has historically come from the Law Society's Regulatory budget; whether or not this funding will continue from the SRA is a matter of doubt. I do, however, think that this is a body which perhaps could be used by the Law Society as a starting point or model to provide the type of representation and support which I earnestly feel we need, perhaps combined with some type of insurance-based scheme.

One nice incidental moment was when a Secretary of another local Law Society saw that I was from Cardiff and said "you're the ones with the really good web site". It was a very nice out-of-the-blue compliment which provides a good opportunity to thank Kevin Greer and the Website Subcommittee for the tremendous amount that has been achieved with updating our Website over the last year.

I also attended the Law Society's Forum at St David's Hotel on 18th March. There were about 24 local members of the profession present; I am surprised that it was that many considering the rather obscure invitation which merely informed me that it was a forum on "Independence", chaired by Joshua

Rozenberg. It was only when I got there that I learned that it was one of a series of meetings dealing with Rule 1 of the Code of Conduct and, taking for this particular meeting, the concept of Independence, as prescribed by Rule 1.03 of the Code. In fact, it turned out to be a stimulating evening, lead by a panel consisting of Michael Imperato (Russell Jones & Walker), Kate Berry (Cardiff City Council) and Peter Jones (Eversheds). Even with the small audience, it was interesting that different sectors of the profession are presented with challenges to their independence in a number of different ways with problems arising, for example, from referral fees and conditional fee agreements and, for criminal defence lawyers, from the SSS procedure. This was another example of the Law Society doing something very well but not letting members realise what they are doing.

We should however be pleased that the meeting was held in Cardiff, entailing another visit from Andrew Holbrook to Wales, following his visits to Cardiff last October and to North Wales a couple of weeks ago. It is also a great compliment to Cardiff and Wales that the Law Society is holding its full Council Meeting in Cardiff in June, the first time, I understand, that it has ever been held other than at Chancery Lane.

I am disappointed to have to report the level of subscription renewal and application for new membership is still disappointing. The Society still needs the stability that the subscription income gives it to enable us to expand activities and representation. I have recently saved £200.00 on a Cardiff/CLT course and have used the Counsels' £50.00 Fixed Fee scheme twice this year – it can only make good sense to join!

At the time this issue hits your desks, you will still have time, if you have not already done so, to obtain tickets for the Annual Dinner on Friday 25th April at the City Hall – application form on the inside back cover of this Issue! I do hope you will join me at our major event of the year.

And, by the way, no apologies for the last two covers!!

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25th April 2008

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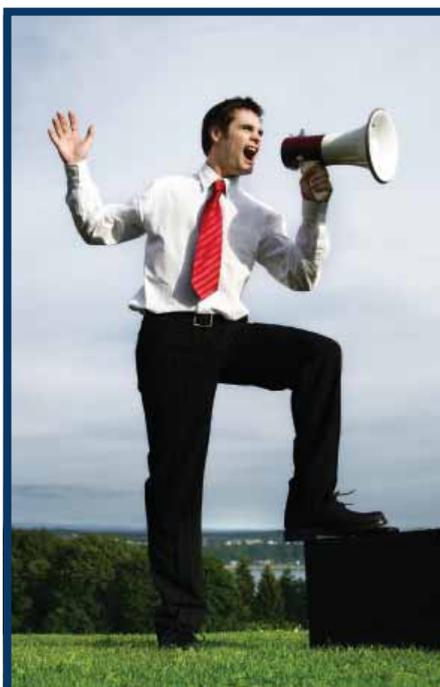
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Cardiff & District Law Society Courses in conjunction with CLT

Tuesday 13th May 2008

Practical Residential Conveyancing (3 hours) • Cardiff - venue to be confirmed

Wednesday 4th June 2008

Winning Employment Cases – Tactics 2008 (6 hours) • Cardiff - venue to be confirmed

Wednesday 9th July 2008

Planning Traps for the Residential Conveyancer (3 hours) • Cardiff - venue to be confirmed

Wednesday 10th September 2008

Cohabitants and Property Rights (6 hours) • Cardiff - venue to be confirmed

Monday 29th September 2008

Companies Act 2006 - In Practice (6 hours) • Cardiff - venue to be confirmed

Thursday 16th October 2008

Health and Safety: An Introduction (3 hours) • Cardiff - venue to be confirmed

Thursday 16th October 2008

Health and Safety Law Update (3 hours) • Cardiff - venue to be confirmed

For further information, please contact Tracy Luke, Honorary Secretary,
Education & Training c/o Eversheds LLP 1 Callaghan Square,
Cardiff CF10 5BT; Telephone 0845 498 7565

THINGS YOU NEVER SEE 'KINGDOM' DO

An ITV series "Kingdom" starring Stephen Fry has been derided as typical Sunday evening viewing. It is said to be lightweight, overly full of local rustic characters and with as much cutting edge as a blancmange. However, it has proved a major ratings success for Independent Television. Moreover, it is the British viewing public's only glimpse of the life of a solicitor. Perhaps like me, against your better judgment, you end up watching it and rather than trying to follow the flimsy plot line you spend all your time criticizing its lack of reality. Here are a number of things that this supposed doyenne of East Anglian solicitors never seems to do:

- Any remunerative legal work
- Receive or send an e-mail
- See a client in his office - Stephen Fry normally goes to the picturesque home of the client; an ivy-clad country house or unbearably quaint seaside cottage
- Looking through job adverts in the Law Gazette on a Thursday morning
- Dealing with spurious complaints from his eccentric band of clients
- Discussing with his erstwhile clerk and partner (his brother who has returned from the dead) billing targets and chargeable hours for the next financial year
- Rushing down to the local County Court to issue proceedings the day before limitation expires
- Standing anywhere other than in a gloriously scenic coastal location (seems to spend a lot of time on the beach at Holme at low tide)
- Getting a roasting from the local judiciary
- Driving a sensible car - a Volvo estate perhaps
- Not wearing a pinstripe suit

Michael Imperato

TRAINSPOTTING WITH A DIFFERENCE



If you like impressive railway stations, the newly renovated St Pancras International is a wonderful building. If you also like champagne, then St Pancras is even more impressive, as it has the longest Champagne Bar in Europe.

It has to be said that it is not actually one long bar, but a central bar with, as you will see from the photograph, a series of sitting and standing areas, interspersed with service stations, manned by efficient and friendly staff in stylish (but warm!) uniforms, extending

a total length of just under a hundred metres. The fantastic thing about this is that it is literally on the platform and you are only a couple of yards away from the Eurostar trains as they arrive and depart. Thankfully, there is a glass screen which protects you from the real impact of the engine noises.

There is a choice of four Champagnes by the glass, starting at £7.50, which is not that bad for London, or even South Wales prices! There is a further large range of Champagnes by the bottle, ranging up to £220 if you're feeling really extravagant or romantic! A hefty bowl of roasted nuts comes at a hefty £3.50 and a collection of light meals and sharing meals are served.

Having crossed off engine number 3202 in my trainspotter's book and stuffed it back into the pocket of my anorak, I certainly can't wait to find an excuse to get it out again and do some more trainspotting in style!

Richard Fisher



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SWTSG

There has been a real buzz this month with spring in the air and a frenzy of activity by the South Wales Trainee Solicitors' Group.

First up in February was the Wizz-Quiz, held at the Mochen Du pub in Cardiff. There was a fantastic turn out, with more than 10 teams battling it out to see who had the biggest knowledge pot between them. It was a tough quiz, with 7 rounds, covering topics from general knowledge to sport, history, music and geography.

In the end it was close, but an amazing winning score of 55/80 was obtained by a braniac team known as 'I love it when a plan comes together'. There were prizes a plenty, sponsored by the committee and Hays Recruitment. Champagne, wine, chocolates, and book vouchers were awarded to the winners and runners up, as well as a prize for the best team name- 'Gin'll Fix it'. For those who didn't win it was still a great night for socialising, meeting other trainees, and unwinding after a hard day's work. Let's hope our next quiz due to be held on 17 September 2008 proves just as good.

On a more serious note, with qualification looming, second year trainees have the world at their feet and important choices to be made. The SWTSG have therefore been working hard to plan out a series of careers events to help guide people through the tough interviews and recruitment processes they face again. The hard work doesn't

end upon securing that training contract and it always helps to have some tips to get you through those tough recruitment processes.

The SWTSG hope to provide support for those who are looking to find a job, either within their existing firm or outside, to get advice and tips as they approach this important final stage. The first event was held on 6 March 2008 at The Yard in Cardiff. Chadwick Nott, Legal Recruitment Consultants, gave an informative presentation, covering guidance on the legal market, advice on how to make the correct choices, and preparation of legal curriculum vitae. The event was well attended by trainees from a wide variety of firms and fields, who all felt that they had gained a valuable overview. After the serious stuff was out of the way, there was food and drinks to be enjoyed and the chance to mingle and ask those niggling questions.

For those who missed out on this event, do not worry. The SWTSG have two more careers events planned this year. These will be attended by local recruiters, and aim to provide help and answer any questions you might have. The events are open to all trainees, first or second years, so find out more by visiting our website at www.swtsg.com.

Finally, this month has seen the sports teams hard at work as ever. Some of you may recall the netball team's last match against Moginie James Estate Agents. Following

the SWTSG team's last victory, a Moginie James team trained hard to improve, and invited the SWTSG team for a rematch which took place on 10 March 2007. It took a while for the girls to get used to the court at St Teilo's school in Llanedeyrn and the Moginie James girls had come on leaps and bounds since the last match.

With an opening score in the first fifth of 7-4 to Moginie James, the SWTSG girls had to work really hard to fight back. Some fantastic team work pulled the scores back in the second fifth as the SWTSG team took the lead 11-10. That lead was increased to 18-14 in the third fifth, and again in the fourth as the team settled back into their rhythm to a score of 28-23 to the SWTSG. By the final fifth, the team really had it, and took the game to a brilliant lead in the end of 38-25 to SWTSG.

It was enjoyed by both teams, who will no doubt meet again in the near future. If you feel like coming along to the SWTSG netball team for a friendly team and great social life, contact femalesports@swtsg.com.

Coming up, the SWTSG has a 'Day at the Races', with coach transport taking members to the Chepstow Race Course on 5 April 2007. Shortly after, on 16 April 2007, this year's annual Law Idol will be held at Tiger Tiger in Cardiff. So get practising and go to the website for further details. We hope to see you all there for what promises to be the event of the year so far. More information and news is available from the SWTSG at the website address above.

Tracey Singlehurst-Ward
Hugh James

AGM NOTICE

Incorporated Law Society for Cardiff & District

Notice is hereby given that the Annual General Meeting of this Society will be held at the Park House Club, 20 Park Place, Cardiff on Thursday 22nd May 2008 commencing at 6pm.

The business to be transacted will include presentation of accounts

for 2007, appointment of officers and Council members and reports. Further details from the undersigned to whom nominations should be sent by the 25th April 2008.

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ILEX SOUTH WALES BRANCH

We held our AGM on 25th February 2008 and reported another active year for the Branch. Our Membership numbers remain steady so we must be doing something right.

Last year we tried to accommodate all levels of Branch Members by arranging a Revision Day in May, a Seminar with CPD points in August as well as many social events including a night at the Hawaiian Club, Cardiff and our highlight of the year, the Graduation Ceremony and Annual Ball in October 2008.

We hope to run similar events this year and arrangements are already underway for the Revision Day which will be run in conjunction with Coleg Glan Hafren.

At the AGM Committee appointments were confirmed as follows:

Branch Chairman
Frances Edwards (Caswell Jones, Caerphilly)

Vice Chairman
Kevin McCarthy (Hugh James, Merthyr Tydfil)

Secretary
Michelle Morgan (Caswell Jones, Caerphilly)

Treasurer
Kevin McCarthy (Hugh James, Merthyr Tydfil)

Committee members
Sian-Marie James (Welsh Assembly)
Lynne Squires (ILEX Regional Representative)
Wayne Phillips (Costleys, Caerphilly)

The Minutes of the AGM can be obtained by request.

Although the Branch is self-funding, we remain reasonably lucrative and therefore we are able to keep the Membership fees the same as last year:

Students - £5.00
Members - £10.00
Fellows - £15.00

NB. Membership is now due for renewal and Membership Forms can be obtained by request.

Future events are as follows:
April 2008 – Revision Day for Level 3 and Level 6 at Coleg Glan Hafren

May 2008 – Meeting and Drinks evening

June 2008 – CPD Seminar – Stress and stress management

July 2008 – Summer Party at Hasapiko Greek Restaurant, Cardiff

October 2008 – Annual Ball

December 2008 – Meeting and Xmas drinks.

These events will proceed subject to interest.

For further information please contact the Branch Chairman:
Frances Edwards
c/o Caswell Jones
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So much for a quiet semi-retirement. Since my last set of rambling and ranting just after Christmas, much has happened in the life of your correspondent.

Firstly and, to me, sadly, my old firm, Rausa Mumford, has decided to give up doing Legal Aid work, including crime. The new partners have decided that it is just not able to do it without making a loss. It is so very sad that a firm that made its name for mainly criminal litigation now finds itself unable to continue.

I could see the writing on the wall by December and I knew that my consultancy was going to come to an end. So I have finally joined up with Hains & Lewis here in Pembrokeshire. I was at school with Vicki and Dan at Tenby and it was not a difficult decision to become their consultant for two days a week.

My friend and former partner, Martin Olden, is joining forces with Trudy McBride and Marilyn Bishop and they have asked me to be a consultant one day a week, adding to their two other advocates, Carol Anthony and Claire Fear. I am sure they will be successful.

As to my two days a week pursuing other interests, well, it just hasn't happened. I seem to be working

as many hours as before! (And I can hear you all saying: "He didn't do much anyway.")

Anyway, today is "Writing Day", when I tap out my usual pastiche of nonsense for you all to ignore and attempt to show some erudition on opinions on appeal and suchlike.

As I write, I am watching a squirrel (grey, not red, unhappily) vigorously attacking the peanuts that I put out for the birds. The device is supposed to be "squirrel-proof", but Septimus (for thus have I named him) seems to have no problem with that. He also completely ignores my bellowing at him nowadays, only reluctantly scooting when I actually go outside. My dear departed mother would have dug the shotgun out and attempted to blast him to bits, but I have to say that I rather admire the little beggar's tenacity.

He reminds me of this wretched Government and its various Departments. He is verminous, gnaws away at any structure he comes across and doesn't give a damn about what he destroys. There is a nuthatch that occasionally takes him on, but just like us lawyers, it never succeeds to any great extent.

Why no-one on high realises what

they are doing simply bemuses me. Since 1997, "New Labour" has introduced THREE THOUSAND FOUR HUNDRED new pieces of Criminal Legislation. How on earth they expect the Criminal Defence Solicitors of England and Wales to be able to assimilate all these new laws, to work out their effect and then to represent their clients WITHOUT BEING PAID FOR ANY OF THE PROCESS is, quite frankly, contemptuous!

And every day brings a new title for something that had a perfectly adequate name before. FDR for a probation report done on the day (I always thought of the World War II US president when those initials came up) and now "Triple S". Speedy Summary Something or other, or Simply Sodding Stupid, as I would have it.

"What can we do to make the Defence Lawyers' job so incredibly difficult that they will finally turn up their toes and fall off the branch?" "I know, let's have trials listed within 30 second of charge and pay them a standard fee that means they will have to subsist on a diet of Lidl's own brand lentils." Roll on the next election - I intend to stand against Gordon "Grumpy with the charisma of a cesspit" Brown under the banner LIAR - Lawyers in Austerity and Rags.



008

SIMON MUMFORD, PRESIDENT

The latest wheeze is to give the Witness Protection Team the cash to ensure that all prosecution witnesses can be collected, taken to court and driven home again. But not, of course, defence witnesses. Very equitable.

I was in Haverfordwest Mags Court last week, when some poor toad, having been convicted in his absence for failing to have a windscreen wiper on his tricycle or some such, was brought to court by the police on a non-appearance warrant from his home in Pontypool. Having been fined a couple of hundred quid including the £15 victim surcharge, he asked, quite reasonably, how he was going to get home without any money. The very nice lady chairman said, "Your solicitor will help you." Well, Jonathan Webb from Layton & Co wasn't having that. He told the bench in no uncertain terms that he wasn't doing anything of the sort! That he was going to be paid far less than the train or bus fare for representing him and that his firm was not a charity.

There was a low growl of smouldering support from the other criminal hacks at that. And there was a delightful sequel outside the court when the prosecuting counsel advised the poor scroat that he should simply get on the Milford Haven to

Manchester train and hide in the bog till it arrived at Pontypool!

He eventually got an emergency grant from the DSS, so it all ended happily.

On the same day, I was asked by some feckless youth how he should go about getting an ASBO, as all his mates had one and he felt left out! Days of wonder and glory we live in.

I can't go without crowing about Welsh rugby triumph. I watched the first half of the Croke Park match in a pub in Reading, having been persuaded by my two student sons to join them in watching our beloved Man City take on the Royals It didn't look too promising at half time when we left to drive to the Majeski stadium, but, Oh Joy! when at half time we learnt of the Triple Crown win and that Manyoo had lost at home to Pompey in the cup!

All went rather sour after that, with Sven's lads putting in the most abject performance to ensure a nasty loss. And then I had to shell out vast sums to victual and alcohol-fuel my reptilian heirs, culminating in me sitting in a traffic jam for two hours en route to the Asparagus trenches, whilst they headed off by train for the fleshpots of Olde London Town.

Ho Hum. Could be worse - I could be an Englishman living in Edinburgh and supporting Chelsea.

With all the recent upheaval, I have not been too active on the Confederation front, but April brings two very important meetings

which I hope will see the much needed expansion, before the social bash of the year (being organised by Fishy) in the summer.

Until the next time. Happy Easter.

Mumf

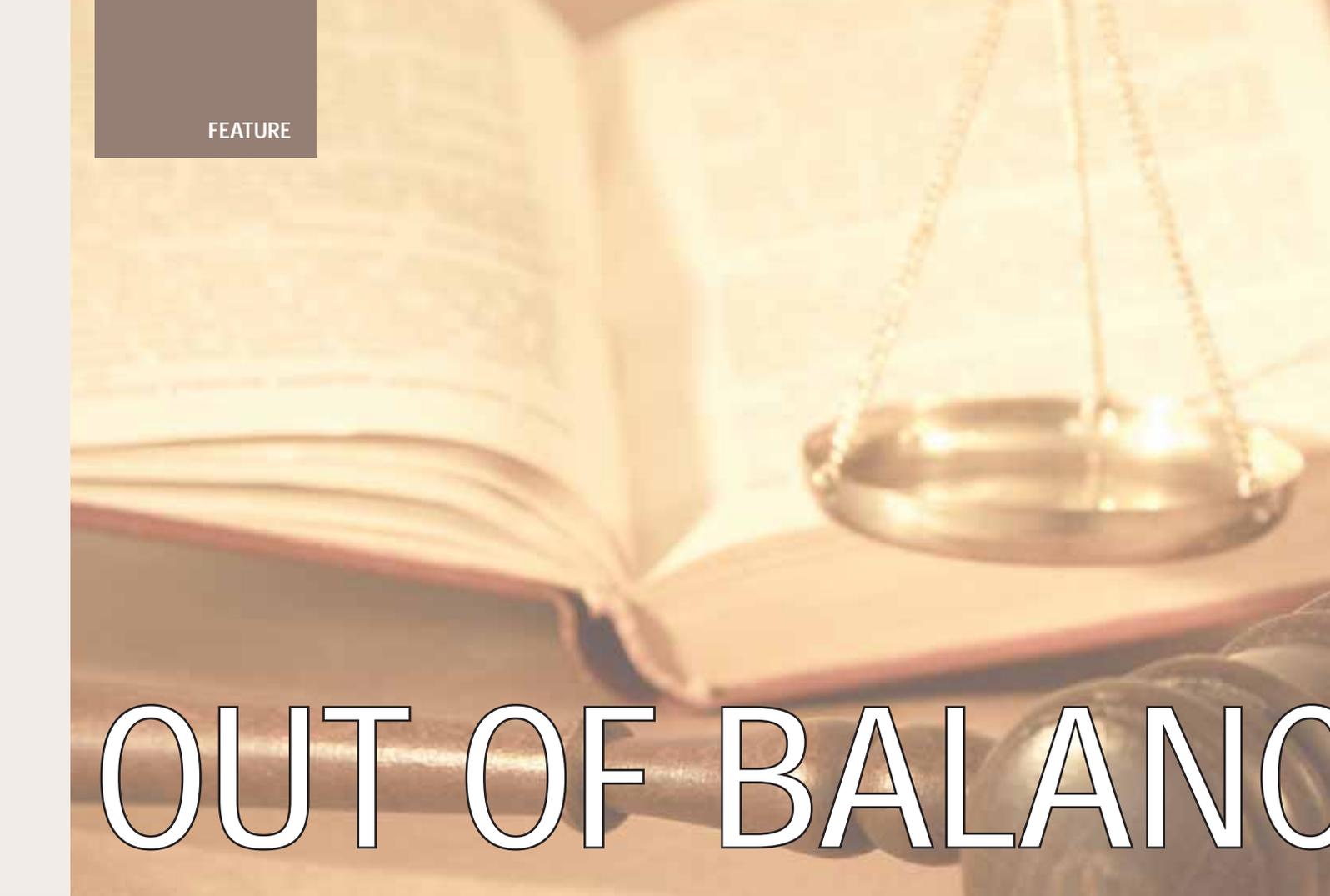


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OUT OF BALANCE

In January 2008, I wrote a letter to the Gazette in response to an article entitled "Open and accountable" by Peter Williamson, the Chair of the Solicitor Regulation Authority's main Board. I questioned whether its policy to make regulatory decisions public in the interests of "transparency", actually accords with the government's five principles of good regulation that the SRA aspires to.

The government's five principles are – proportionality, accountability, consistency, transparency and targeting. From a brief read on the Better Regulation Commission's Website, it can be seen that, in the main, these are inwardly facing principles, there to govern a regulator's relationship with those it regulates, rather than necessarily the public interest (albeit that this is understandably important from a regulator's perspective).

Those interested can see a copy of that letter on my website. I thought

it might be useful to expand on one of two of these principles, bringing in some examples.

Under 'proportionality', regulators should not use a 'sledgehammer to crack a nut'. Under targeting, 'enforcers should focus primarily on those whose activities give rise to the most serious risks'.

Consider these principles from the perspective of a solicitor who discovered that she had an old client account containing about £5.70 and Solicitor Accounts Rules returns had not been made since setting up a limited liability firm about three years ago. The solicitor and her accountant apologised to the SRA and immediately dealt with the money appropriately.

The SRA recently published its proposal that small amounts of client money, under £50 will (subject to future Rules) be able to be sent to the Solicitor's Benevolent Fund,

without having to get permissions from the SRA. One might have expected no action or possibly a Letter of Advice, both of which options are available to the SRA. However, this solicitor received a formal Warning and was ordered to pay the cost of the investigation at £300. She had a discretion vested in her practising certificate so that on the next renewal round any appropriate conditions could be imposed. When she came to renew her practising certificate she had to pay an additional £200 over the normal fee before her application for herself and her qualified staff would be considered.

Consider a firm in December who went to the Solicitors Disciplinary Tribunal on the single issue of misdescribing their telegraphic transfer fees as "disbursements", when not the entire sum was paid to the bank. No dishonesty was formally alleged, but the view of the SRA is that this is making a "secret

profit" - with all the connotations of impropriety that such a phrase might suggest. It is not a simple misunderstanding of how to describe an administration fee, which the Solicitor Accounts Rules say is a perfectly legitimate charge to make.

That particular firm was visited back in November 2005, by the Forensic Investigation Unit (FIU) of the SRA. The firm changed their procedures immediately. However, the approach of the FIU was that this was so serious an issue that it had to go forward to the SDT. The firm was not on that occasion visited by the Practice Standards Unit (PSU) of the SRA. The approach of the PSU at that time was to advise and indeed require firm's to change their description but to take no further action.

From the firm's perspective (and mine as expert witness in the case) the regulatory response depended, not on the

CE REGULATION?

VANESSA SHENTON, THE COMPLIANCE PARTNER

seriousness of the issue, but upon which Unit within the SRA conducted the visit to their firm.

Under the principle of consistency 'regulation should be predictable in order to give stability and certainty to those being regulated'. Also under transparency, 'those being regulated should be made aware of their obligations, should be given the time and support to comply', and 'the consequences of non-compliance should be made clear'.

These are just two examples of many, but they are useful because they explain both ends of the regulatory spectrum and perhaps demonstrate a hardening in the approach of the SRA.

I was recently asked to assist a firm who had been visited by the PSU in 2007 to find that they faced a recommendation of a referral to the SDT under similar circumstances to the firm mentioned above.

Much of the evidence is, of course, anecdotal. However, in the monthly Summary of Performance on the Law Society's website, the number of FIU visits which have resulted in "adverse reports" (which would attract some kind of regulatory response) increased from 56% in December 2006 to 71% in December 2007.

It must be remembered that the PSU are able to make both formal referrals through to other regulatory units within the SRA, which solicitors will be aware of, but also "intelligence" referrals which the PSU officer will not disclose to the firm.

Vanessa Shenton, via her business THE COMPLIANCE PARTNER provides regulatory and compliance advice and assistance to firms of solicitors. She can be contacted via her website, thecompliancepartner.com.

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IN ASSOCIATION WITH THE LAW SCHOOL, UNIVERSITY OF GLAMORGAN

ANNUAL REVIEW OF EMPLOYMENT LAW

WITH PROFESSOR PAT LEIGHTON

(PROFESSOR AT THE COLLEGE OF EUROPE, SPECIALISING IN EMPLOYMENT LAW)

WEDNESDAY 14th MAY 2008 4:00pm - 7:30pm

At the Law School, University of Glamorgan, Glyntaf, Treforest

(From the A470 (N) follow the signs for the Crematorium)

PROGRAMME

3:45pm: Registration

4:00pm: Discussion of important new and planned legislation and important recent case-law; to include: European Developments, including working time, holidays, defining disability, age discrimination and on "flexicurity" and the Lisbon Process. Dispute Resolution; handling workplace problems, including job termination. Employment Contracts; especially affecting agency temps, casuals and contract workers and the issues around continuity of employment. Pay at Work; including developments in equal pay law. Discrimination Law; developments. Changes in the Law; affecting recruitment; migrant workers and those working with vulnerable people. What are the other changes in law we might expect in 2008-9?

Benefits: Up to 3.5 CPD hours (CPD ref: POW/MU/X1212)

Fee: £80 for members of the Confederation. For NON-MEMBERS the fee is £105 per delegate.

I/We should like to book place/s for the Employment Law Course to be held on Wednesday 14th MAY 2008 at the Law School, University of Glamorgan, Treforest, Pontypridd

I enclose a cheque for the sum of £..... made payable to The Confederation of S.W Law Societies.

For CPD purposes please state title (Mr, Mrs, Miss, Ms)

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Please return to: Michael Walters,
The Confederation of South Wales Law Societies 16 Pearl St. Cardiff CF24 1HD or DX 33029 Cardiff 1
Telephone: (02920) 453334 - Email: michael.walters@btconnect.com

Booking form must be returned NOT later than Friday 2nd May 2008

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- 12 Partners and 12 other Solicitors (who shall be nominated by the Partners) can be nominated to become members at a total cost of £1,000.00, but the subscription for any further Solicitors shall be at the rate prevailing from time to time for Assistant Solicitors

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For example, members may benefit from cheaper CPD points (50 % discount on CPD courses run by the Cardiff & District Law Society, discounts on CLT courses held in Cardiff and 25% off courses run by the Confederation of South Wales Law Societies) and 'Counsel's Fixed Fee Scheme', enabling members to receive advice from specialist Counsel (at Temple Chambers (Cardiff), 9 Park Place, 30 Park Place and 33 Park Place) of up to thirty minutes duration either in person at Chambers or by telephone for a fixed fee.

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RENEWAL OF MEMBERSHIP

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AND FINALLY...

Should you have any general queries regarding membership

and/or membership benefits, or are aware of any organisations that may be interested in providing benefits to members, please contact me at the address shown below. However, please do not forward applications and/or subscription payments to me, as these must be forwarded to Michael Walters or Janet Tillyard, as referred to above.

May I take this opportunity of thanking all members for their continued support.

Tom Danter,
Membership Secretary
Cardiff & District Law Society

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THE WORRYING PHENOMENON OF HARASSMENT

Eleanor Williams, Darwin Gray

This month, there have been two cases where an employee has claimed that he has been harassed and, in both cases, a court has found that the conduct complained of did not amount to harassment.

In the case of *Sunderland City Council v Conn*, Mr. Conn had worked as a paver for Sunderland City Council. His line manager was Mr. Dryden, the site foreman. Mr. Conn brought a claim of harassment under the Protection from Harassment Act 1997 (PHA).

Mr. Conn might have used the PHA because the incidents all related back to 2000 and under the PHA, a claimant has 6 years to bring a claim. This makes the PHA potentially treacherous for employers, since old incidents can be dredged up. An additional burden for employers under the PHA is that they can be vicariously liable for the acts of their employees, whether or not they knew what their employees were doing.

The facts of this case were that Mr. Conn complained that Mr. Dryden had harassed him on five occasions. On one of these, Mr. Dryden asked Mr. Conn and two other employees to name those people who had been leaving the site early. Mr. Conn and the other two employees refused to 'shop' their colleagues. Mr. Dryden became angry and threatened to punch out the windows of the cabin and to report Mr. Conn and the other two employees to the personnel department.

When the case had been in front of the County Court, the evidence from the other two employees had been that they were not particularly bothered by the threats. Mr. Conn, though, had been bothered. The five incidents he listed combined direct verbal abuse with physical threats. The County Court found

that this type of behaviour was potentially intimidating and was the sort of behaviour that might cause psychiatric damage to any worker. The Court of Appeal took a tougher line, though. One judge was especially irritated by Mr. Conn's attitude to the window punching threat. He said,

'What on earth is the world coming to if conduct of the kind that occurred in this incident can be thought to be an act of harassment?'

The Court of Appeal decided that harassment needs to be more than,

'Irritations, annoyances, even a measure of upset [that] arise at times in everybody's day-to-day dealings with other people.'

For behaviour to constitute harassment, the Court of Appeal decided:

- It needs to be 'unacceptable' behaviour, not just 'regrettable'. Of course, what is 'unacceptable' will depend upon the context. The judgment pointed out that, 'what might not be harassment on the shop floor or in the barrack room might be harassment in a hospital ward.'
- If the offender might well be liable to receive a punishment in criminal law for his unacceptable behaviour, then it is likely to be harassment.
- The unacceptable behaviour needs to occur at least twice. In this way, the harassment forms a 'course of conduct' which is a necessary prerequisite to bringing a claim under the PHA
- The Court was concerned with the 'mental element' of

harassment. It declared that, 'the alleged offender must know, or ought to know, judging by the standards of what a reasonable person would think, amounts to harassment of another.'

So, harassment is not always easy to prove.

My Advice
An employee need not use the PHA to bring a claim of harassment. Alternatively, if Mr. Conn had been eligible, he might have been able to bring a discrimination law claim. From an employer's perspective, there are advantages to this second sort of harassment claim since the timing to bring a claim under discrimination legislation is 3 months after the incident. Employers need to beware, though, since there is no need, for a 'course of conduct' to have occurred. A one-off incident is enough to establish harassment in discrimination law.

It was a harassment claim that was based on discrimination that took place in the case of *English v Thomas Sanderson Blinds Ltd*, Mr. English brought a claim for harassment. However, he brought his claim under discrimination legislation, namely, that he had been harassed contrary to the Sexual Orientation Regulations. He claimed that he had been subjected to sexual innuendo by his work colleagues. These work colleagues were teasing him that he was homosexual because he had attended boarding school and lived in Brighton.

Ordinarily, Mr. English might have had no difficulty establishing that harassment had occurred. What he needed to show was that, according to Regulation 5(1) of the Sexual Orientation Regulations, there was

- Unwanted conduct by a person (A)
- On grounds of sexual orientation
- Which has the purpose or effect of violating a person's (B's) dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

But, in this case, Mr. English was not homosexual. His colleagues did not think he was homosexual. The Employment Appeal Tribunal decided that he could not bring a claim for harassment under the Sexual Orientation Regulations. The EAT held that he could have brought a case if he was homosexual. He could have brought a case if his colleagues perceived he was homosexual. But, all his colleagues perceived was that he possessed some of the stereotypical qualities associated with homosexual men. This was not enough for Mr. English to be protected under the Regulations.

My Advice
Mr. English was given permission to take his case to the Court of Appeal. At the moment, the law on who may or may not bring a claim is muddled. Employers would be well advised to stamp out persistent, unwanted teasing in the workplace, whatever its nature. Because of the impending appeal, Sanderson Blinds may not yet be off the hook. This is particularly so since The Equality and Human Rights Commission has intervened in the case since this decision.



Please note that this provides a summary only of the issues addressed. It is not intended as a detailed commentary on the relevant law and any comments made should not be acted upon without first taking specific legal advice.

INCORPORATED LAW SOCIETY FOR CARDIFF AND DISTRICT

THE ANNUAL DINNER

CITY HALL, CARDIFF

25th APRIL 2008

SPEAKERS

THE PRESIDENT, RICHARD FISHER,

DESMOND HUDSON,
Chief Executive, The Law Society,

Followed by Cabaret and Dancing with
OWEN MONEY and The Soul Sharks

7.00 p.m. for 7.30 p.m.

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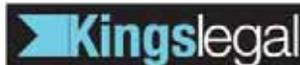
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