

LEGAL | NEWS

The Confederation Summer Party

3rd July 2009

JUNE 2009

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Topics

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*The new disciplinary rules and the
ACAS code of practice.*

When I'm 64

*Discrimination in the workplace: Where are
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TUPE or not TUPE

*The credit crunch and other drivers
of recent developments.*

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PRESIDENT'S LETTER

MARK HARVEY, PRESIDENT



Doesn't time fly when you're having fun? It has been an interesting year; it has been a challenging year; it has been a frustrating year. Most of all it has been an enjoyable year.

I am one of at least three Presidents who, at this crucial time for solicitors, are charged with making the Cardiff and District Society more relevant to solicitors in its constituency. Particularly at a time when those same solicitors have significant concerns over the relevance of Chancery Lane and where in twelve months time or so it will no longer be compulsory to be members of the Law Society.

When I tell you that I have been a member of other Law Societies in England and Wales and that I think Cardiff is one of the more active ones, it is to damn it with faint praise!

Council members

I was concerned about the perception of dwindling attendances at Council in the last two or three years but I warmly thank my colleagues on Council for their good attendances over the course of the year.

Council members will know that I have done my best to try and shake up the meetings of Council. Inevitably one must have an agenda but I have tried to shorten it and use it as a tool to produce more relevant and more interesting meetings.

Following on from Richard Fisher the Past President's lead these meetings have seen the invitation of external guests including the Law Society's Director of Membership Services and the Junior Vice President as well as annexing our meetings to other external meetings to ensure the meetings remain vibrant, stimulating and most of all relevant to the issues that concern practitioners.

I have also tried to involve Council members more in the active running of this Society. For example I have renamed and re-appointed the Court Users' Committee as our Civil Litigation Committee because I think that they must embrace more than simply liaising with the local Courts. That has already resulted in a very encouraging and interesting response to the Law Society Consultation Paper on Contingency Fees and Third Party Funding. I

am indebted to the members of that committee for that work.

With considerable leadership from the incoming President, Stuart Hutton, the Council has also put in a response to the Lord Hunt Consultation on Regulation of the Profession. In both papers the Council's responses were clever in the way they represented the inevitable divergence of views of the members of Council

Membership of Council is voluntary so it is important that members reflect on this and be prepared to do more than simply attend meetings. I would rather have a very small but vibrant and active Council than a large amorphous body which is slower to move and turn than a cruise liner. If I may say so all members must therefore consider carefully their contributions and as I have said in this Column once before, to paraphrase both Barack Obama and John F Kennedy, ask what you can do for your Council. All must share the burdens not just the few.

Chancery Lane

Inevitably we must take our lead from Chancery Lane for good and bad. For my own part I have been of the view for sometime that my favourable impression of Chancery Lane is that of the Executive including in particular Des Hudson the Chief Executive rather than its Council; with the honorable exception of a few members including of course, our own, David Dixon.

I am convinced that this profession needs a focal point and a voice for Government and for the Welsh Assembly and to that end I do think we need to work along

the lines of the BMA model.

That being said, Council members will know however of my intense frustration and indeed irritation that the staff at Chancery Lane failed to involve the profession in a consultation with the Department of Business in relation to the proposed extension of the so-called cold calling regulations and then to warn us of the coming in of the Cancellation Regulations. This oversight has meant that significant members of the profession have been involved in potentially illegal contracts with their clients which they now have to repair.

If the Law Society cannot warn us of important practical issues like that then it does leave one with a very large question mark over whether it is a body fit for purpose. The Law Society was frank in its explanation of what arose and I hope it is no more than a blip.

Law Society's Office in Wales

I wish to express my appreciation for the Law Society Office in Wales led by Lowri Morgan, and her colleagues Geraint Williams, Kay Powell and others. This is a very important office and is very much a focal point both for this Society and the Confederation both from the Welsh Assembly and those looking in on the Principality.

Colleagues on Council

I would like to thank my colleagues on Council for their support, their good humour and most of all their patience with me.

I would also like to thank the members of the Finance & Policy Committee who give up so much of their time to assist

Continued on page 7

THE ADMINISTRATIVE COURT IN WALES

ALAN DAVIES, HMCS AREA DIRECTOR FOR SOUTH EAST WALES

The need for non-London centres for the Administrative Court came following a report by Lord Justice May, which concluded that retaining the Administrative Court solely in the Royal Courts of Justice was not in the best interests of providing access to justice. The principle of providing access to justice has been the main driving force for the changes.

The project has involved HMCS committing to complicated changes to the supporting IT system, reviewing budgets for the whole Administrative Court and the Royal Courts of Justice, looking at the expected caseload for each centre, recruiting the right number of staff to support the work and providing detailed training at the Royal Courts of Justice for these staff on the wide variety of work and procedures involved. Unlike the other non-London venues, in Birmingham, Leeds and Manchester, in Cardiff we have also had to consider all the issues involved in providing a fully bi-lingual service for Welsh speakers.

HMCS' commitment to a bi-lingual service meant that we had to translate and reformat over 100 separate forms and order templates. Superb support from our Welsh Language unit meant that this was all completed on time. The project was very much a joint effort between the judiciary and court management. The success of this teamwork is reflected in the fact that the project has been completed on time and within budget, which doesn't always happen! I am delighted

to say that we went 'live' on the 21st April 2009 and everything is now working as intended.

As well as the office, courtroom, staffing and security changes, we have also put together a very experienced judicial team well able to support this work. The team includes the two Presiding Judges for Wales, the Designated Civil Judge for Wales and the Chancery Judge for Wales. The team also includes judges who are Welsh speakers and we also benefit from having Mr. Justice Beatson sitting regularly in Wales, as the Queen's Bench Designated Liaison Judge, who is a specialist in Administrative Court matters. The judicial team recognise that there are unique legal issues for Wales relating to the potential work that might arise under the Government of Wales Act 2006 that will need to be kept under review.

As of the 21st April 2009, court users in Wales no longer have to commit themselves to the trouble and expense of having an Administrative Court case heard at the Royal Courts of Justice. HMCS has been supporting a limited number of Administrative Court cases in Wales for a number of years. However, the important difference now is that cases can be issued at any Queen's Bench District Registry within Wales and that court users can have their case dealt with at a suitable venue. In addition to Cardiff, a number of centres have initially been designated: Caernarfon, Mold and Swansea. There is also the potential to use other venues across Wales if this meets the needs of the parties involved.

Applications are encouraged directly to the Cardiff Civil Justice Centre office. However, a court user can approach any County Court in Wales to receive support with an application. Protocols are in place to deal with these. Where there is a need to manage an urgent application, for example when seeking an interim injunction, we have procedures in place to ensure that they will be seen by a Judge on the day of receipt.

If an urgent application is received outside of Cardiff it will be faxed to the Cardiff office and then put before an appropriate Judge. A rota for judicial cover has been put in place, in order to support applications up to the daily 4 p.m. deadline. In considering urgent orders, Judges will have access to electronic templates to help speed up the production of these orders. Early experience suggests that these arrangements are working well and that applications are being reviewed and expedited hearings ordered promptly. Each case is given a unique case number and a copy of the case is officially sealed and returned to the claimant. It is also individually reviewed by the Administrative Court office and, if required, a lawyer will prepare a case summary before it is put before an appropriate Judge.

It should also be noted that outside of the normal office hours of 10 a.m. to 4 p.m., an 'out of office hours' service exists, where an application will be reviewed by a judge in London. This does not mean that the application then becomes lodged at London,

as a lawyer acting on behalf of a claimant can still say that if an order is made subject to proceedings being issued, they can still issue in Wales. Judges on the 'out of hours' rota have been given guidance about the required filing in the relevant non-London centre.

As awareness of the new Cardiff office spreads among professional users, HMCS hopes that the volume and variety of work will increase and establish it as a valuable addition to the service provided in Wales. Anyone with an enquiry about the work of Administrative Court is welcome to contact the Administrative Court Office Manager, Simon Jenkins, on 029 2037 6460.

Alan Davies, HMCS Area Director for South East Wales



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ILEX SOUTH WALES BRANCH

The new Level 3 qualifications are now well underway and are popular amongst students and employers alike. The new Level 6 qualifications will commence in September this year, focussed also on obtaining Units of qualifications which will enable Students to become Affiliates, Associates, Graduate Members and ultimately Fellows of ILEX.

The local Level 3 and Level 6 Student Revision Days have been taking place over the last few months at Coleg Glan Hafren. They have been well attended and there has been very good feedback from the Students. We wish all Students the best of luck in their forthcoming exams.

I attended the ILEX Graduation Ceremony at Bedford, as Council Member. I noted from the programme that there was only 1 graduate from the Cardiff area. The South Wales Branch appreciates that it is difficult, and costly, for Graduates to travel to Bedford with their families. We last held a Graduation ceremony in Cardiff in 2007. The Branch would be happy to arrange a Graduation ceremony in 2010. Please contact myself or our Branch Chairman (see below for details) to confirm interest.

ILEX was pleased to announce recently its first ILEX partner. Council Member Nick Hanning was made a partner at his firm, RWPS Law in Bournemouth. Lets

hope that many follow his lead. **FUTURE BRANCH EVENTS** - Events to be confirmed include a CPD event, Night at Hasapiko Greek Restaurant and Quiz Night.

ANNUAL BALL 2009 - Our Annual Ball is arranged for Saturday, 26th September at Park Inn Hotel, Cardiff. There will be a Dinner and entertainment. Tickets will be on sale soon and I hope you will support the event.

Now is the time to re-join the Branch. We have kept the Membership fees the same since the Branch was launched :-
Students £5
Members £10
Fellows £15.

We also have a new category of membership for those who have supported the Branch and these will be Affiliated Members who will obtain the usual subsidies for events organised.

Frances Edwards.
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Or Wayne Phillips
(Branch Chairman)
Email – waynephillips@costleyandpartners.com

keep their reputation in tact.

The contestants were fighting tooth and nail for the now coveted 'Law Idol 2009' title and the main prize of the evening, an Ipod Nano, kindly donated by the South Wales Confederation of Law Societies. The pop-star hopefuls were judged by our very own 'Simon Cowells': Chadwick Nott's Andrew Kelly, talented soprano Sian Winstanley and athletics star Jamie Baulch. Each judge tried hard to imitate the famous Cowell with hilarious, and sometimes a little too honest, comments! As the night went on, more competitors plucked up the courage to share their 'hairbrush' moment with colleagues and we were entertained with unique renditions of classics from the likes of Take That, Spandau Ballet and the cast of Mama Mia...each song sounding like you had never heard it before!

One competitor did however shine, and Andrew Gibson's performance of the Tom Jones classic 'It's not unusual' won him the Ipod Nano and the glory of being named 'Law Idol 2009'. Thank you to all our brave members who took part and supported the night, making it once again, one of the most popular and successful SWTSG nights of the year.

Our next event will be our annual Ball, held at the Hilton Hotel on 18 July 2009. Each year, the SWTSG ball supports a local charity by raising money at the event. Some of you may remember that last year, the SWTSG held a very successful ball in aid of the Redsock charity. This year, we are pleased to be supporting local charity, Kidney Wales Foundation.

Our raffle will be one of the main ways we will be raising money for the charity. The SWTSG ball raffle prizes are renowned for being a little bit special, with prizes in past years including spa and beauty days, shopping vouchers

and golfing days. This year, SWTSG committee members are aiming to make the raffle the best yet to make our guests dig that little bit deeper into their pockets for the Kidney Wales Foundation. Guests at the black tie evening will enjoy a drinks reception, a three course meal and great entertainment. Therefore find that perfect outfit, grab a date, tell all your friends and colleagues and make sure you buy your ticket to the STWSG ball in aid of the Kidney Wales Foundation – it will be a night to remember!

The netball team have also been busy and the dedicated girls have recently been honing their skills with training sessions with an experienced coach, which have been enjoyed by all the team. The team recently welcomed Amersham Ladies to Howell's School for a game. The SWTSG fought hard, and although Amersham Ladies led for the majority of the game, the SWTSG girls managed to put their opponents under pressure throughout. The experienced Amersham Ladies however were victorious, winning the game by 39-22. The SWTSG are looking forward to welcoming the Amersham Ladies again in the coming months.

The SWTSG football team are also working hard. On Thursday 14th May the TSG team kicked off their Law Liga campaign with a game against Eversheds. The Law Liga is an 11-a-side league that has been set up with a number of law firms in and around Cardiff. Both teams were evenly matched to begin with but Michael Evans fired the TSG into the lead with a 40 yard thunderbolt that left the keeper bamboozled! With Dave Jenner performing miracles in goal for the TSG, the first half ended with them being three nil up with further goals from Guto Llewelyn and Huw Roberts. The TSG pushed on in the second half to score 3 further goals >>

THE SOUTH WALES TRAINEE SOLICITORS GROUP (SWTSG)

On Thursday 23rd April 2009, the talent competition of the year, 'Law Idol', was held at 'Tiger Tiger'. The event, kindly sponsored by legal recruiters

Chadwick Nott, was packed with young legal professionals quaking in their boots, eager to show off those well-rehearsed musical numbers...whilst trying hard to

<< (coming from Neville Nyatanga, Owen John and a hapless defender) before surviving some late scares to win 6-2. Man of the match was Owen John.

The five a side team is still going strong and are currently in fourth place in Division 2 of the Monday night league at Powerleague.

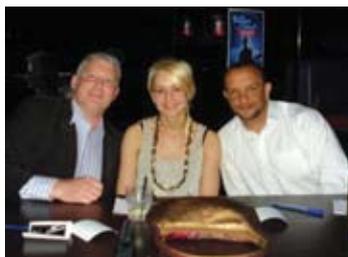
If you are interested in playing some friendly or competitive football or want the TSG to get involved with more sporting events then contact John (malesports@swtsg.com) or Sian (femalesports@swtsg.com) Finally, remember to keep your eyes on the SWTSG website where you will find all the latest

information about the SWTSG events. The SWTSG is open to and represents law undergraduate and post-graduate students, paralegals, trainee solicitors and qualified solicitors with up to five years' active PQE based in the South Wales area. If you haven't already done so, please join our mailing list by e-mailing Michael at info@swtsg.com. Remember to log on to our website on www.SWTSG.com and be sure to buy your ticket to the SWTSG ball on the 18 July 2009 – see you there!

Esyllt Mair Hughes
SWTSG National
Representative
Hugh James Solicitors



A talented contestant



The Judges

Continued from page 3

in the running of the business of this Society. Especial thanks to Administrator Michael Walters who works so hard in facilitating the good running of the Council.

I must also of course thank my partners at Hugh James for granting me the indulgence of participating in this Council.

Relevance

This Society is relevant and it is active but it has so much more to do. It is responding to consultation papers; it is meeting with the persons currently of influence to the profession; it is making its voice heard both directly in consultations and indirectly. It is well positioned to represent its constituents in the many serious challenges faced by them of whatever specialism or indeed generalism. In Stuart Hutton as the incoming

President, we have a star of the Cardiff profession, whose reputation goes beyond this constituency, indeed beyond the Principality. Stuart brings great humour and wisdom to the post and will be a superb President. Indeed it was brought home to me recently when a member of the Law Society staff commenting upon the forthcoming slate of Stuart, Peter Davies and Michael Imperato (the new Senior and Junior Vice Presidents), said that it was good to see some quality at last. I know my place!

However it has been a singular honour and a great privilege to serve as the President to the Incorporated Society of Cardiff & District.

Diolch

Mark Harvey

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PRESIDENT'S REPORT

Sometimes, when I sit down to write these silly pieces, I simply cannot think of what to write.

This month I just do not know where to start! And all of it with a "point of law".

I mean, there has been so much going on. Should I begin by attacking the Justice Minister, Jack Straw, who I "had a go at" in the last edition?

He it transpires, claimed for a refund of the entire sum of his poll tax, but had only had to pay half of it! When pressed he stated that "Accountancy is not my strong point."

This from a man,, you will recall, who told us that "Legal Practices are not supposed to be successful" !!! So its ok for you to line your hypocritical pockets, but the rest of us should tighten our belts eh? If you had been Joe public working for Torfaen BC you might have been charged with deception, Mr Straw. Course you weren't. Legal point number one.

Or perhaps I should highlight the appalling effort of Mr Browns mate at the desk next door planning to besmirch several members of the opposition on a web site specifically designed so to do? And by the way, if the follow hadn't been shopped before he'd done it, wouldn't that have been defamation? Legal point two.

Or should I attempt to amuse you by recounting "Golden's EVENTUAL "apology", after a few half hearted mutterings into his beard, like "I really regret this happened" Pause. {Aside}" Or rather that we were found out" or "As much as I regret

David Cameron's trousers spontaneously combusting and him being revealed to be wearing Posh Spices' designer thong!" Not that he has of course. David Cameron and his thong I mean.

No, but the PM's eventual apology was fantastic. "I, Gordon "Ming the Merciless", "Superman", "Einstein" Brown, unreservedly apologise for Whatshisface, (whose name, despite me and him having been mates for eons-and this being the 27th pension able job I've given him in the past ten years – already escapes me- see how innocent I really must be!) him anyway-being in the first, preliminary and entirely unauthorised, planning stage to say nasty, totally untrue things about other people, who aren't in my party. Or maybe they are, 'cos I didn't even read the bits of paper he made into paper gliders. Honest. And I never said he could use my laptop Never!"

But then, when asked "Do you take full responsibility, Prime Minister?" something awful happened. His mind must have slipped a bit, because his answer was "Yes Yes I take full responsibility..." then realising that he had undone all the work done by hundreds of toadies over the past few weeks, (raiding Wine Bars and stating, robot like to any journo they could find, "Not his fault. Couldn't possibly be. NOT HIS FAULT!" (While New Labours leader hid in the under the stair cupboard, puce in the face, clutching "Mr Wibbly" the velveteen bunny and screaming "Shan't Mummy! Shan't say sorry!") went whiter than a Milky Bar and smooth as gravel said "That's why the person responsible went immediately!

"So.....that would be you then Gord. I listened on the car radio, and I did a double take. So did the presenter, Simon Mayo, who's pretty switched on. But yep! He did say it. But he's still there.

But it's a funny thing, My deal old Mum used to say that when things went wrong for the smug and arrogant, they really went wrong. And by golly they are horrid times for New Labour and their rapidly deflating balloon of a leader....

Quite apart from the economy (and you WERE the Chancellor for well over a decade Brownie) here was the embarrassing rejection of Gord's attempt to plug the dyke of second homes expenses for MP's, where most of his own party said "Yah Boo Sucks looser- I want to carry on getting free viewing of "Madame Whiplash's debauched tales of sensuous sin" on my flat screen in Belgravia – saves me taking the tube all the way to Uxbridge where the missus stops capers like that!"

Didn't you just adore the MP on Question time trying to justify not having to travel 8 miles to the House by saying that "maybe we silly members of the general public didn't realise that they had to stay at the House late sometimes!" and the riposte from some way "Like being in a job you mean?"

Then there was the Ghurkha question. Now I am going to admit that this is something close to my heart as my Uncle Peter Howard, served in the Ghurkhas in Burma in the Second World War, and I have worked with them as a member of the

reserve forces. Good God, they have laid sown their lives in their thousands for this country. They are brilliant people! I'd rather have every one of them living here that some of the Eastern Europeans who are only here to steal and claim benefit. Or else work in Houses of Parliament as Security Supervisors.

And to hear that mealy mouthed reptile, who is apparently the Minister for Immigration – I couldn't be bothered to remember his name – he'll be out the door shortly "Yes Welllllll.....What you must recall is that there is now fair and just process, as long as they serve for sixty years...IN the combat zone, win three gallantry awards, including the VC, and join the labour party...they're in! That is if they joined up POST 1997. So by 2059, most of these one hundred and fifty folk will have satisfied the criteria! Won't be a state pension by then sadly but.."

Anyway pretty peeved Purdey pulled on her purple hot pants and thigh boots and apparently popped along to number 10 and flung a few Karate chops (better if they were Mexican PORK chops), forced Gordon to cower behind the sofa and change his mind. Then, after Gord had had his mind re-changed again, she chased a plainly terrified Mr Woolas (damn-mentioned his name!) around W1 until he had to hide in a Starbucks or some such. He was probably served his Double Butterscotch Latte (justifiable expense)by an illegal immigrant in there as well!

All of this, I hear you say, is just Mumf off on his regular rant about the Government.

PORT - JUNE 2009

But this whole crumbling edifice is far more sinister in my view. And its all to do with the Rule of Law.

Let's take Jacqui Smith. The last few months have seen her stewardship as Home Secretary encompass the Police raid on Damien Greens office IN the Palace of Westminster. Without proper permission. We are asked to believe that the Police DECIDED to use the elite Anti-Terrorist Group, numbering into the hundreds, to mob-handed raid this mans home, arrest him and to "force" their way into the Houses of Parliament. And then to question him under caution for nine hours.

An independent decision. But as yet no-one has revealed WHO made it. We are asked to accept that the police decided on the strength of the "response".

OK. But what were they TOLD it was all about, and by whom? Let's face it this is about as Big Brother is it has ever got - arresting and questioning a man whose job it is to OPPOSE the democratically elected Government of Great Britain and Northern Ireland, and to bring to the Public's attention matters which are of concern to us. And these figures about illegal immigrants being employed in sensitive positions surely are.

The truth is that Mrs Smith, OR SOMEONE pretty darned close to her, must have deliberately "over-egged" the pudding to stop a vote-losing fact emerge, by exaggerating this matter, making out that it was bordering on treason, prompting the disproportionate actions of the police. I don't believe they

would have done it otherwise. That is surely an abuse of legal process, malicious prosecution, and therefore actionable.

And it is extremely frightening to think that if you do something completely legal that THEY don't like, they can send in the Stazi to make sure you know who's boss, to teach you a lesson. Isn't that what Adolf and his mates decided was democracy in the 1930's? (Blimey, I hope she's not reading this! I'll be down the garden up a tree when this edition reaches you. Or in a Gulag in Blaenau Ffestiniog).

There is already a law suit from an American DJ who has been barred from the UK which will cost millions. That is down to her authoritarian, knee jerk policies.

In addition we will shortly have the introduction, at the cost of BILLIONS of pounds, of ID cards, which are a recipe for disaster, and will certainly lead to may miscarriages of justice.

But Wait! - the fabulous news is that in the midst of this debacle Jacqui is able to reassure us of the rectitude of her department, by issuing the news that twenty two, TWENTY TWO, horrid people who have been saying and doing naughty things have been expelled! "Being allowed into the UK is a privilege" and they all abused it.

Phew! That's a relief then. Justice being seen to be done. Very Stern! Blood and Stomach Pills! There are over a hundred thousand illegals wandering about the UK. THEY'RE not going to pop into the post office to give their dabs for a card. They will

pinch or forge one and hang the consequences! I mean what is the worst case scenario for them - a couple of months in a comfy jail, three 'O' Levels, a grant to set up a business, then a free flight home. And then straight back in the refrigerator of a lorry from Ostend for more of the same. Hardly a disincentive is it? I daren't even start on G-20 policing. Mobile phones with cameras are bound to be banned in the next Queens speech, if this miserable excuse for a government manage to hang on long enough.

I suppose that the point of this diatribe is to focus on the increasing authoritarianism of this disparate and desperate Government, and to highlight the fact that it could be ANY party. If you live in a goldfish bowl for too long, you lose the urge to look what's happening outside. And to prove the point that I am not some fascist trying to rabble rouse the proletariat into civil insurrection - I don't think Citizen Smith takes Legal News, and us lawyers are so apathetic that we'd rather watch telly than demonstrate anyway - I am able to recount a meeting I had last week, with a Solicitor who is the Conservative candidate for somewhere or other. He said when told who I was "OH yes! What am I going to have to do to win your vote and stop you writing about me in Legal News then?" Apart from thinking "Crumbs, this bloke actually reads a local law magazine!" I was tempted to blurt out "Just keep breathing mate - you're a shoo-in!"

But then I thought "Wait a tick - this guy may well be in power and, like the last lot could abuse his position just as easily!"

So I told him what I thought would be a vote winner - a total reform of social welfare, public funding for the justice system, legal aid for all, castration for wheel clampers, etc etc etc.

He told me he thought that was a little unreasonable and over optimistic, but that he hoped the Tory manifesto would persuade me of the REAL differences they would make and ensure my vote went to him. I don't hold out much hope for the reversal of all those draconian measures that are gripping our throats like a python any time soon under a Tory Government. I didn't tell him I don't live in his constituency!!

Not much news on the Confederation front. But I hope you will:
a. Support the Summer party on 3rd July (application form on page 15, wearing straw boaters and floral chiffon (that's the men please), and
b. Sign up for autumn CPD courses - otherwise the nasty, big, bad Solicitor's Regulator will come knocking at your door for not having your CPD hours, criticise your wallpaper, then fine you money you haven't got....I know this for a fact, because I have had a whisper that Jacqui Smith's next job is as an enforcer with the SRA.

Enjoy the sunshine

Mumf

WOMEN IN LAW - A SPECIAL

On Saturday 25th April 2009 the South East Wales Branch of the Association of Women Solicitors ("the Association") ("Women in Law") celebrated its 25th Anniversary at the newly refurbished Parc Hotel in Cardiff, and a most enjoyable evening was had by all.

The Association of Women Solicitors has become an institution but, of course this was not always the case.

The records of Frances Williams, Solicitor and Partner in the Firm of Larby Williams, indicate that there was a general meeting in December 1983 which was well attended and which led to the first 'official' meeting of the South East Wales Branch of the Association which was held on 23rd March 1984 at the Royal Hotel in Cardiff as the records of Penny Murphy, Solicitor and Partner in the Firm of Geldards, report. Frances Williams was one of the founder members and has remained in the chair from the inception of the Association in South East Wales. Membership is not confined to women Solicitors but extends to members of the Bar and Legal Executives. The purpose of the Association is to promote the professional, business and social interest of women Solicitors. In the first year there were 73 members and these attendance figures indicate that women practising in the legal profession in the mid 80's felt there was a need in the locality for such an association.

In addition to Frances Williams and Penny Murphy, (who has been

the Treasurer since the inception of the Association and whom we thank for her good housekeeping and maintaining the accounts in a very healthy state), other founding committee members of the Association were Karen Smith, Jan Tillyard, Cathy Roblin, Ceri Price and Margaret Phillips. These members remain on the committee except for Karen Smith who has recently resigned but does continue to serve the Association well. There have been other committee members throughout the years and, on behalf of the Association, formal thanks is given to them for their efforts in organising AGM's, Christmas and Summer lunches, social events and lectures on various topics throughout the years. The Christmas and Summer lunches in particular have proven to be memorable occasions for many members.

Readers will be aware of course that women referred to above are highly successful legal practitioners within the profession in South East Wales. However the right for women to practice as Solicitors and in the professions generally has been hard won.

As late as 1913 the Court of Appeal ruled that women were not eligible to practice as Solicitors because that right was given under statute to 'persons' which the Judges (inevitably male) claimed referred only to men. This despite the provisions of the interpretation of Statutes Act. It has been stated that Frances Williams has been the Chairman of the Association since its inception. The politically correct term is now, of course, Chairperson. Perhaps regarding the above, political

correctness has its place!

Inevitably the right of women to practice in the professions was linked with the women's suffrage movements. In 1897, a number of groups campaigning for women's suffrage got together to form the National Union of Women Suffrage Society. The most infamous militant suffrage was Emily Davies, who died after throwing herself under the King's racehorse during the 1913 Epsom Derby. The battle for women's suffrage was hard fought. Terms of imprisonment were regularly imposed upon the suffragettes but they had not won the vote by 1914. At this time Mrs Pankhurst called a truce as Britain went to War. Indeed it was not until 1918 suffrage for women was achieved and women could vote when they reached 30. It wasn't until 1928 women were granted the same voting rights as men. It was achieved because women from all classes of society and all walks of life came together in a common aim. There was also, of course, a political will to ensure women's suffrage became a reality and many men supported the movement.

It was the Sex Discrimination (Removal) Act 1918 which enabled women to be admitted to the professions for the first time. It is for this reason that the National Organisation, originally set up in 1919 is known as the 1919 Club. The first woman Solicitor was Carrie Morrison, who it seems was admitted in 1922.

There can be no doubt that things have moved on considerably from such time. Indeed at the present time there are as many women

Solicitors as men entering the profession, if not more. Indeed at a Chatham House Lecture Cherry Blair QC stated that: -

"It has been a century of steady progress, something which can be seen in my own legal profession.... I think it is fair to say, usually not seen as in the advance guard of social change".

Today it is common place, although still an achievement, for a woman to enter the profession as a Solicitor and also, to be called to the Bar. Women also enter the profession as Members and Fellows of the Institute of Legal Executives. Today there are many successful QC's, Judges and women sit at the Court of Appeal and House of Lords.

However, during the course of the Chatham House Lecture referred to above Cherie Blair QC also noted interestingly that: -

'Despite progress, the percentage of women in our Parliament still lags behind those elected in Iraq, Afghanistan and Rwanda, which have reserved quotas for women MP's.'

This even though Lady Astor became the first woman member of Parliament in 1919.

It has been commented by many women in the profession and by the Association of Women Solicitors that disparities remain within the profession. The Association of Women Solicitors has indicated that: -

"You are twice as likely to make Partner as a man, more women go to work as Lawyers in-House and in Government

L OCCASION

because these are places offering flexible working”.

In addition despite the Equal Pay Act, women in full time work still earn less per hour. Despite more women than men now graduating with better results, within three years they are earning 15% less than their male counterparts who left University at the same time. Whilst the glass ceiling may have been splintered it most certainly has not been broken.

In an evolving society which has become multi-cultural the Association of Women Solicitors faces new challenges. Different cultures pose different

expectations and demands upon women in their particular society. It is a huge challenge for the Association to assist with ensuring that the hard won freedoms which are enjoyed by current members in Western Society remain and are extended to all members of the profession.

There can be little doubt that we have come a long way since it was necessary to enact the Married Women's Property Act 1882 to ensure a married woman's right to retain her own property and legal identity.

It is economic independence which allows women to follow

their own paths and the right to practice in the professions was a step which enabled them so to do. In addition it enabled women to have a voice and to influence the Law so that it could adapt to protect the needs of women in our society.

The Anniversary Dinner was well attended and the Association of South East Wales Solicitors looks forward to its next 25 years and the challenges which present themselves to Women in Law.

Unfortunately, one vibrant member of the Association was not in attendance. Sally Enever sadly died in January of this

year. Sally Enever, formerly Hamlin and Roberts, was well known in the legal community in Cardiff as a Family Law Legal Practitioner. Sally was well liked by her clients, respected by her colleagues and an adored mother. She will be sadly missed. Sally gave great support to Women in Law from its inception.

Many thanks to those who assisted with this Article.

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RECESSION – CAN YOUR RISK

We have all heard about the multi billion pound investment in the banking system by the Government in an attempt to restore some semblance of liquidity to the banking market and thus hopefully in due course to the mortgage and house purchase market.

Ever since the nationalisation of Northern Rock, those firms undertaking residential conveyancing will know that life has become increasingly difficult and may well have seen a reduction, possibly substantial, in their work load.

The legal press is reporting staffing reductions at various levels, with redundancies being announced from the largest to the smallest firms and with partners not being exempt from the risk of job losses. Indeed magic circle firms have announced a capital call on their partners to bolster the firm's working capital. At least most firms are trying to protect their trainee solicitors from the damage that losing a job part way through a training contract would cause.

None of us can be sure where this is all going to lead and it needs those of some age and longevity to remember the last time economic conditions were as bad which was in the 1970s, although at that time we also had soaring inflation and 15% interest rates and in the early part of the 1970s, the three day working week with power cuts etc.

All of this means that practices need to be alert to the rapidly changing environment and be reviewing and planning, in so far as is possible, the way

forward for their business.

When times are hard and costs are under pressure it can be tempting to take short cuts or achieve work load reductions wherever possible and one area that practices cut at their peril is that of risk management. Indeed when times are difficult fraud is likely to rise both from clients and unfortunately at times internally and there is a need, if anything, to be even more vigilant rather than less.

Practices need to ensure that their risk management procedures in all areas of work but particularly in the reduced volume of residential and commercial conveyancing are robust and properly implemented on a day to day basis by every member of the firm.

The wider political economic scenario also needs to be included in risk management planning and needs to be kept constantly up to date. The Law Society is doing what it can to help give guidance and in two consecutive days in early October issued and then amended a practice note regarding the banking crisis and the security of client funds and has as at 8th January issued a further update to its guidance. Boring as these documents may potentially appear it is important that they are read as soon as they are issued and if necessary acted upon quickly, but in a considered manner, to ensure that the firm is protecting itself, its own assets and its clients interests as best as it can in the rapidly changing times in which we are working. Many practices will still be coming to terms with the new July

2007 Code of Conduct and in particular the new Practice Rule 5 on Business Management.

Comprehensive and possibly intimidating as this Rule may appear, careful and thorough implementation of all of the areas listed can help firms manage and cope with the pressures and challenges that we are facing, particularly if the planning has been done in advance and partners and other senior staff have had time to consider carefully all the possible options and the challenges and risks that practices may face and put in place proper plans to deal with and minimise the risks to the business.

Even if firms have not yet managed to address all areas of this Rule it does act as a very good agenda and aide memoire for partners and managers to consider as they face the challenges that are likely to come in the future.

The particular clauses that may be considered particularly relevant at this time are:-

Ensure adequate supervision;

Supervision is the key to good risk management and is no less important when workflows are low. Indeed it is even more important than usual to ensure that fee earners (and fellow partners) are not taking on work for which they are not properly qualified. This is a route to future problems as has been mentioned many times before.

Control of Undertakings;

The loss of control of undertakings can have a severe

financial impact on a firm that may be experiencing a difficult enough financial climate anyway. The Law Society have pointed out that firms should not restrict or caveat their normal undertakings despite concerns over the financial stability of some banks.

Financial Control of budgets, cash flow and expenditure;

When cash is in short supply, good credit control and cash management is essential. Banks are less likely than normal to entertain sudden short notice requests for additional funding. Good planning is the key to identifying impending cash pressures and thus being able to approach the bank in good time.

Good control of expenditure to ensure that a firm lives within its budget is critical when income is in short supply.

The Continuation of the firm;

Whilst this clause normally primarily refers to the continuation of the firm due to external physical influences and is usually referred to as Business Continuity, planning. It can in current circumstances also apply to the economic forces buffeting firms and thus for the long term sustainability of the business, the making of necessary even if unpleasant decisions is something that should not be left until too late.

The Management of risk.

As has already been said, good risk management increases in importance in difficult times. It is a prime duty of all partners to ensure that their firm has

MANAGEMENT SYSTEM COPE?

robust procedures in place and ensure that they are fully followed by everyone in the firm. As the economic climate is changing rapidly the wider risks to the firm – strategic, regulatory, economic and political should be kept under closer review than in normal times.

Amidst all of the rapid change and confusion there is only one certainty that all commentators appear to agree upon, and that is that things are almost certain to get worse before they get better and that there is not going to be a quick return to what we have grown to believe to be normality. We are likely to face at least one, probably two or possibly even three years of severely straitened circumstances before we recover from the present situation and indeed it is unlikely that we may ever return fully to the situation

that we have grown to used particularly through 2006, 2007 and even into early 2008.

Things may never be the same again and strategic planning needs to take that into account whilst risk management at the procedural level also needs to recognise that things may never be completely the same again. Whilst circumstances remain stressed and difficult, there is an increased likelihood that clients or others relying upon work done by your firm will look to you and your insurers as a possible way of mitigating their own losses, seeing you as professional advisers with “deep pocket” insurers against who claims can be made.

As always it is those who are aware of the risks and plan appropriately to manage

them who will hopefully suffer the least problems, whilst those who do not keep their procedures up to date and properly and fully implemented will unfortunately pay the price.

**Roy Slocombe – Consultant
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Denis Burn – Director – Smith & Williamson

Denis specialises in helping senior executives to develop, implement and track successful business strategies. Much of his work currently focuses on planning, action and leadership in a downturn. He has particular experience of professional practices and Smith & Williamson is a leading adviser to this sector, providing specialist and tailored professional advice.



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JUDICIAL APPOINTMENT

HIS HONOUR JUDGE TERENCE JOHN

My recent appointment to the Circuit bench was preceded by 14 years on the District Bench spent mainly in Cardiff. I am acutely aware that it is an all too familiar mantra of those in middle age (and beyond) that 'things have changed'. We marvel at the pace of it and wallow in the nostalgia of how it all 'used to be'.

The law has not escaped. Indeed, the relentless changes have become a source of frustration for practitioners and judiciary who, on occasions, have said so unabashed.

We can all rattle off a litany of changes not only in substantive law but systemically in the criminal, civil and family jurisdictions. Pausing for breath, in a short period of time the financial limit of the county court's jurisdiction became that of the small claims track alone. As a result of conferring unlimited jurisdiction upon the County Court, and of the eponymous Woolf reforms, work has cascaded from the High Court and Circuit Judges now regularly undertake work that, not long ago, would have been exclusively the domain of a High Court Judge. From 6th April, District Judges have as of right, a jurisdiction that in monetary terms is five times that of that former county court jurisdictional limit.

This has created is a new landscape for judges, new practices and new working lives. Not only have the demands upon them increased enormously but judges themselves are different. The requirements made of them in a multi-ethnic, diverse

and transparent society have procured that change. In 1994, the numbers of District Judges recruited from ethnic minorities was negligible. Women were akin to an endangered species and the District Bench was occupied almost exclusively by solicitors. My role as a JSB tutor on the DDJ Induction Course over the past eight years revealed how quickly that has changed certainly in relation to women and members of the Bar who now comprise something approaching 50% of recruits.

Perhaps the pinnacle of this rejuvenation (assuming there cannot possibly be more) was the Constitutional Reform Act 2005. That sent the hurricane of change to the very heart of it – the Constitution itself – by the further separation of the Judiciary from the Executive. A hugely significant aspect of that was the establishment of the Judicial Appointments Commission. By then, many of the old purely personal methods of appointment had been replaced by competitive processes. The Commission represented a further step in that journey by the establishment of institutional independence and a statutory requirement for merit at the core of judicial appointment. The Tribunals, Courts and Enforcement Act 2007 has redefined the eligibility criteria for some positions.

An appointment system based on defined competencies, an entry point by application and test for District Judge, Recorder and Circuit Judge appointments and the rigorous assessment procedure for Deputy District Judges were part of an exercise in leveling the playing field.

The Ministry of Justice undertook a proactive programme of regional road shows designed to broaden awareness and arouse enthusiasm within more diverse sectors of society. A judicial shadowing scheme now enables practitioners to dip their toes into the judicial water and ascertain whether it is or might be for them by sitting in with a judge.

Yet despite these initiatives, interest and take up remain subdued and applications by solicitors for judicial appointment lag behind what was anticipated. These are genuine efforts to address the perceived need for more solicitors to become judges. You do not have to accept my menial word for it – see for instance the article 'Time for Change' by the Lord Chief Justice in the Law Society Gazette on 17th April.

So what can or should be done about it? I suggest the following are core considerations.

Firstly, the profession itself needs to take a selfless look at this and consider a cultural change towards the appointment of its members to the judiciary. In place of a restrictive approach which, it is often said, has not only discouraged individuals from applying but has actually prohibited them from doing so, should the profession not recognize a duty to provide recruits?

Secondly, individuals should exploit the opportunities to 'suck it and see'. In some it will stimulate great interest as they discover a role quite different from what they expected. In others, it will be anathema. Either way,

the experience is valuable (and earns CPD points). Details of the shadowing scheme can be found at workshadowing@judiciary.gsi.gov.uk. It is enthusiastically supported by the judiciary.

Thirdly, this should not be left exclusively to individuals. It is not necessarily the thrusting ambitious self-confident individuals who will make the best judges. The qualities and competencies required are many and varied; there are many shrinking violets out there within whom others recognize the qualities more readily than they themselves do. Those individuals should be encouraged by their colleagues and peers to consider a judicial future.

Fourthly, there is a need to understand the appointments process and how it functions, the competencies that are being considered and exactly how they are to be demonstrated. This is not a blind date with destiny and very careful consideration needs to be given to an application itself as well as the subsequent processes of assessment, test and interview. As with almost everything else in legal life, preparation and preparedness are vital.

The short point is that unless the profession as a whole addresses the issue of solicitor appointments to the judiciary, sees it as a duty, actively encourages it and frowns upon discouraging it, the number of solicitors appointed to the Bench may remain disproportionately low.

H.H.J. Terence John

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