Issue 26

The Circuiteer

News from the South Eastern Circuit

Spring 2008

Diversity and The Bar

A Note from the Editor

The planning of each issue of *The Circuiteer* has begun with an editorial board meeting and each issue has had a theme. Usually these meetings consist of four or five of us crowding into my cramped room at The City Law School. This time it took place in the vaster surroundings of Furnival Street where Fiona Jackson, already aware of the plans for the autumn Bar Conference, suggested Diversity and the Bar. This fit ideally into something the Circuit Leader, David Spens, Q.C., had said at a committee meeting. He noted that the make up of those present bore little relation to the face of the Bar which he saw every day at court.

Over 30 years ago, my pupil master passed on the advice of his father, who had himself been Called in the 1920s. 'If you are able and you persevere, you will succeed at the Bar'. He added (and I paraphrase), 'if you don't have a sense of judgment, don't bother'. The Bar was then very largely made up of able, sensible white men. Until very recently it continued to operate as if able, sensible women, blacks and Asians would join on some sort of level playing field and would remain at the Bar as did those who come from what is now called a traditional background. As late as 2003, I heard the then Lord Chancellor, Lord Irvine, tell the House of Commons Committee of the Lord Chancellor's Department that since there was now gender equality at admission to the Bar, equality at the senior levels and on the bench would naturally follow. Shortly after that he lost his job and the Judicial Appointments Board was born. We all remember that at its birth the JAC had a tough job persuading people that choosing on merit and promoting diversity were not incompatible. In the event, they have had a tougher job than that, living up to the expectations of Parliament.

There is only so much the Circuit can do but it can help to change attitudes and expectations. 'Against the odds' the Circuit event on October 28, will attempt to do just that. Mohammed Khamisa, Q. C., who is organising it, explains why it is happening and what will take place.

In January 2007, Geoffrey Vos, Q.C., as Chairman of the Bar, told me in interview that the Bar should reflect the society it represents. Not everyone agreed with him. However, Karon Monaghan, Q. C., who served on the Neuberger Working Party and Emily Radcliffe who here deals with retention, show why Geoffrey was right. Childcare has been one of the great barriers to entry and to retention; Jess Connors reports on the long overdue plans for a Bar Nursery.

Even as we sort out our own house, we keep an eye on the outside world. Dorothea Gartland explains the fascinating interplay of English and Sharia law and the capacity to marry. Sappho Dias updates us on the work of the Burma Justice Committee and on why the plight of Burma must not be forgotten. A reminder of our connection with our legal colleagues abroad was the third annual Dame Ann Ebsworth Lecture, where Justice Scalia of the United States Supreme Court challenged a packed audience in Inner Temple Hall with his views of judicial construction of the American Bill of Rights.

Closer to home, our expert on all matters of criminal law, Professor David Ormerod, returns to explain the new Act on corporate manslaughter. Tom Sharpe, Q.C., takes time off from his journeys around French vineyards to describe the development of competition law in this country. The selection of Queen's Counsel is much debated in this issue; Max Hill, Q.C., the Circuit's former Recorder, gives the inside story on what it was like to apply in the last round. Hugh Vass gives us a realistic view of the latest circuit town, Ipswich.

The spring issue always advertises the important upcoming Circuit events: the annual dinner on June 27, the trip to Lisbon, Keble and the Florida advocacy courses. I have taken on the role of book reviewer.

Finally, and at the beginning of this issue, we remember that the Bar is part of the wider legal system. We are happy to include a word from one of our presiders, Mr. Justice Bean, who has been a member and friend of the Circuit for a long time.

As always, I welcome feedback and comments. I would like to thank the Bar Council, for the use of the photographs which they commissioned to illustrate the diversity of the Bar, and those who appear in them.

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Leader's Column

One Bar

At all times, and especially in difficult times, it is important that the Bar speaks with one voice. To achieve such cohesion the Bar Council must represent the views of the profession as a whole. It must be democratic, representative, and inclusive. This also requires members of the profession to participate in the process and to make their voices heard.

This ambition was very much a part of the inaugural address last December of Tim Dutton, Q.C., as the new Chairman of the Bar. Steps have been taken to improve communication between the Bar Council and the profession. Before any Bar Council meeting, each Circuit is required to make a report to the Chairman; afterwards, the minutes of the meeting are distributed. The distance between the individual barrister and the Bar Council is thereby shortened.

The SEC Committee must play its part in this process. For each Circuit Committee meeting I have asked for and received both a high level of attendance from Committee members – your representatives – and reports from each of the eleven Bar Messes. In this way your views are being heard and communicated to the leadership of the Bar, which in turn is made all the stronger for knowing what individual members really think – their current concerns and their anxieties about the future.

If you want your voice to be heard please contact your Bar Mess representatives. Better, this autumn, stand for election to the committee.

Equality and Diversity

I am keen to encourage greater representation on the committee and participation in its activities by as many people from different backgrounds as possible. The SEC is uniquely diverse. The most inclusive it is, the more democratic it will be, and the stronger will be its voice and its ability to represent the daily concerns and future aspirations of all the practitioners on the Circuit.

At the end of 2007, I invited Mohammed Khamisa, Q.C. to become the Circuit's Equality and Diversity Officer. He accepted. I have, with the approval of the committee, co-opted a number of people on to it so that it better reflects the Circuit's diversity.

One of our concerns, shared by the Chairman of the Bar, is that too few people from black and minority ethnic backgrounds are being appointed as Q.C.s, Recorders or to full time judicial appointments. If our judiciary and the senior ranks of our profession do not yet reflect society's make up, they will need to do so in the future, in order to instil public confidence in the judicial system. Tim Dutton, Q.C., has asked each Circuit to appoint a mentor to encourage those from diverse backgrounds to apply for these positions, and – on a confidential basis – to assist them in making their applications. Mohammed has also taken on this role.

People from diverse backgrounds, irrespective of race, colour, religion, disability, gender or sexual orientation, are already members of both small and large sets on this Circuit. What I want to encourage is their greater participation in the affairs of the Circuit, which is best achieved by standing for election to the committee in the autumn.

With this in mind, the Circuit will host an event in October: 'Against the Odds – a celebration of Equality and Diversity'. The main speaker will be the Attorney General, The Rt. Hon. Baroness Scotland, Q.C.

The third Ebsworth Memorial Lecture

The third Dame Ann Ebsworth Memorial Lecture took place on February 5, in Inner Temple Hall. The speaker was Justice Antonin Scalia, Associate Justice of the Supreme Court of the United States. His presence produced a packed house (our apologies to those who were left queuing on the stairs), for his lecture 'Judging Under a Bill of Rights – A Different View' [CF a report on the lecture in this issue]. In choosing this topic, Justice Scalia followed the theme of his 'Ebsworth' predecessors, but he took a radically different position. No one who attended could suggest that the content and his delivery were anything less than memorable and thought-provoking, even if one might not share his views.

I would particularly like to thank Joanna Korner, Q. C., for arranging such a stimulating evening.

Next year's lecture will be given by Lord Bingham.

Very High Cost (Criminal Cases)

The deadline for signing the revised contract was 12 midday on Friday 14th March 2008. At the time of writing I do not yet know how many barristers did sign, nor whether the LSC regards the take up as being sufficient to allow the scheme to work. You will have read the letters from the Chairman of the Bar, Tim Dutton, Q.C. The Bar Council has also issued a Draft Protocol for consideration by any barrister who is offered an ad hoc VHCC case.

This is advisory and not obligatory. Both are available on the Bar Council website **(www.barcouncil.org.uk).**

You will note from the Chairman's letter of 7th March that amendments to the contract included the clarification of several key clauses which made the terms of the contract less onerous. However, you will also observe later in this column that the respite from increased access to electronic diary provision was not regarded by the LSC as a long term commitment.

The rates in the contract remained the same as those previously proposed by the LSC in January, when only 130 barristers signed the contract. Those rates, for work in the most complex cases, have always been regarded by the Bar Council as unacceptably low. It remains the Bar Council's view that this is a flawed scheme, based upon hourly rates, which fails to incentivise quality, efficiency, teamwork and expedient handling of cases.

In particular, you will see that the revised contract allows the instruction of non-panel advocates if there is no Panel Advocate available. You should be aware that the highest rate payable is the same as under the contract, but what the non-panel advocate is actually paid is a matter for negotiation between the advocate and the solicitor. It is the solicitor and not the LSC who will be responsible for initially receiving and then paying the advocate's fees. If the rate agreed is less than the rate payable to a Panel Advocate by the LSC the solicitor pockets the difference. It seems difficult to reconcile this approach with the assertion of David Keegan, Director of HCC Contracting at the LSC, that the new scheme 'will be in the interest of clients, the justice system, and the taxpayer!' I have heard as yet unsubstantiated reports that some solicitors were seeking to pressure barristers into signing by threatening to pay ad hoc cases at less than the full rate. If anyone has experienced this, please let me know.

You will also observe that the rates of pay for preparation, in Annexe 5, provide that on Level A a solicitor advocate is paid the same as a Q.C., and on Level B a solicitor is paid the same as a leading junior.

The Bar Council still hopes to work in a collaborative venture with the LSC and the Law Society to produce a more cost-effective scheme – not a more costly scheme – which has quality and efficiency at its heart.

I remind you that the decision whether or not to sign a contract remains a personal one for each individual practitioner.

Joint Submission by the LSC and CPS to Change the Code of Conduct

The LSC and CPS have made a joint submission to the Bar Standards Board which proposes the following:

i. Rule 701(f) be amended to require records to be kept for three years after the last of the stated events has taken place.
ii. Rule 701(f) be extended to make clear such information must be provided to the Legal Services Commission, Crown Prosecution Service or other instructing public

Leader's Column (continued)

department or body as appropriate.

iii. The conduct rules be extended so that barristers must maintain case files in an orderly manner, showing what work has been performed, when it was performed (date), how long it took (start and finish times by reference to the 24 hour clock) and when it was recorded. These records should be accurate and kept up-to-date by recording within 48 hours of the work being done.

iv. In respect of electronic case management systems, the information recorded should contain sufficient detail to allow reports to be produced for the Legal Services Commission, the Crown Prosecution Service or other instructing public department or body showing day by day the hours and times claimed (and the identity of the person entering the data), case by case by individual barristers. Notwithstanding a barrister's duty to ensure the information recorded is accurate, the above information should be entered by a member of staff.

v. Summary information regarding the total number of hours worked per day by a barrister across all cases (e.g. private, legal aid, prosecution), be made available to the LSC, CPS or other instructing public department or body.

vi. Conduct rule 901 be extended to allow any breaches of the code arising from publicly funded legal services, to be reported to the Legal Services Commission, Crown Prosecution Service or other instructing public department or body.

The Circuit has already sent its working party's response to the BSB Standards Committee. The main points are as follows:

- There is no good reason to change the Code as requested.
- There are already in place substantial sources of information to enable public authorities to monitor and scrutinise cases in which audits are required.
- Any change as proposed would affect the entire Bar and not simply those who perform publicly funded work; otherwise it would be discriminatory.
- There is no proper argument for distinguishing between public authorities and privately paying clients. This would mean that any client would have access to all of a barrister's records for the preceding three years whether or not they instructed that barrister and whether or not the client approved disclosure of such records.
- The proposed changes may contravene confidentiality and data protection principles.
- The proposed changes would cause substantial administrative and financial burdens upon the Bar.
- The proposed change is of such significance and will attract such opposition that should it ever come to be recommended by the BSB it will require consultation with the whole Circuit.

Best Value Tendering (BVT) and 'One Case One Fee' (OCOF)

The Bar Council have responded in detail to the LSC's first consultation on BVT, known by many of us as CPT – cut price tendering. A detailed response was submitted on 3rd March 2008 by a working group chaired by Desmond Browne, Q.C., the Vice Chairman of the Bar. This group included a significant proportion of members who enjoy distinguished careers in public life outside the Bar, so there can be no allegation of special pleading. The paper can be found at www.barcouncil.org.uk. Its conclusion was that there is no compelling argument why BVT is appropriate or necessary for this work. The earliest timing of a pilot crown court scheme is not before 2009/2010.

The second consultation on OCOF is to take place in May or June of this year. A foretaste – were it to be rolled out – of what OCOF would bring to the Bar is reflected by the LSC's proposal (see above) for the payment of barristers who take on ad hoc VHCC cases. The prospect of OCOF will affect not only all publicly funded practitioners but the future quality of our system of justice for years to come, and this Circuit will vigorously oppose it.

The Advocacy Liaison Group

This group comprises Circuit Leaders, the Chairs of the CBA and of the Young Bar, and Nicholas Hilliard, Q.C., together with various senior representatives of the CPS. It meets quarterly to discuss issues which have arisen between the Bar and the CPS including deployment of in-house barristers and HCAs, adherence or the lack of it to the Framework of Principles, 'over-briefing' of HCAs, 'straw juniors' etc….

The Bar has been pressing for some time for equality of grading between CPS external and internal advocates. I am pleased to report that the CPS has provided us with the first draft of their thinking about how a parallel system of grading might be devised for CPS internal advocates consistent with their terms of employment. The CPS asked for the Bar's input. We will provide it.

Thames Valley Bar Mess

The Mess is holding a Reception, followed by dinner at Cerise at the Forbury Hotel, Reading on Thursday 1st May at 7 pm. The resident judges of Reading, Alyesbury and Oxford Crown Courts will attend. It will be preceded by a CPD-accredited lecture given by Professor Colin Tapper at 5.45 pm at Reading Crown Court.

I see this as an opportunity to revitalise this Mess which has been nursed through a difficult period by Brendan Finucame, Q.C., and by Kate Mallison.

Email jbrady@13kbw.co.uk

David Spens, Q.C.

Forthcoming Events

Thursday, May 1.
Lecture (1 hour's CPD) at Reading Crown Court, 5.45 pm followed by a reception and dinner at Cerise.

Wednesday, May 21.
Reception for Presiding and Resident Judges.

Friday, May 23 to Tuesday, May 27.
Circuit trip to Lisbon.

Friday, June 27.
Circuit Annual Dinner: Guest Speaker: Sir Igor Judge, President of the Queen's Bench Division

Tuesday, October 28.
'Against the odds – a celebration of Equality and Diversity'

A Presider Remembers – and Looks Forward

A Presider of the South Eastern Circuit for two years, Mr. Justice Bean is no stranger to us. As a former circuiteer and committee member – and a former Chairman of the Bar – he looks back on his involvement with us and notes the challenges for the Bar ahead

I joined the South Eastern Circuit 30 years ago. As a young barrister at 1 Temple Gardens I learned my trade in the magistrates' and county courts. The venues varied from the medieval stained glassed splendour at the courts at Dover to the Nissen huts at Sheerness. Some of the judiciary were rather variable too – but I must stop myself going into nostalgia mode ('Do you remember old Judge X who was on the Bench when we started in practice? Dreadful man. They should have had him sectioned. Of course things are so much better now').

I graduated to appearances in the crown court for the Customs and for the Kent County prosecuting solicitor - no CPS in those days, of course. In the mid-1980s, just as PACE was coming into force, I moved over to employment work, though from 1992 onwards I was back in the crown court for a few weeks a year as an Assistant Recorder.

When in Rome

The South Eastern Circuit committee has always had a large majority of professional criminals, if you will pardon the shorthand. The then Leader, Lady Justice Hallett (as she then wasn't), invited me to join the committee to provide a civil perspective. The best thing about it was the Circuit's overseas trips organised by Oscar del Fabbro. I can remember Prague, Paris, Rome and Barcelona. There was a serious element to these weekend visits, but it never lasted beyond the Saturday morning.

No rest for the judges

Since the start of 2007 I have been one of the Circuit's four Presiding Judges. Our numbers were increased to reflect our involvement for the first time in the supervision of magistrates' courts. Under the Constitutional Reform Act the Lord Chief Justice is responsible for the deployment of all magistrates as well as all judges. Other Circuits make do with two Presiders, but in the south east we have more than twice as many courts and judges as any other: 487 full time circuit and district judges at the last count, plus large numbers of recorders, deputy DJs and magistrates. I had the magistracy portfolio last year, and, on an unofficial basis, in London the previous year. Sadly the young Bar is not seen in the magistrates' courts as much as it was 20 to 30 years ago. This is a loss, both to the courts and to the profession, since the work provided a valuable training ground before doing jury trials.

This year Peter Gross, J. and David Calvert-Smith, J. supervise the crown courts, respectively, on circuit and in London. Peter shoulders the additional burdens which fall on him as the lead Presider. Jeremy Cooke, J. now deals with the magistracy, which leaves me with the county courts. However we all still divide our sitting time between the Royal Courts of Justice and the crown court. Since becoming a Presider I have been to Reading, Southwark, Blackfriars, Kingston, Cambridge, Maidstone and the Old Bailey. In April I go to Chelmsford, and to Oxford later in the year.

Like the old days

If the listed case – usually, though not always, murder – goes off, we stay on tour and hear whatever the court has to offer. As a result it is sometimes back to the sort of trial that I knew as a Recorder and which the Bar knows all too well – brief the night before, crucial witnesses not warned, PCMH nodded through without anyone grappling with the real points, and so on. It must be a shade worrying for the inexperienced when such cases come up before a Presider, but it is quite character-forming for all concerned – including for the judge.

Getting on with it

We try to work against the culture of adjournment which is so deeply rooted in many criminal courts. Last July I sentenced a man for a rather trivial offence of deception to which he had pleaded guilty. It was the fifteenth appearance of the case in the crown court. This is an extreme example but a matter coming up for the sixth, seventh or eighth appearance is commonplace. I hope that the combined effect of the new Criminal Procedure Rules and of the Bar Council/CBA 'Death of the Mention' project will improve things. However, there have been false dawns before.

Many factors are in play, and I am well aware that counsel are hardly doing mentions for the money. Still, may I commend to you the words of David Calvert-Smith in last year's *Circuiteer:*

'We, and by that I mean the Circuit Bench as well as the Presiders, will always be impressed by those members of the Bar who for peanuts, and with no expectation of doing the eventual trial, nevertheless do a proper job at the PCMH or other interlocutory hearing. The reverse is also true. If work is accepted then the independent Bar has a professional duty to do it properly whatever the fee'.

We few, we happy few

Until very recently we were 35 circuit judges under strength, a deficit which imposed enormous burdens on listing officers and the administration as a whole. We warmly welcome our new colleagues but the process of their appointment was far too protracted. Future appointment rounds, we hope, will be more streamlined. The competition remains fierce at all levels. A recordership is statistically more difficult to achieve than Silk. One area which should be considered by more barristers seeking judicial office is the District Bench, both criminal and civil. The great majority of applicants, especially on the civil side, are solicitors. There was a time when only solicitors could become county court registrars, but that is ancient history now.

We have been through this, together

The Bar faces great challenges, and no one should be complacent, but what my eight years on the Bar Council taught me is the extraordinary resilience of the profession. Exclusive rights of audience were lost. Higher court advocates have grown in number. Legal aid rates for routine crown court work were frozen for years. The Auld report posed a serious threat to jury trial. The Office of Fair Trading investigated the Bar and recommended major changes. The Bar Standards Board took over regulation of the profession. The Legal Services Commission has introduced tendering for long cases. If the topic of the moment isn't Clementi, it's Carter, and if it isn't Carter, it's someone else (actually, these days it's usually Carter).

Despite all this the profession has grown steadily, as has its total income. The Circuit remains strong and in good heart. It is a privilege to be one of its team of Presiding Judges.

Against the Odds – A Celebration of Equality and Diversity

This issue of The Circuiteer is dedicated to the question of diversity. The Circuit's own Equality and Diversity Officer, Mohammed Khamisa, Q. C., of 9-12 Bell Yard, previews the Circuit's upcoming event and strikes the keynote - participation

Last summer the Leader of the Circuit, David Spens Q.C., asked me to become involved in the SEC with a particular emphasis on a project exploring equality and diversity issues. For some time now he has wanted to encourage greater participation within the Circuit's activities from its very diverse membership – particularly in relation to participation by black and minority ethnic members, referred to as 'BMEs' for the purposes of this article. Before long I found myself co-opted onto the Committee and appointed as its Equality and Diversity Officer.

Getting the representation

I began by conducting a survey of representation on the Circuit's own committees, where it became clear that there was an obvious lack of representation and participation by BMEs. This has already been rectified by co-options to the Circuit Committee. What about the long term? Is the answer yet more 'mentoring schemes, think tanks or, for that matter, diversity officers?' Surely, in 2008, we have gone beyond that. The real answer lies in getting many more BME barristers to join the Circuit, and to stand for election to the Circuit Committee. There is nothing more off-putting than the mention of yet another scheme to encourage participation which involves the setting up of another committee. So, I promise, that if I have anything to do with this issue there will not be such a scheme.

I understand and respect those who advocated these schemes in the past. There was a need for them when there was a lack of representation, but we now should build on their success. Getting people involved by active participation at the heart of the SEC's activities is the key to having as diverse a representation as possible. I have no doubt about this for one reason: there are no more bridges to build, because on the Circuit BMEs are already very much part of an integrated network of small and large sets. What is needed is to encourage them to get more involved. So let's examine the pros and cons.

Why should we encourage diversity in all its forms?

First, if the public is to have confidence in the justice system, it needs to see its own background reflected in the judiciary. High quality lawyers, from diverse backgrounds at every level of the profession are the key to achieving this. To a significant extent the public define their view of our legal system by those who populate it.

Secondly, leaving aside the strong moral reasons for promoting diversity, there are strong business reasons. More and more, clients, whether a City firm of solicitors, a small publicly funded firm, a government department, or a prosecuting agency are asking about the Bar's diversity policies. Some even request statistics to prove our commitment. Many clients are publishing their findings on their websites. Diversity is something the SEC must promote effectively to meet today's expectations.

Thirdly, greater diversity on the Circuit means that an 'eligible pool' of candidates for future Silk, Recorder and full time judicial appointments can be identified from within our Circuit.

Fourthly, when school children see that diversity is reflected within the Bar, they may be encouraged to enter the profession. The BSB has recently updated its equality and diversity plan for 2008/9 with powerful statements. These are commendable aims and objectives but only the membership of the Bar and, more importantly, of the SEC can ensure delivery. Speaking as someone who went through the state education system, I would like to think that the entry to this profession will remain open to candidates from all walks of life.

Fifthly, a more representative and diverse membership of the SEC and its Committee will help identify issues which have a disproportionately adverse effect on the BME practitioners – witness the proposed effect of the Best Value Tendering for Defence Services (BVT) which will curtail access to justice for BME communities, severely restrict client choice and have an adverse effect on the diversity of the Bar and the judiciary. Unless the BMEs are participating at the heart of the SEC, these serious issues are in danger of being insufficiently highlighted.

Not overnight

I am not naïve enough to think that things can happen overnight. It was not so long ago that many, like me, faced open discrimination on grounds of race at the Bar. Others encountered it because of gender, or sexual orientation, or disability. It is not necessary to go into the details of those painful days but I learnt a salutary lesson from these early experiences – to overcome such adversity meant participation.

There is a growing body of very successful, younger members of the Bar within the SEC who believe that being a part of the Circuit and, for that matter, the Bar Council lies at the heart of resolving issues of discrimination in whatever form; that we need to look beyond rhetoric and put into effect what we have talked about for the last decade. It has to begin with a clear recognition that there is simply no place for the bigoted or the prejudiced in our profession. People are less interested in labels being attached to individuals but more concerned with what members can do to help service a diverse community by making the law accessible to them. It is the quality of the advocate who turns up to represent the lay client that matters rather then his colour or sexual orientation, or disability.

The way forward

There is an obvious way forward for the SEC. If we have a diverse SEC membership which is reflected fully in its activities and membership of the Committee, it will be very much more likely to provide future leaders of the Bar and appointments to Silk, Recorder, and the judiciary. However the playing field must be level. There is no place in society, and in particular, on the bench, at the Bar or on the SEC, for discrimination in any form. The reasons are so obvious that I do not need to set them out here.

My model is simple. Not everyone will agree. I know some think it is too simplistic, but I believe

that it will work because I hear a chorus from BMEs at the young Bar on the SEC that they regard participation in the SEC as the answer to many of the challenges.

Look at what has been achieved. Already there are now 14,900 practising barristers, of whom 12,000 are self-employed. Of these 33.4 percent are women. 11.2 percent are from the ethnic minorities. This is a far cry from the position in the 1970s and 1980s. The figures suggest that ethnic minorities are well represented with the professions but it is clear they are not participating in the activities of the SEC to the same level. There are some real issues to be tackled: only 4 percent of silks are from BME backgrounds and when one breaks these figures down further, those from an Afro Caribbean background are hardly represented. In the last round, there was not a single black applicant for Silk who was successful

Becoming an integral part

Every day on the SEC, at the various court centres, I see a diverse Bar and I ask, as has David Spens, why is there not more participation? Many of the senior practitioners (and I include myself in this) could do more to help greater participation by themselves getting involved, more so than they have in the past.

There are important issues to be addressed – why are able BMEs not applying to become Silks and, if they are, why are they not being selected for appointment? Why weren't there any High Court judge appointments under the current system, which we were led to believe was transparent and would yield a more diverse judiciary?

I do not claim to have the answers to all of these questions, but one thing I am clear about is that, unless BMEs become an integral part of the SEC many of these issues will not be addressed.

So far as the current Silk appointment system is concerned I have recently examined it for the Circuit I have found nothing which would indicate that the process is unfair or discriminatory against any particular group. I have spoken with unsuccessful candidates from the BMEs who agree that the system is not discriminatory.

So far as the Judicial Appointments Commission ('JAC') is concerned I am afraid the jury is still out. In the last 21 appointments for the High Court, there were three women but none were BMEs. On the face of it this is difficult to understand. Some say that this is a clear example of a system based on merit, and that those appointed are the best applicants. I have no doubt about that. But others ask, Where is the diversity? Why were no BME applicants appointed? According to the JAC again, there is a real issue about the 'eligible pool' of BMEs simply not applying. Is it as simple as that?

Becoming engaged

We cannot examine these important issues unless BMEs become fully engaged in the process. If, unwittingly, the system of appointments is working against any particular group then surely the JAC and the Ministry of Justice will want to examine and correct it? Without detailed analysis of the applicants, their experience and qualifications, it is difficult to explore this further.

This is where I believe the SEC has an important role. The SEC must encourage greater participation at all levels. We can identify a diverse and eligible pool of the most able candidates for the judiciary. Advice, guidance and assistance in

form-filling, finding referees and help with interview techniques could also be provided. But unless BMEs participate the issues will not get addressed.

So on October 28 of this year, the SEC will be hosting a significant event – the biggest of its kind ever held. The title is: 'Against the odds – a celebration of Equality and Diversity'. The main speaker will be the Attorney General, Baroness Scotland, Q.C. The aim is to encourage the diverse membership of the SEC to participate. Importantly at this event, there will be a large number of guests representing diversity in its widest form, thereby creating an important milestone for the SEC.

One Circuit, one voice

The clear message we wish to convey is that the SEC is one circuit with one voice and one membership – regardless of race, colour, creed, disability, gender or sexual orientation. We wish to celebrate the contribution to the SEC by past and present members whose achievements have been significant despite the adversity they faced.

It is anticipated that the Heads of all Divisions of the judiciary, Specialist Bar Groups, the Law Officers, heads of chambers, and Circuit members together with students from the Inns and Bar schools will be invited. The list of invitees is too long to set out here.

We feel confident that every set of chambers on the SEC will want to support this event by being associated with it. If upon reading this article there are members of the Circuit who wish to become more involved in this project or need help in any of the areas I have mentioned in this article, please email me at m.khamisa@9-12 bellyard.com .

The Neuberger Report and Women at the Bar

Lord Neuberger's report ranged far in accepting that the Bar had a responsibility to lower the barriers of entry to those who had traditionally found it most difficult to get into and to remain in the profession. Karon Monaghan, Q. C., of Matrix Chambers, herself a member of the working party and author of Equality Law ***here deals with the role of women and of how much more needs to be done.***

The Entry to the Bar Working Party published its final report in November 2007.[1] Its specific remit was 'to develop proposals for (a) improving funding for new entrants, and (b) identifying and reducing barriers to entry for minority and socially and economically disadvantaged students'. The focus then was on securing greater equality in access to the Bar. The committee comprised people from within and outside the Bar and significant resources were invested to ensure that it was able effectively to do its business. In the opening, Lord Neuberger described his own view of why the issue was important:

> *'The Bar can only flourish and retain public confidence if it is a diverse and inclusive profession. Diversity and inclusivity extend not only to gender, ethnic origin, physical ability, religious belief, and sexual orientation, but every bit as much to social, economic, and educational circumstances and background, and to age. Diversity and inclusivity are essential if a modern profession is to maximise its credibility and to contribute towards a fairer and more effective society.'* (Foreword).[2]

I agree. The Bar must be concerned about greater equality in access if its future as an independent specialist advocacy profession is to stand any hope of being guaranteed. An apparently unrepresentative profession is unlikely to engender community support. Equality in access is important for other reasons too; in particular, to ensure adequate diversity in skill and experience, necessary to meet the needs of legal service users from all communities; to secure compliance with the statutory equality duties[3]; to ensure a sufficiently diverse pool from which the present and future judiciary might be recruited and as a matter of social justice.

Barriers to the Bar

The Report identified two barriers, social (which often includes educational) and economic. The perception of the Bar as being largely made up of those from privileged backgrounds 'has a strong element of self-fulfilment', discouraging those from less privileged backgrounds. 'Our concern is to get rid of the perception, and of any grounds which might be cited to justify it.'

The first barrier, at least, is described as principally extraneous to the Bar – that is, based on *others*' perceptions. Even the second is not in terms said to be attributable to, or contributed to by, the Bar itself. Although the Report does recognise some barriers found in the institution of the Bar itself, the focus is instead on mitigating the effects of some forms of social exclusion and economic disadvantage by;

a. Advertising the work of the Bar, so removing its mystique and mitigating the perception of inaccessibility that can deter potential applicants (recommendations 1-15);
b. Modifying the arrangements for the Bar Vocational Course, including improving its standard (recommendations 16-30);
c. Modifying the arrangements for pupillage, including attempting to increase their number and funding for them (recommendations 31-39),[4] and
d. Ensuring fair (non discriminatory/equal opportunities compliant) recruitment procedures (recommendations 40-43).

Women at the Bar

Women's experience in the law has not been characterised by easy accommodation, and to a great extent the profession itself remains one which is 'fundamentally male'.

Historically, early attempts by women to join the professions were thwarted, firstly and formally because the courts did not regard them as 'persons' and as such they were not entitled under the relevant statutory provisions to entry.[5] It was not until 1919, with the enactment of the Sex Disqualification (Removal) Act, that the legal professions were open to women at all.[6] When Ivy Williams became the first woman barrister she recognised that *'she had gained entry not because of a fundamental change of heart among the barristers, but because Parliament had forced the way open'*.[7]

Women now join the Bar in roughly equal numbers to men (just slightly under half now entering the Bar are women[8]) and the proportion of women entering the Bar has steadily increased over the last 40 years or so, from 8.23% in 1969 to 40.33% in 1989 and 48.98% in 2006-7.[9] However the effect of historic under - representation and present inequality means that, of those practising at the Bar in December 2007, only 30.94% of self-employed practitioners were women (3731, as against 8327 men[10]). Further, only 19.51% of practitioners at the self employed Bar of over 15 years' Call are women.[11] The position for Queen's Counsel is even more disappointing with only 9.48% of Queen's Counsel being women as of December 2007 (116 out of 1223[12]). The explanation for the difference in the proportion of women entering the Bar and those presently within it is explained in part by historic inequality but also by present attrition rates.[13] The barriers are found in the profession's culture and expectations as to working hours and patterns and in the prejudice and discrimination which still exists at the Bar.

A male norm

The self employed Bar requires all practitioners to bear the financial risk of establishing a practice (usually in a city centre). It expects that a practitioner will be self sufficient – if they are ill or absent, or for some other reason unable to work, it is they that must accommodate that alone. There is no sick pay, maternity pay, caring leave (remunerated or at all) or other such support[14]; no holiday entitlement and no limit on working hours. Generally, especially in one's junior years, a barrister is expected to go where the work takes her or him – which may mean early starts; overnight stays and long periods away from home. There is a culture and expectation of long working hours and 'presenteeism'. The institutional arrangements of the Bar, then, are constructed around a male norm – and indeed a male of a certain class. Stereotyping around 'appropriate' practice choices appears still to be prevalent, so that, for example, women are disproportionately represented at the family law Bar.[15] In this year's Silk round nearly four times as many men as women were appointed. However, of those appointed from the family law Bar, 40% were women.[16] The result is that the proportion of women who began a tenancy between the years 1988 and 1998, and who ceased to practise between the sixth and tenth years of Call was nearly twice that of men.[17]

This means that the fact that there is now a greater number (and greater proportion) of women entering the profession will not necessarily result in increasing numbers, or in ever increasing proportions, of women in practice at the senior end of the Bar in years ahead. The new system for the appointment of Queen's Counsel still requires women to practice like men if they are to succeed, so the application process requires a candidate to identify twelve judges in front of whom an applicant has appeared within a relatively short period (two years or three where the number for two years is less than twelve).[18]

As to the new system for the appointment of judges, this again does little better than the old. The most recent eleven High Court appointments were all of white men.[19] Recruitment is 'on merit and merit alone'[20] but one must wonder, with reason, whether that notion of 'merit' is constructed around a male norm.[21]

The Case for Change

There are a number of compelling reasons why equality for women at the Bar must be secured. These have already been alluded to above but, in summary, they are as follows:

a. The need for public confidence in the Bar/ democratic legitimacy;
b. The value to the profession and those it serves of a 'diverse' profession;
c. Anti-discrimination law and the statutory equality duties;
d. Social justice.

These are very different imperatives and a commitment or belief in all of them as a driver for change will not be shared by all at the Bar.

As to the first, the Bar forms an important part of our constitutional arrangements. The independence of the Bar and the reputation it holds helps ensure that the justice system more broadly operates fairly and without fear of the State. The existence of the Bar goes some way to ensuring equality in arms for those before the courts and is generally highly regarded.[22] This helps ensure that the courts have democratic legitimacy, but the judges must be seen to be drawn otherwise than from a narrow gendered class.

The second argument is more problematic, that is, whether the presence of women adds tangible value to the services provided. There are some circumstances in which this will be plainly true – as where feminist campaigning lawyers

have entered or continued in law with the specific purpose of pursuing legal change for other women. The argument is important both for its intrinsic value and also for providing a less threatening route into equality for women than a pure political feminist position might otherwise present.

Discrimination and the law

The third argument centres on the law itself. Barristers are afforded analogous rights to other 'workers' under domestic anti-discrimination law (section 35A of the Sex Discrimination Act 1975, 'SDA'). British law also assumes that barristers are 'workers' for EU law and, accordingly, the EU driven definitions of discrimination and other provisions (unique to those areas of the SDA affected by EU law) apply to barristers.[23] This means that barristers benefit from non-discrimination rights.

Further important statutory gender equality duties – both general and specific – are now imposed on public authorities, including the Bar Council, and which can require them to take designated action.[24] The origins of the duties are found in the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, enacted to give effect to the recommendations in the Stephen Lawrence Inquiry Report[25] and directed at addressing institutional and structural discrimination. They require pro-active action to identify and address them. Structural discrimination – which also requires positive intervention to remedy it – refers to entrenched social disadvantage associated with membership of a particular class that might include segregation and social exclusion.[26]

The gender equality duty

As to the gender duties, the Equality Act 2006 amends the SDA (from April 2007) to introduce a general sex equality duty, requiring public authorities in carrying out their functions to have due regard to the need to eliminate unlawful discrimination and harassment, and to promote equality of opportunity between men and women.[27] The SDA applies to the Bar Council and Bar Standards Board in respect of the exercising of their public functions (including entry to, and regulation of, the profession).

According to the Equal Opportunities Commission's Code of Practice on the Gender Equality Duty (2007),[28]

'The duty is intended to improve this situation, both for men and for women, for boys and for girls. Gender roles and relationships structure men's and women's lives. Women are frequently disadvantaged by policies and practices that do not recognise their greater caring responsibilities, the different pattern of their working lives, their more limited access to resources... Men are also disadvantaged by workplace cultures that do not support their family or childcare responsibilities... Both sexes suffer from stereotyping of their roles and needs.'[29]

Specific gender equality duties[30] (which apply to the Bar Council) have also now been enacted by Order,[31] and require the preparation and publication of a Gender Equality Scheme by 30th April 2007. The scheme must set out the actions which it has taken or intends to take to – (a) gather information on the effect of its policies and practices on men and women and in particular – (i) the extent to which they promote equality between its male and female staff, and (ii) the extent to which the services it provides and the functions it performs take account of the needs of men and women and (b) make use of such information and any other information the authority considers to be relevant.

The Bar Council's Gender Equality Scheme is described as 'Interim'.[32] It is also very weak – disappointingly weak given the skills available to the Bar. It addresses gender, principally, discretely, as a-contextual and so does not address intersectional forms of gender discrimination and its action plans are very limited indeed. However, the legal imperative for change does not exist in the SDA and the Bar Council must act to address the disadvantage experienced by women practitioners.

Finally, though by no means least importantly, I regard equality for women as important as a matter of social justice. This is a political question. But I regard equality for women as a condition worth fighting for.

The Neuberger Report

As mentioned, Lord Neuberger's Report recognised the disadvantages caused by certain of the cultural phenomena and institutional arrangements at the Bar. The recommendations we made in consequence can be seen, in particular, in Chapters 7 and 8[33] of our Report, namely (as they affect gender equality, in particular) that:

'All barristers involved in selecting assessed mini-pupils, pupils and tenants should be required to be trained in non-discriminatory selection procedures.

Merit-based selection procedures involving written or oral work should be actively encouraged in place of interview-based selection procedures.

The Bar Council should encourage good practices in pupillage and tenancy and employment selection.

Some equality and diversity training should be made compulsory for all barristers as part of their continuing professional development requirements.

Chambers should be encouraged to consider guaranteed income schemes for barristers in their early years of practice.

There should be closer monitoring of the extent to which there is actual compliance with equality and diversity requirements.

The Bar Council should encourage Chambers and relevant employers to adopt a mentoring policy for practice development and particular needs. In particular, specific arrangements should be in place to ensure that (a) women who take maternity leave or career breaks to accommodate caring responsibilities and (b) practitioners with disabilities, should be offered a mentor.

The Bar Council should ensure that its own practices and policies do not unjustifiably disadvantage practitioners with disabilities and others, including women on maternity leave and those with caring responsibilities.'

As can be seen these are modest, though important, recommendations. They presume that the core institutional arrangements for the Bar are justified and will continue in their present form – in other words, no guaranteed income for women on maternity leave; no (further) change to the Silk system; no targets for women in various practice areas etc. The word 'Feminism' is not mentioned. The Report is pragmatic, and is designed to make practical recommendations directed at securing greater equality in access to the Bar.

However, there are now significant external forces which call for a closer scrutiny of the Bar's institutional arrangements. Those lie not only in the broader democratic imperatives but also in the statutory equality duties. If women are not to continue to be under represented at the higher levels of the Bar and under represented in the judiciary, more compelling action is required and some of that will have to tackle the strongly held assumptions about the Bar and what it means to practice as a barrister.

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1 Entry to the Bar Working Party Final Report (November 2007) Bar Council. Available at http://cms.barcouncil.rroom.net/assets/documents/FinalReport Neuberger.pdf.
2 See too, para 20 and 23.
3 As were alluded to in the Report
4 The recommendations for part time pupillages are addressed below.
5 M Hall, 'Women as Lawyers' (1901) 1 New Liberal Review 222 at 227, cited in Mossman, n. 6, 113.
6 Though, Hall was not the only aspirant woman lawyer who had her hopes dashed by a patriarchal, misogynistic legal profession (see Mossman, n. 6, Chapter 3).
7 R Pearson and A Sachs, 'Barristers and Gentleman: A Critical Look At Sexism In The Legal Profession' (1980) 43 Modern Law Review 400 at 405-5, cited in Mossman, n. 6, 118.
8 48.98% in 2006/7: Bar Council, Records Office as at 14/12/07.
9 8.23% of entrants in 1969/70; 28.42% in 1979/80 and 40.33% in 1989/90 were women: Bar Council, Records Office as at 14/12/07.
10 Bar Council, Records Office for year 2007 as at 17/12/07.
11 Bar Council, Records Office as at 14/12/07.
12 Bar Council, Records Office for year 2007 as at 12/02/08.
13 Hence the fact that in 1989 (eighteen years ago) some 40.33% of entrants were women but by 2007 only 19.51% of practitioners at the self employed Bar of over 15 years call were women.
14 Outside the minimum required during pupillage (minimum of £5,000 per six months plus reasonable travel expenses).
15 It is recognised that this may be for reasons other than stereotyping too, but anecdotal evidence suggests that such continues and is still likely to explain or influence career choices in many cases.
16 From a small pool (the family barristers only numbered 5 in total) but this reflects the broader picture.
17 Bar Council Equality and Diversity Committees Exit Survey for Barristers Changing Practice Status Report (2005), prepared for the Bar Council by ERS Market Research. Our Working Group reported a selection of comments from the last exit survey in Appendix 14 to the Report (wrongly described as Appendix 12, in footnote 29, in the Report).
18 http://www.qcapplications.org.uk/external/pdf/Summary%20of %20Process%202007.doc.
19 http://www.guardian.co.uk/politics/2008/jan/28/uk.immigration policy1 (with one further white male appointed since then, Richard Plender QC).
20 http://www.judicialappointments.gov.uk/select/select.htm.
21 Senior judges will usually have been Silk (http://www.barcouncil.org.uk/about/whatbarristersdo/); will be expected to go 'on circuit', for example (http://www.judicial appointments.gov.uk/docs/0351_infopack.pdf).
22 Though this might be doubted to some extent in view of recent research which suggests that only 3 in 10 members of the public feel that barristers are a trusted and highly regarded profession ('Perceptions of Barristers, research study conducted for the Bar Standards Board by IPSOS Mori, December 2006 – August 2007, Bar Standards Board', 11 – but see 5 for more positive findings).
23 Section 35A(5), SDA; section 1(3), SDA.
24 Sections 76A – E, SDA (in force April 2007.
25 *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny,* advised by Tom Cook, the Rt.Rev Dr.John Sentamu, Dr Richard Stone, Cm 4262-I.
26 A classic example can be seen in DH & Ors v the Czech Republic (App no. 57325/00) (2007).
27 Section 76A(1,) SDA.
28 http://www.equalityhumanrights.com/en/publicationsand resources/Gender/Pages/Pub licsector.aspx.
29 Para 1.20.
30 Sections 76B and 76C SDA
31 The Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006.
32 http://www.barcouncil.org.uk/assets/documents/ INTERIMGENDEREQUALITYSCHEME8.08.07.doc. In place until 2008 when it is intended to have a single equality scheme covering all strands.
33 We also recommend that Chambers be encouraged to permit pupillages to be served part time (para 258).

Burma: The Shameful Silence

In the last issue of The Circuiteer, Tim Dutton, Q. C. reminded us of the brutal repression of protests in Burma last year, and how that was only the latest episode of human rights abuses by the military junta. Sappho Dias, Chairman of the Burma Justice Committee, goes further into the history of her country and urges us to continue the battle

The inaugural committee

In November 2006 the Burma Justice Committee was launched at the House of Lords with the helpful support of Lord Alton and some of the more splendid people at the English Bar – Anthony Scrivener, Q.C., Roy Amlot, Q.C., Jo Korner, Q. C., Sir Geoffrey Nice, Q.C., and Desmond Browne, Q.C. Afterwards, Adam Zellick and I were invited by the BBC to their studios on the Embankment, so that the special programme they were broadcasting on Burma could include a space for us. A short interview dealing with the work of the Burma Justice Committee was slotted into the Asia Today programme at noon and BBC World sent it all around the world.

As a result, I received emails from South Africa, Canada and the United States about the programme. As it was the World Programme, it did not get listening time in the British Isles. This was regrettable for the thrust of what was being said was: Please don't let these 40 minutes be the last that is said about Burma. Famous last words, as they say.

A tragic precedent

My endless appeals and articles remind me of the sad plight of the Kinwun Mingyi. He was one of King Thibaw's ministers at the Court of Ava. In 1872, he set off for a Final Mission to dissuade Queen Victoria from destroying the last vestiges of the Burmese monarchy. The Kinwun steamed down the Rangoon River flying both the Royal Peacock flag and the Union Jack, and carrying not guns but words. The hopes and aspirations behind those words were for a treaty which would prevent further aggressive intrusions against the sovereign rights vested in the Court of Ava.

In the event, sovereignty would be utterly crushed and destroyed. The king of Burma was eventually exiled to a miserable and sorry shack in Ratnagiri in India. The British forces were led by General Prendergast. More than a hundred years later, it would be unnerving for me, as a Burmese, to plead any case in front of his descendant, HHJ Prendergast at Inner London Crown Court.

In trying to prevent military aggression against the Court of Ava, the Kinwun used evocative words:

'Our land is fertile and richly endowed with minerals and raw materials. We have great mines of rubies and other precious stones. Our teak has no equal in the whole world. European visitors marvel at our gushing oil wells. We have also iron and coal. We produce gold and silver. Our land produces enormous amounts of sesame, tobacco, tea, indigo, all kinds of paddy, all kinds of wheat, and all kinds of cutch. We are glad to note that western nations agree with us that the time has come to develop this rich country'

Cruel irony

No person of Burmese origin can read the words of the Kinwun without wanting to weep for what was then and what is now. Now, there is a different and ghastly picture. The fertility is no more, save in the growing of illicit drugs whose profits go to the Junta, who have also raided the minerals and raw materials. There are no rubies, no emeralds, no jades, no sapphires save those that grace the necks of the wives and daughters of the Junta generals. There is no teak, no gold, no silver, no rice. There is no food save at extortionate prices. The price of petrol rose by eight hundred percent in one day in the summer of last year. All is poverty and grief. And the world watches on in virtual silence.

Peaceful protest and its consequences

How is this so? The answer is relatively simple. The Burmese are by and large, Theravada Buddhists. This is a form of Buddhism which involves acceptance of one's karma, which is perceived as one of suffering and pain. The opposition party (in so far as it exists at all after so much repression by the Junta) has been led by Daw Aung San Sui Kyi, a practising Buddhist whose avowed hero is Mahatma Ghandi.

Anyone who has seen John Boorman's 'Beyond Rangoon' will remember the dramatised version of what happened in 1988 when the appalling living conditions of the ordinary Burmese led to peaceful protests all around the country. A denouement was reached outside the American Embassy on 8th August 1988, when the military opened fire on the peaceful protestors. The exact figure for the dead is not known but secret film footage shows the protestors falling in bloody numbers, being moved into a nearby hospital, and being followed by soldiers. There was further shooting there. These were gruesome killings for which the Military Junta has not been called to account. Since the peaceful protests were led by students, universities were shut down and many of the student leaders were arrested and imprisoned. The vast majority were not allowed to complete their education.

The 88 Generation

After long years in prison, some of the student leaders were released. In or about 2005, some of them began to meet up informally in tea shops, to talk about the ever escalating poverty in their once-rich country. Since most of these student leaders were Buddhists, the emphasis was on peaceful dialogue. In August 2006, the student leaders established the movement and named it the 88 Generation.

Its primary political goal was for the establishment of talks between the Military Junta and Daw Aung San Sui Kyi's National League for Democracy. This campaign was also peaceful.

Three incidents illustrate the philosophical impulse behind the movement. The first was in October 2006, when the members of the 88 Generation all wore white and collected names for a petition calling for the release of 1,100 political prisoners. The second was that November, when, once more wearing white, they led a mass prayer session for the future of Burma. The last campaign was in January 2007, when the movement called for letters to be written to General Than Shwe describing their day to day struggles with poverty. This campaign was called 'Open Heart' and it is calculated that 25,000 letters were sent to General Than Shwe. He did not respond to one.

Bloodshed again

Murderous scenes emerged once more from Burma in September 2007. The soldiers of the Burmese Army were seen to shoot straight at a long line of peacefully protesting monks. The Military Junta admitted at the time that ten had been shot dead although both the British and the Australian ambassadors issued press statements to say that these figures were under-estimates. Following the shootings, many members of the 88 Generation were arrested at their homes (not at the site of the protests) and carted off to jail. The vast majority have been held incommunicado. They are not allowed visits by their relatives, let alone their lawyers.

Keeping up the pressure

After the Burma Justice Committee was launched, its first task was to present petitions to the United Nations Working Group on Arbitrary Detention to get declarations of unlawful detention in respect of the detainees. The Military Junta were allowed 90 days to respond to the petitions we filed. The Military Junta did not respond within that time and to date have not asked for an extension of time. Meanwhile, the body of at least one monk who was arrested and held without trial has been found in the Irrawady River.

The Military Junta is infamous for its torture of political prisoners – each moment which passes in silence is another moment of beating and torture of a defenceless monk. We must not, not, not remain silent. We must ensure that the plight of Burma is always in the limelight. Those that commit torture and murder must know that one day they will be called to account.

Contact Sappho Dias at 5 King's Bench Walk or Adam Zellick at Fountain Court Chambers

The Rocky Road to Silk

In the autumn 2006 Circuiteer, Sonia Proudman, Q. C. described what it was like to have to judge the first round of applicants for Silk under the new procedure. The Circuit's former Recorder, Max Hill, recent-Q.C., tells us what it was like to be at the applying end of the process, and offers hope and encouragement for those who are willing to take the plunge and pay the fee.

During the dark days of the moratorium on appointments to Queen's Counsel in the years 2003 to 2006, the Criminal Bar Association responded to the Government's Q.C. Consultation Paper in the following terms:

> *'Our view is that Silks have a justified and well-established value both nationally and internationally as leaders of their profession; that it is in the public interest to continue the Q.C. mark as one of distinction and integrity; but that the appointing authority should be removed from direct ministerial control and given to an independent Appointments Commission to make recommendations to the Queen through the appropriate Minister'.*

I happened to be one of the members of the Working party which was chaired by Roy Amlot, Q.C., who himself went on to be one of the two barristers on the first selection panel.

The second round of appointments in the 'new' Silk era has now happened. As I write, I have ordered my tights, purchased the buckled shoes, and await delivery of the fabled bum-freezer.

I'm all right

So it's all worked out perfectly for me, hasn't it? I certainly have no grounds for complaint, you may think, being one of the lucky 98 to have survived the 2006-7 Competition.

However, where I have been fortunate to squeeze through the Q.C. Secretariat's rigorous filter, approximately 240 other applicants were not so lucky. As that number includes many of those whom I count amongst my good friends from 20 years of practice, I can but offer two thoughts. Firstly, my sympathy at the thought of having to go through the expense, hard work and nerve-jangling wait after applying all over again, and secondly, some personal reflections on the high and low points of the process I lived through with them.

Last minute

Correct completion of the application form is a test in itself, and one which cannot be rushed. Do not think that I was a model of efficiency. It took me so long to gather the necessary information that my application was lodged with the Secretariat less that half an hour before the closing time on the final due date. I underestimated the task of collating up to 24 referees – I only managed 16 – and writing five short essays on the required competences. As for the latter, it is very difficult to say something useful and comprehensive about 'team leading' in 400 words. Whilst we all work within the confines of a formal court day, few if any of us in crime are used to being guillotined in the middle of an oral submission. Brevity on paper is essential if the application form is to impress. Moreover, the content of each short essay must cross-refer to those referees who can speak about your fulfilment of the competence in question; otherwise you run the risk that your words and those of the referee will seem to describe two different people.

It seems that a different approach to referees was adopted this time. From what I understand, all references were taken up on paper, rather than the 2006 practice of referee interviews which were time-consuming and labour-intensive. Although you pre-select your first and second choice referees on the form, you have no control over whom the Secretariat chooses to ask. It will be someone from the overall list but there is no guarantee that it will be numbers one or two.

Think ahead

I have heard that some prospective applicants, at the end of a long or significant trial, will approach the trial judge and even provide a précis of the important aspects of the case, to act as an aide memoire if and when that judge is subsequently approached as a referee. This sounds like good practice to me. I would only add the obvious, which is to copy and send the completed application form to every referee, so they know what you have said about yourself.

It all costs

The cost of the process is alarmingly high. Naturally, we must pay more now than we did before, as one of the conditions for retaining the Q.C. system was that the profession must underwrite the administration by the new Secretariat. Personally, I have no difficulty with this. I certainly would not say that the Bar as a whole should be expected to pay for a system from which only a small percentage directly benefit. But I do wonder whether unsuccessful candidates should have to pay as much as £2500 for the honour of being considered. Equally, a total payment of £6000 on appointment (a further £3500 being payable immediately, as my appointment letter from the 'Head of Market Study' at the Ministry of Justice told me) is a far cry from the £750 total payment which new Silks were making less than ten years ago.

What is the solution? Perhaps a second tier payment, between the initial application fee and the appointment fee: an 'interview fee' if you like? I suppose it would be wildly naïve to suggest that the Ministry defray some part of the application/appointment cost. If, as was successfully argued during consultation, the Q.C. kite mark is 'the defining characteristic of the English legal system', surely the Government should recognise that everyone gains from maintaining such a system? Then again, in these days of war over the new VHCC scheme, we need to solve the payment crisis for the rank and file members of this great profession, before improving the leaders' lot.

The importance of diversity

The paperwork provided by the Secretariat makes it clear that any or all of the five competences may feature at your interview. In practice, I found that the focus lay on team leading and diversity. For the first time (and controversially, for some) it is clear that diversity has been accorded the same weight as every other discipline. This means that applicants need to demonstrate excellence in awareness of diversity issues to the same degree as excellence in knowledge of the law and advocacy. Again, I have no problem with this. Silks are often called on for a whole variety of public functions (enquiries, tribunals, proceedings abroad), so how can they maintain the highest standards if they are unaware of the modern world and all aspects of a diverse society? The fact that diversity is the only competence which applicants are permitted to demonstrate from experience from both within and without their professional practice means that rounded characters should apply. Others should think first. Just as well for me perhaps, as I have never been much of a legal bookworm.

Because diversity is, rightly in my view, an issue of such importance, I offer two further thoughts on this aspect of the application process. Firstly, diversity doesn't mean that the system should work against the dedicated and committed lawyer who works so hard that he or she has little time for external interests. Advocates who are able to lead by example, showing sensitivity and awareness in dealing with diversity issues in court and on paper, clearly pass the test. Diversity is not about promoting good people above good lawyers. It is about recognising in good lawyers the capacity to demonstrate a true appreciation of diversity. Secondly, however, I found it useful to take

Max, Post-Successful Application

advantage of the right to demonstrate diversity awareness from my life outside the courtroom. For what it is worth, I chose to recite my own involvement in diversity issues through charity work which has no direct connection to my life at the Bar. I hope and believe that this consolidated my attempt to fulfil the diversity competence in my approach to issues and individuals in court. Only the interview panel can say to what extent extra-curricular activity underpins a candidate's legal practice in this area.

That interview

The interview itself I found to be disarmingly low-key, pleasant and apparently brief. Thirty minutes and it is all over, leaving you wishing that you had thought of this bon mot or that retort a few minutes earlier. In reality, I suspect that the hard work has been done if you survive the rigours of the paper application and the peer review represented by your referees. Those whose practice takes them into court all day have little to fear from the interview, albeit that addressing two (distinguished) panel members requires less declamation and hyperbole than a jury or even a judge. Although it is clear that the interview panel are alive to 'standard answers', both on paper and orally, I suspect that those whose practices involve little court work would benefit from some of the training courses in interview technique now on offer.

Not thinking about it

The worst of it all is, of course, the mental fatigue that comes with waiting a whole year between application and outcome. Worse by far than awaiting the result of O levels, A levels, degree results and Bar Finals all rolled into one. Anyone who is honest about it will tell you how hard it is to push the application to the back of your mind on any given week, knowing that your career advancement is on hold and there is nothing you can do about it.

Why is the wait quite so long? It seems to me that there is no good reason for it. I know from reading the Secretariat website that the final list of recommendations for appointment went to the Lord Chancellor on 26th October 2007, but the announcement did not come until 21st January 2008. One of the side-effects was that there were no appointments to Silk in 2007. So a year was lost, in addition to 2004 and 2005 when the entire system was suspended. Perhaps there is a hidden agenda to reduce Silk appointment to a biennial system, rather than annually? If so, that would be regrettable. Having won every sensible argument for the retention of this kite mark of quality, it is surely necessary to maintain progression within the profession and to keep the wheels in motion. A considerable number of Silks are lost to the Bar each year through promotion to the bench, retirement or death. If we are to have a so-called 'upper tier', it must not stagnate but should continually renew.

And now I must seek out my senior clerk and see if he can find some work for this new boy in the upper school. It is a privilege to wear the new blazer, and I wish the best of luck to all who are now applying, whether for the first time or again.

Revised Protocol for Payment of Fees in the London Magistrates Court

The minimum rates of remuneration previously agreed in the 2002 Protocol between the Bar Council and London Criminal Courts Solicitors Association have been revised. From 30th January 2008 the new agreed minimum fees in London are:

i) £50 for first appearances, remands, bail applications, sentences, adjourned trials
ii) £75 for half day trials, half day contested committals and where a defendant pleads guilty at trial
iii) £150 for full day trials and full day contested committals
iv) Travel disbursements to be paid in addition to the above

These rates are intended to represent the minimum rates in London where historically the remuneration of junior barristers has been particularly poor. Like the 2002 Protocol, the revised Protocol is not compulsory however Chambers are strongly urged to adopt the Protocol to protect young barristers. The Bar Council recommends that it is good practice for Chambers to adopt the following timetable:

i) Put in place systems to properly and effectively submit invoices for work undertaken within 14days of the work done;
ii) Put in place systems to ensure that payment is made within 30 days of the submission of the said invoice;
iii) Require payment of the invoice within a further 14 days if payment is not made within 30 days of the submission of the invoice;
iv) Report the matter to the Legal Services Commission if payment is not made within 7 days of (iii) above in accordance with Paragraph 2.15(5) of the General Criminal Contract.

The failure to adopt these revised rates and/or the failure to obtain fees from solicitors promptly can cause considerable financial hardship to young barristers. Under paragraph 404.2 of the Code of Conduct Heads of Chambers have a duty to ensure that 'the affairs of [their] chambers are conducted in a manner which is fair and equitable for all barristers and pupils'. The Bar Council has stressed that any breaches of this rule in relation to the Revised Protocol will be treated very seriously.

The Young Barristers' Committee of the Bar Council strongly recommends that when briefed as unassigned counsel in the Magistrates Court young barristers ensure that their fee is within the minimum protocol levels. It is in the interests of all junior practitioners that the Protocol is adopted within their respective Chambers.

Full details of the Revised Protocol and are available at www.barcouncil.org.uk

Young Barristers' Committee
February 2008

Women and Retention at The Bar

When Lord Neuberger asked 'what steps should be taken to retain women and ethnic minorities at the Bar?' some people replied, 'None'. Emily Radcliffe of 9 Gough Square and the Circuit's Assistant Junior makes the case for retaining our talented colleagues

Since 2005 at least, the importance of judicial diversity has been 'official policy'. The then Lord Chancellor and Lord Chief Justice stated:

'It means harnessing the talent and ability of all those who would make good judges if they were able or willing to apply, enabling us to be sure that the best are being appointed. It will enable every person with the right qualifications and qualities to be certain that they have an equal opportunity to be appointed on merit, whatever their background. It will also assure the public that the judges have a real understanding of the problems facing people from all sectors of society with whom they come into contact.'[1]

A glass ceiling?

Tim Dutton, Q.C., Chairman of the Bar, is working this year to try to remove the glass ceiling for female barristers[2]. However, twenty women were successful in the Silk appointments this year, out of a total of 98. Silk applications from women were 15% of the whole in 2006 compared to 10% in 2003. The Employed Bar Committee has so far lobbied the Ministry of Justice and the Bar Council for the assessment and application criteria to include a wider interpretation of advocacy, but to no avail. These proportions reflect limitation on success elsewhere in the law. Sixty percent of new solicitor trainees are women, but only 23 percent of women solicitors are partners – 15 percent in City firms.

Between 10 and 19 years ago, women made up between 30 and 43 percent of barristers, but women comprise only 29 percent of current barristers between 10 and 19 years' Call, and only 21 percent of mainstream judicial appointments[3]. There are less than 15 women in the upper judiciary and still only one woman Law Lord. On the other hand, 55 percent of law students are women, and 43 percent of new barristers. Of those who have left the Bar, 48 percent are women, so a disproportionately high number of women leave the Bar compared to their male counterparts. The crucial time for attrition is between two and six years after qualification, well before judicial appointments are considered.

Why are experienced women barristers leaving the Bar?

The Bar Council Exit Survey[4], published in October 2005, was commissioned because the Bar Council had been concerned for some time about the disproportionately high amount of female practitioners who leave practice in comparison to the corresponding number of male practitioners who do the same. Of those that responded, only 34 percent had been in Chambers as opposed to employed practice, and 48 percent were women. Of those new tenants between 1988 and 1998 who left the Bar, 47 percent were women, so the survey was representative of this group.

The most commonly cited reasons for leaving chambers was to transfer to the employed Bar, to take up legal employment outside the Bar, or retirement. In contrast, those in employed practice stated their reasons included retirement, transfer to self-employed practice and childcare responsibilities. Men left practice because of uncertainty over future levels of income, level of income or lack of career development, whereas women wanted to spend more time with family and were concerned about inflexible working arrangements, level of income and uncertainty over future levels of income.

Sixty two percent of those who had children whilst in practice did not feel that this had an adverse affect on their practice. In fact, only 37 percent of women respondents had had children whilst in practice. Seventy-eight percent said paternity leave may have been useful, and 35 percent said that a crèche and childcare facilities may have been useful. As many as 18 percent said their tenancy was held open for maternity leave for less than 6 months.

The Association of Women Barristers argues that attitudes are behind the times:

'Chambers who have made adjustments for female barristers who have children, show that accommodating family life is possible, so it is disheartening to see the number of women who cite inflexible arrangements as the reason they leave the Bar, along with having practices made up of work that is not highly paid.'

So what?

Women leave the Bar to look after their children. This, some might say, is stating the obvious. Perhaps their priorities change, and they would prefer not to return to the Bar. Why should we stop them? Are women expressing concerns, or are attempts being made by well-meaning but misguided men? Some argue that there are underlying factors which could be changed to encourage women to return after having children so that the Bar and the public can benefit from their experience, perspective and contribution to a diverse legal profession.

The Commission for Judicial Appointments conducted confidential discussions with practicing women barristers between ten and fifteen years' Call[5]. The main reason (in accordance with the Exit Survey responses) for leaving a legal career was raising children. This however was due to the fact that women more often undertake publicly funded criminal and family work for lower fees with unpredictable hours and therefore full time childcare made working uneconomic. Long-hours culture and reliance on networking were also difficult to combine with parenting. Although chambers facilities allow more to work from home, this is not yet necessarily accepted practice by chambers or clerks. Absence during maternity leave led to clerks allocating work, especially high profile work elsewhere. Compliance with the Bar Council's Equality and Diversity Code was clearly variable between chambers, and training for members and clerks is essential.

More barristers employed by the government are women, and so the inability of government lawyers to apply for judicial offices disproportionately affects women. Research into differentials in earnings at the Bar has not yet been done, but may reflect the notorious pay differential between men and women solicitors[6] (women solicitors earn 56 percent as much as male counterparts, partly explained by greater proportion of younger women solicitors, limitation to partner status, and lower earnings growth once promoted. Career breaks and caring responsibilities do not explain the figures). The Legal Services Consultative Panel who reported to the Government in May 2005 on increasing diversity in the legal profession highlighted the need for properly funded research by the Legal Services Board to address this important issue. It is still awaited.

Isn't this loss of experienced female professionals the same in every walk of life? Industry is making real inroads into the problem. Twenty-five percent of FTSE 100 companies have no female board members, but the proportion of women among new board appointments has increased in 2007, with 20 percent of new FTSE 100 director appointments going to women - the highest level since the first benchmarking report was published in 2000. Following the Higgs Report and the Female FTSE launched by Cranfield School of Management, there are now 122 women on the FTSE 100 executive committees - an increase of 40 percent on 2006[7]. So here, significant improvements have been made within as short a period as 18 months.

Flexible working and rent arrangements

Apocalyptic tales are myriad. Clerks at one chambers booked a trial for a pregnant member's due date. She asked repeatedly to be released from the case. The female members of the chambers met with her and forbade her from returning the brief. Despite the lack of internal support she persisted with the clerks and was released from the case, eventually giving birth on the first day of the listed case. During her six month maternity leave she was charged no rent, but this formed only about £400 out of £2,000 chambers expenses, giving her almost no deduction at all.

Grahame Aldous, Q.C., deputy chair of the Equality & Diversity Committee for the Bar Council, supports the use of flexible working arrangements in chambers, and suggests realistic rent arrangements to help chambers avoid direct and indirect discrimination. For example, a policy of fixed rent without any qualification is potentially indirectly discriminatory against women because it is likely to impact more harshly on a greater number of women than men. Some men argue: why should I take the hit in order to help somebody else in chambers whatever their gender; we are all self employed with its risks and benefits and rents are high enough without including charity? Others would support policies that encourage women to stay and return to the Bar, because their chambers will benefit in various ways from having more and diverse experienced practitioners in chambers.

Legislation and policy

Legislation to eliminate barriers to female judicial appointments is proposed by the Lord Chancellor, including for example, reducing the PQE requirement from seven or ten years to five to seven years for judicial appointments. The average judicial appointment has 19 years' PQE though, so it is not clear whether this change will make any difference.

As described by Karon Monaghan, Q.C., elsewhere in this issue, The Working Party on Entry to the Bar chaired by Lord Neuberger published its report in November 2007. It recommends compulsory equality and diversity training as part of CPD requirements, and guaranteed income and mentoring schemes for barristers in their early years. These measures are superficial to say the least.

Returners' Course

One survey response requested a refresher program for barristers of employed status to rejoin the Bar if desired, and for more flexible working arrangements. This reflects efforts by the Bar Council to set up a Returners' Course, similar to the Association of Women Solicitors' course which has been running successfully for many years. The Bar Council ran the first course last year with about 30 attendees. The next is scheduled for October 2008.

Childcare support

The Bar Nursery Association, as reported elsewhere in this issue, proposes crèche facilities in the Inn. Essentially the responses to their survey indicate this is a 'no brainer' and long overdue[8]. One though said:

'poor idea, using Temple resources for individual benefit discriminates against those with private childcare and those who chose not to have children'.

Is this person short sighted? A more balanced view is expressed by this male barrister:

'my children are past crèche age now…the bar is not a child-friendly career, something that was largely responsible for my wife leaving it and working elsewhere where she enjoyed maternity leave, flexible working, compassionate leave etc. Good luck – hope this venture works out.'

Conclusion

The Government, and the Bar, now acknowledges that action must be taken to improve judicial diversity, and success for women barristers, as well as to avoid the disproportionate attrition currently evident. Three proposals require our support: the Returners' Course; local affordable childcare facilities and non-discriminatory rent structures, maternity policy and flexible working.

1 Written Ministerial statement by Lord Falconer, 13 July 2005, 'Increasing the diversity of the Judiciary' and Lord Woolf of Barnes: speech to the Women Lawyer Forum Conference, 5 March 2005
2 Counsel January 2008, p. 3
3 David Wurtzel, Getting Returns on your Returners, Counsel, March 2006
4 Otherwise known as the 'Bar Council Equality and Diversity Committee Exit Survey for Barristers Changing Practice Status Report'
5 Women in the Legal Professions and the Judicial Appointments Process, October 2005
6 Male and Female Earnings Differentials Among Lawyers in Britain: A Legacy of the Law or a Current Practice? Robert McNabb and Victoria Wass, Cardiff Business School, August 2004
7 http://www.womenandequalityunit.gov.uk/boardroom_diversity/index.htm
8 See article by BNA in this issue

Judging Under a Bill of Rights – A Different View
The Third Annual Dame Ann Ebsworth Memorial Lecture

At this year's Dame Ann Ebsworth Memorial Lecture on 5th February, a packed audience in Inner Temple Hall listened to a very different point of view from that expressed in previous years. Justice Scalia, the senior conservative on the United States Supreme Court, and a vigorous proponent of textualism in statutory interpretation and of originalism in constitutional interpretation, memorably set out how he views the relationship between judges and the American Bill of Rights. From the outset, Justice Scalia took up, with gusto, the gauntlet that had been thrown down by his predecessor in this series, Justice Louis Harms. The Circuit's Junior, Alexandra Price-Marmion of 2 Pump Court was there, and sets out the most important parts of the lecture.

Justice Scalia delivers his lecture

'At this event last year, Judge Harms of the South African Supreme Court of Appeal gave a speech entitled 'Judging Under a Bill of Rights.' I have decided to call mine 'Judging Under a Bill of Rights – A Different View.' As that suggests, my goal is to defend a different approach to adjudication from the one described by Judge Harms.

The subject used to be of purely academic interest to UK citizens, but after your Parliament's enactment of the Human Rights Act of 1998, you will likely find that how to interpret a Bill of Rights is a question of some practical importance. What do I have to tell you about it?

Defining 'judging'

Judging under a Bill of Rights seems to assume that judging under a Bill of Rights is different from judging under any other written law, be it a statute, a regulation, or those provisions of a constitution that address the structure of government. I do not share that assumption. *Indeed, if I did – if I believed that judging under a Bill of Rights called on me to do something different from the ordinary work of a judge, which is the analysis and application of legal texts and precedent – then I would resign my office and seek some employment for which I am better suited.*

For I am not trained in any profession other than the law. I am no expert in philosophy, or ethics, or political science that may be important to the writing of a Bill of Rights as opposed to interpreting what it meant when it was adopted. Nor do I have a handle on the moods and feelings of modern society. Indeed, by virtue of my Court's location inside the Washington Beltway (sometimes described as 100 square miles surrounded by reality), and by virtue of my enforced isolation from the political process, I probably have less a feel than most Americans for the will of the people.

A Bill of Rights is no different...

The very point of my talk today is that judging under a Bill of Rights – or at least my Bill of Rights – is no different from judging under written law generally. And that, by the way, is the only reason my Court possesses the power to enforce the Bill of Rights by invalidating legislation that contravenes it. Unlike many modern constitutions which establish a Constitutional Court with the express power to override unconstitutional legislation, my Court gets into that business only because our constitution is a paramount law, and because, as John Marshall wrote in Marbury v. Madison *1 Cranch 137, 177 (1803),* '[i]t is emphatically the province and duty of the judicial department to say what the law is.' And just as, Marshall continued, judges must sometimes choose between conflicting statutes (in the event of irreconcilable conflict, the more recent prevails), so also they must sometimes choose between an ordinary law and the law of the Constitution, which is always paramount. In other words, I have this power – my Court has this power – because ***interpreting laws is judges' work.*** If constitutional interpretation were something different – if it were an invitation to change the laws governing society then Marbury v. Madison would have been mistaken. We would have a system like yours, in which the legislature is the last word on the meaning of the constitution.

Originalism in two questions

My humdrum lawyerly approach to interpreting our Bill of Rights has been given a name, as though it is some entirely unique process. It is called originalism. Whether interpreting the Bill of Rights, the constitutional powers of the President, a federal statute, an agency regulation, or a municipal ordinance, I ask the same two questions. First, what was the meaning of this provision at the time it was enacted? Not the intent of the drafters, mind you. Some originalists look to 'intent,' but not I. Of no concern to me are the private thoughts of

those who wrote the Constitution or, in the case of ordinary legislation, the recorded speeches made by Senators to an empty Senate floor. We are governed by laws, not by the unenacted intentions of legislators. The critical question always is how would the subjects of this law – informed members of the public – have understood its provisions? Politicians often call this approach 'strict constructionism,' but that is a misnomer. ***I do not interpret broad provisions narrowly – or narrow provisions broadly for that matter. Rather, I read a provision reasonably, simply for what it says and no more.***

The second question that I ask is whether a prior case from my Court has already answered the question presented. Stare decisis is an important doctrine in the American legal system, as it is in yours. ***If in every case we had to reinvent the wheel, our work would be endless, and citizens and government officials would never be sure that they could rely on a settled rule of law.*** I see no conflict between originalism and stare decisis because stare decisis has always governed the work of judges in the Anglo-American tradition, and I take my constitutional duty to exercise the 'judicial power' to include the requirement that I observe the traditional incidents of that power. Of course stare decisis has never been as inflexible a command in our system as it is in yours – for the very sensible reason that your Parliament is able to correct the mistakes of your Law Lords, but our Congress is unable to correct the constitutional mistakes of our Supreme Court. From quite early on in our national history the Supreme Court has revised its constitutional jurisprudence – and continues to do so today.

A judicial monster?

It is worth asking, at the outset, where the notion comes from that a Bill of Rights is somehow different – that it somehow calls upon a judge to treat its provisions differently from those of an ordinary statute. Last year, Judge Harms told this assembly that a Bill of Rights is a 'living organism' that embodies a 'normative value system.' What I take Judge Harms to have meant was that a Bill of Rights represents certain ideals – freedom, individualism, equality – and the role of judges applying a Bill of Rights is to ascertain whether legislation conforms with those general values or at least the judges' very latest notion of what those values entail.

It is convenient for judges to believe this. But is it plausible that any democratic legislature, or any democratic electorate, believed they were creating such a monster? A charter of judicial power that would, for example, enable judges to decree that their current understanding of the value of 'equality under the law' – never mind what the people think – requires allowing same-sex couples to marry. (The supreme courts of eight of Canada's provinces and one of its territories, and in my country the Massachusetts Supreme Court, agreeing with Judge Harms' approach, have decreed this under the equal protection guarantees of the Canadian Bill of Rights and the Massachusetts Constitution. Massachusetts did it by a four-to-three vote.) Judge Harms was quite correct in describing his approach to a Bill of Rights as a common-law approach. The problem is that

Dame Ann Ebsworth, 1937-2002.

common-law judges were agents of the king for making the law. And even then, bear in mind, their handiwork could be overruled by Parliament. This judicial law-making function has been overtaken, in most countries, by a new system called popular democracy, in which the people make the law through their elected representatives. Reverting to a judge-made common law – and a newly potent common law that cannot even be revised by the legislature – seems to me a giant step backward.

Not for me, thank you, not for my country

Or at least it is a giant step backward for those countries that have a well functioning democratic system. And that qualification is one of the reasons I cannot be too categorical in my prescription of originalism for all of the nominal democracies of the world. In those countries that have an unresponsive or dysfunctional legislature and an elected 'president for life,' a stiff dose of judicial oligarchy may indeed be an improvement. But not for me, thank you, not for my country, and not, I think, for yours.

The US Bill of Rights is pedantically specific

What makes Bills of Rights easy prey for 'living constitution' theorists is the fact that they always contain some very generalised guarantees. The American Bill of Rights has relatively few. Such inspiring and totally uninformative sentiments as 'life, liberty, and the pursuit of happiness' were reserved by our Framers for the propaganda piece that was our Declaration of Independence, and not for the law that is our Constitution. Far from being a recitation of universal human ideals, most of the provisions of our Bill of Rights are almost pedantically specific: no quartering of soldiers in homes without the owners' consent; no abridgement of the right to trial by jury in civil cases where the amount in controversy exceeds twenty dollars; the right to grand jury indictment in all capital cases; no issuance of warrants that do not particularly describe the place to be searched and the persons or things to be seized.

Rights that may be wronged

Another thing about our Bill of Rights: It was not designed, and was not thought to have been designed, to protect all the most important liberties of men. To the contrary, some of the rights it protected were relatively inconsequential – such as the right to trial by jury in all civil cases at common law involving more than $20. That pales into insignificance beside, for example, the right to raise one's children according to one's own beliefs rather than pursuant to the directives of Big Brother. But the latter right, unlike the former, was not really in jeopardy. ***The rights included in the Bill of Rights were selected, not for their importance, but for the likelihood that a tyrannical government would try to take them away*** – freedom of speech and religion, freedom from unreasonable searches and seizures, the right to trial by jury, etc. That is perhaps a fundamental difference between our Bill of Rights and the modern versions that seek to guarantee all rights that pertain to free men and women.

There is, in short, nothing in the American Bill of Rights that would justify treating it as Judge Harms' compendium of universal human values and as an empowerment of courts to assure that democratically adopted legislation respects those values. To the contrary, its detailed specificity and its obvious intent not to be an embodiment of all human values suggest that it should be interpreted like any other law. When, in 1920, America decided that all states must give women the franchise, it was not the Supreme Court which decreed that disposition under an equal-protection clause that had never been understood to include such a requirement. Rather, the people adopted the Nineteenth Amendment to our Constitution, establishing such a new requirement. That was as it should be.

Free-fall philosophising

But in the last fifty years or so, to be honest, Judge Harms's approach – the Bill of Rights as a 'living organism' of common law – more accurately describes the path that my Court has followed. My Court recently offered a characteristic example of the 'living organism' sort of thinking in a case that created what the people surely had never adopted, a constitutional right to homosexual sodomy. The Court began like this:

> Liberty protects the person from unwarranted government intrusions into a dwelling or other private places. In our tradition the State is not omnipresent in the home. And there are other spheres of our lives and existence, outside the home, where the State should not be a dominant presence. Freedom extends beyond spatial bounds. Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct. The instant case involves liberty of the person both in its spatial and in its more transcendent dimensions.
>
> *9 Lawrence v. Texas, 539 U. S. 558, 562 (2003). 10 381 U. S. 479 (1965)*

This sort of free-fall philosophizing is entirely at odds with the traditional judge's role of analyzing text and precedent. It assumes that because the

The Third Annual Dame Ann Ebsworth Memorial Lecture (continued)

purpose of the Bill of Rights is to ensure liberty, the Court has carte blanche to identify and insulate spheres of liberty that were obviously not singled out for protection in the Constitution. Like Judge Harms's approach, it treats the Bill of Rights as a 'normative value system,' not a legal code.

Do Good-ers

It is not difficult to understand why judges treat the Bill of Rights as something quite different from an ordinary law. Treating it as *an invitation to judicial definition* (and periodic redefinition) of fundamental human rights allows judges to Do Good – to reach outcomes that they see as desirable, indeed, outcomes that they see as compelled by basic fairness. The anti-contraception law at issue in Griswold, for example, was 'uncommonly silly,' as Justice Stewart labelled it in his dissent. In the view of the Court majority, it just could not be the case that such silly laws could remain on the books in the United States of America, and there just had to be something in the Constitution forbidding it. *The problem is that silliness is often in the eye of the beholder,* and the Court has quite predictably gone from disallowing legislation that almost anyone would disapprove to disallowing legislation that is the subject of genuine and reasonable disagreement among the citizenry – though not, perhaps, among the elite class of citizens from whom judges are selected.

Who should decide?

I want to be clear that *my objection to Judge Harms' sort of Bill of Rights – and the sort of Bill of Rights my Court's cases have created – pertains not to the results it has produced. Some of them are in my view abominable and some are eminently desirable, but that is irrelevant. The relevant question is, who should decide?* Once a Bill of Rights is cut off from the concrete dispositions approved by the people who adopted it; once its generalized provisions such as guarantees of due process and equal protection are interpreted without regard to what the people who democratically adopted those provisions thought they meant; once that happens, the Bill of Rights replaces democratic self-governance with judicial prescription.

Harms' 'living organism' is a two-edged sword

Only my approach enables a Bill of Rights to fulfil its fundamental purpose, which is to insulate certain aspects of an individual's life from the power of the State. Critical to its capacity to do so is its permanence. *If a Bill of Rights can evolve – can change from age to age as the courts decree – then it can become less protective of liberty just as readily as it can become more protective.* A great failing of those who adopt Judge Harms' evolutionary approach to Bill of Rights interpretation is the blithe assumption that that will always lead in the direction of greater rather than lesser protection of human rights... treating the Bill of Rights as a 'living organism' is a two-edged sword. It can expand or contract individual rights.'

To adopt Judge Harms' 'living organism' approach is to make a deal with the devil. You trade an approach that guarantees specific liberties for all time for an approach in which judges decide how general principles ought to apply in a given age and context.

Originalism is not ossification

I want to reply to two objections often raised against my ordinary-legislation approach to our Bill of Rights. One is that in the case of ancient bills of rights (ours is 217 years old) it is sometimes difficult to determine what was the original understanding of its general provisions. Judges, after all, are no better historians than they are philosophers. Originalism does not provide an easy answer to all questions, but it provides an easy answer to the most controversial ones. *I do not*

Justice Scalia and Lord Justice Dyson

have to wring my hands about whether our Bill of Rights was understood to prohibit laws imposing the death penalty, or laws against abortion, or laws against suicide, or laws against same-sex marriage, or laws against homosexual conduct. The record is entirely clear. Laws of that sort existed when the Bill of Rights was ratified, and no one thought they were unconstitutional for almost two centuries. *For the judge applying a Harmsian bill of rights, there is no agreed-upon criterion, only a search for what the generalized provisions ought to mean – which turns out to be, unsurprisingly, whatever the judge thinks is a good idea this year. Nothing is fixed and certain, and every day is a new day.*

Originalism is not Ossification

Another objection frequently made to treating bills of rights like other laws is that it ossifies the law, and prevents flexibility and change. This is a most silly argument. *One does not need a bill of rights to change. A legislature and free elections will assure that admirably.* If the English people believe that the time has come for same-sex marriage, they are quite capable of getting such a law enacted.

Under an originalist interpretation of the American Bill of Rights, the people remain free to accept or reject the death penalty. If they decide it was a bad idea, they can repeal it; and if that produces an unacceptable increase in murders, they can readopt it. That is flexibility. If, on the other hand, a Supreme Court that cares nothing for whether the American people ever agreed to constitutional proscription of the death penalty, decides that that punishment does not accord with its perception of human rights, the death penalty will then and forever no longer be an option. That is ossification.

* * * * *

Originalism is not for all countries

I want to conclude by saying that, while I am certain that an originalist, ordinary-law approach to a bill of rights is best for my country; and while I believe (since our countries share the same legal and democratic traditions) that it would be best for yours as well; I am not sure it is best for all countries, and I am not sure it is even feasible under your Human Rights Act. As for countries other than ours: as I have suggested (perhaps this is politically incorrect) some of them are dysfunctional democracies that might profit from a judicial oligarchy. And some of them (Judge Harms' South Africa may be one) have an aspirational bill of rights whose provisions simply cannot be read as the embodiment of concrete national traditions. (The South African Bill of Rights protects, for example, the right to 'inherent dignity and the right to have [] dignity respected and protected.')

As for your own Human Rights Act: It incorporates a treaty which, unlike the American Bill of Rights, does pretend to be a compendium of all significant human rights, including even the right to life, liberty and security (whatever that means). Moreover, that treaty is subscribed to by many nations of diverse legal and social traditions, from England to Turkey – which makes it difficult for anyone (much less a UK national judge) to give its generalized provisions a concrete meaning that all those nations had in mind. Whereas it is relatively easy for me to determine what my Bill of Rights meant by 'due process of law' – namely, the procedural rights of Englishmen in 1791 – it seems to me enormously difficult to know what the Convention on Human Rights meant by, for example, the 'right to respect for . . . private and family life,' or the 'right to freedom of expression.' In Germany, the latter does not even include the right to deny the holocaust. Perhaps there is no way to interpret the Convention except as an invitation to Judge Harms' judicial philosophising.

On the other hand, the Convention does not apply here of its own force, but only through the Human Rights Act – and perhaps it can be argued that that legislation 'domesticates' the Convention, so to speak, so that what its abstract terms mean in the UK is what the citizens of the UK, given their own legal and social traditions and practices, would have understood it to mean when the Human Rights Act made it domestic law.

What delicious legal questions. I am glad I do not have to resolve them, but will observe with great interest how the legal system that gave birth to mine resolves them.'

After a robust question and answer session, a reception followed.

Squaring the Circle

Astonishingly, the Bar as a whole has done little to make it easier for parents to continue in practice. Jess Connors of 39 Essex Street, who has helped to found the Bar Nursery Association, explains how it may soon be possible to right the balance

How can I balance practice at the Bar with the needs of my children? Every barrister who decides to have a family has to answer this question, but for some women barristers especially, the answer has not been easy to find.

Women drop out

It is a familiar refrain and the more dismal for it. As Lord Neuberger of Abbotsbury recognised in his November 2007 report, in the last 30 years the number of women barristers has grown significantly. Men and women now graduate from the BVC in roughly equal numbers. But that graduation photograph presents an unduly optimistic snapshot. The class photo of six to ten years' Call shows fewer women than men, reflecting a drop-out rate nearly twice as high among the Portias as among their male counterparts.

But why is that? Lord Neuberger, and Bar Council exit surveys identify childcare as a major contributing factor, and that diagnosis is confirmed by a survey commissioned by the Bar Nursery Association (BNA), which has received more than 410 responses to date.

The BNA's survey – which is available online – was to test the level of demand for a nursery, based in the Inns of Court, to provide childcare for barristers and their employees. The answer came back loud and clear: we want an Inn Nursery please, and we want it now.

The responses

It is best I think to let the respondents speak for themselves. Typical answers included:

> An excellent and long overdue idea; for an almost infinite number of reasons, it would be hugely beneficial to so many women, and also men with parental responsibilities, at the Bar. It would change the face of the Bar, attract more women in the future to it, result in financial benefit to individual chambers as more women would probably return sooner to work - the list goes on.
>
> I would find most use for such a service for emergency situations. I have childcare in place, but as a mother working as a barrister, I experience anxiety at the prospect of my routine child carers being ill when I am due in court. Like many barristers, my husband is also a barrister and cannot easily pick up the pieces. Depending on the service available, I, like others, may well be prepared to pay a retainer to have the option of phoning up to use the crèche if I was let down by regular childcare arrangements.
>
> It is the prospect of rushing home to be at nursery for closing time which is the most stressful aspect of prospect of motherhood for me. A well run childcare facility near chambers would be wonderful.
>
> I think this is an absolutely fantastic idea - and my family's life would have been made very much easier if someone had initiated this five years ago. It might be sensible to make provision for extra capacity during holiday periods.
>
> I think that this is an arrangement that is not only extremely desirable, but frankly essential if Chambers are going to participate in the modern world.

My personal favourite was: *I have indicated unwillingness to offer financial support only because I am a sole practitioner very close to retirement (I am 65).*

Why my favourite? Well I suppose because it is welcome, but not perhaps surprising, to find support for an idea like this among those who will benefit directly, or who are junior and imbued in the ways of equal opportunities and flexible working; but this particular comment suggested to me that the BNA can hope to meet with as enlightened and generous a response in less obvious quarters as well. This is important. Grassroots enthusiasm is one thing but the proposal–however popular it is–will not become a reality without the active support of a wide constituency. The important members are of course the Inns, who will be crucial to the success or otherwise of the scheme.

So what is the BNA actually proposing?

Being practical

As well as ascertaining that there was a real demand for an Inn Nursery, we approached a large, reputable childcare provider ('Busy Bees') to find out what setting up and running such a nursery would involve in practice.

We then identified potential premises in Lincoln's Inn, which occupy 2,000 square feet of ground floor space, with an extra 300 square feet on the first floor. This is currently available for rental. The nursery provider came to look around (and took away the floor plans), and confirmed that with relatively minimal physical adaptations, this space – or one like it anywhere in the four Inns – could readily accommodate a 40-place nursery offering care for children aged 0 – 4 years, and operating between 7 am and 7 pm on weekdays.

The idea would be that the initial Ofsted approvals process, and thereafter the daily running of the Inn Nursery (including management of staff, provision of financial reports and so on) would be undertaken by a reputable outside provide, under contract to a nursery company set up for that purpose. Already we have had a number of expressions of interest.

Places at the Inn Nursery could be offered in a number of different ways. Some of the larger chambers might hold one or two places for the joint use of their members (and if desired, their staff) as and when required. Other places might be taken on a full- or part-time basis by individual barristers directly. Any excess capacity could be available for emergency cover (e.g., to offer cover when a nanny calls in sick, or a day off turns into a day in court). With this structure of places we would hope it would be possible for a 40-place nursery to have a real impact on the lives of many more than 40 practitioners, though realistically, we would expect the majority of those using the nursery to be women barristers.

Be flexible

While there can be no 'one size fits all' solution, we believe that our survey shows that the message from ' the coal face' is that an Inn Nursery could be a real 'career saver' for a significant number of the women who are trying to juggle independent practice at the Bar with the day to day demands of caring for small children and babies.

As to cost and resource implications (in addition to the necessary premises), we commissioned Busy Bees to produce five-year financial projections, assuming different levels of occupancy and rental rates. We have now received these, and we are confident that they show that even on the most conservative assumptions the project would be financially viable, if the Inns of Court were prepared to offer financial support in the early years, on the basis that the forecast profits in future years would also be to their account.

We are in the process of drafting a formal proposal. We hope to be in a position to put it to the Inns next term. We recognise that some may feel that this is a radical step for the Inns to take, but we are hopeful that they will feel that once the practical details have been worked out, it is something which they can support as a means of furthering their wider brief to support the profession in whatever way is most appropriate and effective.

So please let us know what you think, by answering the BNA's survey at http://www.surveymonkey.com/s.aspx?sm=ahwBZdsVIpNLn4iQPZpUZg_3d_3d (yes it is a long url but I promise it's worth it) or emailing me at jess.connors@39essex.com.

Kicking the Corporate Soul – At Last!

The Government did not exactly rush into legislating on corporate manslaughter. Once they finally bit the bullet, what did they produce? The criminal Bar's favourite guru, Professor David Ormerod of Queen Mary, University of London, and author of Smith & Hogan explains the Act, which is now in force

The Corporate Manslaughter and Corporate Homicide Act 2007 received Royal Assent on 26th July 2007 and the bulk of the Act came into force on 6th April 2008. Although short by criminal justice standards, with only 29 sections and two Schedules, the Act is complex and likely to provide plenty of work.

Background

There has been pressure for a statutory form of corporate homicide for decades. At common law, corporate manslaughter convictions were possible, albeit exceedingly difficult, at least with companies of any size. It was necessary to prove that every element of gross negligence manslaughter was personally satisfied by an individual at a sufficiently senior level to be identified as a 'directing mind and will' of the company. This had prevented convictions in numerous large scale disasters including the Southall rail crash, and the Zeebrugge (Herald of Free Enterprise) shipping disaster. The requirement could not be circumvented by aggregating the states of mind of a number of senior officials within a company: *A-G's Reference (No 2 of 1999)* [2000] QB 796 (the Southall crash case). Public disquiet with the lack of a specific offence increased with successive failures to convict corporations in the aftermath of large-scale disasters. The Law Commission proposed a new offence in 1996 (Report No. 237 *Legislating the Criminal Code: Involuntary Manslaughter)*). The 2007 Act is in part descended from that Report, but displays characteristics inherited from subsequent government papers including Reforming the Law on Involuntary Manslaughter: The Government's Proposals (2000) and, most importantly, the Report of the Home Affairs and Work and Pensions Committees in 2005 (HC 540 I-III).

Headlines

- ✔ The Act applies to 'organisations', not just corporations (s.1).
- ✔ The Act abolishes gross negligence manslaughter as it applies to organisations covered by the Act (s.20).
- ✔ Health and Safety Act prosecutions remain unaffected.
- ✔ The offence is indictable only.
- ✔ The DPP's consent is required for prosecution (s.17).
- ✔ The maximum sentence is a fine (s.1(6), but innovative disposal powers include remedial and publicity orders (ss. 9, 10).
- ✔ The offence might usefully be broken down into five elements:
  - A relevant duty owed by the organisation (as determined by the judge);
  - A breach of the duty which was as a result of the way its activities are managed or organised;
  - A substantial element of that breach of the duty was due to the way the senior management managed or organised activities;
  - Breach of the duty as determined by the jury to be a 'gross one';
  - The breach of the duty 'caused' V's death, applying normal causation principles.

The new offence

By s. 1 an organisation is guilty of an offence if the way in which its activities are managed or organised–

(a) causes a person's death, and

(b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

Commencement?

Gross negligence manslaughter still applies in respect of an offence committed wholly or partly before April 6th 2008 i.e. if 'any of the conduct or events alleged to constitute the offence occurred' before that date: s. 27(4) and (5). There should be no gap in the law during the transitional period.

Who is caught?

The Act only imposes criminal liability on organisations; there is no liability for individuals, even as secondary parties (s.18). Section 1(2) specifies which entities are caught and obviously includes corporations, wherever incorporated if operating in the UK. The offence also applies to government bodies listed in Schedule 1 (there are over 40); police forces; a partnership, or a trade union or employers' association which is an employer. The categories of entity caught can be extended by regulation (s.21). The symbolic significance of imposing liability on public agencies was endorsed in Parliament. By s.11 a Crown organisation is treated as owing whatever duties of care it would owe if it were a corporation that was not a servant or agent of the Crown, and s.13 allows for prosecutions against the police. However, as will be explained below liability of public authorities is heavily qualified in ss. 3-7.

The duties owed?

The 'relevant duty of care' owed by the organisation is governed by s.2. The most important principle in interpreting the duties is that the offence is not intended to impose new duties; it criminalises gross fatal breaches of existing civil law duties arising under statute or common law. The organisation can only be liable for the offence if fault is proved (in effect, gross negligence), even if in civil law liability is strict: s. 2(4).

At first sight s. 2 imposes an incredibly broad range of duties, but the true picture of liability only emerges once the exclusions in ss. 3-7 (below) are factored in. The categories of duty owed by an organisation are (ss. 2(1)(a)-(d)):

(a) A duty owed to its employees or to those working for the organisation or performing services for it. This extends beyond formal employment relationships. Determining whether a duty was owed under this category may involve expert advice from employment specialists.

(b) A duty owed as occupier of premises. This is based principally on the duties owed under the Occupiers Liability Acts 1957 and 1984. Again care must be taken since these involve complex areas of civil law. Duties extend beyond those arising because of the 'state' of the premises and include some 'activities' on the premises. Some deaths in custody might therefore constitute the offence even before s.2(1)(d) (below) is brought into force.

(c) Duties owed in connection with (i) the supply of goods or services, whether for consideration or not. This will catch the transport provider and the e-coli ridden butcher; (ii) the carrying on by the organisation of any construction or maintenance operations; (iii) the carrying on by the organisation of any other activity on a commercial basis, (examples such as mining and farming were provided in Parliamentary debates) or (iv) the use or keeping by the organisation of any plant, vehicle or other thing. These represent very wide duties.

(d) A duty to someone for whose safety the organisation is responsible. This will deal with deaths in custody. This controversial provision requires affirmative resolution in Parliament before it can be brought into force: s.27(2).

Section 2(6) replicates the position at common law that the duty of care will not be excluded by *ex turpi causa* and *volenti non fit injuria* doctrines *(Wacker* [2003] QB 1203).

The determination of the existence of a duty

Given the potential difficulty in determining the existence of a duty, and the reliance on complex aspects of civil law, the Act sensibly provides that the matter is one of law for the judge to decide: s.2(5). In addition, 'the judge must make any findings of *fact* necessary to decide that question'. This is highly unusual and contrasts with the position for gross negligence manslaughter where 'whether a duty of care exists is a matter for the jury once the judge has decided that there is evidence capable of establishing a duty': *Willoughby* [2004] EWCA Crim 3365.

The 'management failure'

Liability will turn on whether the way in which the 'organisation's activities are managed or organised by its senior management is a substantial element in the breach' which causes death: s.1(3). Obviously, an important difference from the common law is the shift from having to prove the failings of a single person who was a 'directing mind and will' to proving failings of the organisation's management system. This change should result in convictions on facts such as those in the Zebrugge ferry disaster where although no individual of sufficient seniority could be identified to have been grossly negligent, the Sheen Inquiry (1987) concluded that the company's hierarchy was permeated by a 'disease of sloppiness.' (DoT (1987), *The Merchant Shipping Act 1894, mv Herald of Free Enterprise*, Report of Court No 8074). See also *P&O Ferries* ***(1999) 93 Cr App R 72***

Senior Management

The element of the offence relating to the 'senior management' is important in several respects. As noted, it gives rise to a much wider scope of liability than under the common law identification principle. However, the reference to the senior managers' involvement does limit the offence: it is not enough to prove simply that the organisation's systems were defective. The involvement of senior managers is crucial, but since their involvement need only be a *substantial* element in the fault the involvement and conduct of others – 'non-senior managers' who are involved in the management and organisation of activities – is also relevant. This is important in seeking to prevent an organisation avoiding liability by declaring that all responsibility for safety procedures rests with someone expressly designated as a 'non-senior' manager. When assessing the management failure the contribution of these individuals who are not senior management can be taken into account even if their involvement is 'substantial' provided it is not so great as to render the senior managers' involvement something less than substantial. Senior managers are defined as including those who are significant in decision making or organising or managing the company or a substantial part of its activities: s. 1(4)(c).

A gross breach?

The offence is triable only on indictment. Under s. 8, once the judge has concluded as a matter of law and fact (see above) that an organisation owed a relevant duty of care to the person, it falls to the jury to decide whether there was a gross breach of that duty i.e. whether the conduct fell far below what could reasonably be expected of the organisation: s.1(4)(b).

By section 8(2) the jury *must* consider:

- evidence that the organisation failed to comply with health and safety legislation related to the alleged breach, and
- how serious that failure was, and
- how much of a risk of death it posed.

In addition, the jury *may* have regard to:

- 'attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such failure… or to have produced tolerance of it';
- any health and safety guidance that relates to the alleged breach;
- any other relevant matter.

The jury is obliged to consider whether the 'organisation' complied, not just whether its senior management complied. There is concern that juries will be subjected to lengthy arguments and volumes of evidence comparing safety and training practices across the particular sector or industry in which the death occurred.

The exclusions

In many cases the provisions excluding the duties (ss 3-7) will be as important as those imposing duties. The exclusions themselves are hedged in with qualifications and merit careful consideration. In outline only, these are as follows.

Section 3(1) excludes completely 'any duty of care owed by a public authority in respect of a decision as to matters of public policy (including in particular the allocation of public resources or the weighing of competing public interests)'. No prosecution would be possible, e.g., if a hospital trust had chosen to spend resources on drug A rather than B, and V died as a result of being denied drug B. The aim here is to ensure that the scope of the duty in criminal law remains consistent with the civil law. There is much complex jurisprudence on whether a public body owes a duty in respect of 'policy' rather than 'operational' decisions: see *Phelps v. Hillingdon* [2001] 2 AC 619.

Section 3(2) provides partial exclusion of duties of care owed in respect of things 'done in the exercise of an exclusively public function' unless as a result of a duty under s 2(1)(a),(b) or (d) i.e. employment, occupier or custodian duties. This restricts liability for organisations performing purely public functions which involve e.g. the supply of goods or services.

Section 4(1) completely excludes duties owed by the Ministry of Defence in respect of operations, including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in the course of which members of the armed forces come under attack or face the threat of attack or violent resistance. In other cases the MOD will owe a duty as an employer, occupier or custodian: s. 4(2).

Section 5 seeks to set similar limits in respect of the police (who are treated as 'employees' by s.13). No duty is owed in respect of police who come under attack, or face the threat of attack or violent resistance, in the course of the operations for dealing with terrorism, civil unrest or serious disorder. In other cases the police will owe duties as employers, occupiers and custodians.

Section 6 excludes duties relating to the way in which specified organisations (such as the fire service) respond to emergency circumstances. Again the boundaries of the criminal law are designed to parallel those of the civil law, but the civil law position is far from straightforward. Liability may arise for breach of a duty other than one arising from conduct relating to the way in which an organisation responds to an emergency. So, arriving at the incident late will not trigger liability, but killing someone en route because the ambulance was inadequately maintained may do. Emergency services may also be liable for a death arising from their status as employer or occupier even where the death arises in the course of an emergency. Similarly, liability may arise from gross negligence in the provision of medical treatment itself (other than from decisions establishing the priority for treating patients).

Section 7 excludes duties of any public authority relating to its child-protection or probation functions.

Penalties

The maximum sentence on conviction is a fine (s.1(6)). The Sentencing Advisory Panel consultation document suggests that a starting point fine would be 5 percent of the annual turnover of the organisation. That could be an astonishingly high figure for larger corporations. The court may, if the prosecution apply, also impose a remedial order under s.9, requiring the organisation to take 'specified steps' to remedy the breach, its fatal consequences, or any identified deficiency as to health and safety matters. Failure to comply is an offence. Yet more innovative is s.10: a publicity order may be made requiring the organisation to 'publicise in a specified manner' its conviction, specified particulars, the amount of any fine and the terms of any remedial order. This provision is clearly intended to deter by adverse publicity.

There is a further discussion of the Act in Blackstone's Criminal Practice Bulletin for October 2008 and in chapter 15 of *Smith and Hogan,* to be published in June 2008.

Capacity, Comity and Consent

Following a speech by the Archbishop of Canterbury in February, the media briefly turned its attention to the relationship of Sharia law and English domestic law. By coincidence, the courts were even then dealing with this, and the capacity to consent to marriage. Dorothea Gartland of 4 Paper Buildings analyses the relationship.

On March 19, the Court of Appeal gave judgment in the matter of **KC & Anor v City of Westminster Social & Community Services Department & Anor [2008] EWCA Civ 198,** an appeal from the High Court decision in **Westminster City Council v IC [2007] EWHC 3096 (Fam).** The case was subject to particular media interest in February, coinciding as it did with the speech of the Archbishop of Canterbury. Indeed, in his second paragraph, he said, 'just a few days ago, it was reported that a "forced marriage" involving a young woman with learning difficulties had been "sanctioned under sharia law" – the kind of story that, in its assumption that we all "really" know what is involved in the practice of sharia powerfully reinforces the image of – at best – a pre-modern system in which human rights have no role.'

The case of C, which in fact concerned a young man with learning difficulties, concerns issues of capacity and consent and how they are dealt with in English law in comparison with the law of Bangladesh and under Sharia law. It also deals with the court's inherent jurisdiction in relation to vulnerable adults when considering their capacity to marry and the validity of such a marriage. The issue is likely to return

The background

The Westminster case concerned 'IC', a 26 year old British-born man with severe learning difficulties, global developmental delay and autism. According to the report of the expert consultant psychiatrist within the proceedings, IC functioned at below the level of a 3 year old. The consultant psychiatrist suggested it was likely that IC had an IQ of less than 50.

IC had been cared for by his family throughout his life with assistance from the Local Authority. At times IC had benefited from respite care from the Local Authority. IC has two sisters and a twin brother. His parents have dual nationality. They were born in Bangladesh but had lived in the UK for many years. All of the family are Hanafi Sunni Muslims.

At a meeting with the parents and the Local Authority's learning disability partnership in November 2006, the parents had informed the Local Authority that they wished their son to travel to Bangladesh to marry in April 2007. There was no agreement that he could not. By way of letter dated the 2nd May 2007, the parents' solicitors subsequently informed the local authority that IC had been married in a Moslem ceremony over the telephone on 23 April 2007.

The ceremony had taken place over speaker phone, with IC in London with his siblings and his father. The bride, NK, who did not suffer from any disability and who freely consented to the marriage, was with her family in Bangladesh, along with a Khazi officiating.

This letter arrived after the Local Authority had already issued proceedings under Part 8 of the CPR to seek an application for a declaration as to the capacity of IC to marry. The Local Authority was of the view that IC lacked such capacity.

The legal argument

The Respondent argued that as section 11 of the Matrimonial Causes Act 1973 ('MCA') does not list lack of capacity to marry as a ground for declaring a marriage void, the marriage was valid. Alternatively it was submitted that section 12(c) of the MCA[1] should apply, namely, that since a marriage involving one spouse who cannot consent because of unsoundness of mind is voidable, the marriage is valid until a decree of nullity is pronounced.

The Respondent drew a distinction between 'legal validity' and 'mental capacity'. He relied upon the authority of **Re Roberts[2]**. That case concerned the Will of a testator who subsequently married at a time when it was said that he was suffering from senile dementia. It was held that the marriage had indeed revoked the Will under the Wills Act 1837. It was not void but merely voidable under section 12, and thus remained valid until a decree of nullity was pronounced at the petition of one of the parties.

The key issues for the court to determine in 2007 was whether the marriage was valid in English law and whether or not the High Court had power to prevent IC leaving the UK to travel to Bangladesh in the future. The parties and the court were in agreement that the marriage itself was valid under the civil law of Bangladesh and also valid under Sharia law.

The appeal is dismissed

The Court of Appeal dismissed the appeal by IC's parents although it did uphold the argument that the marriage could not be made void by an application for a declaration but only through a petition for nullity. At the same time it held that the marriage was in fact not valid even though it was recognised by a law of a friendly foreign state. The declaration of the High Court was substituted for a declaration that the marriage, whilst *'valid according to the law of Bangladesh, is not recognized as a valid marriage in this jurisdiction.'* (paragraph 103).

The Court of Appeal did so having considered the effect of sections 55-58 of the Family Law Act 1986. Thorpe LJ (who needed no one to address him on Roberts having acted in the matter as junior counsel to the plaintiff widow) stated at paragraph 26 that the combined effect of these provisions: 'is to ensure that the only route to a judicial conclusion that a marriage was void at its inception is a petition for nullity'. He further held that the appropriate declaration was that the marriage was not recognised as a valid marriage in this jurisdiction.

In his judgment, Wall LJ held at paragraph 60: *'I acknowledge, of course, as I have to, that, as a matter of English domestic law, section 12(c) of the 1973 Act renders the marriage between IC and NK voidable rather than void. It does not, however, in my judgment follow that the English courts are bound to recognise the marriage as a valid marriage.'* The Court of Appeal held that the case of Roberts was not relevant to that issue.

X City Council v MB

It is helpful to consider an earlier decision of Munby J in **X City Council v MB [2006] EWHC 168.** That case concerned a 25 year old man with autistic spectrum disorder. His parents had informed the Local Authority that they were considering taking MB to Pakistan to marry his first cousin. The Local Authority commenced proceedings and sought a declaration that MB lacked the capacity to marry and also sought to prevent his parents from taking him to Pakistan.

The main issue in **MB** was what if any relief, and in what form, should be granted to achieve this aim. Munby J held that MB lacked the capacity to marry and that any marriage entered into in any country by MB would not be recognised in English law.

The court was prepared to grant injunctions to prevent MB's parents from taking him to Pakistan. In the event, the matter was dealt with by the parents offering undertakings that they would not do so, and that they would not allow him to get married in any kind of civil or religious ceremony.

In both cases the parties were in agreement that the adult in question lacked capacity. However the obvious difference is that in **MB** the marriage had not yet taken place and in IC it had. It is also of note that the case of MB did not expressly consider section 11 and 12 of the Matrimonial Causes Act 1973, nor the case of **Re Roberts.**

Three issues

The cases focus on three main issues, mental capacity, consent to marriage and the principle of comity:

Mental Capacity is issue specific

The issue of capacity has been held to be issue specific[3]: *'The authorities… provide ample support for the proposition that, at common law at least, the test of mental capacity is issue specific; that…the test has to be applied in relation to the particular transaction (its nature and complexity) in respect of which the question whether a party has capacity falls to be decided.'*

Capacity to marry

The issue of capacity to marry was further considered by Munby J **in Sheffield City Council v E & S [2004] EWHC 2808 (Fam).** In that case the Local Authority brought proceedings due to concerns about the 21 year old E's relationship with an older man, S. S was a 37 year old schedule 1 offender with a substantial history of sexually violent crimes. E had hydrocephalus and spina bifida. The Local Authority alleged that E functioned at the level of a 13 year old and had limited independence skills and was vulnerable to exploitation.

Munby J defined the issue of capacity to marry at paragraph 83 of his judgment: *'It is if you like, a general question, in the sense that the question is whether E has capacity to marry, not whether she has capacity to marry X rather than Y, nor whether she has capacity to marry S rather than some other man.'*

Consent to marriage:

In the **Westminster** case the court had before it the expert opinion of a Professor of South Asian Laws at SOAS. Paragraph 55 of the High Court judgment explains: *'Despite IC's incapacity to consent, a mentally incapable adult can contract a legally valid marriage under Islamic law…what is essential is that for these purposes IC has a guardian (a marriage guardian) who has full mental capacity, and who has the right to give his consent for his son's marriage, notwithstanding the incapacity of IC. The bride must be without disability and consent freely. The "marriage" needs to be contracted in an "Islamically accepted form".'*

The opinion of the professor was that the marriage of IC to NK was valid in Bangladeshi civil law and in Sharia law. He did not express an opinion regarding its validity in English law. It is interesting to note that here the court had before it expert evidence that Moslem Sharia law co-exists with Bangladesh civil law and that where conflict exists between the two systems then the Sharia law ultimately prevails.

This position in Sharia law and in Bangladeshi civil law is in direct contrast with the UK statutory framework in relation to consent for those who lack capacity that exists in the Mental Capacity Act 2005, section 27[4].

In the Sheffield case at paragraph 100 Munby J outlined the position under English law: *'If an adult lacks the capacity to marry, he cannot marry. And if, nonetheless, he purports to marry, the validity of the "marriage" can be challenged in the usual way. And if an adult lacks the capacity to marry, a purported "marriage" is not better than it would otherwise be merely because the Family Division has granted a declaration that it is in that person's best interests to marry or even if it has granted a declaration (I adapt the form of declaration used in 'residence' and 'contact' cases) that "it is lawful, as being in his best interests, for him to marry X".'*

The principle of comity:

Comity (the principle by which the courts of one jurisdiction may accede or give effect to the laws of decisions of another) is of particular relevance in this area.

In deciding that IC lacked the capacity to marry, and that it would be repugnant to public policy to recognise that the marriage had taken place, Roderic Wood J in the High Court proceedings made it clear that no criticism was intended of the religious and cultural beliefs that held the marriage valid. This was upheld by the Court of Appeal.

The need for a careful approach in this regard was outlined by Munby J in the case of MB at paragraph 28 in which he cited an earlier decision of **Re K (A Local Authority v N and others [2005] EWHC 2956 (Fam):** *'We must guard against the risk of stereotyping. We must be careful to ensure that our understandable concern to protect vulnerable children (or, indeed, vulnerable young adults) does not lead us to interfere inappropriately – and if inappropriately then unjustly – with families merely because they cleave, as this family does, to mores, to cultural beliefs, more or less different from what is familiar to those who view life from a purely Euro-centric perspective.'*

The exercise of the inherent jurisdiction

The exercise of the inherent jurisdiction of the High Court is considered to be an ever evolving remedy and this is apparent from the case law in this area.

In the Sheffield case at paragraph 108 Munby J stated: *'One question which I have not been asked to consider is whether the court can, and if it can whether it should, grant an injunction to restrain the marriage of someone who lacks the capacity to marry. ..I prefer to express no views, one way or the other, as to whether this jurisdiction is exercisable or properly exercisable to restrain a marriage.'* However, he was prepared to grant an injunction to prevent MB from travelling to Pakistan for the purpose of marriage and in the Westminster case the court was prepared to continue to grant injunctive relief to prevent IC from leaving this country.

The Court of Appeal in the Westminster case held (at paragraph 32): *'… the refusal of recognition in this case is justified even if not precedented.'*

The Future

In both the MB and Westminster cases, the court was being asked to decide the manner in which it may intervene in the family life of an adult who lacks capacity. In both cases the families had made decisions on behalf of the adult with which the English local authorities did not agree. Of particular interest is the difference in approach between the English authorities on the one hand, and Sharia Law and Bangladesh civil law on the other. These differences suggest that this is an area which will continue to be the subject of case law and of media debate.

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[1] Section 12(c) MCA *"A marriage celebrated after 31 July 1971 shall be voidable on the following grounds only, that is to say – that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind, or otherwise."*

[2] **Re Roberts Deceased, Roberts v Roberts [1978] 1 WLR 653**

[3] Chadwick LJ in ***Masterman-Lister v Brutton & Co (No 1)*** [2002] EWCA Civ 1889 at para 62

[4] Excluded decisions
27 Family relationships etc
(1) Nothing in this Act permits a decision on any of the following matters to be made on behalf of a person –
(a) consenting to a marriage or a civil partnership,
(b) consenting to have sexual relations,

Competition Law Comes of Age

The Circuiteer's wine correspondent, Tom Sharpe, Q. C., of 1 Essex Court, whose 'day job' is in the practice of European competition law, deftly guides us around an aspect of the law which is well publicised but has not been so well understood.

Twenty five years ago, when I taught very bright Oxford postgraduate students 'the law of monopolies and restrictive trade practices' for the BCL degree, there were a few judgments of the Restrictive Practices Court (RPC), a growing body of EC Commission decisions and European Court judgments – and no text book. Still, Oxford colleagues would wonder, what on earth has the subject to do with law; the less charitable would also say that it was pretty useless to any would-be practitioner.

Today all major law firms have-or aspire to have-sizeable and respected competition teams, in addition to the significant and growing specialists at the Bar. Some distinguished competition practitioners, including Buxton and Richards LJJ and Barling and Plender JJ, have moved on to higher and better things.

The change is very largely due to the growth of EU law and to the push that gave to reform of UK competition law in the Competition Act 1998 and the Enterprise Act 2002.

How it was

In the early 1980s the UK had a unique regime. All agreements could be evaluated to see if, in legal terms, restrictions had been accepted by two or more parties in the supply of goods and services. If so, the focus was then to see if the agreements were of a description that they were excluded by the legislation. If not, the focus moved on to see if the restrictions themselves were of a sort that could be disregarded. If not, particulars of the agreement had to be furnished to the Registrar of Restrictive Trade Practices, later the Office of Fair Trading. If they had not been furnished, the restrictions were automatically void and, moreover, gave rise to a private action in damages for any loss caused by giving effect to the agreement. If the particulars had been furnished, the agreement fell to be assessed by the RPC as to whether it came within a number of specified 'gateways' and was in the 'public interest'. The presumption was that it was unenforceable.

This may seem a bit of a 'legal egg and spoon race' but the tests of registrability were essentially legal ones and the system, while not perfect, did give rise to a fair level of predictability of what type of agreement could be made or what should be avoided.

The bad old days

In the initial stages after 1956 there is little doubt that the legislation put an end to many of the old-style industrial cartels in the older industries where management had grown up without ever making an independent pricing decision. The trouble by the 1970s was that it was plain that it did not work. As it was 'form' based, parties could construct agreements designed, for example, to tie parties to each other, or create exclusivity, or even share customers, without offending the law. There were a few private settlements for damages once cartels had been uncovered, but these were rare and unpublicised.

Meanwhile, since 1973 and membership of the Community, all major British companies with European interests, were obliged to obey European competition law. For agreements this meant that, irrespective of the 'form' of the agreement, if its 'effect' was such as to 'prevent, restrict or distort competition' it was prohibited unless it had been notified by the EC Commission and granted formal exemption.

Getting to the 21st century

The combination of domestic ineffectiveness and the duty to comply with Community law meant that the pressure for harmonising the rules proved irresistible. After an unduly long gestation period, and many reviews, the Competition Act 1998 was passed. This essentially translated Articles 81 and 82 into UK law, subject to an effect on trade 'within' the UK, and created what is now known as the Competition Appeal Tribunal (CAT). This is presided over by the President, currently Sir Gerald Barling, though all Chancery judges are members ex officio. It sits in panels of three, each with a legally qualified chairman and, a welcome legacy from the RPC, two lay people. The CAT has an appellate jurisdiction hearing appeals against decisions not only of the OFT but also from the various sectoral regulators (communications, water, rail, energy).

There are some procedural innovations. First, the CAT has an appellate jurisdiction. This is combined with duplicate powers of the OFT. As a result, it can confirm, set aside, remit or do anything the OFT can do. Secondly, once a regulator's decision has been upheld it can form the basis of a private action for damages. This can be brought in the CAT, which exercises an original jurisdiction. This means that the parties are disabled from going beyond the matters determined earlier by the CAT so the 'only' issues for adjudication are causation and quantum. Thirdly, under a provision which has yet to be brought into force, if a competition point should arise in the course of private litigation in another court, there is the power to adjourn it and to remit the point to the CAT. Lastly, the CAT and all other courts must follow European case law on the same matters and must 'have regard' to any Commission decision on a similar matter.

What has happened

What has happened? The OFT showed an initial enthusiasm for bringing decisions. Issues such as the burden and standard of proof, introduction of new evidence, the meaning of predation and excessive pricing, and aspects of fining policy, were the subject of various cases. Since 2005 the number of new OFT cases has slowed remarkably. This is a reflection of a new policy of 'prioritisation' but it means that even when confronted with good evidence of price-fixing cartels the OFT has not acted. This has dried up appeals to the CAT. On the other hand, the OFT is keen to foster private redress for breaches of the Competition Act prohibitions (Chapter I and chapter II) and their European analogues, Articles 81 and 82 (the abuse of a dominant position provision), and proposals are awaited. They will probably consist of more relaxed rules on representative actions, especially by 'consumer' bodies (*Which?* has already brought one action against the participants in the 'football shirts' cartel, which was settled out of court) but no 'class actions' or treble damages awards (a recent judgment ruled out punitive damages for breaches of Community law in the English courts). In parallel, there has been a steady growth in private actions in the High Court – in the Chancery Division or the Commercial Court – for injunctions and damages under the old European provisions and the new torts introduced by the Competition Act 1998.

Not always successful

Of these, few have been successful, as yet. They involve typically complex facts and some refined economic evidence. In one of two Chapter II/Article 82 cases last year, Arriva, the bus company was accused of abusing its dominant position in the Chester bus market. This was lost by Chester City Council because it had defined the relevant market wrongly. The correct definition ruled out any claim of dominance so the rest of the case collapsed. In the second case, Ineos Chlor v Huntsman, the defendant was accused of exclusivity and overcharging for its product, ethylene, and for overcharging for the pipelines used to transport it. The claimant's case collapsed because it could not show inter alia that Huntsman had a dominant position or that a term contract for a commodity such as ethylene was an abuse. Both cases lasted for more than three weeks and many witnesses were heard in both, including expert economists.

Whatever the level of activity of the OFT, private actions are growing in importance. The Commission is still very active; and all major transactions involve an analysis of whether existing agreements and practices are in conformity with competition law. The transaction itself may be subject to scrutiny under UK and EU merger provisions, as well. Failure to offer good advice may well result in unenforceability of agreements, substantial fines for entering into them, and exposure to damages from private parties.

The subject has come of age.

CIRCUIT TRIP - LISBON 23-27 MAY 2008

The capital of Portugal sits at the point where the River Tagus feeds into the Atlantic Ocean. This year it will also provide the perfect backdrop for the South Eastern Circuit trip and our meeting with the Lisbon Bar Association. The rest of the time is your own to explore this historic and magnificent city. Book early to avoid disappointment!

Proposed itinerary

23/05/08	**1835 hours**	**Depart London Heathrow**	**BA504**
	2115 hours	**Arrive Lisbon Airport**	
		Transfer to Hotel	
24/05/08		**Timetable to be announced but includes**	
25/05/08		**the meeting with the Lisbon Bar Association,**	
26/05/08		**Group Dinner and a Guided Tour of the historic city**	
27/05/08	**1825 hours**	**Depart Lisbon Airport**	**BA503**
	2105 hours	**Arrive London Heathrow**	

COST: £525 per person (on the basis of a couple sharing a room)
Including Flights, First Class Hotel Accommodation for 4 nights, Breakfast, Transfers and Group Dinner

PLEASE NOTE
A supplement may be charged on single occupancy of rooms
Only 25 seats have been reserved on the flight
You are advised to take out suitable travel insurance as your cancellation may not result in refund of the airfare

YOUR PLACES WILL BE RESERVED BY SENDING YOUR CHEQUE
[made payable to SOUTH EASTERN CIRCUIT BAR MESS] TO:
Giles Colin, 1 Crown Office Row, London EC4Y 7HH (DX 1020 LDE).

For further details please contact Giles Colin - e-mail: giles.colin@1cor.com
www.southeastcircuit.org.uk

A Circuit Town: Ipswich

The Bar is used to taking the rough with the smooth in terms of cases and where we practice. Hugh Vass of 1 Paper Buildings continues our series on Circuit towns with a realistic view of Ipswich

Ipswich. Gateway to the North Sea. Recently the town gained some notoriety as the locus operandi of Steve Wright, who was sentenced to life imprisonment by our presider, Mr. Justice Gross, with a recommendation that he should never be released from prison. The local football team (aka the Tractor Boys) had a brief elevation to the Premier League a few years back. Its former managers include Bobby Robson and Alf Ramsey, the latter being honoured in town by a statue. Norman Foster designed the Willis Coroon building (see illustration). This was very much the shape of things to come in 1974, and in 1991 it became the 'youngest' Grade I listed building in Britain. Other claim to fame: in October 1936, Mrs. Wallis Simpson jumped the queue for hearings in the Royal Courts of Justice and obtained her decree nisi of divorce in Ipswich. The plan was for decree absolute to be pronounced the following April, in good time to marry Edward VIII before the coronation in May 1937. She at least succeeded in inspiring the American newspaper headline, 'King's moll Reno'd in Wolsey's home town', Cardinal Wolsey being the most famous local boy who made good.

Having been in local chambers for 10 years until 2002 I can say that Ipswich is an unlovely town, no doubt eliciting a fierce loyalty from many of its residents, but with few attractions to interest the outsider. The shopping precinct is typical of the standard High Street, with all the usual chain store outlets and barely a handful of shops or eateries of any individuality.

The Courts

The Crown Court

The new Crown Court (built and run under the PFI regime by the same outfit that built and run Cambridge Crown Court) is conveniently located for the train station (five minutes' walk, max.) Come out of the station, cross the bridge straight ahead, take the first left and there it is, in all its glory, a glass and metal oblong that contains five courts, a canteen and one public lavatory on the ground floor. The courts are mostly on the second floor.

There is a tiny robing room which makes one wonder what the Lord Chancellor said to the architects about the future of the Bar. On an average day there are upwards of twenty counsel plus an increasing number of solicitor advocates and in-house CPS advocates using its cramped and wholly inadequate facilities. Bags and cases are usually three deep on the floor as there is only a narrow ledge which can at best accommodate five cases. There are lavatories for both male and female advocates, but only one of each. They have been designed for disabled users, and the basin and hand dryer are at knee height, as is the intercom for access to the cells.

On the plus side

On the plus side there are currently a very decent tranche of judges sitting regularly at Ipswich, so that at the very least the experience of appearing in court is no more harrowing than need be.

The food in the cafe is quite good, offering baked potatoes with a choice of fillings and usually a choice of two hot meals, as well as salads, sandwiches and baguettes. There is a free shuttle bus that leaves from the council offices opposite the court every 15 minutes up to the town centre, although you can walk it in ten minutes. I am told that counsel are allowed to use the very good canteen in the council offices just opposite the court entrance. Simply tell the security staff that you are working at the crown court, and they will let you in.

Car parking is available across from the court at a cost of £4.40 per day. There is the alternative of leaving your car at the park and ride at Copdock (south) but frankly if you are coming by car the car park is hugely more convenient.

Should you happen to be here on a weekend, there is free parking in the town centre on the first Sunday of every month. So proud is the town of the free parking benefits that on March 6, £500 in cash was given Marion Osbourne, Chris Freeman and their children Christian and Thomas Freeman who arrived in the 10,000th car parked for free since May 2007.

The Ipswich County Court is located in Arcade Street, right in the Town Centre and close to numerous pubs and cafes. It is walkable (approximately ten minutes) or a five minute taxi ride. If you wish to walk go straight across the bridge opposite the station and keep going for about 1/4 of a mile, pass the Willis Coroon building on your right, turn left up Museum Street and first right.

Accommodation

As Ipswich is only an hour from London counsel coming up from the big smoke tend to commute, but if you are staying overnight a comfortable moderately-priced hotel with an indoor pool and

gym is the Belstead Brook, with rooms varying in price from £70 to £140. I recommend the laterooms.com website which offers discounts of up to 70 percent off normal prices. If your case involves a lengthy sojourn and you do not wish to commute to London, I also recommend the pretty little towns further up the coast: Woodbridge, Orford, and Aldeburgh, for example, are all within a 40 minute drive and well served by small hotels and restaurants.

Eating

There is barely time to go into town during the lunch adjournment, so the choice is between packed lunch, court café or council offices canteen. If you are staying overnight and want to venture out onto the mean streets of Ipswich after dark there are a number of reasonable Indian, Thai and Chinese restaurants on Tacket Street, as well as the ubiquitous Pizza Express opposite the taxi rank in Lloyds Avenue. Trongs in St. Nicholas Street is recommended by locals as a very good Chinese restaurant. .

Sites of interest

Well, struggling with this one a bit. The museum in Wolsey's old house in Christchurch Park is worth a visit, the dock area currently being renovated and turned into flats and the marina is quite a pleasant walk for those of a nautical bent. Fans of the cartoonist Giles might wish to see the bronze statue of his much-loved characters in Princes Street. The New Wolsey Theatre hosts a variety of short runs, and the Sir John Mills Theatre (the theatrical knight in fact once lived in Felixstowe where, for that matter, Steve Wright worked in the docks) is the home of the Eastern Angles touring theatre group. Their latest production is *Cuckoo Teapot.* Otherwise, London really isn't that far…..

The Willis Coroon Building

THE SOUTH EASTERN CIRCUIT BAR MESS

The Annual Dinner of the South Eastern Circuit Bar Mess
is to be held at Lincoln's Inn Great Hall on
Friday, 27th June 2008 at 7 for 7.30pm

The Guest of Honour

THE RIGHT HONOURABLE SIR IGOR JUDGE

President of the Queen's Bench Division and Head of Criminal Justice

Dress:	Black Tie	
Cost:	Silks	£90 per person
	Juniors	£70 per person
	Under 7 years call	£45 per person

There will be dancing after dinner

Those who wish to attend should apply **AS SOON AS POSSIBLE.**

Places will be allocated on a first come first served basis and all applications, accompanied by a cheque, must be received by Inge Bonner at the address below by **Friday, 13th June 2008**

Please mark the envelope **'Circuit Dinner'** and retain this part of the form

Please note ***a cheque must be sent*** with your application

You will be informed nearer the time whether or not your application has been successful

Inge Bonner (Administrator)
289-293 High Holborn, London WC1V 7HZ
Tel: 020 7242 1289 Fax 020 7831 9217 DX: 240 London, Chancery Lane

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Name ..... Year of Call.....

Chambers .....

Telephone..... DX .....

Email .....

I AM A FULLY PAID UP MEMBER OF THE CIRCUIT

I enclose a cheque made payable to the **South Eastern Circuit** for £.....

* If possible I would like to sit next to.....

* I would like to be seated on the .....Bar Mess table

* I have no seating preference

* I require a vegetarian meal Yes/No

** Please delete as applicable*

BOOK REVIEWS

Beyond Ugly

by Constance Briscoe. Published by Hodder and Stoughton at £14.99

At the conclusion of UGLY, we see Constance Briscoe about to depart for her university career. Her mother makes an unwelcome visit. While Constance goes out shopping, her mother takes, and keeps, her daughter's childhood diaries. It is a symbolic moment.

It is also the last time that Constance will belong to the milieu of her childhood. With a new name – her real name, Constance, the family having always called her Clare – she embarks on her future as an educated woman in a profession where most of the members are white men. This is the Bar of the 1980s. She approaches it as an outsider, but with enormous determination. Only occasionally does she take to her bed in despair, but she soon fantasises a visit by her inspirational school teacher, Miss K, who tells her to get up and fight on.

Hard work not always rewarded

Her experiences as a pupil barrister will be familiar to readers. They consist of temporary travail and of hard work rewarded. She does a pupillage in Took's Court with Michael Mansfield. To her dismay, they advertise for new tenants and she has to compete with 120 other aspirants. No one gets taken on. After that, she begins to write to other chambers. This leads to two interviews, from one of which she receives an offer of a temporary home which eventually turned into an offer of a tenancy. Solicitors and lay clients all value her–the descriptions of court appearances, and especially those she observes as a pupil, are wonderful, and remind one, as UGLY did, that she can be a very funny raconteur.

The Bar of course is full of highly successful counsel who did not get taken on by their pupillage chambers. What is striking about BEYOND UGLY is how much it still rankles.

The long journey

Before we get to the Bar, there is her time at university and her experiences, explicitly described, of plastic surgery. She makes friends, enjoys studying law, and finds a boyfriend, J. There is no contact with her family. She works diligently during the holidays at a hospice, which she loves. When she is ill, a Catholic priest gives her a copy of Kahlil Gibran's THE PROPHET, which becomes her favourite book. She quotes what she, without elaboration, calls 'the most beautiful verse in the world': 'But let there be space in your togetherness and let the winds of the heavens dance between you/Love one another but make not a bond of love/Sing and dance together and be joyous, but let each one of you be alone'.

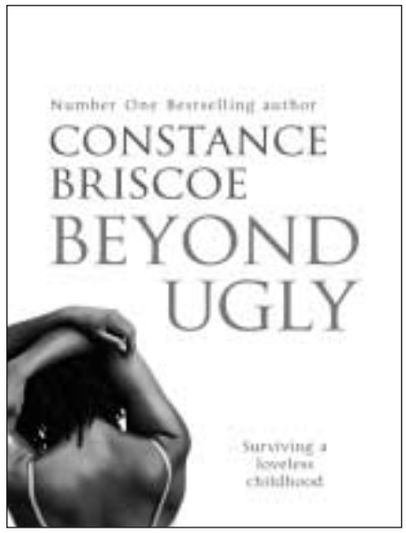
Her three plastic surgery operations were carried out at her insistence and at considerable financial sacrifice (and physical pain) as a student: the cost ate up her savings from work, leaving her so little to live on during term that she had to skip dinners. The driving force was the deep rooted belief that her mother was correct in calling her ugly. Did it make a difference to her life? J 'could at least have said, "Oh I see you've got a nice new nose", but he hadn't even noticed. That's men for you, I thought. But then nobody else noticed either'.

May one pause to nit-pick here? She says that she began her career at Newcastle in 1979, which means she graduated in 1982, but without taking a year off she only passed her Bar Finals in 1984 and, after months of doing cases as a pupil, is Called in November 1985. And for what it is worth, she could not have spent hours changing trains back to London from Devizes: Devizes station shut in 1966, and the nearest train is the main line service from Chippenham or Pewsey.

A lonely time

In any case, now that she is in London she ends her nomadic existence by renting a house in Clapham, which she later buys, and which she plans to fill with Bar student tenants. 'For the first time in my life I would have an income without working my backside off'. The Bar finals course is got through. 'Even though I was a member of Inner Temple I did not make one single friend. It is a place where many students simply pass through'. Her Christmases remain lonely. She does not receive a single card. One would be interested to know whether she found her contemporaries cold, and whether she tried but failed to break through.

It is striking that she never applied for a pupillage. As a 13 year old school girl, visiting Knightsbridge Crown Court she struck up a conversation with Mike Mansfield: 'Do you think that you can be my pupil master?' To which he replied 'Sure. Stay in touch and when you qualify, I'll give you a pupillage' 'A promise is a promise', she says. There is no second string to this bow. Eight years later (actually, UGLY dates this 14 years later) and only after she has passed her Bar exams, she writes to say that she was going to take a break but would be happy to start pupillage 'at a time convenient to you'. He replies, two months later, 'come as soon as you like'. By then he has set up Took's Court. She contacts the last address she had for him – Cloisters – where the clerks refuse to tell her where he has gone. Eventually she finds him and she begins a fascinating six months while Mansfield does a number of politically charged cases arising from the miners' strike.



The depiction of Mansfield is of someone who is 'dishy' and willing to help but evasive when pressed at moments of crisis. The depiction of chambers is very unflattering. The three junior tenants take against her immediately. She works extremely hard, makes many cups of tea, and does well in all the work she is given. She likes Adrian Fulford and babysits for Helena Kennedy ('It did not occur to me that such a move might be seen as me swarming up to Helena. It was not an invitation limited to me – anyone could have said "yes" but no one did').

After failure, success

Why did Tooks Court not take her (or anyone else) on? The reason was 'balance', that is not wishing to have too many people at the bottom, a recognised problem twenty-two years ago. However, she wrote to every member of chambers, pointing out that there had been no criticism of her ability and potential as a barrister. 'If you were an ordinary set of Chambers, I would have found it normal to be rejected on unspoken and irrational grounds, and I would have promptly set about finding a place elsewhere. However, you are a set which was established to further the struggle of oppressed people to do so in a principled way'. Three and a half months later Adrian Fulford is deputed to explain.

The ending is on a happier note. She finds chambers. She finds love. She becomes pregnant. There is a third volume promised. One hopes it will report on the good things she has worked so hard to achieve. D.W.

One World One View

by His Honour Judge Nic Madge, published by African Children's Education Trust

Those who use Harrow Crown Court, where Judge Madge sits, will know the photographs which decorate the main staircase. They were taken by him, in places as far flung as Azerbaijan, Bhutan, Brazil, Egypt, India, Iran, Mongolia, Mozambique, Sri Lanka, Sudan, Syria, and Tanzania. They have been on permanent exhibition since 2005 and are there both to decorate the public part of the building and to reflect the diversity of the court users.

Many of the photographs can be found in this handsome publication of 115 pictures of people he has observed around the world, including a woman begging in Mongolia and a woman begging on Fifth Avenue. The book is printed by and is published to benefit the African Children's Education Trust (A-CET), a charity which helps to alleviate the poverty of African children (many of whom are orphaned, abandoned or disabled) through long-term self-sustaining education initiatives, primarily in Ethiopia.

Judge Madge's introduction gives some taste of his own experiences in that country. He flew to Lalibela, the centre of Ethiopian Christianity. It is an isolated town where the local people live in mud or stone huts. Its twelfth century churches are excavated out of solid rock and decorated with murals. From there he hitched a ride to the cave church of Yemrehanna Kristos. Most people who go there are pilgrims and arrive on foot. Thousands, apparently, had walked in their time from Jerusalem and, lacking the strength to go home, lay down and died. Their skeletons are on the floor, by the tombs behind the basilica church inside the cave. A priest leads a procession of men chanting and waving brass instruments while women dance. This is followed by a sermon, exhorting the congregation about the perils of AIDS and urging them to look after orphans. It puts our lives in England in perspective.

'Education is the most fundamental tool which enables people to better themselves, both intellectually and economically,' he writes and it is the belief in this which motivated A-CET, which provides scholarships for 800 children and has begun to build its own schools.

This is a handsome and important book in its own right. Fortunately buying it will benefit those for whom it is a testament of our diverse world, not least because 92 percent of donations go directly to supporting the students and the educational projects. It can be ordered on-line from www.a-cet.org, at £25 including postage, or from Judge Madge at Harrow Crown Court at £20 (cheques made payable to A-CET) if the recipient can get it without postage, e. g., through the DX.

Banks on Sentence

by Robert Banks, Third edition.

It is another sign of how quickly the law is changing that it is time for another edition of Banks on Sentence, the third since October 2005. Although it is 1194 pages and is printed on very thin paper, the aim is to reduce the text to just what the reader needs, and to make sure that the book remains portable. It is produced in soft cover. Statistics are printed in clear boxes, and sentencing guidelines are similarly set out succinctly. The full sentencing guidelines documents can of course be found on the website of the Sentencing Guidelines Council. Details about individual orders are omitted. Sentences passed before 2002 are cited only by caption where there are more recent decisions. Many of the cases here are dated 2007. Some chapters have been re-written (e. g., murder and fraud) and the basic sentencing chapter which begins the book has been expanded. Although statistics have been included there is also a warning that sometimes they need to be approached with caution, e.g., where a defendant receives the same penalty for different offences or where statistics for two offences are included together. The size of the task is reflected in the list of cases, which itself runs for 54 pages.

Two things stand out as being particularly helpful to the busy practitioner who is after all only concerned with the facts of the case before him or her. The first is the comprehensive nature of the structure of the book. The 205 chapters break things down into at times very precise areas: yes, there is affray, criminal damage and rape, but there is also co-defendant's personal mitigation, hostility towards a disabled victim, 'lavatory, sex in a', road rage, and certain drugs according to their nature (ecstasy, LSD). Chapters are themselves broken down (see under Manslaughter: Passion, Crime of). This should assist those on the bench and at the Bar who are dealing with an unusual or difficult case

Looking at one chapter as an illustration, 'handling stolen goods' begins by citing the maximum penalty. It gives the crown court statistics for sentencing. Interestingly, if you are aged 18-20, you stand a much better percentage chance of custody if you plead guilty than if you plead not guilty, and in 2006 this even applied to adults although it is fair to point out that despite the general belief that juries in certain crown courts are indulgent to handlers, nine times more people plead guilty than not guilty. The guideline case of Webbe is set out in five substantial paragraphs. There are the magistrates' courts sentencing guidelines of January 2004 and the draft Sentencing Guidelines Council guidelines of 2007. There are several discrete topics: antiques, art and valuable jewellery (three cases plus a reference to some older ones), businessman defendant (one case), a reference to Car Ringing (see Theft, Vehicles Car Ringing), compensation, confiscation and restitution (a short paragraph which largely lists the relevant sections), custody threshold (two cases), defendant aged 10-13, defendant aged 14-17, fines and compensation more appropriate than custody, monetary value (three sections according to value), persistent offenders (three cases), professional handlers, 'robbery, proceeds of' and 'vehicles, stolen'.

The second helpful aspect is the manner of setting out the facts of decided cases in detail. Everyone knows that the law is there to be relied upon or to be distinguished, as suits the needs and interests of one's lay client. In the past one has either had to make do with very short summaries or plough through an entire decision, assuming that it has been reported in something accessible. Banks provides very full summaries of facts, sparing us none of the worst aspects of the crimes. At times one detects the authorial voice amongst those of the Lords Justices.

The retail price is £45 or £43 if ordered online on www.banksr.com. Orders for six or more books reduce the cost to £36 each or £34 online. For those who would like the second edition for reference to the older cases; it can be purchased as well at £19 by ringing 01435 883838.

From Around the Circuit

Cambridge & Peterborough Bar Mess

The race is over and the winner declared! Not the Boat Race or the Grand National but the race for the residency at Cambridge Crown Court. Congratulations to HHJ Hawkesworth who takes over the reins from his old stable mate both in practise and on the bench, HHJ Haworth. The Crown Court at Cambridge has flourished under HHJ Haworth making it one of the best court centres to appear in. He has the heartfelt thanks of all who practise regularly at Cambridge. There is no doubt that this will continue under the leadership of HHJ Hawkesworth. HHJ Haworth meanwhile will continue sitting in Court 2. Watch this space for details of the dinner in celebration.

Huntingdon Crown Court is now up and running. A dinner was held on the 26th October 2007 to mark the opening. The speeches of the Chairman K Khalil Q.C. and the Resident Judge HHJ Coleman were I am told very entertaining. [The author of this report has no individual recollection due to a close liaison with two or three very good bottles of red]. The dinner also allowed the Mess to thank HHJ Sennitt for his kindness and consideration towards the Bar. We wish him well in his retirement.

The court building however leaves a lot to be desired in terms of facilities. Again it is down to the staff to make life comfortable. If you are posh the furniture comes from Ikea if you are not it comes from MFI! I suspect the overall furniture budget equates approximately to the furniture allowance for a single MP. Someone's taking the **** somewhere! I hesitate to use the words "things can only get better"; Tony Blair did and look what happened to him.

Congratulations to the following new Judges upon their recent appointments. HHJ Maloney, Q.C. HHJ Bates and HHJ Enright. All are very pleasant individuals but the author cautions against shaking the hand of HHJ Bates on too many occasions as the story goes that it has been up the back passages of a number of smelly and dirty animals [and I don't mean MP's] in a previous life! Ask him at the next dinner for full details if you dare.

Until next time.

CROMWELL

Central Criminal Court Bar Mess

The big news since the last report has been the dinner organised by the Mess to mark the centenary of the present building on Old Bailey. This prestigious event, attended by over 230 members of the Bar and judiciary, was held in the hall of Middle Temple on Thursday 15th November. The Mess was pleased to have as its guests for this occasion the present and past holders of the offices of Recorder of London and Common Serjeant, and two significant female members of the Mess. They were Her Honour Judge Ann Goddard Q.C., the only female judge resident at the Bailey and who at the time was nearing her retirement, and Ann Curnow Q. C., who was marking her fiftieth glorious year at the Bar.

The assembled throng were entertained by Anthony Arlidge Q.C., who took his opportunity in proposing the health of the guests to provide a highly dubious history of the Old Bailey. The record of posterity was then corrected with alacrity, in his response on behalf of the guests, by Sir Lawrence Verney, the former Recorder, who was on sparkling form.

However, the star of the occasion was His Honour Alan King-Hamilton Q.C., who had already celebrated his own centenary and who had come to help celebrate that of the building in which he had sat for many years. This can, of course, be taken as proof that membership of the Bailey Mess encourages health and longevity. If you are not already taking advantage of these benefits, membership can be acquired by contacting Duncan Atkinson at 6, King's Bench Walk.

Duncan Atkinson

Central London Bar Mess

A very well attended drinks party in the Middle Temple in November marked the retirement of Judge Van der Werff as resident judge at Inner London. Thanks go to Hannah Duncan for organising such a successful evening. He has been succeeded by HHJ Roger Chapple. The Inner London junior, Jonathan Polnay has been addressing a number of issues of concern to the Bar. The news from Inner London also includes the appointments of HHJ Fraser and HHJ Ackner.

At Woolwich HHJ Byers has taken over as the resident judge and he has been joined by new appointments, HHJ Marks Moore and HHJ Jeffrey Pegden, Q.C. A ceremony was held to mark the retirement of Judge Norris OBE and speeches were made on behalf of the Bar by both the Chairman of the Central London Bar Mess and the judge's son. We wish Judge Norris a long and happy retirement. The former resident judge, Judge Anwyl, Q.C. has been much missed and all members of the Mess will I know wish her well.

News from Southwark includes the departure of Judge Dodgson to the more convenient court at Kingston and a ceremony to mark the departure of Judge Elwen to take over at Truro from Judge Rucker (formerly of that parish). The judicial numbers at Southwark have been boosted by the appointment of HHJ Beddoe.

We wish all the newly appointed judges well in the years to come.

Finally, if any members of the Mess have any issues that they would like to see addressed on their behalf then they should contact the following Bar Mess representatives who will take up the matter in the appropriate quarter:

Inner London – Jonathan Polnay
Southwark – Lucy Kennedy
Woolwich – Matthew McDonagh
Blackfriars – Phillipa Page

Gareth Patterson

Essex Bar Mess

Once again the road into Basildon from the A127 is lined by thousands of daffodils, but this is the first spring in over a decade without HHJ Clegg at the helm of the town's fine Palais de Justice; Friday 9th May will see the Mess dining (and dancing) in his honour aboard HMS President. Contact our junior Jackie Carey at 2 Bedford Row ASAP if you want to join us in marking the end of Philip's distinguished period as the first resident judge of Basildon Crown Court. He leaves the court in the safe hands of HHJ Christopher Mitchell who will bring no doubt a little hint of Gallic chic to an area of Essex that could well benefit from the same.

We raise our hats and a loud cheer at the news that two former Essex boys have made it to the rank of Q.C. – our former junior Max Hill who has enjoyed much success prosecuting terrorists in recent years, putting into practice all those lessons learned in the Greenwood/Watling eras when any case listed in either of those two courts was likely to take on the characteristic of a state trial depending on the state of the moon. And of course Brian Altman, who felt that the calmer waters of the Old Bailey would be better to suited to his great talents – his rise to senior TC there was swift and inevitable and we salute him too. Can we claim Sarah Forshawe as perhaps an honary Essex girl? – I'm not sure but we would certainly like to, so well done Sarah!

Our new Mess chairman, John Dodd, Q.C. has taken over at the helm from Trish Lynch, Q.C.. He has a tough act to follow and all of the membership will want to thank Trish for her hard work over the last three years.

As you all know HHJ Adrian Chapman died on 9th February. On the 6th March a memorial service was held at Chelsea Old Church. It was the most beautiful of services – a true celebration of a life cut short. Roger Eastman singing a little Gilbert and Sullivan was unforgettable, but Dan Worsley's address was a marvel; he drew a picture in words of our judge that was so vivid and full of life that his death seemed all the crueller. He spoke of Adrian's great bravery and courage right to the end and how Adrian had asked him whether he had done any good as a judge. There can be no doubt about that – Adrian Chapman had so clearly grown into the role, seeking to help where he could but to punish where it was necessary. The service was followed by a most wonderful party hosted by Virginia and his children – they were greatly touched by the number of judges, court staff and lawyers who had attended from Essex. May he rest in peace.

'Billericay Dickie'

Herts and Beds Bar Mess

This March saw the retirement of HHJ Breen who was replaced at Luton Crown Court by the former chairman of this Mess, now, HHJ Andrew Bright Q.C. HHJ Breen's last day in office was marked at court by the delivery of expressions of appreciation, including an address by the Mess's new chairperson, Lynn Tayton, Q.C. There is to be joint dinner, for both the outgoing and incoming judicial incumbents, to be held at St Michael's Manor, St Albans, on 1st May. This venue has provided many enjoyable dinners in the past and, as an extra incentive, will be preceded (in the hotel bar half an hour before the reception) by the elections for the Mess committee. For those not aspiring to high office, it is not anticipated that this will be a lengthy process, but if you do chose to arrive at the advertised time, do not be surprised if your committee members appear (un)characteristically jovial.

In an effort to make us more user friendly, our new chairman has approached the Circuit with a view to increasing our profile on their website. This is part of an initiative to encourage members of the Bar (not limited to criminal practitioners) to contact us in relation to local issues or concerns generally. Lynn is also in the process of reinforcing our links with the Court User Groups in St Albans and Luton Crown Courts. Our aim is to have representatives at all future Court User Meetings.

On the criminal front, Bedfordshire CPS appear to have overtaken Hertfordshire CPS in their pursuit of recruits from the practising Bar and have enticed (it is believed) three practitioners, from our ranks this year.

Fred Ferguson

Kent Bar Mess

Despite the pressures that the Bar faces, the Kent Mess is thriving. New members, particularly from the junior Bar, continue to join, and attendance at the regular events such as the annual dinner proves that the Mess retains its important function as a 'social glue'. The speaker at the dinner in November was HHJ Statman who, to loud applause, suggested that female counsel might occasionally be allowed to conduct cases other than rapes and sexual assaults. He may even have mentioned fraud as an alternative. Controversial stuff for Kent, although reports of dark mutterings in certain clerks' rooms about 'bloody judges' remain unsubstantiated.

Maidstone has played host to a number of visiting judges, including Mr. Justice Bean, Mr. Justice Goldring and HHJ. Pontius. The Mess has held receptions for each of them, all of which have been well attended by bench and Bar alike. An adventurous HCA turned up to one of them, but has not been seen since. We also celebrated the 85th birthday of Robert Flach, who continues regularly to appear at Maidstone. Respected as he is for his age and experience he is the only person able to tell the famously softly-spoken HHJ Lawson, Q.C. 'I cannot hear a word Your Honour is saying'. We all indebted to him; somebody had to say it.

The Mess continues to produce its share of the great and the good. Congratulations go to Martin Joy and Martin Griffith on their elevation to the bench, and to Jo Cutts and Sarah Forshaw on taking Silk. Judge Joy lived up to his name in his first week by writing off the Court Manager's brand new car while trying to park his own, whilst Judge Griffith was four days into his judicial career before the local paper described one of his sentences as 'puny'. The Mess is of course proud of their achievements.

We are, however, sad to say 'goodbye' to David Bate Q.C and Fiona Moore-Graham, who are retiring from the Bar to live in Fiona's native Ireland. Fiona in particular has been a stalwart of the Mess; a committee member for 15 years and a past Junior. Her contribution to the continuing success of the Mess has been enormous, and we wish them every happiness in Bushmills.

N. Victor

North London Bar Mess

The Mess has seen a number of arrivals and departures among the judiciary. Our new judges are HHJ Lamb, Q. C., HHJ Tudor Owen, HHJ Wendy Joseph, Q. C., HHJ Atkinson, HHJ Simon Freeland and HHJ Lafferty. We have lost HHJ O'Mahoney to Maidstone Crown Court and HHJ Richardson to London County Courts.

The North London Bar Mess annual dinner is being planned for October.

Please write with any concerns to the chairman, Jeremy Dein, Q.C., at 25 Bedford Row, email: clerks@25bedfordrow.com

Pamela Oon

HERTFORDSHIRE & BEDFORDSHIRE BAR MESS

BLACK TIE DINNER

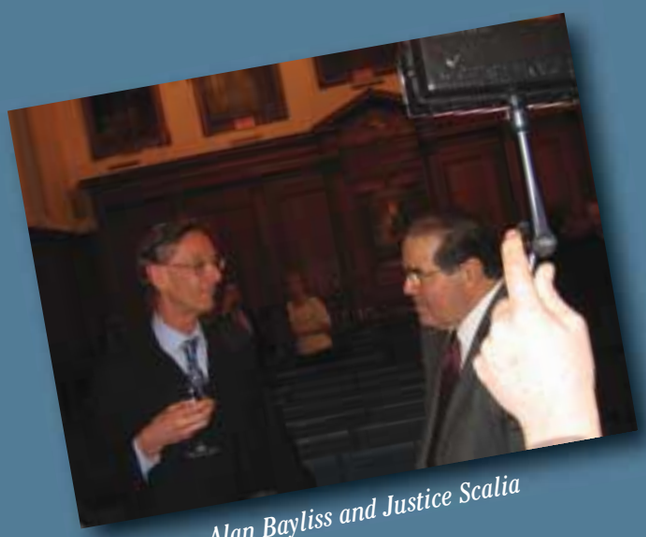
TO MARK THE RETIREMENT OF **HHJ GEOFFREY BREEN** AND TO CELEBRATE THE APPOINTMENT OF **ANDREW BRIGHT Q.C.** TO THE CIRCUIT BENCH

Date:	1st May 2008
Time:	7:30pm for 8pm
Venue:	St. Michael's Manor Fishpool Street, St. Albans, AL3 4RY
Ticket price:	£50 under 5 years call £75 over 5 years call

Please contact Will Noble at will.noble@9bedfordrow.co.uk for a ticket application form

The dinner will be preceded by a meeting of the bar mess at 7pm for the purpose of electing committee members.

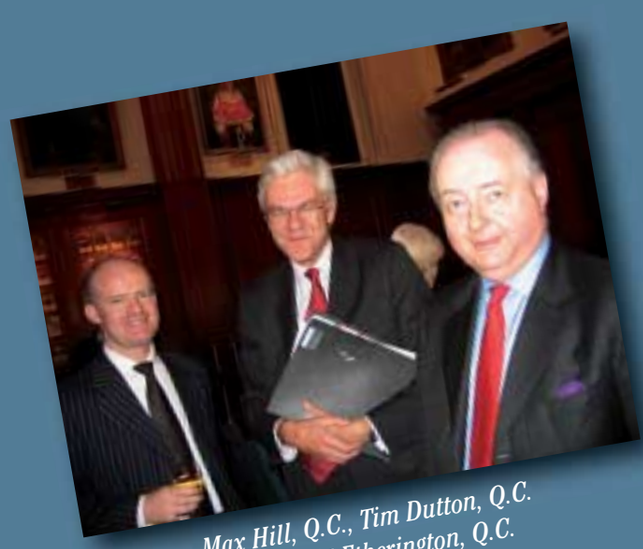
The Third Dame Ann Ebsworth Memorial Lecture



Alan Bayliss and Justice Scalia

Adam Zellick and Justin Adams

Robyn Piccioni and David Spens, Q.C.



Max Hill, Q.C., Tim Dutton, Q.C. and David Etherington, Q.C.

David Spens, Q.C., Jason Carter and Justice Scalia

Tom Sharpe, Q. C. and Richard Gillis, Q.C.