



When is a holiday not a holiday?

*Long-term sickness and
annual leave, page 10*



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- ▶ **The Legal Charities garden party**
- ▶ **Landlord Law**

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East Anglian Region Local Law Societies - p.9

Conveyancing in the current climate - p.16

Complaint injustice p.14

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As there are three different tiers of National Competency Standards reflecting different stages of a Secretary’s career, LEARNING 4 LEGALS training can help both experienced Secretaries and those new to the Legal Profession. New entrants will learn essential skills and knowledge so they are more productive, more quickly, whilst experienced Secretaries can formalise their knowledge, fill in skills gaps and achieve professional/qualification recognition for their expertise.

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The LEARNING 4 LEGALS training maps against the standards, and so there are three levels of legal secretarial training, Introductory, Intermediate and Advanced.

NB. The Institute will be publishing National Competency Standards for Paralegals, Legal Assistants (i.e for people who do non-fee-earning, non-secretarial clerical support work) and Conveyancing Paralegals in the next few months. LEARNING 4 LEGALS will be provided training in those standards if requested.

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President's address



It is hard to believe that more than a third of my Presidential year is now behind me. I have been very busy in the first few months of the year attending a number of dinners of other local law societies, as well as chartered accountants and insurance institutes. I am grateful to my Vice President, Katherine Chase, for standing in for me when I was unable to attend personally. I am also grateful to Katherine for organising the first district supper of 2009 (Luton & Dunstable), which recently took place at the very salubrious Adams Brasserie at Luton Hoo; numbers were down this year due no doubt to the current economic climate, but it was nice to see a number of old friends.

I presided over the second Council meeting of the year on 21 April 2009, which took place as usual at the Red Lion, Hatfield. We were delighted to co-opt Gary Smith (of Nockolds and Chair of the Herts Junior Lawyers Division) to fill a vacancy on Council for the rest of this year. There is one other place available and if anyone is interested in coming onto the Council this year please contact our Administrator. Unfortunately, I was unable to attend the most recent meeting of the East Anglian Region Local Law Societies (EARLLS), which took place in Cambridge on 27th March. The Society was ably represented in my absence by Katherine Chase and Graham Spittle, and I understand the guest speaker was Mike Williams, the national Council Member for Beds and Cambs.

Unsurprisingly, we are finding that membership renewals this year are a bit slower than usual, and a few members have been questioning their support of the Society. I am a firm believer that you get out what you put in, but even if you just renew your membership, that support is invaluable for the Society. I do share the concerns we all have about the current economic climate, but I have been urging people to continue to support the Society and not to see it as a soft option for cost saving. As I said in my first address of the year, now is a time for Solicitors to stick together and support each other. If you have not already done so I would urge you to contact our Administrator to renew your membership for 2009.

By the time you read this, the invitations for the annual dinner will have been sent out. This is due to take place at the Old Palace, Hatfield, on Thursday 18 June. If you have not been before, the Old Palace is a wonderful venue, and I can promise you a delightful evening in authentic pre-Tudor surroundings. Our guest speaker this year will be the broadcaster and journalist, Joshua Rozenberg, a name that I am sure will be familiar to many of you. Despite the current economic climate, we have once again managed to raise sponsorship for this event and this has enabled the Society to subsidise the ticket prices slightly this year. This is our main event of the year, and I do hope you will be able to attend.

**David Bird,
President**

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Editor's message

Dear Members



Here is the next issue of the Hertfordshire Law Society Gazette and I hope you find it interesting reading.

I would like to draw your attention to the information regarding the Annual Dinner that is taking place on Thursday 18 June at Hatfield House. As you read this invitations should be arriving on your desks and in your email inboxes and reminders will be sent to make sure you don't miss out on booking your space. The ticket price has been reduced this year as the Society is aware that times are difficult for everyone. We can also announce that Mr Joshua Rozenberg will be the after dinner speaker so an entertaining evening should be had by all.

Please contact me if you have not received your invitation or have any queries regarding the Annual Dinner, or indeed any other issues such as membership, administration or the website.

I would like to also remind members that subscription forms for 2009 membership have already been sent out and reminders will be sent to member firms that have not renewed. If you would like to renew but have mislaid the forms please either download them from the website or contact me and I will forward them to you immediately.

Erica Pearce-Howard,
Editor and Administrator
Hertfordshire Law Society
Email: hertslawsoc@talktalk.net

Hertfordshire Law Society CPD Education Programme 2009

The Hertfordshire Law Society has once again arranged a series of lectures and seminars in association with the University of Hertfordshire's School of Law. All of these events are scheduled to take place at the University's Fielder Centre in Hatfield Business Park.

The Continuing Professional Development Scheme of the Solicitors Regulation Authority requires all solicitors to acquire 'CPD hours'. The Programme has been designed to help members fulfil these obligations with their local society. For members, we have decided to keep the price of the seminars at £80 and lectures at £40, both of which include all course materials and refreshments. For non-members, the price will remain £110 and £70 respectively. A substantial discount has again been agreed with the University for those firms who wish to book places for the entire programme and we hope you will agree that the lectures and seminars offer excellent value for money and are relevant to the needs of solicitors practising or living in Hertfordshire and the surrounding areas.

Details of each lecture or seminar and a booking slip will be circulated to members one month or so in advance of the relevant event. Places may be booked by communicating with the CPD Programme Administrator at the School of Law, as explained below.

Delegates attending lectures will receive tea, coffee and soft drinks beforehand and a light buffet/wine afterwards. Those attending seminars will receive tea, coffee and soft drinks beforehand and sandwiches at the mid-seminar interval. This format gives delegates an opportunity to meet one another socially. We hope that members will support the Programme and look forward to seeing as many as possible.

Lectures	6.00pm to 7.30pm	Seminars	4.00pm to 7.15pm
Welcome	5.30pm to 6.00pm	Welcome	3.40pm to 4.00pm
Light buffet/wine	7.30pm	Tea/coffee	5.30pm (for 15 mins)
Cost per place	£40 (non members £70)	Cost per place	(£80 (non members £110))

The cost for the entire Programme is £400 per place, which represents a saving of £80. The Programme and flyer for the first event are enclosed. The Programme is also available via www.hertslawsoc.org.uk

SOLICITORS REGULATION AUTHORITY ACCREDITATION (Ref: NA/HLSO)

Members are reminded that lectures and seminars qualify under the Continuing Professional Development Scheme of the Solicitors Regulation Authority (Ref: NA/HLSO). Lectures count for 1.5 CPD hours and seminars for 3 CPD hours. Please ensure that on arrival at the venue you sign the register.

JOINING THE SOCIETY

For membership enquiries, please contact the Administrator, Erica Pearce-Howard at Foreman Laws Solicitors, 25 Bancroft, Hitchin, SG5 1JW, Tel: 01462 471560; email: hls@foremanlaws.co.uk. The cost of membership is currently a maximum of £40 per person.

EVENTS INFORMATION AND BOOKINGS

For events information and bookings, please contact the CPD Programme Administrator at the School of Law, University of Hertfordshire, 7 Hatfield Road, St. Albans AL1 3RR; Tel: 01707 286203 Fax: 01707 286205; e-mail: uhlaw-cpd@herts.ac.uk

Tuesday 2 June 2009 Ralph D. Camp, Solicitor and Senior Lecturer, University of Hertfordshire and Kerry Underwood, Solicitor and Fellow of the Institute of Advanced Legal Studies, University of London	LECTURE 6.00pm (followed by a barbeque meal	The Legal Services Act 2007 and its implications for the Solicitors' Profession	CPD Hours: 1.5
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VENUE: The UH Fielder Centre, Hatfield Business Park, Hatfield Avenue, Hatfield AL10 9TP.

N.B. The above programme may be subject to possible change. Details of each event will be circulated to members at least one month before the scheduled date of the event.

FOR YOUR 2009/2010 DIARY: The Society's 2009/2010 Programme will begin with a family law CPD lecture on Tue 13 October 2009

AGM - Preliminary notice



I am pleased to give you advance notice of the Law Society Annual General Meeting which will take place at the Law Society's Hall on Thursday 23 July 2009 at 2:30 pm.

Please go to the Law Society website www.lawsociety.org.uk for all the information you need regarding the order of business and the various Bye-Laws for the Annual General Meeting.

I look forward to seeing you there.

Paul Marsh,
 President of the Law Society of England and Wales

Simon Levy

It is perhaps unfair to describe a Chartered Building Surveyor expert witness as a 'jack of all trades' but the range of expertise provided by this profession is considerable and focused on a practical approach to dispute expert evidence supply in accordance with the requirements of Part 35. These services comprise:

- construction (including domestic building) dispute services;
- building defect diagnosis and remedial work definition;
- construction development disputes;
- boundary and party wall dispute evidence including administration of the Party Wall Etc. Act 1996;
- rights to light evidence and analysis;
- leasehold dilapidation disputes;
- residential disputes including alleged trespass and nuisance;
- asbestos identification and hazard definition;
- pre-purchase building surveys and schedules of condition
- professional negligence in certain construction matters.

As in all professions, there is no substitute for experience, especially in the context of expert witness evidence supply. A balanced, factually accurate and reasoned approach is required at all times in order to best assist the Court. Competent and accurate report preparation in a fashion that is easy to digest is the key, not only in serving the Court, but also in advising the parties of the technical issues and how (if possible) the dispute can be resolved. An expert who advises on an excessive or disproportionate remedy may well create an uphill struggle for those who provided the instructions. Competence, experience, accuracy and balance are paramount.

Commonly, disputes involving the Building Surveying profession can be inflamed and acrimonious. The Building Surveying expert should distance themselves from these issues and concentrate on the factual aspects of the dispute based as much as possible on documents, research or an examination of site features. Phrases such as 'I am instructed that...' may well be necessary in some instances but where possible their use should be minimised.

The Building Surveying profession is best placed to assist the litigation process where an experienced expert view is required in a wide variety of building or land related disputes above described. A telephone conversation at the outset can often be very helpful in establishing how a Chartered Building Surveyor can be of help. Try it!

Regards,

Simon Levy
sl@simonlevy.net




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East Anglian Region Local Law Societies (EARLLS)

Hertfordshire Law Society Council Member Graham Spittle writes:



EARLLS first started meeting together in 2005 and now meet regularly at various venues in the Cambridge area. Those taking part comprise 7 of the 10 local law societies within Bedfordshire, Cambridgeshire, Essex, Hertfordshire, Norfolk and Suffolk. The other three were invited to participate, but so far have not done so. The intention is that each society should send two representatives to quarterly meetings. The purpose of these is to support and help each other, exchange information and opinions, and try to formulate consensus views of matters affecting the profession. Where appropriate, meetings elect one or more delegates to present such consensus views at regional and national meetings.

EARLLS do not intend to create a formal body or association with any particular constitution. Also, there is no intention of compromising the present autonomy of local law societies. However, it is hoped that future meetings of EARLLS will strengthen the influence of local law societies and their individual members, and that this may be especially valuable if the Law Society does not provide all the representational functions individual solicitors need.

Members of Hertfordshire Law Society who would like items discussed at future meetings of EARLLS should initially bring them to the attention of a Hertfordshire Law Society Council member.

Hertfordshire Law Society Council Member Graham Spittle reports:

Delegates to the March meeting were given a presentation by guest speaker Mike Williams, who is national Law Society Council member for Bedfordshire and Cambridgeshire. He outlined what the Law Society is doing and proposing to do, and discussed some of the threats and opportunities for the future. Afterwards, those present were able to raise points of concern, and received a standing invitation to raise issues in future with which he might be able to help.

The meeting then heard about the recent Law Society Leadership Summit from two delegates who had attended.

Cambridgeshire & District Law Society had convened a working party to submit a response to Lord Hunt's consultation and it was agreed that members would consider that response with a

view to adopting it on behalf of EARLLS as a whole, which was subsequently done.

Other discussion topics included the Solicitors Regulation Authority, legal aid, "dangerous legislation", and cuts in available court time.

Under EARLLS administrative matters, the programme for the June meeting was discussed and provisional arrangements made for a meeting on the 17th of December to be followed by a carol service and annual dinner.



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When is a holiday not a holiday?

Employers may wish to brace themselves for the impact of a recent European Court of Justice decision. In the recent case of *Stringer v H M Revenue and Customs* the European Court of Justice was asked to rule as to whether employees were entitled to accrue and use annual leave during a period of long term sickness absence.

The matter has been the subject of substantial debate over the years and often gave rise to difficult situations for both employers and employees alike – employers were uncertain as to how to apply the rules and employees were potentially required to return early from sick leave to avoid losing their entitlement. The European Court of Justice Decision has now determined several difficult areas:-

- It is now clear that a worker will still accrue leave despite not actually working during the relevant period.
- Additionally, the Court ruled that an employee should be entitled to take leave during a period of sickness.
- The Court further decided that if a sick worker has not been able to use up their holiday entitlement they must be allowed to carry this over. It is however debatable whether the current UK Regulations relating to this allow for this to occur.
- The Court also indicated that a previous court of appeal decision in the UK was wrong and that employees who had been

away sick for the whole year in question should not be paid in lieu of accrued holiday on termination.

The case raises a number of issues for employers. In the first instance it must now be possible for employees to decide to take holiday during a sick period and therefore obtain payment in respect of a holiday period even though they would otherwise be unable to qualify for such a payment if they were at that time off sick. There has to be a substantial concern that this may lead to a large potential costs to employers and inadvertently create an adverse reaction whereby employers will be less tolerant of those suffering from long term sickness so as to limit the potential liability. The decision also leaves a number of other matters unclear. For Example - How do employers deal with accrued holiday that has not been taken in a relevant holiday year? Can this be paid in lieu or must the holiday be taken? Can employers force employees to take holiday during a period of sickness? One thing is for certain all employers need to be aware of this position and be prepared to react accordingly. As usual the information in this article is of a general nature and specific advice should be sought if the matter affects you.

For further information on this issue please contact Stephen Smith on 01582 514 396.



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Hertfordshire Junior Lawyers

Further to our recent article in the last edition of the Hertfordshire Law Gazette, Hertfordshire Junior Lawyers Division (HJLD) has now arranged future events for the summer which the Committee hope will be a real success.

In keeping with the aims of the Committee, our next event will be a quiz night in aid of Shelter, a charity which supports the homeless. Shelter, like many charities has seen a reduction in charitable donations being received due to the tough economic climate and we would like to raise as much money as possible to support them in their excellent and worthwhile work. The quiz night is open to members of HJLD, colleagues, family and friends and we are certain that it will be another evening of good natured, inter-firm rivalry. We would also like to mention that there is no limit to the number of teams per firm, so if you have been wondering which department has the best general knowledge brains in the business (which is of course completely separate to who brings in the most billing) or which sibling is really worthy of appearing on University Challenge, head on over!

The quiz will be held on the 18th June 2009 at the Slug and Lettuce in St Albans and the quiz will start at 7.30 p.m. For further details and to enter a team, please contact Helen, our Social Events Representative, whose contact details can be found below.

After the success of our Greek evening which was kindly supported by Legals4Lawyers, we will also be arranging a further themed evening for our members this summer, full details of which will be sent out via e-mail in the next few weeks. Places for these events are taken up quite quickly, so, if you would be interested in joining us, please make sure that you have been added to our mailing list by sending your contact details to Sarah, our Marketing & Members Representative.

We would also like your feedback on future educational events that you would like to see this summer. Whilst we have received some feedback on potential seminar topics, please keep your suggestions coming in.

Finally, another idea that has been suggested is some inter-firm sporting events, and considering that this summer is set to be one of the hottest of this year, we would like your opinion as to what sort of event you would be interested in participating in, whether it be five-a-side football, rounders or even an ultimate Frisbee tournament. Alternatively, are you already organising a sports event, which you would like the HJLD to publicise or be involved in? If so, do let us know, we look forward to hearing from you.

Sandeep Burman-Roy

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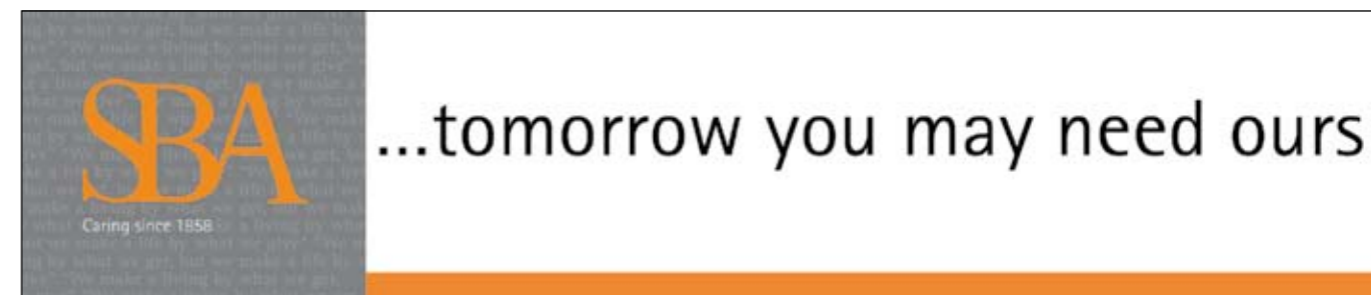
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The Legal Charities Garden Party

Thursday 18th June 2009 at Lincoln's Inn, London



In 1968 the Holborn Law Society decided to hold a Garden Party where the members who came from all over the Home Counties could meet and more importantly the members wives who seldom met could socialise. The first Garden Party was held on June 6th 1968 in Gray's Inn with the President Dick Ritchie presiding. Money was raised through the sale of tickets and the proceeds went to the Solicitors' two charities, Solicitors Benevolent Association and the London Solicitors and Families Association.

The Garden Party has traditionally been held on a Wednesday, but will this year be on Thursday 18th June 6-8pm in the North Lawns of Lincoln's Inn, London. Over the last ten years the event has raised well over a quarter of a million pounds on behalf of charities for lawyers and their dependents and it continues to be a crucial source of income for these charities, particularly in the current economic climate.

Tickets are priced at £15 per head with complimentary canapés being served throughout the evening. If you would like to attend the Garden Party please contact Katie Wylie at the Solicitors Benevolent Association (SBA) on telephone number 0208 675 6440 or email Katie@sba.org.uk

Race For Life, Sunday 5th July 2009

Ladies from local law firm Machins are hoping to raise over £2,000 for Cancer Research. The 20-strong team will be taking part in the 5 kilometre Race 4 Life event taking place in Stockwood Park in Luton on Sunday 5th July this year.

The Machins team - which is made up of current and former staff of the firm and a few family members too - includes Anna Medwid, Lelia Abbott, Yvonne and Melissa Bartlett, Shivaun Bianchi, Sarah Cox, Lynn Evans, Lisa and Tiyauna Huggins, Irene Hunt, Pauline Josephs, Val Owens, Shelley Phillips, Liz Robertson-Browne, Suzanne Chalkly, Carole Robinson, Deborah Ruppung, Saima Shah, Janica

Thompson and Debbie Vernon.

Some members of the Machins team have taken part in the fundraiser before and have found it a very worthwhile and enjoyable event and were only too keen to put their names down again for this year.

Whilst the men of the firm are unable to take part in the race itself, they will be providing moral support by cheering their friends and colleagues along the way.

In addition to actually running the 5km race, the team also intend to organise other fund-raisers in support of the good cause. They plan

to hold a cake sale and a mufti day at the office, where staff are encouraged to make a donation to the Charity in return for being allowed to come to work dressed in pink. Men who choose not to wear pink must make an additional donation!

Team leader Debbie Vernon said, "We were really pleased when the partners of Machins offered to give a donation towards our costumes and fund-raising efforts. We're still taking pledges - every little bit helps!"

If members of the public would like to donate to the Charity via Machins' fund, they can visit the team web site at www.raceforlifespansome.org/machins

The Solicitors Benevolent Association

Most people when first hearing of a Benevolent Association for Solicitors think of it as something of an oxymoron and scoff at the idea that Solicitors need financial help, however The Solicitors Benevolent Association (SBA) has been supporting solicitors and their dependants for over 150 years and continues to be the principal charity for solicitors in England and Wales.

The first meeting of the SBA was held on the 13th January 1858. When proposing the establishment of the Association in 1857, founder, James Anderton, of Blackfriars, with Messrs Banner and Hope, of Liverpool and Leeds, pointed out that in the Profession of Law no comprehensive Benevolent Institution existed.

Since 1858 the SBA with the support of the profession has provided the comprehensive benevolence needed to assist solicitors or their dependants, using the words of James Anderton, "in seasons of adversity." In 2007 for instance, the SBA helped 296 beneficiaries through loans and grants totalling £1.7m. Beneficiary secretary Angi Birts, who is the first port of call for applicants, explains that there are just two requirements for help: the need must be financial and the applicant must be a solicitor or dependant of a solicitor or former solicitor. 'We help purely on a financial basis, but we like to give a bit of TLC on the phone; however, we are not counsellors,' she says. Assistance is not given to those who have been struck off the roll or who have brought the profession into disrepute, 'but we may help their families, who we consider victims of such situations', adds Ms Birts.

The charity is funded through various means. There is a membership fee, currently £10 per year or £100 for life (the SBA has 16,000 members who are solicitors or retired solicitors), while legacies and general donations form a substantial amount, plus conditional donations which are unclaimed balances from client accounts that firms can donate, subject to the approval of the Solicitors Regulatory Authority. More recent initiatives include a new corporate membership scheme, through which large firms can donate annual payments on behalf of the whole firm rather than individual membership.

Please do not hesitate to contact the SBA if you need help or know of a solicitor friend or colleague in need. This is why the charity was established in 1858 - to help members of the profession and their dependants "in seasons of adversity".

The SBA is a company limited by guarantee registered in England number 6601907
A charity registered in England & Wales number 1124512

Solicitors Benevolent Association
1 Jaggard Way, Balham,
London SW12 8SG

T. 020 8675 6440
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Complaint injustice. Could this be you?



Hertfordshire Law Society Council Member Graham Spittle writes:

An article in "The Times" on Friday, April 17, 2009 caused me profound concern

It told of a complaint against a family doctor, who had refused to register a new patient, who had been abusive to the practice nurse. The resulting procedures took almost seven years to resolve before the Health Ombudsman found the GP to have been the victim of "maladministration" and "significant injustice" and awarded her £25,000 compensation. While the complaint was being investigated, she had been unable to practise for almost six years. That is less than £5,000 per annum, but this article is not about money.

My concern is that similar circumstances could so easily have affected any one of us in our practices. Indeed, I imagine we have a positive duty to protect our staff from abusive clients, and that this would be a good reason for declining to act. Nevertheless, I am sure this would not stop some people complaining. Would the Legal Complaints Service have robustly thrown out such a complaint?

As I see it, we need to ensure that complaints procedures are not misused, and I see a role for

local law societies here, because of their knowledge of the realities of daily practice. I do not know how the Legal Complaints Service operates, but I suspect they may need reminding that complaints can be totally without foundation. If there is no procedure for dismissing groundless complaints at a very early stage, there should be.

To me a worrying feature (which was not highlighted in the article) was that the doctor was offered "conciliation procedures". She refused these.

In these days of targets and statistics, it seems to me that individual justice is seen as being of secondary importance. I would like to be reassured that achieving what may be seen as the appropriate proportion of satisfied complainants is not considered more important than investigating the justice of the complaint. When I started in the law in 1962, I was told (and I still believe) that it did not matter how many guilty men (criminals were mainly men in those days apparently!) escaped conviction as long as no innocent person was wrongly convicted. I suspect this may not now be the case; particularly when professionals are the subject of a complaint.

Observations from readers would be received with interest. Factual experience (anonymously where appropriate) would be particularly valuable.

Hertfordshire Law Society Annual Dinner Thursday 18th June 2009 The Old Palace, Hatfield House, Hatfield

The President of the Hertfordshire Law Society, Mr David Bird is pleased to announce that the Society will be holding its Annual Dinner at The Old Palace, Hatfield House, Hatfield on the evening of Thursday 18th June 2009.



The President is looking forward to welcoming Mr Joshua Rozenberg as the after dinner speaker.

He is also delighted to invite members of the Society and their guests to join him at this year's Annual Dinner.

Thanks to the generous sponsorship of Swedish bank Handelsbanken we have been able to reduce the price this year to £39.50 per person to include entertainment during the evening and an after dinner speech by Mr Joshua Rozenberg.

Mr Joshua Rozenberg is Britain's best-known commentator on the law, and has recently been included in The Times' Law 100, a list of the UK's most powerful lawyers.

He was the BBC's Legal Correspondent for 15 years before moving in 2000 to The Daily Telegraph, where he continues to write the on-line law page. Mr Rozenberg also writes a weekly legal column for The Evening Standard

Members are invited to book a table or more (up to 10 seats per table) and bring along spouses, partners and clients. There will be a bar facility and wine for the meal can be ordered either in advance or on the evening (cash only).

Dress is formal "black tie".

Kain Knight Group, who specialise in costs draughtsmanship, are kindly sponsoring the VIP drinks.

The Society is also pleased to invite, at the Society's expense, any solicitors admitted since June 2008 as its guests. They must however be accompanied by a member. Please ensure that we are notified of the names of newly admitted solicitors using the booking form sent with the invitations (or downloaded via the website).

As always the Hertfordshire Law Society Prize (formerly the Marcus Godman prize) will be presented at the dinner to the trainee solicitor who achieved the best results in the LPC last year at Distinction or Commendation level. Please notify the name of any trainee in your firm who could qualify for this prize on the booking form together with their overall examination mark.

The caterers at Hatfield House, Leith's, have a very good reputation for their cuisine. The menu will be sent out with the invitations to all member firms or it can be accessed via a link on the website. We need to know numbers well in advance of the actual event so please R.S.V.P. promptly enclosing your cheque made out to "Hertfordshire Law Society" by no later than Friday 4 June 2009 to:

**Erica Pearce-Howard,
Administrator,
Hertfordshire Law Society,
54 Brunel Drive,
Biggleswade, Bedfordshire
SG18 8BH**

*Email: hertslawsoc@talktalk.net
Tel: 01767 312539 (answerphone)*

Website: www.hertslawsoc.org.uk

Conveyancing in today's climate

To say that we are in challenging economic times would be an understatement. No one more than the conveyancing solicitor is feeling the credit crunch more acutely – particularly as nearly every day the headlines state the doom and gloom of the current property market.

However, just because times are hard doesn't mean that we can't take stock of the situation and address some areas that can actually improve process efficiencies thereby increasing revenues. Take insurance for example. Now is the time to review your supplier and ensure that you are getting the best value for you and your client. There are a wide range of companies that offer defective title and legal indemnity products and frequently the reason for using one supplier over another is merely force of habit. But, the crucial question to ask in the current economic climate is, are they offering you and your client's best value for money?

One of the first questions to ask yourself is - is the process by which you are ordering your policies the most time efficient? For example, do you order via paper-based methods or do you use an on-line ordering system? We all know the benefits of ordering online (fast, easy and user friendly) and yet more than 75% of the conveyancing market continues to use paper based self issue policies. Whether that means faxing off an actual policy or even less efficient, a cover note, it is still a cumbersome and inefficient solution when compared with going online. It is often the case that the hard copy books have out of date policy wordings and prices. Version control when they are changed is also a headache for the conveyance to deal with.

Secondly and what is often the driver for purchasing one policy over another is price. But conveyancers beware, what may appear as a competitive price could be misleading. Ask yourself - or your supplier, what the insurance actually includes in addition to the "basic cover". There are policies on the market that offer escalator clauses to a maximum of 200% of the value of the property, as well as in perpetuity and successor clauses as standard across the range of policies. Is this the case with your existing supplier or is your cash strapped client going to be asked to pay extra for the privilege? Another word of warning in terms of price is that with paper-based Self Issue policies, pricing remains static until updates to the hard copy policies are posted out to you. Online, both policy terms and pricing can remain fluid (generally in a downward trend) and thereby be updated and improved instantly.

Finally, for those conveyancers whose lives are dictated to by case management systems, taking advantage of an integrated online ordering platform can transform processes and improve productivity. With the move to e-conveyancing this is a simple, easy and effective way of completing the loop from the beginning of the transaction to the end.

In the end, the conveyancer must do whatever is needed to find a way through what will undoubtedly prove to be a very testing couple of years in the property market. Ensuring that the fundamental basics, such as the processes utilised for ordering products required through the course of a transaction, are as efficient and effective as possible can only help this cause. Ordering insurance online saves the conveyancer time (and increases margins per transaction) and, with the right supplier, can benefit their client with lower prices and increased cover

Matt Le Breton, Managing Director
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Corporate restructuring



As with all rescue procedures there can be an element of uncertainty on the effect of the company's business. Therefore it is essential to give consideration to the restructuring method to be used; its management and how it is presented to third parties. In particular with those who are owed money with whom its future is dependant on them continuing to supply good or services.

In conclusion, a director of a financially troubled company, where there is no prospect of recovery, has a duty to creditors to preserve as much of the assets as possible. It is therefore essential for a director to obtain the specialist advice of a Licensed Insolvency Practitioner, at the earliest possible stage, to provide a solution.

Norman Cowan
 Licensed Insolvency Practitioner
 Wilder Coe
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 SG1 1HG
 01438 847200

Now that corporate insolvencies have hit an all time high, the need to save companies with a solid core business is essential. Restructuring encompasses a wide range of procedures; the most commonly used are Administration; Company Voluntary Arrangement and Liquidation. The aim is for a company to continue trading by reducing its debt burden; halt creditor action to enforce payment; preserve goodwill and the business.

An Administration procedure can deliver a new business operating free from the burden of historic debt in an almost seamless way. If a buyer has been found prior to Administration, then a 'Pre-Pack' procedure can be used. This is where the business of the company, prior to Administration, is marketed and a buyer, which could be a director, is found, for which a draft agreement is drawn up. Once appointed, the Administrator will sign the agreement and the business is sold. This procedure succeeds in preserving value, minimises risk and uncertainty and delivers continuity, especially to the employees.

An Administration is initiated by application notified to Court, by a director; the company; a holder of a floating charge or in exceptional cases a creditor. The reasons for placing a company into Administration will be where: the company is insolvent; it can be rescued as a going concern (in whole or in part); there will be a better realisation of assets than in a liquidation and the realisation of assets is for the benefit of the secured or preferential creditors.

Advantages of Administration are that the Court provides protection against creditors with their rights frozen. At the same time the Administrator continues to trade, providing breathing space to restructure and possibly find a buyer.



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History repeating at Law Consultants



Nineteen eighty nine - The Berlin wall came down, Jason Donovan topped the singles charts, the power of the internet was yet to be unleashed and we started Law Consultants. I was young, full of optimism and had a full head of hair. We'd chosen Cambridge largely because it was one of the very few cities in the UK with negative unemployment.

In those days we were impressed with the 'new technology' of the office fax machine. Blackberrys grew on bushes, mail was sent by the pushing of paper into a red box and to use a telephone away from the office meant walking into a red tardis shape box with a handful of coins. As a forward thinking company we had invested heavily in IT which at that time which meant two computers in the office - we were streets ahead of the competition.

A couple of years after we opened the country started to head into recession. Clearly my timing in opening the business had not been ideal. All of a sudden nobody wanted conveyancers or commercial lawyers. I remember the depressing sight of lawyers we had placed over the past few months returning to us having been made redundant. Worst of all we did not have new jobs for them and a lot of excellent young lawyers ended up leaving the profession and taking up alternative careers. Few ever returned.

We managed to keep going and survived by placing primarily legal aid, litigation, matrimonial and criminal lawyers.

Eventually and inevitably the market picked up. One of the first signs was an increase in the locum market. The reason for this was that so many lawyers had been lost that when the recovery started firms struggled to cope with the work especially during periods of holiday or sickness. Over time the market fully recovered and bust gave way to boom. The problem then was a severe shortage of experienced lawyers to handle the work. So many good young lawyers had been lost during the 1990's. Up to as recently as 2007 we were desperately short of conveyancers and commercial lawyers.

The current economic situation is similar in symptoms if not cause to that of the early 90's. Once again we are seeing some very good people losing their jobs. Recently I spoke with a former partner of a long established firm now working on the check out at a supermarket. I have also spoken with lawyers going into sales, web design, property development and one training to drive a bus.

2009 - the year history was rewritten with the appointment of the first African-American President of the United States; our chart hits decided by TV shows and those sexy red shoes in the Virgin Atlantic advertisement are walking us back to the 80's, once again we are in recession and the litigators are back in demand. This time for obvious reasons employment

lawyers are very busy and an increase in matrimonial work is predicted.

So what will happen when we turn the corner? I suggest that history will repeat itself and we will once again see shortages of particularly property and commercial lawyers. What will happen to this years crop of newly qualified solicitors if they cannot find jobs? In particular we could see a shortage of young lawyers which may cause problems for firms where succession is imperative for the survival of the firm.

With this in mind I would urge partners and directors to think long and hard before making redundancies. Remember how difficult it was to find and recruit good people. When the recovery comes it could be even more difficult to replace them and train the newcomers.

2019 - Watch this space...

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Gerroff moy land!



Land in the UK is a finite commodity – except on the East Coast for example, where either through natural erosion or a policy of abandoning land to the sea, our small island is growing even smaller – so it is little wonder that arguments over who owns which part of our precious Albion are emotive.

Some land of course is well worth fighting over: the narrow strip which would allow access to a huge building site worth millions, for example. But what can cause just as much concern is the dispute between neighbours over where exactly a border runs between their properties. Such disputes can last for years at huge expense, and emotionally they can be a nightmare.

Take the case of neighbours in rural Lancashire, reported in the Daily Telegraph only last October. A dispute over the exact placing of a fence had gone to the High Court, which ruled in favour of Mr Jeffrey Grundy, a businessman. His neighbour Miss June Iddon, a 72-year old spinster, didn't accept the court's decision. When Mr Grundy and his contractor began moving the fence, Miss Iddon, in a rage, seized a spade and swung it at Mr Grundy, breaking his arm. She was sent to prison for 12 weeks, and was dragged down to the cells, protesting her innocence.

So not only would it have cost her a fortune in legal fees when she lost at the High Court, not only does she now have a criminal record, but when she is released (for good behaviour?!) she will have to go on living next door to the person she hates.

There has to be a better way of solving such cases, and indeed there is.

District Judge Stephen Oliver-Jones QC, designated DJ for the West Midlands, is so aware of such problems that he insists, on first learning of a boundary dispute in his area, that all parties and their lawyers attend his chambers, where he warns them of the expense, delay and emotion of continuing with the litigation, and forcefully urges them have a skilled mediator help them to settle the matter.

Of course mediation is not the answer to every situation – Halsey –v- Milton Keynes General NHS

Trust [2004] EWCA Civ 576 gives a checklist – but it is remarkably effective in many cases, and the going rate for reaching a settlement is reckoned to be over 70%, even including those parties who agreed to mediate only after judicial “encouragement”.

Please allow me to describe a couple of mediations I have done on this topic, all identifying features changed to preserve confidentiality.

Business neighbours had not spoken for ten years when I was asked to mediate their dispute. At the start they even refused to sit in the same room. The dispute was over a yard between two Victorian warehouses. On the low side was a motor panel beater who had traded there for many years; on the other a new architects' practice. The latter had constructed a mezzanine floor and modern staircases inside, and completed the facelift by laying tarmac in the yard. Trouble was, the yard had been muddy with natural drainage. Now every time it rained the water ran down the slope into the panel beater's workshop. He couldn't spray cars over a wet floor, and had to waste time mopping out.

Worse, the architects had marked out the yard with parking spaces, blocking a public right of way, a fire escape, and access to the workshop.

The panel beater had produced an expert accountant's report on loss of profit of £100,000. It was grossly inflated, and was really just a cry for help.

I took the parties out to the yard on a damp November afternoon, and eventually the architect agreed to repaint the parking spaces freeing up the right of way and access, and agreed to have a new drain constructed to take the water away. With a modest payment to the panel beater for his inconvenience, the dispute of ten years was settled in a day.

The other example concerned a row of detached houses, “little boxes on the hillside made of ticky tacky”. Looking from left to right there was Mr Left's house and a drive, then Mr Right's service strip and house with a drive to its right, and so on up the hill.

Mr Left wanted to construct a garage at the side of his house with a bedroom above, and there was doubt about where exactly the border lay between his drive and the service strip. Mr Left asked Mr Right for the benefit of the doubt, to construct his extension up to the edge of the service strip rather than taking

the mid-point of the low dividing wall. Mr Right adamantly refused; but when he was on holiday, Mr Left had the extension built nevertheless.

During the mediation, I knew we were in trouble when Mr Right produce a photograph of his house, showing where he believed the boundary lay. Interestingly, there was a bedsheet draped out of the bedroom window, painted with a Union Jack and “Welcome Home, Gary”. To be friendly, I asked “Who's Gary?” to be told that he was his now dead, a soldier killed in the first Gulf War, and Mr Left had encroached on the “sacred” land where he had played with Gary as a child.

After fierce negotiations, Mr Left agreed to pull down the extension – it was only a brickwork shell – and rebuild it two inches narrower. That would have been a good result, except that Mr Right said that he must have been Right (!) all along, so he wanted his costs. Mr Left had no money. The mediation failed, and no doubt the dispute rumbled on, with huge legal costs and destroyed relationships; but we got so close.

Litigation destroys relationships; mediation can rebuild them. Litigation is hugely expensive; the cost of mediation can be modest. Litigation can last for many years; mediation is usually over in a day. And mediation is such a powerful process that even a mediator such as myself, a mere chartered accountant, can bring warring parties together.

As Lord Justice May said in Egan –v- Motor Services (Bath) Ltd [2007] EWCA Civ 1002:

“Try it more often.”

Chris Makin has practised as a forensic accountant and expert witness for 20 years, most recently as Head of Litigation Support at a national firm. He has been party expert, single joint expert, Court appointed expert and expert adviser in hundreds of cases, and given expert evidence about 70 times. He also performs expert determinations.

Chris is a fellow of the Institute of Chartered Accountants where he serves on the Forensic Committee, and as an ethical counsellor; he is a fellow of the Chartered Management Institute, a fellow of the Academy of Experts where he serves on the Investigations Committee, and a qualified mediator. He now practises as a freelance mediator, from his home in West Yorkshire and his office at 3 Gray's Inn Square, London WC1R 5AH, telephone 020 7430 0333. He has mediated a vast range of cases, with a settlement rate to date of 80%.

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The Law Bazaar



Times are certainly tough for the legal profession at the moment. Firms are being squeezed from all angles and some are not surviving. Fewer clients, delays in getting paid, staff under employed, the list is endless. I want to focus here on just one aspect of solicitors' problems, that of having a reliable source of new referrals.

Getting new clients and obtaining more referrals is a real headache. Taking a closer look, we find:

1. Claims management companies and insurers are using their muscle to sell claims to solicitors for up to £750 a time. Unsurprisingly, there are few statistics here, but I have seen mentioned that insurers alone are making £400 million each year solely from selling their insured's claims to solicitors. The figure for claims farmers is probably much higher. What impact does this have:

a. Clearly bulk suppliers of claims are using (and probably abusing) their position and demanding ever higher referral fees;

b. On narrow margins already, the profitability of running such claims is now borderline at best;

c. Solicitors are forced to take on loss-leading cases, just to keep the provider happy;

d. What benefit to the service provided by solicitors, do claims management companies add anyway? I certainly cannot see any. To me, the underlining message given out by these companies is that they will control the nasty solicitors, making sure they don't rip off the poor client. For a solicitor, that's pretty hard to swallow, especially when they are paying for the privilege.

2. Does the money spent on advertising and PR really make a difference? This is difficult to evaluate as there is no real way to differentiate one firm of solicitors from another in most cases. Considerable sums have been invested in websites, but is this money well spent, and don't all solicitors' websites look pretty much the same anyway? Is having an expensive website really going to get you new work?

3. Without bulk referrers of new work, most solicitors in most areas of their practice have to win new clients for every case they handle. This can be taxing, both on resources and time. Eating what you kill these days means being on a virtual starvation diet.

Before I go further, I think it would be fair to mention why I consider myself qualified to address these issues. My experience in the legal profession goes back to 1988. I have been a solicitor for 20 years. For 7 of those years, I ran my own practice, being the sole principal. I reached 20 staff and a turnover of £1 million. My firm specialised in international work, primarily personal injury and was a panel member of the largest legal expenses insurers in the country. Subsequent to this, I was an equity partner with 2 top 100 law firms. I have been a Law Society Personal Injury Panel Member and recognised in Chambers as a Leader in The Field of Travel and Tourism law. Even if I say so myself, there are very few aspects of running a law firm I do not feel qualified to talk about.

Over the years, it was rather depressing to see the status, standing and reward of being a solicitor slowly being eroded. This against the background of twenty-something MD's of claims management companies driving back to their mansions in Bentleys – I have seen it.

In addition, if we are honest, most people view going to see a solicitor with more trepidation than a visit to the dentist and certainly more expensive.

Convinced there was another, better, way, I decided to take a step back from being a solicitor and formed a limited company, trading as The Law Bazaar (www.thelawbazaar.com). The intention was to create an alternative way for solicitors to acquire new work and one which embraces modern technology and actually invites interaction with potential clients.

What I did was to create a virtual meeting place; a web based platform that facilitates solicitor/client interaction leading to new referrals.

The Law Bazaar provides for clients, a nonthreatening environment within which to interact with lawyers. It achieves this by being completely free to use and by being anonymous. Once registered, clients post their legal problems on the site. The details required are quiet brief, as most lawyers should be able to tell on the barest of facts whether or not they are interested in a case.

Lawyers can register on The Law Bazaar without having to pay any subscriptions or membership fees and being comfortable knowing there are no panel lawyers. Once registered, lawyers are able to send private messages to clients who have posted cases. Typically, this will be to invite the client to instruct them on their case by stating their expertise and how they propose handling the case.

Registered lawyers build up their rating, based on client feedback. This enables them to distinguish themselves from competitors. Entrepreneurial lawyers will also find innovative ways to deal with cases, particularly when it comes to costs.

On the question of cost, you get nothing for nothing these days. The site is paid for by lawyers who accept cases, but the charge per case is modest. All cases accepted are £50 plus VAT, whether it is a small will drafting, for example, or a multi-million Pound transaction. The only exception is for injury claims, which are £150 plus VAT. That's it, there are no other charges and lawyers are completely free to choose which cases they decide to take on and on what terms with the client.

The site is not restricted to any one area of law. It contains sections on injuries, employment, contract, family, property, wills/trusts/pensions, with a catch all miscellaneous section. Both individual clients and businesses are encouraged to post their cases.

Furthermore, the site is global. Increasing numbers of issues dealt with these days involve an international element. I have been able to ensure that specialist lawyers from around the world have registered on the site, many of whom I have worked with over the years and can personally vouch for.

In essence, I hope I have achieved a unique platform which is inexpensive, yet generates new, repeat referrals for lawyers and which empowers both client and lawyer, giving both some control over their destinies.

If you are interested please visit www.thelawbazaar.com and click the mauve 'lawyers' button at the top. You will find information about registering with us in that section. For further information, please feel free to drop me an email at admin@thelawbazaar.com or call me on 01428 729922.

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