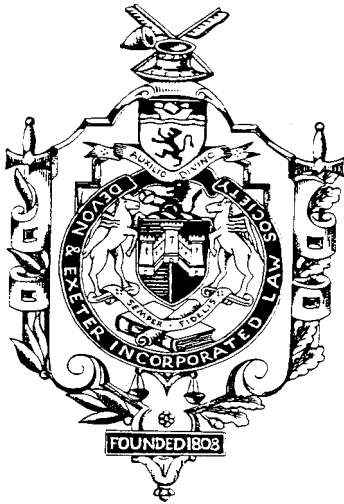


Devon & Exeter Law Society

NEWSLETTER ONLINE EDITION



JULY 2003

Honorary Secretary
Anthony Spiers

Administrative Office
Miss Monique Bertoni, *Administrator*
Tony Steiner, *Membership Services Manager*
(Direct 01392 494110 / Mobile 07979 746205)

Renslade House
Bonhay Road
Exeter. EX4 3AY

DX 8361 EXETER
E.Mail. mail@devonlawsociety.org.uk
Tel. 01392 411585
Fax. 01392 431511

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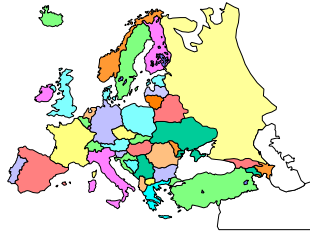
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REMEMBER

DELS can provide
Personal Introductions
to Lawyers in Mainland
Europe

Ring Monique on
01392 411585



FBE ANNUAL CONGRESS **PRAGUE - 5TH to 8TH JUNE 2003**

Prague - the city of spires and bohemian beer. The Devon contingent of Michael Cosgrave, Jeremy Ferguson and myself descended on this beautiful city to participate in the congress, which had as its theme the European Court of Human Rights.

Speakers from Strasbourg and individual contributions from France, Germany and Holland informed us that the Court is so popular that it is now swamped with applications. 15,000 from Russia, 13,000 from Poland, etc - very few of which get past the screening process. The volume is creating a substantial backlog and extending the time for genuine claims to reach a conclusive judgment.

Devon had the impertinence to suggest that mediation could be tried to provide the parties with a mechanism to have face-to-face contact within their national boundaries and we added that this service could be provided by lawyers who had trained as mediators. We had overwhelming support when we put it to a vote. Only our colleagues from Strasbourg voted against – I wonder why?

We were royally entertained by the Czech bar, who arranged for us to have dinner in a monastery. Only 15 years ago, such a visit would have been unthinkable and every movement of a visitor watched by the secret police.

On a practical note, I now have the Rules of Court for the European Court of Human Rights and the forms of application - so please contact me if you need assistance.

Paul Derbyshire

DELS Vice-President
Ford Simey, Exeter – Tel. 01392 274126

DELS NEW MEMBERS

We welcome

Mr J Bradbury, Dunn & Baker, Exeter

Mrs C Chant, Coodes, Holsworthy

Mrs A Shropshall – Clark, Eastleys, Paignton

Mr A Fripp, Crosse & Crosse, Exeter

Miss D Gammack, Bond Pearce, Exeter

Mr G Rossetti, Beers, Kingsbridge

Mr I Soul, Beers, Kingsbridge

Mr S Tansley, Brewer Harding & Rowe, Barnstaple

Miss L Taylor, Crosse & Crosse, Exeter

Mr J Tuffin, Crosse & Crosse, Exeter

Mrs A Williams, Foot Anstey Sargent, Exeter

Mr M Woloshak, Eastleys, Paignton



Need someone to listen to *your*
problems for a change?

Professional worries or Personal problems

the Solicitors' Assistance Scheme
is there to help solicitors

The Solicitors' Assistance Scheme –the SAS –
offers a lifeline to solicitors with problems by
providing a fellow practitioner
who will listen and help.

Don't delay – an early call
could make all the difference

If you would like to contact a scheme member call
Susannah Lewis at The Law Society in confidence
on Tel. 020 7320 5795

DISTRICT JUDGES' CORNER



A HOLE IN THE ROAD

The unfortunate Mr Bloggins (not his real name) was crossing the road when he slipped or tripped over a badly repaired hole. His solicitors set about diligently pursuing a claim for injury to his knee. The highway authority equally diligently defended and in turn set out to pass the potential buck to the digger of the hole. Ultimately all was settled. Mr Bloggins went away with a touch over £2000. The costs to all parties came to a total (and this is not a joke) of over £20,000.

I am not at all sure what the passengers on the Clapham omnibus would think of this state of affairs, but I imagine that their views would be replete with expletives and very largely unprintable. In fairness to all concerned in the case, it all started in a different court and long before the Exeter court-based mediation scheme had been launched. That scheme is now up and running and appears to have been well received by Devon and Exeter solicitors.

There is however a degree of hesitation in using the scheme in some cases, particularly personal injury claims. A common explanation proffered for declining to engage in mediation is the suggestion that the solicitors have already negotiated, and settlement has not proved possible. That ignores the dynamics of mediation, involving the introduction of an impartial and trained mediator to assist the parties from a neutral standpoint. We have a useful yardstick with the small claims mediation scheme which has been running long enough to provide a guide as to the chances of success. No less than 95% of claims mediated result in a settlement.

It is understandable that the instinct of the litigation solicitor is to prepare the client's case thoroughly, and then consider what is a fair settlement. That instinct can be dangerous and expensive as the Bloggins case (which did settle) demonstrates. The benefit of the Exeter scheme is to advance the point at which the parties can get to grips with settlement, avoiding last minute negotiations at the door of the court. Pre trial protocols should normally provide a sound basis for such early mediation.

Another argument advanced for opting out of mediation is that the issues are supposedly too complex. That view can hardly stand up in the light of the successful mediated settlement involving no less than 1200 parents in the group action against the Alder Hey Children's hospital. Mediation there not only overcame the enormous complexities of the litigation but also produced benefits to the claimants beyond the

powers of the court, including an apology, a donation to charity and a pledge to press for reforms in the law.

Last but not least, in the week that saw two people lose their lives over a minor dispute relating to a garden hedge, we should remember how stressful litigation can be. Mediation is one very obvious way of alleviating that stress. The facilities are now there, on our doorstep and at modest cost. Please do use them.

District Judge Andrew Harvey
Exeter Combined Court Centre

COURT USER MEETINGS

At the last Civil Court User meeting the legal profession was represented by one solicitor and one member of the bar. There were two District Judges and six members of staff present to deal with matters of interest and to answer any questions. The matters raised at that meeting included practice and procedure and, more importantly, the introduction in this Court of mediation in small claims and ADR in Fast and Multi Track cases. Next year we shall be moving to the new Court and practitioners will need to be aware of changes that will inevitably result from that move.

I appreciate that in a busy practice, it may be difficult to justify the attendance of a representative from the firm on costs grounds but these meetings do provide a forum for open and frank discussions about the work we do and if practitioners do not wish to take advantage of this, the Court Service may be compelled to end the holding of these meetings.

I would appreciate hearing from the members of the Society with their views on the holding and frequency of Court User meetings and if requested I would keep such views confidential when considering future plans.

PRE-ACTION DISCLOSURE

Each day we receive a surprising number of these applications with a request for an order to be made without a hearing. Most solicitors appreciate that we need a draft order with the dates for compliance left in blank and for the order to be endorsed with the usual notice under Rule 23.9. In the majority of cases the costs claimed are for about one and half hours of work which is what we would expect. In some cases, the costs schedule shows numerous letters written and several hours spent on documents. In these cases the solicitors may find that the costs have to be assessed at a lower figure than the amount claimed or that the application is listed for a hearing to allow the solicitor to justify the amount claimed.

District Judge John Crosse
Exeter Combined Court Centre

COUNCIL MEMBER'S REPORT

PRESIDENTIAL ELECTION

The Council elected Kevin Martin to be the next Deputy Vice President. He was admitted in 1970 and has been a Council Member since 1996. He practices in Stratford upon Avon and has been Chairman of the Compliance Board. There has been no "objection" to his election by 500 members within the period of time allowed by the Bye Laws. Thus, Kevin Martin will join Peter Williamson (President) and Ed Nally (Vice President) at the AGM in July. I do believe that the new electoral process does provide certainty, continuity and stability.

CONSTITUENCY ELECTIONS

An election is pending in this constituency (West Country and Gwent). Voting papers are due to be dispatched on 26 June 2003. You will recall that this is a multi-member constituency with five Council members. There are three "seats" vacant. Geoffrey Sandercock (who is the Law Society's Treasurer) and myself retire after a four-year stint. We are both standing for re-election. Nancy Nagle has to retire before the expiry of her four-year term on reaching 70. In addition to Geoffrey Sandercock and myself there are three other candidates standing (from Bristol). Thus there are five candidates standing for three seats.

KAMLESH BAHL

Most regrettably new proceedings were commenced, in May, at the Employment Tribunal by Kamlesh Bahl. A number of new allegations are made against the Law Society, the Council, the Main Board, Janet Paraskeva and Michael Mathews (Past President).

PROFESSIONAL INDEMNITY

SIF Contribution for 2003/2004

The Council began to collect the shortfall in the 1998/99 indemnity year. The intention at that time was to collect the shortfall over seven years i.e. by 31 August 2005. Apparently, there has been a "positive development" in the funds financial position since 31 August 2002. The SIF Board recommended to Council that there should be no contribution requirement for the 2003/2004 indemnity period. The Council agree that the contribution should be set at nil! However, whilst the Fund's current financial position is "healthy" there remains volatility in the figures and further collections in the future cannot be ruled out completely.

Change of Renewal Date

From time to time the Law Society receives feedback from firms complaining about the problems caused by having a 1 September renewal date. Two suggestions have been put forward to overcome the problem:

- Introducing a rolling renewal date
- Moving the renewal date to another month away from the main school/summer holiday period.

The Indemnity Insurance Committee have recommended that a single indemnity renewal date is retained and that it should be moved to 1 October with effect from 1 October 2004. A renewal date of 1 October would avoid the main school holidays but would have the additional benefit of reducing the period between the indemnity renewal date and the PC renewal date. Practices would be simultaneously addressing the need to obtain Practising Certificates and indemnity insurance.

COMPENSATION FOR COUNCIL MEMBERS

This has been about for a number of years. The AGM in 2001 authorised payment of compensation to the firms or employers of Council Members. This was taken as an enabling power, with no definite decision taken in 2001 either by the Council or by the AGM as to whether in fact it would be exercised and, if so, how, and at what level of compensation. However, the AGM clearly approved of such payments in principle.

It is, of course, a potential contentious issue. However, the Council has now decided that Council Member should be "compensated" at the rate of £3000.00 per year. Additional payments will also be made as follows:

- | | |
|--------------------------------|----------|
| ▪ Treasurer | £7000.00 |
| ▪ Chairs of Subsidiary Boards: | £6000.00 |
| ▪ Main Board Members | £3000.00 |

Office holders have, of course, been paid for a number of years on a different basis. Excluding office holders, the total additional annual cost to the Law Society of a compensation scheme based on these figures would be £319,000.00.

MINIMUM SALARY FOR TRAINEE SOLICITORS

The Council have agreed that:

- The minimum salary to be paid from 1 August 2003 should be £15,300.00 for trainees working in central London, and
- £13,600.00 for trainees working elsewhere
- The corresponding recommended levels should be £16,200.00 and £14,450.00.
- No waiver should be granted for salaries below £11,000.00.
- The revised levels should, in accordance with the standard training contract, apply to all trainees from 1 August 2003.

LEGAL AID

The Lord Chancellor's Department has announced a major review of demand, supply and purchasing arrangements for legal services. In a letter to the President, LCD explained that the review would assess the need for changes in purchasing arrangements for all aspects of legal aid work in light of: the future demand for legal services; the prospective supply of legal services taking in account entry and exit trends from the profession; the profitability of legal aid work; the number of firms seeking contracts and whether remuneration is sufficient to attract and retain an adequate supply of legal services in the medium term; possible ways in which the contracting procedures could be changed to enhance competition, quality and output and efficiency incentives; and the need to control legal aid expenditure.

This review is in tandem with the Society's moves to formulate a new policy on legal aid. It is intended that, at its October meeting, the Council will consider and then maybe adopt a policy drafted by the Representation Board and reviewed by the Main Board.

You will be aware that holders of criminal legal aid contracts have received letters from the LSC informing them that existing contracts will be terminated in 2004. The Society will provide resources for the short-term appointment of a trained and experienced negotiator to oversee the re-negotiation of contracts. The intention is that the negotiator will work closely with practitioners to achieve the best possible deal.

THE HOUSING BILL

The Society continues discussions with the Office of the Deputy Prime Minister, Council of Mortgage Lenders, the National Association of Estate Agents and others in respect of the proposal to introduce legislation featuring a Home Buyers' Pack. The Housing Bill which includes the Pack has been issued and the Society is responding to consultations on the Bill. The Law Society supports the concepts of advance preparation, transparency and consultation with a solicitor at the earliest stage of the house buying process. These concepts are all consistent with the Transaction Scheme developed over ten years ago. However, the Society has concerns about the current proposal for a Home Information Pack because it could: add to the cost of home buying; create potential adverse impact on the residential property market; and stands to be overtaken by e-conveyancing developments. In view of these concerns, the Society will press for a voluntary rather than a compulsory scheme if the Government insists on pressing ahead with implementation.

REDUNDANCY PAYMENTS

You may have seen an article in The Independent on 22 May about the redundancy payments made in 2002 to the former Director of Regulation, John Plane. The article was headed "Law Society's Complaints Chief was given £358,000.00 pay off". The article contained a number of inaccuracies. John Plane left the Society at the end of August 2002 on compulsory retirement as a result of his post becoming redundant. He had been with the Society for 30 years and was entitled to the maximum redundancy payment of 24 months salary (£200,000.00). He was also entitled to three months' pay in lieu of notice (£25,000.00). In addition, there was a discretionary payment of six months' salary (£50,000.00). The figure that appeared in The Independent was incorrect. John Plane actually received a total payment of £275,000.00. In addition, the Society agreed to make a lump sum of payment of £185,000.00 into the Pension Fund. This payment was considered prudent to ensure that the early retirement did not impose a funding strain on the Pension Scheme. It was not a payment to John Plane and it did not enhance his pension.

INDEPENDENT COMMISSIONER TO THE LAW SOCIETY

Sir Stephen Lander has presented his Second Report as Independent Commissioner to the Law Society. He has made a number of recommendations, including the following:

- Complainants, not the OSS, should designate their complaints as seeking redress or concerning regulation.
- The Law Society should find ways of providing soon:
 - An increase in the capacity of the OSS telephone helpdesk
 - Facilities to interview complainants who find the articulation and explanation of their complaint in writing difficult.
 - A review of all OSS standard letters to remove jargon
- The OSS should run a nine-month trial accepting complaints in Probate cases from any beneficiary and investigating Probate cases as they arise.
- The OSS compensation limit should be raised to £15,000.00 from 1 January 2004 and raised again every third year thereafter in line with inflation.
- The OSS should bring mediation and complaint outsourcing schemes into full operation quickly and should explore the practicality of providing support to Local Law Societies which operate, or are prepared to operate, complaint resolution schemes on its behalf.

Christopher Palmer
Law Society Council Member

DELS TWIN BARS

CLARISSE Blanche, a single parent, has been a workshop manager employed by Remploy since December 1997. Her contract became permanent a year later.

Sadly, her factory is going through a rough patch just now; its machinery is a bit out of date and some of its products are out of fashion and not selling. Its few clients are buying less of them. Turnover at Dec 01 is 6% down on the previous year's and the company returned an operating loss. Consequently she's been given her cards.

The employer will say that it did its best. Redundancy criteria were set. Mrs B was the one chosen.

She replies that her employer's economic circumstances were insufficiently grave to justify her dismissal, and is unhappy not to have been offered alternative employment within the company.

Last month at the Rennes football stadium her case was brought before five consecutive employment tribunals, sitting in Rennes but composed of first French, then Italian, followed by German, Belgian and English lawyers and judges, with significantly different results.

The French court found that the employer had failed to give adequate weight to recent regulations requiring priority to be given to those who are single parents, have long service or would find it difficult to obtain employment elsewhere (the handicapped, the elderly etc.) And, although it had clearly set out the objective detail of the workings of its selection criteria it failed subjectively to communicate to her how she scored as against her fellow employees. Accordingly she was awarded €18,000, roughly one year's salary, in compensation, plus €700 towards legal fees. Interestingly, an informal appeal was instantly heard by Court of Appeal judges who happened to be in the audience who confirmed the decision but remarked they would have reduced the compensatory award a little.

The Italians awarded her nothing. Not a salami. Heaven knows how she'll pay her lawyer.

The Germans ordered her reinstated. Future industrial relations should be fun.

The Belgians awarded her three months' salary.

In his judgment His Honour Judge Howell sitting as part-time Chairman of the Torquay Employment

Tribunal criticised her English solicitor roundly. This case should never have been brought upon such flimsy grounds. Once a reasonable selection procedure had been decided upon it was not for the tribunal to look into its application. She was of course entitled to her statutory redundancy award but not a penny more.

That said, the gathered audience was shocked at the personal nature of the cross-examination to which she was subjected by Chris Over acting for the employer, who brought into question all sorts of aspects of her personal life which could surely have little relevance to the matter in hand, including the question of her alleged affair with a work colleague. Only the perfidious English subject litigants to such embarrassment.

So - well, approximately - went the working session of the annual meeting of the twinned bars in May in Rennes. A fine event this year. it involved what amounted to the first joint training session for the two French lay sides of the tribunal - like here, the French tribunal comprises a judge who sits with representatives of both employer and employee, and in France these two groups are separately trained. They rarely meet outside the tribunal itself. On this occasion they could compare notes.

The French 'barristers' were in fact trainees, and this was their first time on their hind legs out of law school. A lovely, harmless environment in which to cut their teeth, in front of a couple of hundred expert advocates instead of, as per usual, a hapless client.

The English team of Jeremy Howell, Chris and Nicky Over, Nick Preisner and the author were faced with the dilemma of making something of a scenario which here simply would not arise. On these facts the claimant had no case. Had there been discrimination of some kind, she could have cleaned up but as it was this one was ill-fated from the start. This is often a problem when staging events like this. Interesting facts in one country simply don't play elsewhere.



Nicky Over hard at work preparing her husband's speech
Chris Over hard at work approving his wife's handiwork. Hilary Howell behind

judge was not impressed.

All credit here to Jeremy who bravely delivered long opening and closing speeches in French., ably assisted by his charming speech coach French trainee avocat Marie Genton, pictured here preparing for the event, in a Directors' box overlooking the football pitch.



In the evening we were lavishly entertained by the local paper Ouest-France, and introduced to its unique philosophy by its second-in-command, Francis Teitgen, a former President of the Paris Bar whose family links to the paper go back pre-War. It's a rare privilege to hear someone of this professional standing speaking on a subject on which he is genuinely personally passionate. Many lessons in advocacy were here for the taking.

Saturday brought tourism and a tour around the magnificent sunny Gulf of Morbihan off the south coast with a lovely island lunch.

That evening the studios reviewed the week-end's events in the company of the mayor. The author is ashamed to admit that he sneaked back to the football ground to watch the almost-crunch match between Rennes and Strasbourg - which sadly Rennes lost (to the dismay of the 20,000 home fans, and the delirium of the 43 - I counted them - away ones). But all's well, they subsequently narrowly avoided relegation from the French Premier League. And the paper-aeroplane throwing from the grandstand was magnificent, with one almost reaching the half-way line and getting an enormous cheer.

Memorable meals, as ever, were eaten ('mice' of lamb being one in particular. Or should that have been 'smiles'? Souris d'agneau). Hospitality was wonderful. New friends were made. An excellent-value hotel was discovered. Rennes runs the system where you borrow bikes which belong to the City for an hour or two much better than Exeter ever did. The metro stations look fantastic and the traffic is significantly lighter as a result. Ouest-France continues its unique style vaguely reminiscent of those facsimile editions of the Times from the 1950s. Long may it continue. Brittany Ferries food is still vastly superior to that of P&O although the latter has improved. If you're driving, do it in France and take the Roscoff ferry rather than drive in England and sail from Portsmouth. The French road's far better. The new batonnier Raymond Bondiguel is quite charming. The red wine shop on the way to the ferry does a great deal on

Pouilly-Fumé. The Exeter team had a very happy time. Many thanks to Chris Over for transporting us all, save Nick who went under his own steam.

It's our turn to host next summer. Please join in the fun. If you're willing to play host to a foreign lawyer for a week-end please contact a member of the International sub-committee or Monique with your name. And then make 2005 the year you reciprocate and join in this lovely event by visiting one of our 'friendly bars'. You're assured of a warm welcome and a memorable week-end.

Richard Adams

Vice-Chairman, International Relations

DEVON YOUNG SOLICITORS GROUP

It is almost a year now since the concept of the Devon YSG was mooted publicly when a good number of young solicitors attended an evening at The Hotel Barcelona to register interest in the relaunch of the Devon YSG. From that evening a committee was formed and the Devon YSG was reborn.

We held a successful Casino night in Exeter at the end of last year but unfortunately the events we have organised this year have had little take up. This is disappointing as there is a large number of solicitors practising in Devon who are eligible for membership of the Devon YSG (currently the criteria is less than 5 years PQE or under 40 years old). There has been a great deal of debate at National YSG level about the criteria for membership of the YSG and constitutional changes at national level are expected. Whether any changes at national level are adopted at local level in Devon will be a matter for the Committee to consider.

Your views are always welcome on events you would like to see hosted. We are currently embarking upon a series of social evenings giving people the opportunity to meet and mix with other young solicitors in the area. We had the first such social evening in Exeter on 20 June. Our next social evening is to be held at the Double Locks pub in Exeter on 18 July from 6pm with a further event planned for a pub (yet to be decided) in Plymouth on 5 September. It is hoped that the YSG events will be spread around the county to give all access to some events.

The Devon YSG AGM will be held on 24 September at the White Hart Hotel, South Street, Exeter. All are welcome especially those that wish to play a part in the committee next year.

The young solicitors are the future of the profession and we need your support to keep the Devon YSG events going so please come along to the forthcoming social evenings.

If you require any further details or have any views on future events or wish to join Devon YSG please e-mail the Devon YSG Secretary, Hannah Lush at hmlush@wbw.co.uk.

Darren White Devon YSG.

A DAY IN PRINT

Mary Jackson, Law Society Regional Manager

At a business breakfast in December, I met **Peter J O'Reilly**, Associate Editor, and cheekily asked to spend a day at the Western Daily Press (WDP). I wanted to observe the press at work and form better links for the benefit of our lawyers.

The elected day was **9 April Budget Day**, the quietest day of the year! Initial impressions were of quiet industry, creativity and energy punctuated by quick chats and friendly banter. It wasn't a mad scene of expletives, hair-tearing, fagging and coffee-gulping. Putting a paper together is slick teamwork. The day begins at 7am with **Ellie Campbell**, Senior News Editor who, with Peter, filters the news items, the heavyweight stories, (Iraq War & Budget), then the local ones the Rest Of Press (**ROPs**). A list is devised in descending importance, a conference called at 11am with the Editor, **Terry Manners**, ex Fleet Street, Daily Express. Ellie reads from her list expanding with short summaries of the snappy headlines. I heard about a jackdaw with a schoolboy for a mate and a dog bouncing around with a 7inch blade in its tummy. The Subs, Features and Picture Editors are present, all contribute, connections are made, suggestions taken on or cast aside as the skeleton outline of the paper begins to build. If Terry wants spin, his phrase is: "Sprinkle a bit of stardust on it".

Marking the Book – Making the News

Terry, physically sketches/pastes up the paper with a pencil in the Book, (a mock-up of the paper) lined and ruled up in columns, deciding where copy and pictures will go. As stories grow, develop, wither, lose energy, find pictures so too does the Book. The Front Page **was** to be, Beat the Budget Blues with a special Budget Day offer, WDP on sale for 10p (**emblazoned on Gordon Brown's red box**), (thanks to **Tracey Feltham** for that design). Throughout the day on breaking news we watched and waited for the huge statue of Saddam to fall marking the end of the dictator's era a picture for the history books and front pages. In it came the wonders of electronic transmission down an ISDN line. Terry subsequently altered the front page as Tracey's design was ditched. On a more prosaic note, **Toni Farrington**, Deputy Pictures Editor, was requested to source a picture of

an arm with an HRT patch on it. I heard her say: "**It has to be a man's arm as it is an article about Prostate Cancer**". Two hours later she had it from her "snapper" (aka **photographer**).

I had a chat with **George Frew**, **journalist** about his article on whistleblowers and read his own poignant, inspirational article on battling against lung cancer. Words are one weapon he surely has. I also had a chat with **Cathy Smith** in Features a section introduced since Terry's arrival.

To end a very exciting day, **Debbie Knifton**, Terry's PA, arranged for me to tour the printing area. I felt I had walked into the set of Metropolis, whirring, clanking, rushing, pounding machines with astonishing energy and speed. **Bob Patterson**, Director and General Manager was my guide. I saw printing blankets, learned about lithography, asmosis, the blend of the four ink colours and witnessed the paper changeover done with lightning speed. Conveyor belts in yellow and blue snake around endlessly, huge pipes twist and turn, the papers spin down helix-like structures to arrive "hot off the press"; the smell of ink, paper, oil mix to form an addictive blend. A shower of pale grey dust settles on everyone and everything giving the workers a ghostly grey look. Images of Citizen Kane flooded back to me.

So there you have it a day in print! Thank you all at WDP a regional paper with national aspirations! May your readership increase...

An opportunity awaits.

The Law Society's South West Regional Office is often approached by the press/media at short notice for legal comment. If you are willing to go on a database please let them know. Kindly telephone Elizabeth Dyer, Office Manager on 0117 929 5170 or contact her by e-mail Elizabeth.dyer@lawsociety.org.uk

Please bear in mind that time is always of the essence for journalists.

MONEY LAUNDERING UPDATED

You are no doubt aware of the present statutory framework relating to money laundering, including the Money Laundering Regulations 1993 which have been in force for nearly ten years. The subject is dealt with in The Guide to Professional Conduct wherein the 1993 Regulations appear in full along with the text of the 'blue card' warning circulated by Chancery Lane a few years ago.

In a nutshell, money laundering is the process whereby criminal money is 'cleaned up' by being placed into the economy (eg client gives solicitor

cash for a house purchase deposit and when the transaction goes abortive the funds are returned to the client by means of the solicitor's client account cheque), layered to obscure its origins (eg client buys and sells a number of properties) and finally integrated legitimately into the system (eg client buys a trading company).

The Proceeds of Crime Act 2002 comes into effect shortly – the Money Laundering Regulations 2003 are in the process of being laid and are likely to be operative in September. Amongst other things, the new Act consolidates and extends existing money laundering law and establishes an Assets Recovery Agency. In common with many other legislative events, change is driven partly by Europe, in this instance the Second European Money Laundering Directive.

The concept of 'criminal property' is introduced – property will be criminal property if it constitutes a person's benefit from criminal conduct or it represents such a benefit in whole or part and whether directly or indirectly, and the alleged offender knows or suspects that it constitutes or represents such a benefit. 'Criminal conduct' will mean conduct which constitutes an offence in any part of the UK or would constitute an offence in the UK if committed there – it will therefore mean all crimes including crimes committed abroad, and it will not matter who carried out the conduct, who benefited from it or whether the conduct occurred before or after the Act came into effect.

Offences of concealing, arranging, acquiring, failing to report and tipping off are set out in detail in the new Act, as are the defences of which those who find themselves on the wrong end of an unpleasant situation may be able to avail themselves, and the penalties if a defence is not successful – up to fourteen years inside if it all goes very badly wrong. Ouch! Think about it though. If for instance you advise a client about a divorce and as part of the settlement arrange for the purchase of a property using money provided by the former spouse which you know or suspect is the proceeds of tax evasion, you would be facilitating the retention of criminal property and thereby guilty of an offence under s.328. If you act for a client in a house purchase and he lets slip that the funds which he is using come from tax evasion (criminal conduct) you would be prima facie guilty of an offence under s.330 if you failed to report the matter.

MEMBERSHIP OF THE SUB-COMMITTEES FOR 2003/2004

Tipping off and the mechanics relating to the obtaining of consent to continuing to act following the making of a disclosure are also covered by the Act as are the practicalities of making disclosure.

Issues around privilege may concern you. Although legal professional privilege is on the whole still protected, the current legislation contains exceptions to the normal duty of confidentiality and a corresponding immunity for breach of duty in relation to some offences. The question of how and when to terminate your retainer if circumstances dictate that you should make a report about a client's activities to NCIS is not entirely straightforward. The Professional Ethics division at the Law Society and staff at the OSS are there to help you pick your way through these situations. The government and NCIS believe that solicitors are being targeted by money launderers, but on the other hand NCIS says that it does not want us to go to the other extreme and inundate it with purely defensive reporting.

The Law Society is preparing more guidance which will be circulated later in the summer. Further training will almost certainly be needed for fee-earning and other staff. A defence which will be available to those of you who are employed staff rather than principals, is that adequate training was not provided for you by the bosses! That will of course have adverse consequences for them. The courts will also have power to consider whether your actions were in accordance with standard industry guidance ie in the case of solicitors, that provided by the Law Society. The good news here is that I understand that DELS will be providing suitable training courses in the autumn, so do please avail yourselves of them. And do remove your Gazette from its plastic wrapper and spend ten or fifteen minutes with it when it arrives each week – help with the new regime will be available there too.



Mary Dolley

The author is a Property Solicitor and DELS member

THE LAW SOCIETY

SOUTH WEST REGIONAL OFFICE

has moved to: Newminster House, 27-29 Baldwin Street, Bristol. DX 78110 Bristol

Tel. 0117 929 5170 / Fax 0117 929 5184

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The meetings of this Sub-Committee are open to all Training Partners/Managers

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Notes:

1. The President and Honorary Secretary are Ex-officio members of all Sub-committees. In practice, the Honorary Secretary attends only the Vice President's Committee meetings as a matter of course but is available to other sub-committees if his attendance is required.
2. The Executive Committee consists of the current President, Vice President, Junior Vice President, Immediate Past President, Honorary Secretary and Honorary Treasurer.
3. The current Chairman of the Exeter & District Trainee Solicitors Group, Denise Gammack of Bond Pearce in Exeter, (or other TSG) representatives attend the meetings of the general Committee as well as of all the sub-committees as observers. May 2003.

NOTICES

MISSING WILL

THELMA TUCKER OF 20 HEYWOOD DRIVE, STARCROSS, EXETER, DEVON

Richard Mark Phillips Solicitor of Messrs J & S P Pope, Solicitors of 32-33 Gandy Street, Exeter has been appointed Interim Receiver of the above-named following a hearing on 3 April at the Public Guardianship Office. Any Solicitor holding a Will or other papers relating to the above-named is requested to contact Richard Mark Phillips advising as to the dates, nature and copies of such documents. All correspondence should be addressed for the attention of him at Messrs J & S P Pope, Solicitors, 32-33 Gandy Street, Exeter EX4 3LS.

ADVOCATES OPEN FORUM

TORQUAY & NEWTON ABBOT COUNTY COURT

The next open forum meeting at Torquay & Newton Abbot County Court, The Willows, Nicholson Road, Torquay will be on Thursday 31st July 2003 at 4.15 pm. Items for the agenda please to Jo Gill by Monday 28th July – Tel. 01803 616791.

DEVON YOUNG SOLICITORS GROUP

The Devon YSG is planning the following events:

- | | |
|-------------------|--|
| 18 July 2003 | Drinks & Social evening – Double Locks, Exeter – 6.00 pm |
| 5 September 2003 | Drinks & Social evening – Plymouth TBA – 6.00 pm |
| 24 September 2003 | AGM – White Hart Hotel, Exeter – 6.30 pm |

For further details contact Hannah Lush at hmlush@wbw.co.uk

COMPLAINTS AND RULE 15

Edgar Blazier has contacted the Society. He is a student carrying out research for an LL.M Legal Practice Management at Staffordshire. He asks if any firm would be willing to complete a questionnaire concerning the application of Rule 15 to assist him. You can contact him on 01782 286300 or at eblazier@ebstar.co.uk