



# Newsletter

DEVON & SOMERSET LAW SOCIETY

[www.dasls.com](http://www.dasls.com)

May 2011

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## 2011 Membership Survey

Each spring we ask you, our members, to let us know how we are doing. Last year you told us that we had maintained our high standards of service and that we offered excellent opportunities for networking with colleagues and fellow professionals. Over the last twelve months we have endeavoured to maintain and improve what we do for you - have we succeeded? Please let us know by going on line and completing our annual membership survey at

[http://kwiksurveys.com?u=DASLS\\_2011](http://kwiksurveys.com?u=DASLS_2011)

(Hard copy survey available on request)

Each completed survey will be entered into our prize draw to win a bottle of Champagne



## Tell us what you think



INVESTOR IN PEOPLE

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Education & Training  
Michelle Johnston  
[michelle@dasls.com](mailto:michelle@dasls.com)

## CLAIMS AGAINST THE POLICE

We are a practice based in Torquay known to many of you as a firm that has been established in Torquay since the early 1900s.

What our colleagues may not know is that we have for a number of years been running a department dealing exclusively with claims against the Police. Currently we have a number of cases referred to us by criminal practitioners both locally in Torbay and from Plymouth to Exeter.

We invite referrals of any of your clients who you believe may have suffered unlawful imprisonment, malicious prosecution and/or trespass to person.

Ordinarily we undertake this work under a conditional fee agreement so there is no cost to your client.

For further information contact Owen Evans on 01803 299131 or email

OwenE@almythomas.co.uk.

**Almy & Thomas, Solicitors**  
71 Abbey Road Torquay Devon TQ2 5NL  
Tel: 01803 299131 / Fax: 01803 200399

## CONGRATULATIONS TO ...

TORRIDGE DISTRICT COUNCIL AND WEST DEVON BOROUGH COUNCIL NAMED WINNERS AT THE LAND DATA LOCAL LAND CHARGES INDUSTRY AWARDS HELD IN FEBRUARY 2011.

Torrige District Council was presented with the Marketing Innovation Award and was highly commended in the Customer Satisfaction category and West Devon Borough Council was awarded the Customer Satisfaction Award.



Front row second from left: Eve Pollard with Louise Sykes and Claire Fryer from West Devon and Torrige District Council's Kevin Crowl

## MEMBERS' PAGE

**Something to say or advertise? Use this page to reach over 1100 solicitors and legal professionals. Classified rates:**

**Full Page: £300 + VAT**  
**Half Page: £200 + VAT**  
**Quarter Page: £100 + VAT**  
**or £5.50 + VAT per column cm**

**Sole Practitioner in East Devon thinks it is time to retire .**

**Any offers/ interest in writing to DASLS office in the first instance.**

***Adverts accepted at the Editor's discretion. Offer only applies to DASLS members. Recruitment and Training Course adverts will not be accepted.***

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on **0117 948 5117**

or **Marco D'Ovidio** Senior Client Manager

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or visit us at [www.solicitors.aon.co.uk](http://www.solicitors.aon.co.uk)

\*Insurance Times 2010

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# President's Diary

By David Turner, President

I am very pleased to be writing my first **President's diary entry for the DASLS Newsletter**.

Rather than simply setting out what I have been doing (and indeed what I will be doing in the future) please forgive me if I firstly thank my predecessor Rebecca Parkman.

I have had the honour of working alongside Rebecca last year in my capacity of Vice President to her President, and the year before when I was second Vice President to her Vice President. It has not only been an honour but also a very enjoyable experience. Thank you Rebecca.

I became President of DASLS at the Annual General Meeting on 5 April 2011. I am really looking forward to the year ahead and in serving you. I trained in London with what was then Cameron Markby Hewitt (now CMS Cameron McKenna) and moved to Devon in



David Turner at DASLS AGM on 5 April 2011

1994 when I joined Bond Pearce. I almost immediately joined the local Law Society – what was then DELS – and joined the main Committee of DELS in 1995. I have therefore been heavily involved in DELS/DASLS for about 16 years. I had been a partner in Bond Pearce for about 10 years when I moved firms, joining Foot Anstey as a partner in 2007. I have also chaired the Contentious Business Sub-Committee

of DASLS for the last three years. I am a Dispute Resolution Lawyer and I can say that being an active member of DASLS has certainly helped with my day to day running of cases for clients. If I have a theme for my presidential year it is that we, as local Solicitors and members of the local Law Society, should try and interact more often. Whether that is professional or social interaction, it does not really matter. I for one like meeting and speaking with my fellow lawyers – and not always about work. We have well over 1000 members of DASLS, and did you know that on a percentage basis we have the largest number of members per qualified solicitors in our region, of any local Law Society.

DASLS of course gives us all a number of opportunities to get together. On the work front there are all the various practice group sub-committees where you are all very welcome to get involved. On the social side there is also so much going on, including of course our Annual Dinner which will take place early next year at Sandy Park.

**For the President's Charity this year, I have chosen the Children's Hospice South West.** This is a valuable local charity which cares for Children who have illnesses which mean they will die before reaching adulthood. The **Children's Hospice South West** will provide expert care for them, for their parents and for their well and able siblings. Here at DASLS we have a proud tradition of supporting local charities and thinking of innovative ways to raise money for them. More details will follow.

Finally – my diary – what I have been up to and what is coming up. On Friday 1 April I attended the Annual Dinner of the South Western Society of Chartered Accountants. This was the second year running I have been invited as a guest and was pleased to meet up with some old friends. In May I am attending the **Presidents' and Secretaries' Conference** in London, along with Tony Spiers and later in May I am attending the **Federation of European Bars' Conference**. I am lucky that this conference is taking place in Florence! The topic is Lawyers and Social Security Benefits. It will be interesting to see how other European countries address issues of social security in relation to lawyers; I am not aware of our country having any plans at all in this area! I have been invited to address the conference as to how we deal with the position in England and am looking forward to that...my Italian is not good enough for a full scale presentation but I am reliably informed that everyone will be able to speak and understand English!

I will report back in my next President's diary.



David Turner  
Partner, Foot Anstey  
Solicitors, Exeter  
David.Turner@footanstey.com

## DASLS PRESIDENT'S CHARITY 2011/12 IS THE CHILDREN'S HOSPICE SOUTH WEST

If you would like to find out more about supporting the Children's Hospice South West in your firm, please contact their Head Office

Little Bridge House, Redlands Road, Fremington, Barnstaple EX31 2PZ - Tel. 01271 325270  
Alternatively email [corporate@chsw.org.uk](mailto:corporate@chsw.org.uk) or visit [www.chsw.org.uk](http://www.chsw.org.uk)

## OFFICERS OF THE SOCIETY FOR 2011/2012

At the Society's AGM on 5 April, the Officers were elected as follows:

**President**.....David Turner , Foot Anstey, Exeter.  
**Vice President and Crown Prosecution Service Representative**.....David Bowen, Exeter.  
**Junior Vice President** ..... Paul Dyson, Scott Richards, Teignmouth.  
**Honorary Secretary** .....Anthony Spiers MBE, Exeter.  
**Honorary Treasurer** .....Richard Adams, Crosse & Crosse, Exeter.  
**Immediate Past President** ..... Rebecca Parkman, Wards, Weston-super-Mare.  
**The Law Society Council Member** ..... Rod Mole, Chanter Ferguson, Bideford.

Apart from the Officers above, the Committee Members (including co-options) are as follows:

**Chair: Contentious Business Sub-Committee** ..... TBA.  
**Chair: International Relations Sub-Committee** ..... Rod Mole, Chanter Ferguson, Bideford.  
**Chair: Mediation Sub-Committee** ..... Judith Hirst, Torcross.  
**Acting Chair: Non Contentious Business Sub-Committee** ..... Patricia Durham Hall, Taunton.  
**Chair: Practice Management Sub-Committee** ..... Chris Hart, Hooper & Wollen, Torquay.  
**Chair: Social Sub-Committee** ..... Claire Revell, Kennedys, Taunton.  
**Acting Chair: Education & Training Sub-Committee**.....Tony Steiner, DASLS Executive Director.  
**Local Government Representative** ..... Sue Aggett, Teignbridge District Council, Newton Abbot.  
**SBA The Solicitors' Charity Representative** ..... Jeremy Lee, Symes Robinson & Lee, Crediton.

Alec McNeill, Peter Peter & Wright, Bideford.  
Michael Cosgrave, Harold Michelmore, Newton Abbot.  
Peter Cox, Boyce Hatton, Torquay.  
Tom Penny, Tiverton.  
Alastair Teague, University of Plymouth.  
Patricia Durham Hall, Taunton.  
Lisa McClelland, Alletsons, Bridgwater.  
Charles Cooper, Harold Michelmore, Newton Abbot.



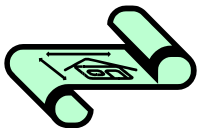
If you would like to find out more about the work of the Sub-Committees and get involved in the Society's activities, we would love to hear from you - please contact the Administrator, Miss Monique Bertoni, at DASLS office:  
Aston Court, Pynes Hill, Exeter, Devon, EX2 5AZ. Tel. 01392 366 333 or [monique@dasls.com](mailto:monique@dasls.com)

### **DISTRICT JUDGE JILL WAINWRIGHT 1957-2011**

As members may be aware, District Judge Wainwright had been unable to sit for some time. Sadly she lost her battle with cancer and died on Easter Sunday at home with her mother and her sister at her side. A Service in Exeter Cathedral is planned and details will be published on DASLS website as soon as they are known.

# Speakers' Corner - Localism and Decentralisation Bill

By David Forbes



This Bill of 207 Clauses and 24 Schedules was introduced into the Commons in December after a number of delays

caused by the complexities inherent in the Bill. It is largely based on the Conservative's Green Paper "Open Source Planning", but there are some changes to take account of the fact that there is a coalition and that Eric Pickles has, in some cases, listened to advice and comments from interest groups.

Some Matters are *not* included in the Bill

Third party rights of appeal

Costs for appealing

Curtailment of rights to appeal

Payments by developers for Planning

Permissions

## Main matters included

### Abolition of Regional Spatial Strategies

This is clearly included as one of the first items in the Planning Section of the Bill (Clause 89), and Schedule 8 sets out all the consequential amendments which are necessitated by this. The abolition was presaged by letters from the Secretary of State. It remains to be seen what use will, or may be made of all the evidence collected in preparing the RSS. As a result of the *Cala Homes* litigation, there is considerable uncertainty as to the present state of play regarding the impact of RSS until the Bill becomes law.

### Duty to cooperate

The duty to cooperate with other bodies responsible by statute, for the preparation of, or consultation on, plans. LPAs must cooperate with each other in preparation of local plans and "other activities that support the planning of development". The definition of persons affected by this requirement appears to leave out LEPS. Other LPAs however must consult with each other in accordance with Regulations to be published.

### Development Plan Documents

Inspectors Reports will not in future be binding, unless he/she considers that the document is not sound and is unsatisfactory. Alternatively, the Inspector may recommend modifications which will make the Plan sound. The LPA may then adopt the plan with these and other modifications so long as the additional modifications do not materially affect the policies set out in it. Is this a return to the days when LPAs adopted plans with modification which had not been properly

discussed at examinations? LPAs must also monitor Plans at least every year, and more often if in the interests of transparency.

### Community Infrastructure Levy

The three main changes to the CIL regime are:-

1 That, if an examiner considers that certain of the drafting requirements for CIL schedules are unacceptable and can be **modified, the LPA may "have regard to those recommendations" i.e the LPA does not have to adopt them.** If, however, the examiner considers that the Schedules are not capable of modification, the LPA cannot adopt them and must re-submit them.

2 The LPA can use CIL for Infrastructure that is to be provided, or *that has already been provided.* These can also include "maintenance, operational, and promotional activities"

3 The CIL provisions must enable the LPA to pass on money to the neighbourhood or area affected by the development.

### Neighbourhood Planning

The Bill provides for Neighbourhood Plans to be prepared by bodies set up if more than 50% of a Neighbourhood Area (as defined in



S 61G of Schedule 9) request that such a body be set up. Only 3 people applying for the designation need to live in the area. That body can then approve Plans for the area; pass Development Orders for the Area; and allow permitted Development. There are controls by way of examination in public of the plans and orders, and the LPA and the Secretary of State will have residual powers. Also, the designation of the Neighbourhood Area will only last 5 years initially. There are therefore ample opportunities for Nimbyism to run riot, but with some measure of control. As always, the devil will be in the detailed Regulations.

### Consultation

There will now be a statutory duty to consult the community on such applications as the Secretary of State shall prescribe before the application is submitted. Whilst experienced and careful developers have been consulting widely as a matter of course for some years, this proposal takes that good practice to a statutory requirement, and also **requires the developer to "have regard to any responses to the consultation" when**

making the actual application. Whilst this would appear to be another delaying factor in Planning Applications, if the Regulations are modelled on the Consultation requirements for the IPC, they will be clear and unambiguous and could afford a measure of protection to developers against later challenges by third parties.

### Enforcement

Provision is made for the prevention of planning applications where an enforcement notice already exists on the land for those matters for which planning application is made. The LPA can simply decline to consider it. This could be dangerous where old enforcement notices are on land.

Power is also given to LPAs to apply to the Magistrates for a Planning Enforcement Order if the LPA considers that, by action, inaction, or misrepresentations, the land-owner or occupier has concealed the breach of planning from the LPA and the breach has come to the LPAs attention less than 6 months before the application to the Magistrates is made. This despite the fact that the 4 year or 10 year period has passed. It will therefore be very important to make very careful enquiries of the vendors when buying land or property where there may be a breach of planning control. It will not be possible to apply for a CLEUD, for example, if the period for applying for a Planning Enforcement Order has not passed.

The fines payable in respect of Breaches of Condition have been raised to level 4 fines (£2500) and proceedings can be brought for breaches of TPOs within 6 months of the breach becoming apparent to the LPA, but in any event not more than 3 years after the offence was committed.

There are also detailed provisions tightening up enforcement of adverts on hoardings and other structures, which may include farm trailers.

Back in March a new Court of Appeal case means that planning permission will be required for any demolition work, unless it is less than 50 cubic meters. You may need planning permission to demolish your conservatory/ garden shed!

Look out for **David Forbes' seminars on 16 June for Commercial Property Lawyers and for Residential Conveyancers - both planning update sessions will address the Localism Bill - visit the Training page on DASLS website for details and booking forms.**

## Exclusive Online Training Offer

DASLS has teamed up with The College of Law to offer an online training facility to assist members with their CPD needs. The package will include up to 3 hours training at one of DASLS own training events and provide 24 hour online access to the College of Law's market leading CPD training service that supplies high quality training for all levels of experience.



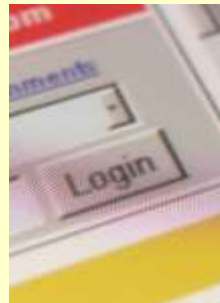
This is an exciting development for DASLS and helps us stay at the forefront of training provision in the region.

The College of Law Media service offers a total of up to 76 new TV style programmes per year accessible via 10 channels covering the following areas of law:

- Property
- Private Client
- Corporate & Commercial
- Family
- Practice Management & Compliance
- Employment
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- Crime
- P.I. & Clinical Negligence
- Local Government

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- ☺ Cost Effective
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- ☺ Time Saving



A 12 month subscription to the package is:

- ➔ £385 + VAT per member
- ➔ £435 + VAT per non member

The system is now available for trial via a training portal accessed via DASLS website.

**DATES FOR  
YOUR DIARY!**

**SOMERSET DINNER 2011**

**Friday 11 November**

**Somerset Cricket Club, Taunton.**

**DASLS ANNUAL DINNER 2012**

**Friday 2 March**

**Sandy Park, Exeter.**

**Watch this space for more details!**



Lawyers drink. It seems that every lawyer knows another who is enjoying rather too many liquid lunches with clients, or keeping a bottle of alcohol in a desk drawer.

LawCare was established in 1997 because of a perceived heavy drinking culture in the legal profession. Although LawCare's helpline now takes calls from eight times more lawyers asking for help about stress than it does from those misusing alcohol, 80% of those who contact us seeking help for an alcohol problem blame their starting to drink on stress at work. This is not surprising, as alcohol offers a quick fix to the unpleasant side effects of long-term stress.

**It's not easy to help an alcoholic lawyer.** For the general population, facing up to an alcohol or drug problem usually means going frequently to local meetings of Alcoholics Anonymous or Narcotics Anonymous, going to the family GP and perhaps being referred to the community alcohol service or a counsellor, or maybe even entering an inpatient addiction treatment unit for twelve weeks of intensive rehab paid for by the NHS.

But lawyers are different and this approach to treatment may not always be appropriate for them, for a number of reasons:-

- They are concerned about their reputation and career prospects if the world becomes aware that they are alcohol dependant.
- They are concerned about the impact on the public image of the profession they represent.

Lawyers drink. It seems that every lawyer knows another who is enjoying rather too many liquid lunches with clients, or keeping a bottle of alcohol in a desk drawer.

- They have had instilled into them the importance confidentiality and, despite the assurances that the "Anonymous" part of AA is taken very seriously, are reluctant to make themselves vulnerable by announcing to a roomful of people that they are alcoholic.
- The nature of the profession makes it extremely difficult for a sufferer to take an extended period away from work, especially if colleagues and superiors are not aware of the reason. Barristers, who are generally self-employed, are especially badly placed to take a twelve-week leave of absence, or give instructing Solicitors any clue that they might be struggling with an addiction.
- Many lawyers are highly intelligent and well qualified professionals and fear that they will have little in common with many of the other people at AA meetings, so they refuse to attend.

For these reasons, LawCare offers specialist support to lawyers who are misusing alcohol or drugs. We have 58 lawyer volunteers across the country who are in recovery from an alcohol or drug addiction and stand ready to offer personal, and completely confidential, one-to-one help. We also have details of 52 accredited professional counsellors who are former (and sometimes still practising) lawyers and understand not only the difficulties of addiction, but also the stresses of day-to-day practice that might have led to the problem developing. An addicted lawyer calling the free LawCare helpline can be referred directly to these private counsellors, avoiding the need to visit his or her GP

(although we do recommend this).

When it comes to inpatient treatment – shown to be the most effective way to overcome an addiction – one option is to be treated privately abroad. One advantage of being treated abroad is that a stay in a unit overseas (generally 3-6 weeks) can often be disguised as an extended holiday, and the lawyer can return to work with the appropriate tan and photographs, and explain their improved health and lifestyle on the benefits of the holiday. Also, up to 40% of those checking into addiction treatment find it too tough and leave before treatment is completed. The further away the treatment centre is from home, the more difficult it is to leave and the more likely it is that the patient will complete the course.

Even factoring in airfares, it can be cheaper to be treated abroad. The better climate and pleasant surroundings can also make the process of detoxification and rehabilitation easier than it would otherwise be. Again, referrals can be made privately, without involving the GP, though involvement of the GP is always encouraged.

If you know a lawyer with an alcohol or drug problem, or if you are, or think you may be, a lawyer with an addiction, LawCare can offer you discreet and confidential help and support. **LawCare's free and confidential helpline** is available to you, 365 days a year:-

**- 0800 279 6888 -**

**9 a.m. to 7.30 p.m. on weekdays**

**10 a.m. to 4 p.m. at weekends and on**

**Bank Holidays**

[www.lawcare.org.uk](http://www.lawcare.org.uk)

### From Plymouth Law School

The Law and Criminal Justice Centre, Plymouth Law School, University of Plymouth will be hosting a Youth Custody and Human Rights Conference on 2nd and 3rd June in association with the British Society of Criminology Youth Criminology / Youth Justice Network (YC/YJN) and the South West Branch of the British Society of Criminology.

The Conference will take place over three sessions which cover the three core themes of **'Youth Custody as a Last Resort'**, **'Conditions Inside Custody'** and **'Resettlement and Social Exclusion'**. Each theme will be introduced and explored by four eminent speakers in the field including: Bob Ashford, Dr. Tim Bateman, Penelope Gibbs, Professor Barry Goldson, Nick Hardwick, Professor Kathryn Hollingsworth, Laura Janes, Dr. Ursula Kilkelly, Professor Rod Morgan, Professor John Pitts, Adrian Quinn, and Carolyne Willow.

**Keynote lectures will be followed by 'themed' roundtable discussion and debate.**

The Conference is directed at criminologists, legal professionals, policy makers, researchers, rights organisations and youth justice practitioners.

Venue: Roland Levinsky Building, Lecture Theatre 2, University of Plymouth, Drake Circus, Plymouth PL4 8AA. Cost: Full delegate rate £70.

Further information about the Conference can be found at the Law and Criminal Justice Centre website <http://www.plymouth.ac.uk/research/lcjc> or by contacting the Conference organiser Dr. Patricia Gray, Associate Professor of Criminal Justice, Plymouth Law School, University of Plymouth, email [P.Gray@plymouth.ac.uk](mailto:P.Gray@plymouth.ac.uk).

# Risk Management: Post Renewal Assessment, Mid Term Report

Advertorial from 

## Lead in:

In the last edition of Insurance Matters, Ryan Senior of Aon addressed the top five non-compliance issues considered critical for the management of risk identified during and immediately after the 2010 renewal. Six months hence, armed with more data, Ryan gives his mid-term report.

## Article:

Prior to the 2010 professional indemnity insurance (PII) renewal, both insurance brokers and underwriters emphasised the need for firms to clearly demonstrate that they had effective arrangements in place for the management of risk and supervision of their practices. This was commonly achieved through the completion of enhanced proposal forms which included risk management questionnaires. Some insurers and brokers have encouraged Firms to further engage in the risk management process by completing enhanced risk management questionnaires, which take a **broader view of a Firms' arrangements for risk management**. As the data from these questionnaires is being collated, some trends are beginning to emerge. This article gives a mid-term report by focusing on common non-compliances revealed by Aon's risk management programme and reaches the inescapable conclusion that the profession has room for improvement!

## Whistle blowing.

It is incumbent upon all Firms to observe and comply with the provisions of the Public Interest Disclosure Act (PIDA) 1998. **Moreover, Rule 20.06 of the Solicitors' Code of Conduct entitled "Reporting serious misconduct and serious financial difficulty" states that you must report to the Solicitors' Regulation Authority if you become aware of serious misconduct, doubt the integrity or have reason to believe that a solicitor, an REL, an RFL, a recognised body, a manager of a recognised body, or a Firm is in serious financial difficulty.** Clearly this rule has particular pertinence in the battle against financial crime, especially mortgage fraud, and is closely aligned with Rule 5 of the code, which at 5.01(1) states "you must make arrangements for the effective management of the firm as a whole, and in particular (b) compliance with the money laundering regulations". At a practical level therefore, all Firms need to have devised and

published a whistle blowing policy in order to comply with their obligations to both legislation and the code of conduct.

In view of this, Firms have been asked if they have a whistle blowing policy that complies with the requirements of legislation as well as Rule 20.06, and many do not. In essence a whistle blowing policy should empower all members of a Firm to be able to report any concerns they may harbour about the probity of an individual within their Firm or an external organisation to a person within the practice nominated as the whistle blowing officer. Furthermore, the policy should explain that each member of the practice has **recourse to either the 'Public Concern at Work' organisation or the Solicitors' Regulation Authority** if they do not feel comfortable reporting concerns to a member of the Firm.

## Customer Due Diligence.

Customer due diligence procedures requires **Firms to establish the client's identity and retain proofs of identity checks on file and, preferably, in a central identity register.** Typically, proofs of identity will include copies of passports, driving licences and utility bills. Firms are advised to issue instructions to all fee-earners and appropriate support staff specifying that verifiable and traceable proofs of identity must be obtained and copies kept on file and in a central register. In addition, due to prevalence of identity fraud, Firms are encouraged to subscribe to agencies providing enhanced customer due diligence services if they have reason to doubt the identity proofs offered by their clients, or the transaction seems unusual in any other way.

## File Reviews.

A process should be established for file reviews that take into account adherence to risk management procedures as well as substantive legal issues. The Firm must ensure that file reviews are undertaken and that these reviews encompass sole practitioners and all fee earners including partners. Typically, the control and management of file reviews will be performed utilising standard checklists that specify which topics the review should encompass and records the files that have been reviewed so they are traceable. In addition, the records and outcomes of file reviews should be kept in a central location as well as on the matter file. This is necessary not only

because the supervisor needs to follow-up corrective actions agreed during the reviews to ensure that they have been completed effectively and within the specified timescale, but also in order that all the outcomes of the reviews can be monitored to identify any emerging trends Firm-wide that may need to be addressed by changing or introducing new risk management procedures and training.

## Risk Management Strategy.

Compliance with the business management requirements of Rule 5 includes the effective management of risk, which in-turn requires any given Firm to have a risk management strategy. The risk management strategy must encompass the strategic, operational and regulatory risks inherent within the **Firm's operations, and the Firm must** nominate an individual to be responsible for the implementation and operation of the strategy. Implementing the strategy requires training to be given to all appropriate staff, which will include support staff for some elements of the strategy.

## Annual risk management review.

A key aspect of any risk management strategy will be undertaking an annual risk management review. The review must mirror the complexities of the risks the Firm faces but, as a guide, the annual risk management review should encompass:

- Complaints, claims, notifications and other client feedback
- Risk assessments
- Equality and diversity
- File reviews
- Financial crime
- Third party and key service provider performance
- Business continuity
- Corporate responsibility
- Resources
- Business changes
- Regulatory issues

Clearly, as noted in the introduction, the inescapable conclusion derived from this appraisal of some common risk management non-compliances, identified by the analysis of risk management questionnaires, is that there is still room for improvement in the **arrangements many Firms have, or don't have, for the management of risk.**

*Continued p.10*

# 2011 LOCAL LAW SOCIETIES' ANNUAL CONFERENCE

By Tony Spiers, Honorary Secretary

Surrey Law Society were this year's hosts of the conference that LLSs (Local Law Societies) organise for ourselves: these conferences enable us to talk directly to other Societies (free of the influence of Chancery Lane) and are well attended.



The theme this year was "Thriving or Surviving".

This seemed apt for the current circumstances of both legal practice and LLSs.

Numbers of those attending are involved in legal aid work and some were very fatalistic and seemed to have given up thinking about the future altogether. Those from Surrey (and Devon & Somerset) were more upbeat as were the speakers.

Tony Steiner attended the session which related to sponsorship for LLS activities and how to obtain this (see his report on p.13). I went to an hour on membership. This was positive and helpful, the speaker addressing the question of how one makes a membership society attractive to prospective new members and, how, having obtained their interest they can be retained long term as happy members.

The speaker was described as a "thought leader" on the subject: certainly he seemed to be making some very sensible points about how organisations need to care for and involve their members. His clients included many well known charities and membership organisations covering a huge range of activities. These included societies as diverse as the Royal Society of Arts, the Slimbridge Wildfowl & Wetlands Trust, a Society for English Folk Dancers, the Westonbirt Arboretum and the British Woodworking Federation: eclectic or what! .

Many Societies that he has advised had been losing members at a rapid rate and he described his prescriptions for staunching the outflow.



He urged upon us careful analysis of our "offering" to members and to keep in regular contact with them, preferably by telephone or via personal contact: we have to remember that members all apply the "what's in it for me" test and this becomes more apparent if and when firms cease to pay the subscriptions for their members so that these have to be met personally.

We need to know what our members want of our organisation and reach out to give it to them; what he described as pro-active member engagement.

We are, here at DASLS, continually seeking to do this. We conduct an annual survey of members and look carefully at the feedback from course attenders and seek to anticipate the needs of the busy practitioner who is seeking to make a reasonable living from our profession.

*But to do this, we need feedback from you. Please tell us what you want if we are not doing it.*



We presently recruit for firms at a modest price (just over half what commercial agents charge), provide lots of courses for members at reasonable prices in local centres and encourage socialisation and networking with other solicitors and with other professions. Real successes this last year have been the Joint Professions Group's networking meetings at the Mill on the Exe and the DASLS Challenge Cup in which competition has been intense.

Have a look at our website, speak to Monique, Tony or Michelle (our new recruit) on 01392 366333 and come along to a DASLS activity...please.

Although DASLS seems to have been doing much of what the speaker suggested was advisable, I am always conscious that we can do more and better for you: just tell what you want and, if we can, we will do it.

Advertorial from Aon  
*Continued*

If any of the observations in this article seem to apply in your Firm, I would strongly urge you to address these issues sooner rather than later. I make this recommendation not only because it is solid governance and risk management practice, but also because the renewal season will soon be upon us once again. As we experienced last year, many proposal forms will be accompanied by enhanced risk management questionnaires which, inter-alia, will enquire what arrangements your Firm has in place in respect of the issues **considered here**. The better your Firm's risk management performance is perceived as an outcome of completing such questionnaires will be key in providing your broker with the leverage required to negotiate optimum PII terms.

Grahame Davidson Dip CII  
Lexcel Consultant  
Branch Director

**Marco D'Ovidio**  
Senior Client Manager  
Tel: 0117 948 5116



*CONGRATULATIONS  
AND WELL DONE*



**ZOË CLAIRE SIMS**

who ran the  
2011 London Marathon  
in 4h:33m:24s

**See Zoë's report on page 12**

# Report on Charities' Bike Ride held on 12 March 2011

By Rebecca Parkman, Immediate Past President



At Yatton Station before the ride, from left Henry Nevill, the Wakely family, Richard Adams with (behind him) his daughters Beth and Georgie, Joshua Eva, David Bowen, Rebecca Parkman and her son Jacob



Henry Nevill and Joshua Eva outside the Lamb in Axbridge



Matthew Still with his wife Gail and sons Alex and Tristan in The Square in Axbridge



Everyone at the Market Cross in Cheddar



Rebecca Parkman with her daughter Harriet in the car park in Yatton at the end of the ride

I was somewhat relieved when I opened my curtains on Saturday 12<sup>th</sup> March to see that the sun was shining and that there was not a cloud in the sky! Although I had dusted off my bicycle a good 4 weeks before the event and had been out on a number of rides in an attempt to increase my stamina, I have to admit that I am something of a fair weather cyclist and I benefitted greatly from the sunshine.

The DASLS cyclists met at Yatton station. I was delighted to be joined by our then junior vice-president David Bowen, our treasurer Richard Adams with his daughters Beth and Georgie and his friends the Wakely family, Henry Nevill from Henry Nevill & Co in Burnham-on-Sea, Joshua Eva from Harris & Harris in Wells, my husband Ian and son Jacob. Thank you to you all and particularly to Henry and Joshua for flying the flag for our Somerset members.

We made good time across the Somerset Levels from Yatton to Winscombe via Congresbury and through the cider apple orchards at Sandford. Spring was very definitely in the air and the wild flowers and birdsong were plentiful.

Unfortunately the stretch of line between Winscombe and Axbridge was closed due to remedial work being carried out on the tunnel at Shute Shelve to repair damage caused by icicles over the winter. This meant that this relatively level stretch of the line was replaced by a road diversion up the very steep and very long Winscombe Hill. Several of our party did manage to cycle up the hill but I am afraid that some of us simply had to get off and push our bikes.

When we reached the beautiful medieval square in Axbridge we stopped for welcome refreshments at the Lamb Inn where we were delighted to be joined by Matt Still, his wife Gail and children Alex and Tristan who joined us for the Axbridge to Cheddar part of the route.

At Cheddar we had a group photograph in the Market Cross before turning back to return the way we had come. My daughter Harriet joined us at Winscombe and keeping up with her enthusiastic fresh legs gave me the spur I needed to finish.

I was most impressed by our young cyclists all of whom participated with energy and enthusiasm. I must give a special mention to my son Jacob who completed the entire route in one gear due to a problem with his gear cable – after being out for most of the previous night on a scout night hike – the resilience of youth!

Many thanks to all of those who participated - not least for your great company on such an enjoyable day together. Thank you also to everyone who sponsored the participants raising much appreciated funds for the Somerset and Devon Community Foundations.

# Testing Testing: Hair alcohol tests in the family courts

Advertorial from Trimegalabs

I should say at the outset of this article that I was Counsel instructed by Trimega Laboratories as intervenors in the recently reported decision of Moylan J LB Richmond v B [2010] EWCA 2903 Fam - <http://www.familylawweek.co.uk/site.aspx?i=ed71271>. This is one reason why I have become interested in the science behind hair testing and the place of the test results in the family court process.

Hair tests for alcohol are relatively new – but they have a 10 year history and are based on extensive research. Much of this research has been pioneered by the renowned international expert Professor Pragst, an adviser to Trimega Laboratories and board member of the industry's self-regulatory body: the Society of Hair Testing [www.soht.org](http://www.soht.org).

There are two main tests available to test hair for alcohol. Each test identifies chemicals which are only found in hair when ethanol has been present in the body – generally this will only happen when alcohol itself has been ingested. The two markers which can be tested for are Ethyl Glucuronide (EtG) and Fatty Acid Ethyl Esters (FAEEs). EtG is water soluble, incorporated into the hair through sweat.

Over time it may be washed out of hair so it has a relatively limited shelf life. FAEEs are fat-loving and are much less sensitive to hair treatments and washing.

In order to provide the court with the best information the ideal is to commission tests for both EtG and FAEEs and this practice was specifically approved by Moylan J. By doing this you ensure the greatest possible degree of accuracy because the relative strengths of each test compensate for the possible shortcomings of the other.

In the particular case in which all this was considered by Moylan J, a situation arose which may be all too familiar to family lawyers. The mother had a long-standing alcohol dependency. She claimed to have given up drink altogether. Hair tests were regularly commissioned and one particular test, said to relate to one particular month, came back from the tester and was reported to indicate that she had been drinking in that month. The tester had adopted a practice - commonly used in relation to drug testing - of using one centimetre segments of hair to represent one month in time and dividing the cut-off by three. They interpreted the result as indicative of alcohol use. This had the all too predictable effect of causing the local authority to lose confidence in the mother's veracity and reliability and as a result they would not agree that she could care for her children.

Had the tests been reported by the tester in accordance with Society of Hair Testing guidelines, they would have had to say that the results did not provide evidence of drinking.

What became clear from the case is that we lawyers have tended to interpret the tests in a very black-and-white way and to assume that the tests can reliably tell us exactly how much someone is drinking rather than that someone is drinking excessively. The Judge emphasised the need to instruct test providers in the same way as any other expert i.e. by following the Practice Direction.

The Judge's other conclusions were in summary:-

(a) Hair tests should be seen as one part of the overall evidential picture;

(b) Where hair tests are undertaken, tests for both FAEE and EtG should be done;

(c) The tests can only support findings that the results are consistent with/indicative of excessive drinking – below cut-off they can be said to be consistent with either abstinence or social drinking and they cannot show how much someone may have been drinking;

(d) Tests involving 1cm samples should not be used as they cannot be said to produce reliable evidence of excessive drinking.

It is difficult to gauge how many cases may have been affected by the incorrect interpretation of hair tests but family lawyers should review any case in which segmenting has been used or unlikely results are received and consider whether to ask for re-testing and/or FAEE testing, particularly where the test results seem to be out of sync with the overall evidential picture and the client is insistent that no alcohol has been drunk.

Further reading:  
<http://www.trimegalabs.co.uk/>

## About the Author

Jacqui Gilliatt is a family law barrister with over 18 years' experience practising from 4 Brick Court in Temple, London. Jacqui regularly accepts instructions in all children cases (public and private) including child abduction & international relocation, divorce & nullity and domestic violence. Jacqui is the General Editor of the Family Law Week Blog & has her own Bloody Relations blog.



**London Marathon on Sunday 17 April 2011 .....** About six months ago I had just got back into running after taking a break from it for a while and feeling quite fit I thought that perhaps I needed a target to aim for to, sort of, keep it interesting...I decided to apply to Barnardo's to run for them in the London Marathon. A few weeks later my program was drawn up, blue-tacked to the kitchen wall and I was ready to begin my training.

So since November of last year I have been pounding the streets of North Devon, 3 times a week without fail (fear is a powerful motivator!), short runs in the evenings and "the long one" at the weekend: 6 miles, 7 miles, 8, 9, 11, 13, 15, 13, 16, 18, 20, 20.5 (that's as far as I could go) and then down again: 13 miles 10 miles ready and rested for the big day.

On 17 April 2011 I ran the London Marathon. I still can't quite believe it! It was such an amazing day (some bits, for instance, the last six miles, were not so enjoyable). After several hours and after several thousand other people, I crossed the finish line having run 26.2 miles which even the night before I didn't know that I would be able to do and I would definitely recommend it to everyone.

Zoë Sims

# 2011 LOCAL LAW SOCIETIES' ANNUAL CONFERENCE

By Tony Steiner, DASLS Executive Director

I attended two workshops at the annual conference - one that looked at creating value for members using electronic solutions such as online Newsletters, the other at working with sponsors.

Members may have noted that DASLS has had a growing number of sponsors in recent years. We have been pleased to work with Aon for the last few years and more recently with Wessex Searches and TriMega Laboratories. Of course sponsorship does not always come in the form of cash; Barristers and other profession-

als have helped us with some of our events and the Jolly Vintner provides the Champagne prize for our crossword. Since the merger of the Devon and Somerset Societies more organisations have sought to align themselves with DASLS.

The workshop was hosted by the Surrey Law Society with Lexis Nexis who had sponsored the conference and a financial adviser that had worked with the local society for some years. Like DASLS, the Surrey Society offered a bespoke sponsorship package that was sensitive to the

desire to take the benefits that external support can provide without becoming an advertising mule. In turn the sponsor receives access to the Society's membership through advertising and promotion at events. They spoke about pitching for sponsorship and building relationships with sponsors; something that I think we do reasonably well.

The message was that there are opportunities for DASLS to make more use of sponsors, but please be reassured that DASLS will not sell its database!



## MEDIATION SERVICES



The Devon & Somerset Law Society is a recognised trainer in mediation and a member of the Civil Mediation Council.

DASLS is an accredited member of the Civil Mediation Council.

DASLS is a recognised provider of mediators to the National Mediation Helpline.

DASLS Mediators are required to attain high qualification standards and are under the continuous supervision of the Society to maintain these.

DASLS experience is that many disputes are capable of a mediated solution whether Court based or not.

Some clients may prefer to seek a mediated resolution to their disputes.

DASLS is able to help and can provide experienced and trained lawyer mediators for non-Court based mediations.

Current rates for mediation services:

Case Level	Duration	Fee
Up to £5,000	1 Hour	£100.00 plus VAT
Up to £5,000	2 Hours	£200.00 plus VAT
£5,000 to £15,000	3 Hours	£600.00 plus VAT
£15,000 to £50,000	4 Hours	£775.00 plus VAT
£50,000 +	Negotiable	Negotiable

*Parties will be responsible for the venue and its costs.*

\*If additional mediation time is required this can be agreed with the mediator who will invoice the parties directly at a rate of £200 inc. VAT for each additional hour.

\*One and two hour mediations may be conducted by telephone.

Devon & Somerset Law Society  
Aston Court, Pynes Hill, Exeter, EX2 5AZ  
Tel. 01392 366333 [mediation@dasls.com](mailto:mediation@dasls.com)

## Interview of the Month: David Turner DASLS President



*Why did you join DASLS?*

I joined in 1994, as soon as I came down from London. I wanted to meet lawyers from other firms. I have been on DASLS Committee since 1995 and have worked with (I think) 16 different Presidents. It has been a real pleasure and very enjoyable.

*What is your dream job?*

I am pretty lucky and happy with the job I have got at the moment, but if I had to do something else, it would involve teaching of some sort with my choice of topics being history or politics.

*What has been the most embarrassing moment during your professional career?*

When I was about 4 years qualified I appeared before District Judge Moon in Exeter. I was seeking to strike out my opponent's case on the grounds that it disclosed no reasonable cause of action. I made my case quoting the White Book which



were the rules of the High Court. After about 5 minutes District Judge Moon reminded me that we were in the County Court jurisdiction and

pushed the Green Book over to me and said there was no jurisdiction to strike out in the County Court and invited me to read the Green Book. My application failed and I walked out. That was not the embarrassing moment; I never regret taking chances and trying to take opportunities. What was embarrassing was that I had taken a trainee solicitor along with me who had to hear all this. Even to this day whenever we meet up, he always reminds me of that day.

*Which sort of work gives you the most job satisfaction?*

Getting results for clients. The emotional enjoyment they experience after a good result, or settlement is immensely satisfying.

*What do you do in your spare time?*

Family and sport. My wife Toria and I have 4 children, and most of our spare time is taken up with family activities. Outside that I do a fair bit of sport: swimming, cycling and running. I still enjoy competing.

*What book are you reading at the moment?*

I don't usually read books but read newspapers and magazines. If I do read books, it is usually political biographies or history. The last book I read (re-read) was Roy Hattersley's History of Churchill. I have also just started Michael Morpurgo's "Alone on a Wide, Wide Sea" as recommended by my son.

*What is the most recent film you have seen?*

I really enjoy a good film. The last film I saw was Shutter Island; I am a bit of a Scorsese fan.

*What is your favourite food?*

I am not really a food buff. For me the company is far more important than the food. However as I am asked, I think my favourite food would be a traditional English breakfast.



*Which is your favourite restaurant?*

I really don't have one. Anywhere with all my family with me is fine by me - and that includes the Golden Arches.

*Where is your favourite holiday destination?*

As a family we haven't been to the same place twice. The place I would most like to return to is Menorca. That was a fantastic holiday - nothing beats swimming in the Med with crystal clear water with the fish surrounding you.



*What is your favourite pet?*

We are cat people. Cats are low maintenance and in a strange way I quite like their real independence and how they don't need you until dinner.

David Turner  
Partner, Foot Anstey Solicitors, Exeter  
David.Turner@footanstey.com

## Sustainable DASLS Newsletter

Thank you to those members who have already opted to receive the DASLS Newsletter by e-mail only, in place of the hard copy.

We are conscious of the impact of the Society's printing and are seeking to reduce our paper usage.

Please opt for the email version of the Newsletter - it saves postage too! Just let Monique know - [monique@dasls.com](mailto:monique@dasls.com)



## Letters to the Editor

...are always welcome.

Please write to Tony Spiers  
at Aston Court, Pynes Hill,  
Exeter, EX2 5AZ  
(DX 8361 Exeter) or email  
[mail@dasls.com](mailto:mail@dasls.com)



## Plastic Envelopes



**DASLS  
newsletters  
continue to be  
distributed in  
clear plastic  
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found in local supermarkets.**

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## Mombasa is the new Egypt? By Jeremy Ferguson, Past President of DASLS

About 18 months ago I was approached by Liverpool Law Society who apparently have a twinning arrangement with Mombasa, Kenya. They had agreed with Mombasa to send somebody out to that City to train Civil Mediators. They didn't have anyone immediately available and asked whether I would do it and I agreed.

After the usual exchanges of emails, I found myself boarding a Kenya Airways flight on 1<sup>st</sup> March at 7 o'clock; landing (thanks to the different time zones) at about 8.30am local time on the 2<sup>nd</sup> March. I was greeted warmly at the Hotel by Mr Mohammed Balala, Chairman of the Mombasa Law Society, who welcomed me to Kenya.

After a day resting up following the overnight flight, Mr Balala and a number of other colleagues came to the Hotel and we had a convivial drink together and I was advised to present myself at the Conference suite in the Hotel at 8.30am the following morning.

When I got to the suite complete with my video camera, tripod, briefcase, documents etc. I found Mr Balala there and Kenneth Akide who was introduced to me as the Chairman of the Kenya Law Society.

We seemed to be on our own for the first half hour but gradually the room filled up and at about 10 o'clock Mr Akide made a pleasant speech welcoming me to Mombasa. I had expected him to leave immediately after the welcome speech but he stayed behind the whole morning and, just for a change, my video camera worked alright, the DVD which I had brought with me also worked, the sound system was excellent and the class of attendees (about 50) seemed welcoming, cheerful and interested in what I had to tell them. One of their number is a trained Mediator having trained in California and also done cross border mediations, obviously a very high powered person.

I felt slightly daunted because of course I was putting forward the DASLS model of small claims mediation and county court time limited mediation but everyone seemed very receptive and by lunchtime I felt that we had made a lot of progress.

In the afternoon there was a small mock mediation which produced a huge amount of amusement but also showed that the attendees had taken on board what I had been saying.

Kenneth Akide had left at lunchtime but before he had gone he had observed to somebody that the sort of training that I was giving was exactly what they needed in Nairobi as well!

I must say I was still feeling the effects of the flight combined with a very hot and humid atmosphere (about 35 degrees and about 65% humidity) and I was glad for the opportunity to stretch out in the sun in the late afternoon by the pool and with a cool beer.

The second day was a source of some anxiety to me because we were doing a 3 hour mediation where I was the mediator and my scenarios, having been distributed. I remained concerned that perhaps that scenario which had been shown to them before when I got to Kenya, didn't accurately reflect Kenya practice or procedures but I needn't have worried. I knew that I was on to a good thing when, upon having sat the "parties" down around the mediation table and asked for their names, the people taking the parts of the Lawyers representing each side had swapped names and I realised I was in for a very enjoyable morning.

The mediation took the best part of 3 hours and a conclusion was reached and then I started to wind up the session but there was such enthusiasm that we overran the morning session by about half an hour, simply because people wanted to talk and ask questions and get more information.

I was then told that a member of the committee would call for me in the afternoon which indeed happened, and I spent a very pleasant afternoon with that committee member, her children, another committee member and his fiancé walking through a local park and poking my camera at giraffe, hippo, buffalo, eland, crocodiles and sundry snakes culminating with a giant tortoise.

The following day Mr Balala had arranged for me to be taken into Mombasa town and to visit the town fort which had been built by the Portuguese then taken over by the Omanis and finally occupied by the Brits at the request of the Omanis in the 1820s. It was a fascinating visit, not least because the building had a vaguely Italian feel and it turned out that the architect had been an Italian!

I think perhaps the highlight of that visit however was a couple of walls in what had probably been the Portuguese sailors' mess which had been covered with graffiti in about 1500. The graffiti contained a number of Portuguese ships including one wreck, a number of dhows or feluccas, the Portuguese with their baggy trousers and funny hats, the Omanis with their curved scimitars, a quantity of huge fish etc.

Anyway, my hostess was charming and after a modest lunch I returned to the hotel and lay in the sun. I had been invited to go out for an evening meal with the committee members but in view of the very early start that I was to have, they later abandoned that idea although they did visit me at the hotel for a final farewell drink before I left.

I woke Sunday morning the 6<sup>th</sup> March at 5am Mombasa time (3am gmt) changed planes at Nairobi and landed at Heathrow at about 6pm, collected my bags after the obligatory wait and was home just before 11.

It seems that following the trouble in Egypt, Mombasa has had a real flood of tourists; in fact my taxi driver assured me on the drive into the City that Mombasa is the new Egypt. Whether that is entirely true I'm not sure but the hotel was very comfortable, the food was good, the weather was gorgeous and my only regret is that I didn't manage to get into the hinterland to enjoy a safari but time pressures in office work meant that I had to be back a few days earlier than perhaps otherwise should have been the case. I had been meant to go onto Abuja but as everyone knows, they have been having some unrest there and that leg of the trip was cancelled.

If anyone is going to Mombasa and feels like looking up the local law society, do contact them. They are a most hospitable and pleasant crowd and I am hopeful that I might be invited to go back there again. Anyone visiting Nairobi would also I think be assured of a warm welcome by the Kenya Law Society.

I am astonished at how welcome I was made and how friendly and interested the lawyers in Mombasa were about what I had to say.

Once again, the flag of DASLS has been held high in foreign climes!



# Alternative Business Structures: a new direction for the legal profession

By Des Hudson, Chief Executive of The Law Society (30/3/11)

On 23<sup>rd</sup> March 2011, the Law Society's Council voted in favour of applying to the Legal Services Board to be a designated Alternative Business Structure (ABS) licensing authority.

The introduction of ABS will change both the way that law firms are allowed to operate and also the markets within which they operate – competing ABS owned entirely by non-lawyers will be able to enter that market. The vote by Council to adopt and **support the SRA's application means that we can continue to be certain that the future regulatory framework guarantees the same levels of probity and consumer protection that has characterised the tradition and values of the solicitors' profession.**

I was there throughout the Council Meeting and I can assure all our members that there was a detailed and considered debate by **their representatives. Council's deliberations** followed on from earlier work by Council at our meeting in February and the work of Management Board and the negotiating team set up to work with the SRA. Council members discussed and debated the issues thoroughly before deciding by a vote of 54

**for and 16 against to approve the SRA's application to the Legal Services Board.**

The imminent availability of ABSs and the mandatory conversion of most LDPs to ABS status will mean that all law firms will have to consider what the best structure or trading vehicle for their business will be. The changes to the markets in which firms operate may intensify existing challenges but may also open exciting opportunities.

It is vitally important that every practice makes a positive choice either to retain the vehicle of a traditional partnership or LLP status or ABS and settle their business - plan for the future. Perhaps the worst possible position is to choose by default the status quo and do nothing else. **Survival in tomorrow's market is not compulsory!**

This might be particularly important for those firms operating in areas of practice which is easily commoditisable or systemisable. **Consider how the Society's accreditation schemes or COS and our planned advertising campaigns in support of the profession and the COS scheme may help you.**

I am confident that our profession is well equipped to face the future and seize the opportunities the future holds and that solicitors will continue to thrive in the new legal services market.

The Law Society will continue to help provide clarity on how solicitors can navigate the new regulatory and legal services market and plan to meet both challenge and new opportunities.

An ABS business model will not suit every firm so over the coming months the Law Society will run a programme of national road shows across England and Wales offering practical advice and support for the profession. We will also be issuing a practice note in May. The Law Society will work with the Devon & Somerset Law Society to help promote these roadshows and I hope that as many members as possible from Devon and Somerset and across the South West will be able to make them.

I look forward to meeting you shortly.

## CQS and the residential conveyancing market

*Extracts from an article prepared by Law Society Chief Executive Des Hudson on 30 March. For a copy of the full article which explains Chancery Lane's approach to CQS, please contact Monique at DASLS office.*

"The residential conveyancing market, when it recovers from the effects of the recession, which I fear is some way off, will look very different.

"**We launched the Conveyancing Quality Scheme initiative in December 2010, which we intend to be the 'kite mark' for the conveyancing market. Our plan is to invest over the longer term in building for the benefit of our members a widely recognised brand and securing our dominant role in the conveyancing market.**

"**With the support of the Council of Mortgage Lenders, the Building Societies Association, and the Association of British Insurers, the Society has created a scheme which requires robust assessment in order for members to gain membership. Entry to the scheme will test the responsibility of the principals of the practice who apply for**

membership and their controls over the organisation they run.

"**The scheme will ensure that the public, lenders and insurers will be able to identify CQS practices with the knowledge that the service offered will be of a truly excellent standard. CQS members who consistently fail to meet the standards set by the profession will be required to improve or leave the scheme.**

"**There are many benefits for solicitors of CQS accreditation, as well as for clients and the residential conveyancing market as a whole. For example, CQS will improve efficiency with common, consistent standards and service levels. It will ensure all key members of staff working within residential conveyancing are kept up to date with changes in law and practice; provide assurance to lenders that initial vetting checks have been carried out as to a practice's provenance and quality, endeavour to create an environment that deters fraud, and a better understanding of the residential conveyancing process enabling**

consumers to recognise practices providing a quality residential conveyancing service.

"**There is another benefit that has often been overlooked. Last year saw the launch of the new legal complaints handling body - the Legal Ombudsman. The Ombudsman, while primarily dealing with client complaints emerging from the legal services industry, is also there to help improve overall client care standards in the legal sector.**

"**We have to be realistic, CQS membership will not automatically translate into lender panel membership or lower PII premiums, but with the support of CML, BSA and the ABI for the scheme, not having CQS status could be a hindrance. The CML has indicated that CQS may be a prerequisite for lender panel membership.**

"**In April, the Law Society launched a public relations drive to inform the public - home buyers and potential home buyers in particular - of this new badge of excellence. If you haven't applied for membership yet do so now. Together we can make a difference and secure our role in this market.**

# Debt Recovery Across EU Borders

By Emma Davy, Partner, Kitsons LLP, Exeter

DASLS Office recently received a request for help from a member firm whose client was trying to pursue a debtor in France. The International Relations Sub-Committee thought the following article on this topic would be helpful to all members at large.

Previously, if a claimant obtained judgement in an English court against a Defendant with assets in a Member State, then the Claimant would have to apply to have the English judgement recognised in that Member State and then enforce the judgement in that country.

The EU regulation number 805/2004, which came into force on 21 October 2005, changed all that. It enables a party to enforce directly certain judgements obtained in one Member State in another Member State.

The regulation only applies to uncontested claims. These will be in the following situations:

1. The Defendant has admitted the claim or settled the claim (i.e. by way of Consent Order).
2. The Defendant has never objected to the claim.
3. The Defendant has never appeared or been represented at court after initially objecting to the claim.

In addition, the claim form must include the following:

- a. Details of the procedural requirements for contesting the claim including time limits and court details.
- b. The consequences of failing to object and/or not attending, in particular the possibility that judgement may be obtained together with costs.



The regulations do not apply to bankruptcy or insolvency proceedings.

A European Enforcement Order Certificate can be enforced in all Member States except Denmark.

### Some questions answered...

When can I apply for an Order?

You can apply for an EEO when the judgement becomes enforceable, normally when the debtor has defaulted in payment.

How do I apply for an Order?

You will need to complete either Form N219 or N219A.

If the Defendant has admitted the claim or has agreed a settlement use Form N219.

If the Defendant has not replied to the claim or has not objected to the claim or has not filed a defence use Form N219A.

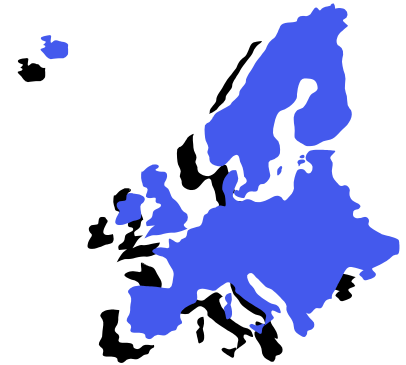
You should then send or take the following documents to Court:

1. The Application Form.
2. Two copies of the completed EEO Certificate.
3. The Judgement
4. Any certificate of costs:
5. If the Defendant did not reply or object to the claim, any document proving service of the Claim Form or Judgement.
6. The fee (or an application for fee exemption or remission)
7. A translation of any documents which are not in English.

The court will then issue you with a European Enforcement Order Certificate.

I have an EEO certified in England and Wales – What happens next?

You will need to contact the relevant Court in the other Member State about enforcing your judgement. Information on how other Member States enforce judgements can be found on the European Judicial network website [http://ec.europa.eu/civiljustice/index\\_en.htm](http://ec.europa.eu/civiljustice/index_en.htm)



When you contact the court you will need:

1. A copy of the Judgement.
2. A copy of the European Enforcement Order Certificate.
3. A translation of the European Enforcement Order Certificate into the official language of the country in which it is to be enforced.

I have an EEO certified by another European Members State – What do I do next?

You will need to consider what type of enforcement you want taken against the debtor. You should then contact the local County Court if the amount of the EEO is for less than £600. If the amount of the order is for more than £600 you should contact the local District Registry of the High Court to begin enforcement.



Please contact Monique at DASLS office if you would like a copy of the Practice Guide for the Application of the Regulation on the European Enforcement Order.

01392 366333

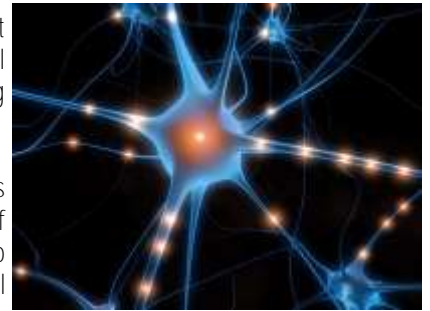
[monique@dasls.com](mailto:monique@dasls.com)

**Did you know .... back copies of the DASLS Newsletter can be found at [www.dasls.com](http://www.dasls.com)**

# INVITATION TO PARTICIPATE IN AN ESRC-FUNDED SEMINAR SERIES

## Developmental Social Neuroscience, Ethics and the Law (University of Exeter)

The Schools of Law and Psychology and the Centre for Clinical Neuropsychology Research at the University of Exeter are organising a seminar series, funded by the Economic and Social Research Council, on Developmental Social Neuroscience Ethics and the Law and are calling for any interested participants (speakers or attendees) to register their interest.



Recent advances in developmental neuroscience provide insights into how disorders such as Traumatic Brain Injury (TBI) and Anorexia can, in the long term, result in the compromising of key neurological functions - in particular, the capacity to consider complex decisions relating to one's own welfare and real engagement in society. These conditions - either involving mental health problems emerging from brain injury, or vice versa, lead to complex needs that need to be addressed within a socio-legal framework. For example, recent research has shown that injury to the brain during early (childhood) development can lead to problems later on in adolescence in the ability to engage with others and with society as a whole. They may suffer disorders or depression and/or behavioural dyscontrol (anger). Related research with prison populations indicate that when childhood brain injury is not treated, an individual may be predisposed to violent crime in adulthood (organic personality change). Similarly, adolescents with anorexia who maintain a starvation level of diet may suffer damage to the frontal areas of the brain which are vital for decision-making. If such adolescents do not achieve an appropriate level of nutrition their brain systems may never regain full functioning. Affected individuals may fail to develop the sophisticated levels of executive decision-making required to make coherent, cogent decisions (in particular relating to their own well-being). At the same time, however, studies have shown that children who receive adequate treatment for such injuries or illnesses at an early stage in their development may deal more successfully with social integration at a later stage - such as children provided with rehabilitation after brain injury may avoid violent offending.

These advances in developmental neuroscience clearly provide the opportunity to investigate and address issues of policy relating to (compulsory) treatment and youth incarceration and social justice. Many socio-economic advantages could be gained by achieving better long term outcomes through earlier intervention for such children. However, at the same time, many questions are raised relating to key legal and human rights concepts such as free will, individual choice, personal autonomy etc. - e.g. how should issues such as individual choice be conceptualised in light of the knowledge that the brain's ability for sophisticated levels of understanding and generating coherent decisions is compromised, not just immediately but in the long term? Addressing issues of policy at the EU level is even more challenging since EU laws are diverse, multi-layered and multi-lingual and the understanding of key principles such as personal autonomy can differ considerably across languages and legal societies.



The seminar series aims to establish collaboration between scientists, policymakers and lawmakers to: share advances in the neuroscience of developmental conditions; explore the legal implications of such advances at national and EU levels and produce guidelines for the creation of improved regulation of neuroscience in the UK and the EU. The seminar series will thus address areas considered as 'priority areas' by stakeholders and policymakers at UK and EU level. It is expected that the seminar series will lead to the establishment of a collaborative research network of scholars, practitioners, policy-makers and lawmakers that will continue to produce recommendations and provide insights into much-needed reform of existing regulatory frameworks in the field of medical and criminal law.

The series of five seminars, commencing in 2011 will address the following topics:

- Seminar 1: *Advances in neuroscience: ethico-legal dilemmas*; London, Oct 7<sup>th</sup> 2011
- Seminar 2: *Ethico-legal dilemmas in developmental social neuroscience: UK regulatory frameworks*; London Dec 2<sup>nd</sup> or Dec 9<sup>th</sup> 2011
- Seminar 3: *Ethico-legal dilemmas in developmental social neuroscience: Supranational regulatory frameworks and law formation across languages and cultures*; Brussels, Feb 2012
- Seminar 4: *Core group meeting: response to issues raised*; Exeter, March/April 2012
- Seminar 5: *Seminar series conclusions*; Houses of Parliament, London, May 2012

The series organisation is led by Karen McAuliffe, Atina Krajewska and Huw Williams (University of Exeter, Schools of Law and Psychology, Centre for Clinical Neuropsychology Research).

For more information, to register your interest in participating or to be added to the mailing list for seminar announcements, please contact [k.mcauliffe@exeter.ac.uk](mailto:k.mcauliffe@exeter.ac.uk)

## Competition!

For your chance to win a bottle of champagne, simply complete this month's crossword and send it to Monique Bertoni at DASLS, along with your name and address. The winner will be drawn from all correct entries received by **Friday 24 June**. DASLS address can be found on the front cover. The solution will be published in the July issue.

*The competition is open to DASLS Members, Associates and Affiliates.*

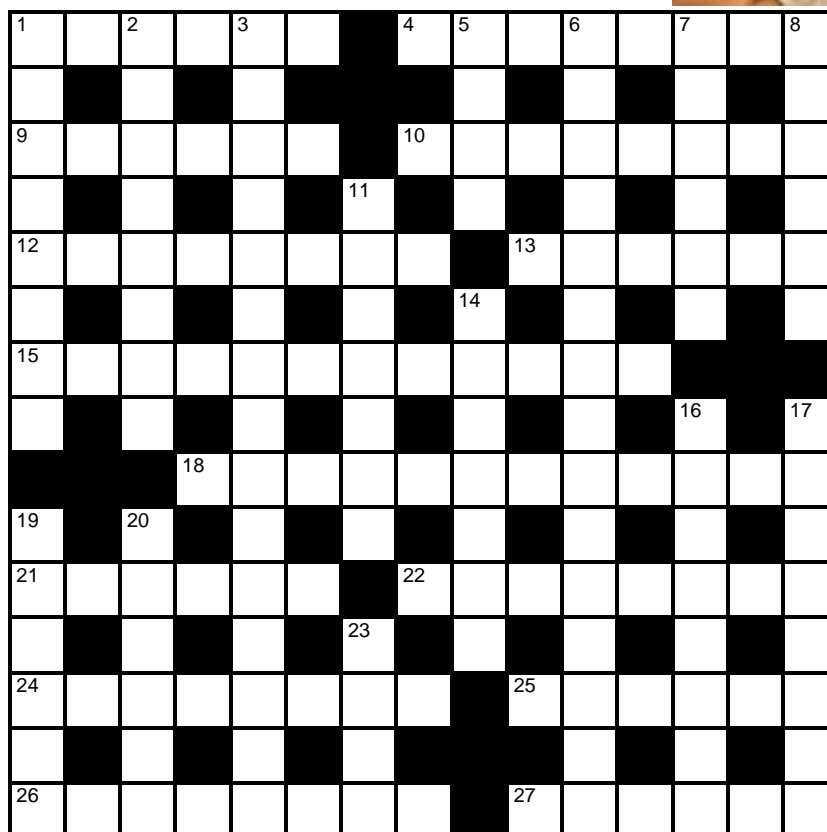
Champagne supplied by

Telephone:  
01884  
255644



## CROSSWORD CORNER

Compiled by David Stephens of Battens



### ACROSS

- 1 Wrap infant? Saw the confusion! (6)
- 4 Plant I ran about in another (8)
- 9 Imager confused - I didn't really see it (6)
- 10 Appreciative of a replete hearth, we hear (8)
- 12 Reduced needless confusion (8)
- 13 Writer employs Breton characters (6)
- 15 Smokes upset field trip pet (6-6)
- 18 Decline guide exercising appropriate care (3,9)
- 21 Unattainable? beat it out about once a year (6)
- 22 Parsimonious moment in Greenwich (4,4)
- 24 Theatre after the pub - I can consume beer top (8)
- 25 Trial - or start a game of cards (6)
- 26 After the forest, start to love you passionately (8)
- 27 Old golfer engineers replay (6)

### DOWN

- 1 Mischief maker, if in sly mode, will make it easy (8)
- 2 Befuddled Eros also sprays (8)
- 3 I'd rue High-octane mixture, learning after school (6,9)
- 5 Peer in good time but endlessly (4)
- 6 Law officer dismantled generator neatly (8,7)
- 7 Youngster in Berlin fantasy (6)
- 8 Tell me about a hammer (6)
- 11 Current edit - swimmers back stroke. (3,4)
- 14 Used software deceived (7)
- 16 Peace keepers introduce Dalton Bond to City at the wrong moment (8)
- 17 Watch seller well in? Boo! (8)
- 19 Greek character starts with mutton - then Russian says yes! (6)
- 20 Caught a faulty sander (6)
- 23 Unfinished 8 for shoppers (4)



# Heard it on the Grapevine: The true cost of your wine

by Rory AKA The Jolly Vintner

Like everything else at the moment, the cost of your bottle of wine has risen quite dramatically over the last two years. Production costs, duty increases, VAT increases, exchange rates and transport costs have all impacted on the price. As an example if I shipped a wine from the south of France two years ago that cost me €2.00 a bottle it would translate to a £4.99 bottle of wine on the shelf ( of course this is bought in legally and paying the relevant duty at time of shipping!) That same wine with the increase cost pressures now works out at £6.99. A huge leap in a short space of time. This does not just apply to France, the Australian dollar strengthened 48% in 18 months and the New Zealand dollar 23% and with margins tight in the trade these costs cannot be absorbed. It is common knowledge in the trade that alcohol is being targeted the same way that the cigarette market has been by successive governments as being a major cash cow from taxation. Many of the same arguments are being put forward but for two completely different products. Yes drinking to excess will damage health but wine in moderation as also been proven to have many health benefits.

Unfortunately large scale increases in price of anything inevitably increases two things: smuggling and fraud. The height of white van man bringing in quantities of alcohol and tobacco has diminished over the last few years but organised crime still makes millions out of this every year and is probably reflected in equal amounts of duty lost to the government. But when it comes to fraud you open a whole new can of worms. Would you class this as fraud or smart business practice? A couple of years ago over a leisurely wine trade lunch with a French wine importer, she informed me of a crisis of

conscience she was having with a supply of wine to a major UK supermarket. She had just supplied a parcel of Lore Sauvignon for a promotion that had been a great success, they wanted to repeat the promotion to keep the momentum going with the proviso that the presentation of the wine was to remain the same but the wine inside was to be a much cheaper wine than she had originally supplied. So to the consumer they thought they were buying the same wine but in fact the supermarket were just increasing their profits. The reason behind it ..... no wine fraud has ever been discovered by a member of the public, it has always been from a disgruntled employee or family member that has been missing out or from over zealous officials that notice discrepancies in paperwork, the most recent of these being a major American wine importer shipping Pinot Noir from the South of France. It was only when an official by chance had two bits of information on the same day that he discovered exports of Pinot Noir from one company in the region actually surpassed the total annual Pinot Noir production of that area!

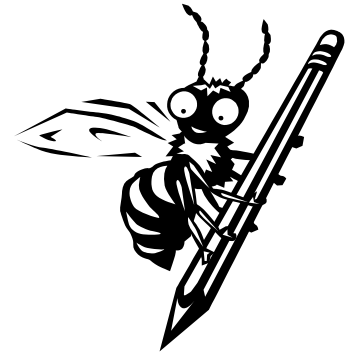


A couple of years ago I was reading an article by a master of wine describing a tasting he had been to of one of the major international brands. What amazed him tasting the wines blind was that he could not identify a single grape variety

even though all of the wines stated there were Cabernet, Chardonnay, Sauvignon, Merlot etc and what baffled him even more was that some of the wines tasted identical! As he said he could not say for definite whether it was the same wine being passed off as two or three different wines but it does remind me of a Manchester fine wine merchant 40 years ago that if you asked for Macon or Volnay you got it in a Burgundy bottle and if you wanted Medoc or Pomerol you got it in a Bordeaux bottle. But at the end of the day it made little difference as it only came out of one barrel. Apparently they never received a complaint.

Final snippet about the cost of wine at a fiver a bottle - the actual cost of the juice in the bottle is about 1p.

## Have you seen DASLS's BUZZ?



**It's our fortnightly e-bulletin.** If not, do we have your current email address?

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## Associate Membership

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Rory AKA The Jolly Vintner  
23 West Exe North, Tiverton EX16 5LX  
Tel. 01884 255644



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# DASLS SEMINARS

## Why should you choose DASLS seminars?

**DASLS has over 20 years' experience** of organising a comprehensive programme of CPD courses annually, including *in-house training*, with experienced and *high-quality speakers*;

Delegates enjoy the benefits of training undertaken nearer to the office, reduction in travel and associated expenses resulting in *cost-effective training* with discounts available for multiple bookings - *look out for our 3 for 2 Offer* when you can book 3 people on the same seminar and get the cheapest place free;

Practitioners can *keep up to date* with current developments in the law throughout the CPD year;

No penalty for substitute delegates with individual CPD *Certificates of attendance* issued after each course;

Members of DASLS Education & Training Sub-Committee are responsive to requests for seminars on particular subject matters and welcome suggestions for future topics and *specialists* we can invite.

Latest developments include an online training facility with the *College of Law Media service* - see p.7. for further details.

All courses are held in the Exeter area unless otherwise indicated

ABS - Big Bang or Damp Squib?

Wednesday 11<sup>th</sup> May 2011:

2.00pm – 5.15pm 3 hours CPD

Nick Jarrett-Kerr

Children Law Update

Thursday 12<sup>th</sup> May 2011:

10.00am – 4.30pm 5 hours CPD

Susan Campbell QC & Christopher Naish

The New National Conveyancing Protocol & Related Changes (Yeovil)

Tuesday 17<sup>th</sup> May 2011:

9.45am – 1.00pm 3 hours CPD

Richard Snape

Residential Conveyancing Update (Yeovil)

Tuesday 17<sup>th</sup> May 2011:

2.00pm – 5.15pm 3 hours CPD

Richard Snape

Business Property Relief and Agricultural Property Relief (Taunton)

Tuesday 7<sup>th</sup> June 2011:

9.45am – 1.00pm 3 hours CPD

John Thurston

Administration of Estates (Taunton)

Tuesday 7<sup>th</sup> June 2011:

2.00pm – 5.15pm 3 hours CPD

John Thurston

Planning Update for Commercial Property Lawyers

Thursday 16<sup>th</sup> June 2011:

9.45am – 1.00pm 3 hours CPD

David Forbes

Planning Update for Residential Conveyancers

Thursday 16<sup>th</sup> June 2011:

2.00pm – 5.15pm 3 hours CPD

David Forbes

Termination of Leases

Tuesday 21<sup>st</sup> June 2011:

9.45am – 1.00pm 3 hours CPD

Richard Snape

Commercial Leases Update

Tuesday 21<sup>st</sup> June 2011:

2.00pm – 5.15pm 3 hours CPD

Richard Snape

SARs for Fee Earners

Wednesday 22<sup>nd</sup> June 2011:

9.45am - 1.00pm 3 hours CPD

Linda Lambert

Solicitors Accounts Rules for Cashiers

Wednesday 22<sup>nd</sup> June 2011:

9.45am - 5.15pm 6 hours CPD

Linda Lambert

Advising the Elderly, Asset Protection & Long Term Care

Thursday 23<sup>rd</sup> June 2011:

2.00pm – 5.15pm 3 hours CPD

Jonathan Wilkey

Pensions and Divorce

Thursday 30<sup>th</sup> June 2011:

2.00pm – 5.15pm 3 hours CPD

George Mathieson

Law Management Stage One (Tiverton)

Tuesday 27<sup>th</sup> September 2011:

9.30am – 5.30pm 7 hours CPD

Keith Harper

LAW MANAGEMENT DEVELOPMENT PROGRAMME  
20 HOURS CPD.

A 3.5 day programme helping lawyers master key management skills

Dates: 19 September, 17 October, 21 November 2011 (full days) and 10 January 2012 (part day)

Law Management Stage Two (Tiverton)

Wednesday 28<sup>th</sup> September 2011:

9.30am – 5.00pm 6 hours CPD

Keith Harper

The Future of Litigation

Thursday 29<sup>th</sup> September 2011:

9.45am – 1.00pm 3 hours CPD

Dominic Regan

You can now sign up for the monthly training e-bulletin containing details of all our courses and links to online flyers.

Simply e-mail [michelle@dasls.com](mailto:michelle@dasls.com) to subscribe.

Settling Claims

Thursday 29<sup>th</sup> September 2011:

2.00pm – 5.15pm 3 hours CPD

Dominic Regan

Topics to be confirmed

John Thurston Seminars on

Thursday 29<sup>th</sup> September 2011:

9.45am – 1.00pm 3 hours CPD

2.00pm – 5.15pm 3 hours CPD

COMPULSORY COURSE FOR TRAINEES

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starting on 7 November 2011

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