



# Newsletter

ONLINE EDITION



Your Committee, Officers and Staff  
wish you a very Merry Christmas  
and Happy New Year



Honorary Secretary: Anthony Spiers MBE  
[secretary@devonlawsociety.org.uk](mailto:secretary@devonlawsociety.org.uk)

Administrator: Monique Bertoni  
[monique.bertoni@devonlawsociety.org.uk](mailto:monique.bertoni@devonlawsociety.org.uk)

Membership Services Manager: Tony Steiner  
[tony.steiner@devonlawsociety.org.uk](mailto:tony.steiner@devonlawsociety.org.uk)  
Direct Dial: 01392 494 110  
Mobile: 07979 746 205

Education & Training: Lydia Vanstone  
[lydia.vanstone@devonlawsociety.org.uk](mailto:lydia.vanstone@devonlawsociety.org.uk)



DEVON & EXETER  
LAW SOCIETY

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

**NOVEMBER 2005**

**IN THIS ISSUE**

President's Diary

District Judges' Corner

International Database

2006 DELS Dinner  
With "Brasso"

Signing Ceremony  
Between DELS and  
Verona Bar

Beer, Belly-dancing and  
Bacon Ice-cream – A  
Week in Erlangen

DELS Complaints  
Service

Fixed Fees For Counsel

No Lawyer Needs  
to Suffer Alone

Money Laundering After  
Bowman v Fels

Centre for Legal  
Practice Mentoring  
Scheme

I Heard it on  
the Grape Vine!

E-Mail: [mail@devonlawsociety.org.uk](mailto:mail@devonlawsociety.org.uk)

Tel: (01392) 411585

Fax: (01392) 431511

DX: 8361 Exeter

Registered Office: Renslade House  
Bonhay Road  
Exeter  
EX4 3AY

## **VOLUNTARY BOARD MEMBERS**

Can you help lead a major regional housing regeneration organisation?

At Devon and Cornwall Housing Trust we are looking for new board members, to share responsibility for steering our strategic direction and continuing our growth and development.

Devon & Cornwall Housing Trust is at the head of our group structure, providing strategic leadership and central resources to several subsidiaries. The group is built around providing high quality services to local people and meeting housing and community needs.

We manage 9000 rented, shared ownership and leasehold homes for over 22,000 residents, have a development budget of £20 million and a turnover of £27 million.

We want to recruit people from a wide variety of backgrounds from within the counties of Devon and Cornwall who have skills that may include treasury management or a legal background. Our aim is for the board to represent the communities it serves, and we therefore encourage applications from people from black and minority ethnic communities, women and disabled people who are currently under-represented at this level.

Board members usually attend about 16 daytime meetings a year, including training and conferences. The work is currently unpaid but we reimburse expenses such as travel and dependent care.

Appointments to the board will take place in February 2006 with interviews scheduled for January 2006.

If this sounds right for you and you'd like an informal conversation about the role, please telephone Dave Chitty, Head of Human Resources on 07976 559128. Alternatively, for an information pack and application form please call 01392 814532 and select line number 1 or contact us via our website at [www.dcha.co.uk](http://www.dcha.co.uk).

We are committed to equality and diversity and welcome applications from all sections of the community.



### **DELS Christmas Opening Hours**

The Office will be closed from 23<sup>rd</sup> December 05 and will re-open on 3<sup>rd</sup> January 06.

### **Staff Changes at DELS**

We are delighted to welcome Lydia Vanstone to the team at Renslade House. She replaces Lyndsay Allen who has left for her "dream job" in the psychology unit at Exeter Prison. We wish her every success.



### **The Meteorological Office Tours – Just a Few Places Left**

Don't forget.....On Friday 31<sup>st</sup> March 2006, DELS have arranged for two tours of the Met office (10am and 1pm). There are only a few places left for each tour that will be allocated on a first come, first served basis.

Please email Tony Steiner to reserve your place at [tony.steiner@devonlawsociety.org.uk](mailto:tony.steiner@devonlawsociety.org.uk)



## **PRESIDENT'S DIARY**

**Rod Mole**  
President



*"Egrigi Colleghi Ed Amici".....*

I have no doubt that one of the most memorable events of the year will, for me, be the wonderful weekend that we spent at the end of September with our colleagues and friends in Verona. Although we were there to formalize the twinning of our two Associations, we have over recent years enjoyed the close co-operation and friendship which is the basis of any such relationship and we look forward to maintaining and developing that relationship in years to come. It was particularly pleasing to have Monique as a member of the delegation. Needless to say we were treated to the usual lavish and generous hospitality even to the extent of having our own wine label (as those who read their Gazette may have noticed).

All did not go quite so smoothly with the visit to the Opening Ceremony of the Leuven Bar. A combination of cancelled flights, due to weather conditions and mechanical problems, bussing from Bristol to Heathrow, and a Public Transport National Strike in Belgium meant that your President, Vice President and their respective better halves arrived too late for all proceedings save for the evening dinner! A word of warning – Chris Hart tells me he has the reputation of being something of a travel "Jonah". En route he also confessed that his Grandfather had been on the Titanic! Our efforts in the face of such adversity were nonetheless much appreciated by our Belgium Colleagues.

Between the 20<sup>th</sup> and 22<sup>nd</sup> October Marseilles hosted the National Convention for French Avocats. With three thousand lawyers attending that Convention, if nothing else it must rank for the Guinness Book of Records. At the same time the City was chosen for the Intermediary meeting of the Federation of European Bars. The subjects discussed in full session included training, specialization, advertising and Professional Indemnity Insurance and contributions were made by Michael Cosgrave and Philip Moser, a representative of the English Bar. In Commission Session I attended, the subjects remaining very much under discussion

were money-laundering and surprisingly "Clementi", whose report I can assure you has sent shock waves far beyond "Albion".

Returning to the national scene with Tony Spiers I attended the Local Law Societies Conference for Presidents and Secretaries and the Law Society Annual Conference held in London on 13<sup>th</sup> and 14<sup>th</sup> September. As the events were run in tandem with the Golden Jubilee Commonwealth Law Conference they provided an opportunity to renew personal contact with Joseph James, the President of the Zimbabwe Law Society who attended with several other Lawyers from that Country. He remains ever grateful for the continued support from DELS. As you will have judged, in the National Conferences, the main discussion item was the future of the Law Society. In subsequent weeks I have attended ASWLS, an N.O.P Forum and a further Law Society meeting held in Cardiff to review the consultation process. A questionnaire is now due to be issued to all members of the profession in the New Year to seek their views on what they would like from their professional body in the future. May I urge you all to respond.

On the local scene I have had the pleasure of representing the Society at the dinners of Bristol, Somerset and Cornwall Law Societies and the Junior Vice President has attended the Dinner of the Plymouth Law Society. These occasions are usually the high spot of a President's Year and if you have not already done so may I ask you please to note in your diaries my own dinner which is scheduled to be held on the 3<sup>rd</sup> March at the Saunton Sands Hotel in North Devon. What better location for a Winter Weekend Break? Early booking is recommended!

Finally as the year end approaches may I take this opportunity of wishing both you and your families a wonderful Christmas.

*"Buon Natale"*

## **DISTRICT JUDGES' CORNER**

**District Judge Wainwright**  
*Exeter Crown &  
 County Court*



Following the Presidents guidelines for the Private Law Programme, the District Judges at Exeter have been consulting with Cafcass to review the way in which private law children cases are being conducted – particularly between the period of issue and first directions appointment.

It is proposed that upon the filing of any Children Act application a copy will be sent within 24 hours by post to the local Cafcass office. The file will, in addition, be referred to the District Judge who will either list for a directions hearing or give notice to the parties of his/her intention to transfer the application to the Family Proceedings Court. The appointment will be approximately 6 weeks ahead. It will be listed at a specific time with a time estimate of 20 minutes.

The Court will send the parties (with a copy to their solicitors) a standard letter explaining what will happen. This will give the solicitors or their client an opportunity to say whether they consider the procedure to be inappropriate in the light of e.g. past or present domestic violence.

Upon receipt of the application, a Cafcass officer will be allocated the case immediately and will make it his/her responsibility to undertake enquiries of the police and social services and a check will be made in their records to see if there has been previous Cafcass involvement.

The officer will then (within the same period, so before the first appointment) contact the parties (not their solicitors) to arrange an appointment. The officer will see the parties and any children aged 9 and over and will endeavour to reach agreement or to narrow the issues. If mediation is considered appropriate, arrangements will be made for this to take place. Discussions between the officer and the parents/children will not be privileged.

A short report will be prepared for use at the first directions hearing and the officer concerned will attend that hearing. If the report contains a

recommendation for a full report, the office will also indicate whether that report should be undertaken by Cafcass or by Social Services.

Last year there were 492 applications issued in the Exeter County Court and 289 in the Torquay & Newton Abbot County Court. The number issued in the various Family Proceedings Courts was in the region of 60 for each court. A decision will be made by the end of November as to which courts will become the pilot courts for the new scheme, it being agreed that Exeter CC would be one of them.

Before the scheme can be implemented, the current number of cases awaiting allocation will need to be reduced. It is hoped that the scheme can start in April 2006. The scheme will be discussed at the next family court users meeting, but in the interim if there are any comments they should be addressed to any of the District Judges at Exeter.

## **DEVON & EXETER LAW SOCIETY NEW MEMBERS**

We would like to welcome:

**Mrs J A Aston**  
*Gowmans, Paignton*

**Mrs K Barton-Donald**  
*Boyce Hatton, Torquay*

**Miss N H Bevan**  
*WBW Solicitors, Exeter*

**Ms E L Booth**  
*Dunn & Baker, Exeter*

**Mrs E F Crawford**  
*Boyce Hatton, Torquay*

**Mrs C L Lovett**  
*Everys, Honiton*

**Mrs C Parsons**  
*Everys, Honiton*

**Miss K Sandel**  
*Everys, Exeter*

**Mrs A E T Serle**  
*Stones, Sidmouth*

**Mrs H K Woodford**  
*Everys, Budleigh Salterton*

## INTERNATIONAL DATABASE

**Paul Derbyshire**

*Chairman International Relations  
Sub-Committee*



Many firms are making use of our international contacts by applying to be put on the DELS international database. However, one or two, who have international and linguistic expertise, are notable by their absence.

If you want to be included please send details to Monique with:

- Contact name
- Languages spoken
- Areas of legal expertise

We will then use our contacts to market DELS members firstly with our twin Bars and then more widely throughout Europe.

Don't be the Managing Partner who fails to get their firm included!



Solicitors Support Network

For confidential help ring

0800 328 4203

**FREE & CONFIDENTIAL SUPPORT FOR SOLICITORS**

**ARE YOU EXPERIENCING PERSONAL OR PROFESSIONAL PROBLEMS?**

If so, you do not have to do so alone.  
Support groups exist to assist you.

## DELS DINNER WITH "BRASSO"

**Friday 3 March 2006  
The Saunton Sands Hotel**

**Disco provided by Ian Brass  
of BBC Radio Devon**



Further details and booking form will be circulated with the January 06 Newsletter.

**Accommodation:** 40 rooms have been provisionally booked on the Society's behalf. Members and their guests must contact the Saunton Sands Hotel direct to reserve overnight accommodation and a deposit will be required to secure the booking.

Tel. 01271 890212 Fax. 01271 890145  
Email: [info@sauntonsands.com](mailto:info@sauntonsands.com)

**PLEASE NOTE** that any unassigned rooms will be released on 3 February 06.

Bed & Breakfast for the night of 3 March 06:  
£50.00 per person (Inland Facing)  
£55.00 per person (Sea Facing)  
All rates include VAT at current rate.

## **SIGNING CEREMONY OF THE TWINNING AGREEMENT BETWEEN DELS AND VERONA ON 1 OCTOBER 2005**

"Everywhere I go in Europe, I fall over a representative of DELS" complained a recent National President. Well known for its active participation with twinned Bars in France, Germany and Belgium, Devon and Exeter Law Society (DELS) has now signed a twinning agreement with Verona in Italy.



### *Left to Right*

Roberto PADOVANI, Council Member, Verona Bar Association  
Rod MOLE, DELS President,  
Chris HART, DELS Vice President  
Michael COSGRAVE, DELS Past President



To celebrate, the Italian hosts were kind enough to produce one of their favourite white wines labelled, appropriately, "Devon". Not a spoof – the owner of the vineyard simply liked the name!

So did the sixteen-strong delegation from DELS – last seen eating and drinking for Devon near Lake Garda.



## **BEER, BELLY-DANCING AND BACON ICE-CREAM:**



### **A week in Erlangen**

by [Rachael Morgan](#)

Having studied German as part of my degree in the nineties but having spoken very little of it since that time, it was with some trepidation that I set out on my trip to Erlangen, to stay with Birgit Schelter-Kölpfen, the deputy chairman of the Erlangen Lawyers' Association and her family and to work at the international firm Rödl & Partner in Nuremberg for a week.

I needn't have worried....

### **Saturday 8<sup>th</sup> October**

Land at 4.30 in the afternoon at Nuremberg airport and I meet my 'family' for the week – nothing like a good dose of Kaffee und Kuchen to revive the spirits. This is shortly followed by an opportunity to meet some other members of the Erlangen Lawyers Association; Dr Michaela Weiss who specialises in insurance law and Herr Trost, a construction law specialist who have been invited for supper. A very jolly time is had by all, discussing the local construction programme underway at the moment, the recent elections and the finer points of German road traffic law (which unfortunately were mostly lost to me – sorry!) and of course, how such things are dealt with in England. This is all washed down with copious amounts of Sekt, local white wine and a five course meal including some rather delectable bacon ice-cream!

### **Sunday 9<sup>th</sup> October**

A day trip to the fine town of Bamberg including a look around the nearby Levi Strauss museum (now I know where the maker of 501's came from) and a walking tour of the town, complete with cathedral, cobbled streets and a strange beer called 'Rauchbier' on account of the way the hops are smoked before use. On the way home, a drive past the building which houses the Oberlandesgericht (a sort of supreme higher regional court) the Landesgericht (regional court) and the Amtsgericht (the local/magistrates' court) triggers a discussion on the differences between the legal systems in Germany and England. I learn that the Germans not only have the division between

civil and criminal but also separate divisions for employment law, public law and road traffic law. I am also told that German lawyers carry out the work of both solicitor and barrister.

### Monday 10<sup>th</sup> October

First day at the office! Christina Chlepas, a tax lawyer at international firm Rödl & Partner, picks me up bright and early and gives me a whistle-stop tour of the new offices (which are still under construction). The office is huge with 7 floors, 3 wings, an enormous staff restaurant and underground parking. I struggle to remember where the kitchen is! By the afternoon, I am given my first job, to draft a contract for services in English but governed by German law. I learn the reassuringly long word for 'professional indemnity insurance' in German (Berufshaftpflichtversicherung!) and set about my task. In the evening, I'm invited to the monthly Erlangen Lawyers' Association meeting where I listen to a seminar on recent changes to employment laws in Germany whilst dining on sumptuous Schweineschnitzel with mushrooms in a cream sauce and an oversized pint of beer (I need two hands to lift it). I manage to introduce myself to the other lawyers in the room in my best German, which is met with a resounding knocking of knuckles on the tables, followed by questions about how one becomes a lawyer in England and the formal training stages.

### Tuesday 11<sup>th</sup> October

Finished my draft contract today and for good behaviour my 'boss' gives me time off to take in the sights and sounds of downtown Nuremberg. Most of the town centre is pedestrianised, with plenty of old architecture, churches and stalls selling hot chestnuts, Bratwurst and giant Brezen (pretzels, to you and me). I head for the largest book shop I can find and hunt out a new German/English law dictionary – priceless! I head back to the office to join in the after-work drinks party and some networking. Many are pleased to hear an English lawyer attempting German and are keen to take up the opportunity to make use of these skills in the future. Time will tell...

### Wednesday 12<sup>th</sup> October

A new job today, drafting a counter-statement in English for a German client whose CTM application has been opposed by a Spanish company, so a good mixture of researching the

law, considering the advice in German given so far and drafting the statement. In the evening I'm taken on a quick tour of Erlangen by Dr Michaela Weiss before settling into a brewery for the evening. We are joined by Michaela's parents and I learn that her father is also a lawyer and works with his daughter in the same firm. It's not long before we're discussing my route to qualification and his interest in UK companies limited by shares – further networking and exchanging of business cards ensues! Michaela tells me a little more about being a 'Fachanwalt', a specialist lawyer, and the extra exams and training she has had to undergo, unlike in England. I also learn that students straight from University can train to be judges, with the odd consequence that 28-year-olds can pass judgment at a relatively early age!

### Thursday 13<sup>th</sup> October

Just another day at the office and I really feel part of the team now. Due to my basic knowledge of English company law, I am able to help Christina Chlepas with a deal she is working on, much to her and her client's delight! I spend the evening with Christina, Birgit and Daniela Gunreben, an employment lawyer at Rödl & Partner, munching on blue trout, sipping champagne cocktails (tasty but hellishly lethal) whilst watching Christina on DVD perform at her latest belly-dancing convention – amazing, if she ever gets fed up with the law, there's a second career there!

### Friday 14<sup>th</sup> October

My last day at the office. I manage to complete my CTM counter-argument just in time and exchange a few more business cards before I go. Such a nice bunch to work with and a thoroughly enjoyable time. On the way home, Christina drives me past the formidable sight of the famous Nuremberg Court where the Second World War crimes were tried. I end the week by going out with Birgit, her husband and the rest of the local Lions Club members for an evening at a nearby shooting club. Easy enough, you might think, but tricky without glasses or contact lenses (which I quickly realise I am without) if one is short-sighted! Firing arrows somewhere near the target is one thing but I decline the offer to shoot real bullets for fear of doing some serious damage! More beer and a local speciality dish of carp fish restore my nerves.

So there you have it, a testament to the hectic week of working, eating, socialising and learning new German words, I hope. They are a really friendly and incredibly welcoming bunch in Erlangen and I thoroughly enjoyed my time there.

But now it's your turn to go, with a few pieces of advice:

1. Don't worry in the slightest about not speaking perfect German – they were just so pleased to hear someone from England having a go at it.
2. Don't be shy about networking – they are always open to bridging the gap between themselves and firms in England.
3. Expect to come home a few pounds heavier than you were when you went!

*Rachael is a trainee solicitor at Ashfords, currently working in the Corporate Department.*

If you would like to find out more about the possibility of a work placement, sponsored by DELS at one of their twin bars of Erlangen in Germany, Leuven in Belgium, Rennes in France or Verona in Italy, please contact Monique Bertoni.



## **DELS COMPLAINTS SERVICE**

This service has been available to members for nearly five years. In that time the Society has been able to resolve the vast majority of matters without further recourse to The Law Society. This year 90% of all complaints handled by DELS have been resolved locally.

A number of complaints still go directly to the Law Society's Consumer Complaints Service simply because clients are unaware of the DELS facility. Details of the service are on the Society's website and are made available through local libraries and CABx.

Many firms have now included reference to the service in their own client care materials. If your firm has not yet done this the Committee invites you to do so.

Here is a suggestion:-

### Complaints

The firm's in-house complaints procedure is described above. We usually find that most complaints can be resolved by that method. If our in-house scheme has been used and you are still not satisfied, please be aware that there is a free conciliation service operated by the Devon & Exeter Law Society who can be contacted by telephone on 01392-411585 or via the DELS website – [www.devonlawsociety.org.uk](http://www.devonlawsociety.org.uk)

**Don't forget to visit our website:**

**[www.devonlawsociety.org.uk](http://www.devonlawsociety.org.uk)**

**Click on Newsletters, you will find past copies of the Newsletter**



## **FIXED FEES FOR COUNSEL**

*Members are reminded of this scheme whereby Barristers will give an opinion on a topic for a fixed fee of £50.00 + VAT.*

The Chambers that are participating are:

Walnut House - Tel. 01392 279751  
 Southernhay Chambers - Tel. 01392 255777  
 Rougemont Chambers - Tel. 01392 208484  
 Colleton Chambers - Tel. 01392 274898

## **TERMS AND CONDITIONS**

### **1. The fixed fee**

The fixed fee is £50.00 plus VAT.

Payment of the fee must be made by the Solicitor within fourteen days of receipt of Counsel's fee note. In the event of non payment or late payment, Counsel may refer the matter to the Committee of DELS to take up with the Solicitor.

### **2. Entitlement**

A Solicitor wishing to take advantage of the scheme is entitled to receive from Counsel up to 30 minutes initial

advice either in person at Chambers or over the telephone.

Solicitors are not entitled to written confirmation from Counsel of the advice given.

If Counsel is unable to advise within the half hour limit then either Counsel can refuse the instructions or negotiate an additional fee. The "cab rank" rule does not apply.

### 3. Procedure

At the first instance Solicitors should contact the Clerk of participating Chambers and clearly state that this is a DELS Fixed Fee Scheme matter. They should then supply the following information :-

- (i) Name of preferred Counsel
- (ii) Names and addresses of all the parties
- (iii) The general area of Law involved
- (iv) The precise legal issue upon which advice is required

### 4. Conflicts

It is the responsibility of Counsel to ensure that no conflict of interest arises. For this reason it is essential that Solicitors accurately identify the parties involved.

## **FROM THE LAW SOCIETY:**

### **Guidance: model CFA for personal injury claims**



The Law Society has issued guidance available electronically:

- The model for use up to 31 October 2005
- The new model for use from 1 November 2005
- Guidance on using the new model
- Go to [www.lawsociety.org.uk](http://www.lawsociety.org.uk) – on home page click on Rules, guidance and regulation, then Regulations and professional conduct, then Guidance.

### **Guidance: limitation of liability by contract**

The Rules and Ethics Committee of the Law Society has recently published new guidance relating to principle 12.11 of *The Guide to the Professional Conduct of Solicitors*, to clarify that a firm may enter into an agreement with its

client to exclude the personal liability of the firm's employees, or its members if it is an LLP, provided the firm accepts liability at least to the minimum level of indemnity cover, and provided the agreement is lawful.

**More information:** [www.lawsociety.org.uk](http://www.lawsociety.org.uk) – on home page click on Rules, guidance and regulation, then Regulations and professional conduct, then Guidance.

### **Legal aid issues – Carter Review of legal aid procurement**

All legal aid practitioners, civil and criminal, who have not yet seen the September edition of Dispatch, the Law Society's newsletter on legal aid issues, should go to [www.lawsociety.org.uk](http://www.lawsociety.org.uk), then click on News and events, then on Newsletters and finally on Dispatch – Legal Aid newsletter. There are very good articles on the background to the Carter Review, its terms of reference and how the Law Society will contribute to the process and on Carter from a criminal practitioner's perspective.

It also introduces the Law Society's Carter Review coordinating group, whose purpose is to provide a forum for practitioners, local law societies etc to feed in views. This will inform the Law Society's response to the Review.

The group is chaired by Lucy Scott-Moncrieff and the chairs of the Law Society committees covering crime, housing immigration, family and mental health & disability law have each nominated a member to the group. Richard Miller from the Legal Aid Practitioners Group will also be a member along with individuals from the Law Society's staff.

Send general comments and enquiries to [carter@lawsociety.org.uk](mailto:carter@lawsociety.org.uk)

Send comments for the specialist practitioner members to:

David Ruebain - mental health/disability law:

[mentalhealthcarter@lawsociety.org.uk](mailto:mentalhealthcarter@lawsociety.org.uk)

Christina Blacklaws – family law:

[familycarter@lawsociety.org.uk](mailto:familycarter@lawsociety.org.uk)

Alison Sanley – immigration law:

[immigrationcarter@lawsociety.org.uk](mailto:immigrationcarter@lawsociety.org.uk)

Ian Kelcey – criminal law:

[crimecarter@lawsociety.org.uk](mailto:crimecarter@lawsociety.org.uk)

Russell Conway – housing law:

[housingcarter@lawsociety.org.uk](mailto:housingcarter@lawsociety.org.uk)

## Appointment of a Solicitor member of the Consumer Complaints Board

From January 2006, the Law Society's Consumer Complaints Board will be responsible for policy concerning the handling of consumer complaints about Solicitors' service, and for overseeing the way in which the Consumer Service discharges its functions.

The Council have decided to appoint an additional solicitor member to this Board.

The Law Society are advertising this vacancy now, all applicants must be solicitors who are currently engaged in providing legal services to private individuals and who have extensive experience of handling consumer complaints.

Applicants must demonstrate a track record of achievement in their field and a commitment to establishing a consumer-focused approach to dealing with complaints.

Board members will receive £4,800 per annum for a commitment of, on average 12 days per year. Additional fees will be paid if members undertake additional work. Travel and subsistence expenses will be reimbursed.

The Law Society is committed to providing equal opportunities for all, and to the principle of public appointments on merit. The Society intends that the Board should reflect the diversity of the solicitors' profession and of the society it exists to serve.

For further information, including an application form, you can obtain this from the Law Society's consultants kmc international, at [www.kmcinternational.com](http://www.kmcinternational.com); by telephone on 0870 060 8108 or via email at [lawsociety@kmcinternational.com](mailto:lawsociety@kmcinternational.com).

The closing date for applications is 9<sup>th</sup> December 2005.

## **LEXCEL BENEFITS**

Research undertaken by Sir Stephen Lander, Independent Commissioner to the Law Society, has highlighted the benefits available to law firms from obtaining Lexcel, the Law Society's practice management quality mark. Law firms who held either Lexcel or three other quality marks (Investors in People, ISO9000 and the Legal Services Commission's SQM) were

surveyed. In relation to Lexcel the research found:

- 81% of Lexcel firms found it to be beneficial regarding client care;
- 79% found it beneficial regarding risk management;
- 75% found it beneficial as a business improvement tool;
- 69% found it beneficial in relation to insurance premiums.

## **Lexcel case study competition**

Here is the winning entry as penned by Scott Evans, Quality Administrator at Yorkshire solicitors firm, Chadwick Lawrence:

When we first embarked on the process of Lexcel accreditation it was, admittedly, for two main, rather narrow reasons – the potential reduction in ever-increasing indemnity insurance premiums and the future marketing possibilities that the accreditation might bring.

One year on and, to our surprise, these initial reasons are now far from top of the list of our reasons for maintaining Lexcel status. The (perhaps not so obvious) benefits that the process of accreditation has brought to Chadwick Lawrence are manifold. As a practice of around 170 people spread over six sites around the West Yorkshire region, the "spin-off" benefits in terms of the control, understanding and development of the business have been huge.

The Lexcel standard has allowed us to understand how the practice operates at an individual, departmental, office and company-wide level as well as enabling us to establish clear, understandable, achievable targets. This in turn has very rapidly created a culture where conformance to the Lexcel standard and hence excellent client care is foremost in the minds of both fee earners and secretaries. Even those who initially dismissed and overtly resisted the implementation of the Lexcel standard have, by now, been forced to succumb to the need for it and, moreover, to acknowledge its benefits.

Indeed many fee earners now welcome our internal auditing procedures – not simply from the point of view of knowing that they conform to the Lexcel standard, but rather that they feel much safer and more confident in their work given a logical, consistent and measurable framework in which to operate – safe in the

knowledge that “their backs are covered” on the one hand and pride in the fact that they are delivering a quality service on the other.

Some fee earners even request additional “off the record” audits of their own files as part of a personal “health-check” to see just how they compare both against the provisions in the standard and (more importantly perhaps!) against other fee earners in their department or office.

We are very much committed to maintaining Lexcel and now that we feel comfortable in the knowledge that our files and procedures are of a high standard we are looking at expanding the Lexcel “mindset” into other areas of the business. The Lexcel “way of working” will be introduced into all areas of the business, increasing profitability and ensuring a top quality level of service to corporate, group and individual clients alike.

There are of course a range of quality marks and standards available to law firms, but the specific nature and the enormous benefits which Lexcel brings mean that it isn't simply a logo on a letterhead but a real, working framework which delivers impressive, tangible results in a short time-frame.

For further information about Lexcel go to [www.lexcel.lawsociety.org.uk](http://www.lexcel.lawsociety.org.uk)



## **NO LAWYER NEEDS TO SUFFER ALONE**

The Solicitors Support Network is obviously fulfilling a need because in 2004, there were 194 calls between late May (when national advertising started) and the end of the year. In 2005, there has been no national advertising, but nevertheless, there had been 121 calls to the helpline by the end of September 2005.

All the calls to the helpline are totally confidential, but nevertheless, interesting statistical data can be extracted from the database of callers. In 2004, by far the largest number of calls came from Assistant Solicitors (45 from women and 24 from men). Trainees were the next largest group of users (14 women and 19 men), with Partners and Sole Practitioners evenly balanced (with 19 and 20

callers respectively, being 14 male Partners and 5 female and 15 male Sole Practitioners and 5 female). The remainder of the callers were employed in industry (3), non-practising (8) or no information was volunteered (52).

In 2005, however, instead of the female Solicitor callers being 2x1 to the male callers, they have risen to 4x1. Also, there have also only been 2 Sole Practitioner callers to 21 Partners, instead of an almost equal number. There has also only been 1 Trainee caller, so they have dropped right down the league.

A lot of calls have involved employment or Partnership disputes. Other concerns expressed by callers have ranged from the purely seeking administrative information to genuine hardship.

**Case study one:** A lawyer suffering from depression and attempting to self medicate through cocaine and alcohol, with resultant addiction to both and worsening of depression.

**Case study two:** Lawyer with partner to support emotionally; young children to care for; demanding job to do. Exhausted and making mistakes.

**Case study three:** Other staff, who are abusive and bullying. Firm dismissive of problem.

**Case study four:** Caller is the only black lawyer in the firm and feels that is not being treated equally with the other staff. Feels that is only there as a token gesture.

**Case Study five:** Been charged with drink driving. Concerned for effect upon career and with the Law Society.

**Case study six:** Partner has misappropriated money from firm without caller's knowledge. Concerned how this leaves the other Partners.

**Case study seven:** Pregnant and afraid firm may use that as an excuse to terminate the employment.

As can be seen from this very small snapshot of the range of problems being suffered by callers, their needs are very varied. Nevertheless, the helpline has been able to put all of them in touch with at least one support group and in most instances, with several, each of whom has dealt with a different facet of their problem. Time and again callers have commented on

what a worthwhile and helpful structure the Solicitors Support Network is and how much better they feel for calling and knowing that there are support mechanisms available.

If you need help, or know someone who does, the free and confidential helpline is available 365 days a year on Tel: 0800 328 4203.

9am – 7.30pm, Monday to Friday and  
10am – 4pm weekends and public holidays.

## **MONEY LAUNDERING AFTER BOWMAN v FELS – 2**

### **The implications for non contentious transactional work**



By Trevor Hellowell  
*Solicitor & Training Consultant*

#### **A. Introduction**

Since 2003, solicitors and others have been under obligations in the Proceeds of Crime Act 2002 (POCA) and the Money Laundering Regulations 2003 to report to the criminal investigation authorities (NCIS) any matters in which they are involved, or information which comes to their notice which involves the use of the proceeds of criminal activity.

The Court of Appeal in *Bowman v Fels* took the opportunity to consider the application of this regime to litigation matters in particular, and concluded in March 2005 that the POCA reporting obligations do not apply in a litigation matter.

The judgment left open the implications of the regime and the case for other, non-contentious transactional work and on 13 September 2005 the Law Society issued new guidance on the implications of the case in these areas.

On one interpretation, that Guidance confuses rather than clarifies in that it introduces some very fine distinctions and definitions, but its (undoubtedly laudable) aim is to reduce the circumstances in which lawyers may feel obliged to report matters. It includes a complex flowchart to which lawyers may “usefully” refer. The purpose of this article is to simplify the main issues as set out in that Guidance.

#### **B. THE LAW - Money laundering offences**

The Principal POCA offences are to:

- i) conceal, disguise, convert, transfer or remove from the UK any criminal property (s 327)
- ii) enter into or **become concerned in an arrangement** which a person knows or suspects facilitates the acquisition, retention, use or control of criminal property by someone else (s 328)
- iii) acquire, use or have possession of criminal property (s 329).

“Criminal property” is a person's benefit from criminal conduct. This may involve tax evasion, VAT, insurance, mortgage or benefit fraud. It is immaterial who carried out the conduct or when it was committed. Lawyers must know or suspect that funds are criminal in origin. Speculation that illegality may have taken place is insufficient to trigger obligations under the Act.

The main issue is what is an “arrangement” within the meaning of s 328?

The Ancillary offences include the offence of failing to report information regarding money laundering, received in the course of a business (s 330).

The Home Office are (unofficially) of the view that the receipt by a victim of restitution by the person who financially prejudiced them, is not of itself an act of money laundering.

#### **C. BOWMAN V FELS – WHAT IS AN ARRANGEMENT?**

The CA concluded that the proper interpretation of s 328 was that it was not intended to cover or affect the ordinary conduct of litigation by legal professionals. Such conduct was not an “arrangement” for the purposes of the section.

This includes any step taken by them in litigation from the issue of proceedings and the securing of injunctive relief or a freezing order up to its final disposal by judgment. They also expressly indicated that consensual resolution of a litigious matter was also exempt, but exercised caution in indicating a distinction between genuine mediation discussions and sham bargaining that may have an ulterior motive.

In a separate discussion, the CA took the view that the part of POCA dealing with the principal offences could not be taken to override fundamental principles of human rights and access to justice by the use of general words. Thus legal professional privilege must

still subsist even under these principal provisions (the opposite view to that taken in *P v P*).

It would seem, therefore, that there is no obligation to report suspicions arising during the ordinary course of a litigation matter, OR whenever we are ascertaining the legal position for a client and information is being relayed for the giving or receiving of legal advice.

This latter limb of the judgment potentially extended its reach into many other areas besides litigation, though the impact was unclear at the time. The Law Society has had time to reflect on the issues and published interim guidance in April 2005, and revised guidance in September 2005 dealing with these implications.

#### **D. GUIDANCE (13 September 2005) – THE LAW SOCIETY VIEW**

In its new revised guidance issued in September 2005, the Law Society makes the following points:

##### In relation to litigation matters:

- the exemption for litigation matters also extends to dealing with the final division of assets in accordance with a judgment or settlement, including the actual handling of any assets which are criminal property
- the carve-out for consensual resolution of disputes must include all forms of ADR, whether conducted by lawyers or others
- sham litigation, bogus negotiations, the management of funds not covered by the judgment or settlement process and the client's subsequent use and possession of the funds WILL still be subject to the reporting requirement
- any subsequent dealings with the client, third party or the funds involved in the contentious matter BY OTHER DEPARTMENTS within the firm may still be subject to the reporting requirement (as knowledge will be imputed to them from the litigation team)
- firms should consider having systems in place whereby the MLRO can be alerted (by the litigation teams) to any suspicious information that might compromise those other departments' ability to act in the future, and all departments must be vigilant to ensure that appropriate reports are made as and when the (future) need arises.

##### In relation to non-contentious transactional work:

The CA judgment in *Bowman v Fels* does not relate specifically to transactional work, but comments in the judgment lend support to the following view; that:

- an "arrangement" only comes into effect at a single point in time, and that is when a loose series of discussions or instructions becomes a binding agreement – it follows that lawyers can be engaged in the preparatory steps of a matter (due diligence, enquiries, requisitions, heads of agreement etc) and not be subject to reporting requirements; only when the agreement becomes binding can it be said that there is an "arrangement", the lawyer's involvement in which becomes reportable
- "arrangements" must have practical effects and must actually, in fact, facilitate the acquisition, retention, use or control of criminal property to be reportable
- if information regarding the criminality of the funds or the arrangement has come to us under the cloak of legal professional privilege (ie from the client, or in the course of a litigation matter) then we must not disclose the information to MLRO/NCIS without client consent as legal professional privilege is not to be overridden by the general words of the statute
- clients may be minded to consent to the waiver of privilege implied by disclosure if they are the innocent party, and want to join in with the disclosure to protect their own position
- if clients do not consent to the waiver of legitimate privilege, then lawyers will have no option but to withdraw from the transaction, unless they believe the client has a criminal motive
- generally, privilege cannot apply if the lawyer has been retained for some criminal or fraudulent purpose
- the "failure to report" offence in s 330, also relevant to transactional work, is also qualified by a privilege exclusion which requires us to seek client consent to a report being made
- ascertaining the availability of solicitor-client privilege may be complicated by concerns over who is the client, or the client's representative.

The Guidance deals in some detail with all of these points, discusses the fine distinctions between common-law privilege (applicable to ss 327-329) and

statutory privilege (applicable to s 330) – the main distinction being that statutory privilege covers communication from client representatives (maybe accountants, property agents, tax advisers) - and offers a flowchart for fee-earners to follow.

**E. PRACTICAL ISSUES**

The author offers the following simplification of the Law Society's flowchart approach.

The main steps to consider are:

**In relation to litigation matters:**

1	Are the funds received in the litigation process, restitution to a victim by the perpetrator of the criminal act which defrauded them?	If YES, PoCA does not apply.
	If NO, then	
2	Is there a suspicion that funds involved in the litigation are derived from criminal sources?	If NO, proceed as normal
	If YES, then	
3	Report details to MLRO for internal record purposes.	
4	Continue to conduct matters to conclusion and distribute assets.	

**In relation to non-contentious transactional work:**

1	Are we suspicious that an offence may be being committed under PoCA, ss 327, 328, 329 or 330 by ourselves, our clients or third parties?	If NO, proceed as normal
	If YES, then	
2	Consider whether information on which suspicion is based is covered by common-law legal professional privilege (ss 327-329) or statutory privilege (s 330)	If NO, REPORT

	If YES, then	
3	Contact client to discuss position and seek waiver of privilege	If GRANTED, REPORT
	If DECLINED, then	
4	Consider if client or others have a criminal or fraudulent purpose, in which case privilege disappears	If YES, REPORT
	If NO, then	
5	Withdraw from the transaction, making no report other than internal report to MLRO for record purposes.	

**F. CONCLUSIONS - PRACTICE & PROCEDURE**

REPORT	BUT, NO REPORT
<p>If you: know or suspect that money received or to be transferred in the course of acting for a client might have been derived directly or indirectly from an illegal or improper origin (handling the proceeds or subject matter of a litigation matter NOT caught)</p> <p>know or suspect that a <u>transaction</u> – if and when it is actually concluded - is going to be based on, or involve the use of, such funds whether in possession of client or third party (litigation is NOT a transaction for this purpose, nor is legal advice, pure and simple)</p> <p>come into possession of information that suggests that someone, somewhere may be committing a money laundering offence by using or being in possession of improperly obtained funds</p>	<p>If: after clarification, you are satisfied that there is no illegality involved in the history of the funds</p> <p>the information on which suspicion is based was divulged in privileged circumstances, eg in litigation, or by a client seeking our advice and after discussion, the client declines to waive privilege and disinsturcts the firm, or firm declines to act further</p> <p>the information on which suspicion is based was divulged to us in privileged circumstances, eg in litigation, or by a client (or representative) seeking our advice and after discussion, the client declines to waive privilege and disinsturcts the firm, or firm declines to act further</p> <p>the matter involves litigation, from the issue of proceedings .. up to final disposal, any settlement negotiations, ADR or mediation process and the implementation of the judgment, settlement or</p>

	<p>outcome of other alternative process</p> <p>the matter merely involves restitution to a victim by the perpetrator</p>
--	--

### Steps to take when you are suspicious:

- 1 *Discuss concerns with clients, third parties and colleagues to ascertain nature of matter and our instructions, to alleviate concerns if possible*
- 2 *Discuss concerns with MLRO if not immediately and completely satisfied by client/third party explanations*
- 3 *Record decision NOT to report - if that is the appropriate course  
(which it will be if the matter is litigious, comprises the mere giving of advice or the information is legitimately privileged and the client declines to waive privilege)*
- 4 *Complete Suspicious Matter Report Form if that is the appropriate course  
(which it will be if litigation is sham or bogus or the matter involves transactional activity where client waives privilege, or privilege is removed by virtue of an underlying criminal intent) - Complete with details of steps to be taken, timescales and need for urgency*
- 5 *Hand matter file over to MLRO to deal with*
- 6 *Do not discuss the fact that a report has been made with anyone until consent conferred to proceed and even then, only if absolutely necessary.*

## **CENTRE FOR LEGAL PRACTICE** **Exeter University Mentoring Scheme**

The academic year 2005/06 will see this successful scheme operating again.

Various individuals have offered to be mentors to our LPC students, drawn from a wide cross section of Devon legal life. We are trying to recruit further mentors to keep up with student demand. If anyone is interested in becoming a mentor please contact Tom Serby via email: [T.W.J.Serby@exeter.ac.uk](mailto:T.W.J.Serby@exeter.ac.uk)

In previous years mentors and students have commented that the scheme has been both enjoyable and very useful.

The idea of the mentoring scheme is simply to give students a taste of legal practice in real life. We are aware of the great pressures on practitioners' time; we believe the scheme is not onerous to mentors. We encourage the students to be proactive in contacting their mentor to arrange to attend at the mentor's place of work, at the mentor's convenience, for a period which can range from a one hour meeting to perhaps more than one day's work. The aim is simply to give the student an opportunity to observe a part of a lawyer's working day; as such demands on the mentor are kept to an absolute minimum.

In around October we will invite our students to volunteer for a mentoring place. We will give them the names of the individual mentors. Some mentors have in the past offered to take on more than one student. We match students to mentors and leave the students to contact their mentor to arrange a date for a mentoring session. Students are warned that dates must be at mentors' absolute discretion and sometimes must be scheduled for some days or weeks in advance.

After the session/s we ask students to report back briefly on how they found their "work experience". Students not attending at mentoring sessions are advised that their place will be offered to another student.

We are very grateful to the lawyers in Devon who participate in the scheme which forms such a valuable part of the students' time with us.

## **I HEARD IT ON THE GRAPEVINE!**



### **Champagne – The Facts**

The name of Champagne derives from the Latin word *campagna* and is limited not only to a defined area but to a process and unlike any other wine it has established its "appellation" as a brand.

The region lies ninety miles north-east of Paris and is centred around the towns of Reims &

Epernay. From its earliest history, which can be traced back to the 5th century, it was situated at the crossroads of the major trade routes running both north to south and east to west.

Until the early 17th century the generic wine of Champagne was predominantly still and pink in colour. It was early in the second half of the century that the wine underwent radical changes to become the sparkling product with which we associate it today.

Dom Perignon, a monk and cellar master of the Abbey of Hautviller is credited with the next stage of the wine's development. Different grape varieties were planted, but above all and critical to his success was the blending of wines from different vineyards to achieve the best possible flavour.

Even until the 19th century production of this sparkling wine amounted to little more than a few thousand bottles. It was during this century that the widow " Clicquot " made her contribution by devising a method of removing the sediment which resulted from fermentation in bottle without removing the bubbles at the same time.

Champagne is made from three different grape varieties. Pinot Noir, Pinot Meunier (both black grapes) and Chardonnay. When the black grapes are picked they must be pressed rapidly using a specific procedure to prevent the colour running from the black grape skins in order to make a "white" wine.

The first pressing is known as the *cuvée* and this is used to make the highest value wines. The rules state that a maximum of 100 litres can be made from 160 kilos of grapes.

There are several styles of Champagne. The main ones being *Brut & Demi-sec*. Other styles available such as *Blanc de Blancs* is made exclusively from white Chardonnay grapes and *Blanc de Noirs* exclusively from black Pinot Noir or Pinot Meunier grapes. Vintage Champagne is the product of an outstanding year.



## CHRISTMAS WINE OFFER

Devon & Exeter Law Society in association with Quay West Wines are pleased to offer Society members a 12 x 75cl bottle case at the reduced price of £49.99 or a superior case at £59.99. Cases can be mixed, all red or all white.

Delivery is free throughout Devon and there are no other hidden costs.

If there is a particular wine you are looking for this Christmas, we will do our best to source it for you.

To contact us:-

Telephone: 01392 - 841833

Fax: 01392 - 841996

E-mail: [sales@quaywestwines.co.uk](mailto:sales@quaywestwines.co.uk)

