



ChBA Review 2014

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Chair's introduction



The Chancery Bar Association has enjoyed an extraordinarily busy year, the highlights of which are covered in this Review. We now have a well earned reputation as one of the most active and successful of the Specialist Bar Associations.

This year has seen the CLIPS scheme running successfully not only in the Interim Applications Court but also in the Central London County Court with over 150 of our members volunteering. I do not think it overstates the position to say it is one of the most important things we have ever done.

CLIPS was of course born of the Chancery Modernisation Review and the Association has continued to be closely involved in its implementation under the guiding hand of Newey J.

It has also been business as usual with a varied programme of seminars and the international trips which have become highlights of the calendar: Cayman in May and Jersey in October attracting the Chief Justice and the Bailiff respectively as speakers. We have also continued to respond to the ever increasing number of consultations, making the Association's views felt and have established the dinner for our academic members as part of the calendar.

Last year also saw the launch of the Junior Chancery Bar to represent the interests of our more junior members and our first and hugely successful Summer conference.

The year ahead promises to be just as busy: in February we are running a seminar together with COMBAR and TECBAR as part of the Global Law Summit for lawyers from all over the Globe as part of the Magna Carta Celebrations. In March we go to Singapore to join forces again with the Singapore Academy of Law. A full and exciting programme of seminars is planned and there will be the second Summer conference following its success last year.

Of course none of this could happen without the huge amount of time generously devoted by our members whether as part of the committee (where elections this year were hotly contested), members of sub-committees, part of working groups responding to consultations, speakers at and organisers of seminars here and abroad and the Annual and Summer Conferences, volunteers for the CLIPS scheme and those who simply say yes from time to time when we ask them to volunteer for specific tasks. We are also enormously grateful for the support the Chancery Judges provide to us.

Last but not least, none of this would be possible without the excellent work Francesca does for the Association and the support she gives its officers, committee and members.

Thanks to all of you.

Penelope Reed QC

The Junior Chancery Bar

Michaelmas term saw the launch (with cocktails and canapés) of the Junior Chancery Bar (JCB), a division of the Association for members of 10 years call and under. There was a fantastic turnout, and we were delighted to be joined by the Chancellor, numerous other members of the Judiciary, a delegation from the Bar Pro Bono Unit, and the Chair of the Association.

In addition to a networking medium and chance to socialise, the JCB aims to be a professional forum in its many guises (encompassing, for example, NPP, CLIPS support, equality and diversity, social diversity, career development and a scholarship and travel database). It will strive to foster strong links between junior members

of the Bar (including other Specialist Bar Associations) and other professional bodies, as well as providing a means to liaise with senior members of the Bar and the Judiciary.

We have a number of events and exciting projects in the pipeline, and we look forward to a busy 2015. However, the main aim of the division is to support our constituents, and members are encouraged to make known their views about what they would like to see from the JCB.

It only remains to record our thanks to and admiration for Caroline Waterworth, whose initiative this was, and whose energy made it happen.

Eleanor Holland

Annual Conference 2014

There was no snow last year, despite our frosty programme cover, but much to warm those attending what must now be called the Winter Conference. When Tim Fancourt QC asked me to chair the organising committee, it was my chance not only to shape the debate but also to try to contribute, in some small way, to the conference's ongoing success.

I was overwhelmed by the enthusiasm and goodwill from Bench and Bar alike and by the devotion of their valuable time towards preparing for and participating in the conference. The most extraordinary effort was made by Briggs L.J. who had arrived back in the UK from the Antarctic on the morning of the Conference and was able, complete with Penguin hat, to enlighten us on some of the proposed reforms in his Modernisation Review.

Our long-debated title was "Equity Released", encompassing both the foundation of Chancery jurisdiction and the fairness and equality bursting out of the Association. That was the theory but without much basis in reality! Equity was certainly a theme of two of the keynote talks: Professor Charles Mitchell delved back into *Target* to assess the liability of various types of

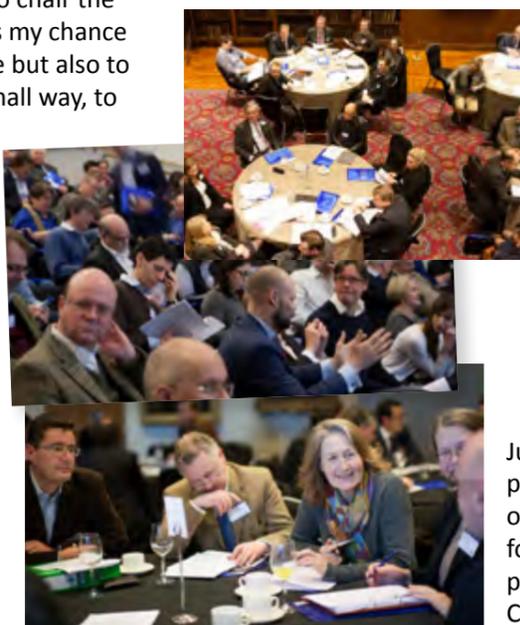
stewards of property to account and Newey J. explored whether fiduciaries are constrained in the exercise of their powers by considerations of reasonableness and rationality. Henderson J. was able to bridge the gap that most of us feel towards tax cases by showing how many of those that he has dealt with recently have developed and stretched the boundaries of the law of restitution. We were also privileged to have the new Chairman of the Bar interviewed and to hear from the Chancellor.

The Friday evening debate had a fine array of judges and senior practitioners discussing common issues across the Rolls Building Jurisdictions and entertainingly chaired by Carr J. I had the great pleasure of videoing Judges, a Master, the Chief Registrar and practitioners to introduce the themes of this debate, all of whom were so forthcoming and particularly keen to preserve the equitable traditions of the Chancery Division, although Malcolm Davis-White QC seemed to think that

docketing was something to do with chopping off a dog's tail! It was soon time for a drink or two...

It remains for me to thank all the workshop leaders who worked so hard and delivered so well what is really the heart of the Conference. And finally, a thank you to all of you in continuing to attend the Conference and making it so special with such a convivial and healthy atmosphere.

Michael Green QC



Summer Conference 2014

In June the Education and Training Committee held the Association's first Summer Conference at the British Library. Prompted by members' feedback from the annual conference with a timely nudge from our Equality and Diversity Committee, this afternoon event was designed to offer high quality educational and networking opportunities over a shorter period of time and during the working week.

Iain Mackie of Macfarlanes LLP agreed to join Francis Tregear QC and Louise Hutton in launching the afternoon's programme with an illuminating panel discussion on litigating fraud claims. This was followed by three lively workshops where delegates considered knotty problems that arise in trust litigation, claims for breach of rent covenants and lender's claims against solicitors for breach of trust. Newey J. then brought the delegates up to speed with progress towards implementation of the Chancery Modernisation Review.

This was followed by a sparkling debate of truly outstanding quality between Professors Sarah Worthington and Louise Gullifer on the correctness of the House of Lords' decision in *Stone & Rolls Ltd v Moore Stephens*.



The delegates rounded off what had been an enjoyable and stimulating afternoon by joining members of the judiciary, the speakers and other guests of the Association for early evening champagne and canapés on the roof terrace.

Tracey Angus QC

2014 Seminar Programme

The Education and Training committee has had an eventful and busy year. 2014 began with a heated joint seminar with COMBAR on the new BSB Code of Conduct, and then a seminar on Futter and a debate about *Petrodel v Prest*. We were honoured to have Prof Graham Virgo speak at a breach of confidence seminar in May.

The excellent Annual Lecture was given this year by the Chancellor, who presented his paper on proprietary

relief ahead of the Supreme Court hearing *FHR Ventures v Mankarious*. The New Practitioners' Programme featured 'Managing Your Practice' with some star clerks, and a seminar on Costs Budgeting.

The autumn featured a brilliant seminar on Fiduciary Duties in a Commercial Context in October. The year ended with seminars on rent as an administration expense and quantification of damages for professional negligence. Looking ahead, Lewison L.J. is set to deliver the Annual Lecture in early May.

Richard Millett QC

International Affairs / Overseas Trips

International Affairs 2014

Our long-distance excursion this year was a return visit to Cayman. 21 members of the Association went out to Cayman and 12 spoke at the Conference.

The keynote address was given by the Chief Justice, who spoke about the incredible transformation which has taken place on the Island since it achieved independence, taking it from a small Caribbean backwater to a major financial centre. This has required rapid and massive changes in the legal system and the growth of a legal infrastructure to provide the services required by clients.

That, of course, is where we come in. Although there is a burgeoning legal profession in Cayman, there is still room for UK practitioners and we used the occasion to highlight the range of services and talent which we can offer.

One of the incidental benefits of having a Conference in Cayman is that the reception is likely to be in a stunning location. With her usual panache, our administrator Francesca arranged for ours to be held on a terrace overlooking the beach and we were delighted to welcome the Governor-General as well as the Chief Justice.

After our successful joint conference with the Singapore Academy of Law in 2013, we have been invited to repeat the event in 2015 (5th & 6th March 2015 to be precise). We are lucky enough to have 30 UK members who will be speaking at the conference or running one of its workshops, and we will be hosting a glittering reception in a rooftop bar on the Thursday evening.

David Halpern QC

Cayman

Cayman Conference 2014

The Association's 2014 Cayman Conference was held at a hotel on "Seven Mile Beach", an idyllic (and lengthy) stretch of coral sand on the west coast of Grand Cayman. This conjunction (rather than collision) of the recreational with the professional encapsulates Cayman and other Caribbean offshore jurisdictions. It is possible to swim before and after Court, and some people do, but this is also a serious place where serious work is done. The conference took place over the course of two (half) days during the Cayman working week and was nonetheless strikingly well attended by a highly engaged audience.

It consisted of talks by English members of the Association in four themed sessions: (1) good faith in company and trust law, (2) traps in commercial litigation (3) trusts



and (4) insolvency. It was evident that the Chancery Bar is held in high regard by local practitioners and the talks, which were deliberately targeted at a sophisticated audience, seemed to be well received.

So it was quite hard work, but not all work. A dip in the limpid, warm sea was more bath than swim and the food – often consumed in fabulous locations with genial Cayman lawyers – was quite delicious. Lest envy totally consume the reader, it should be noted that it rained quite heavily on the first afternoon of the conference...

Shantanu Majumdar

Cayman Trainee Placements

In May 2014 an agreement was signed between the Chancery Bar Association, the Cayman Islands Law Society and the Caymanian Bar Association setting up a scheme under which Cayman Islands legal trainees, with the support of their law firms, can apply to chancery chambers

for placements of up to three months in order to gain experience of working in our jurisdiction. At the time of writing, some 17 sets of chambers have joined the scheme and the first round of trainee applications is underway.

Malcolm Davis-White QC

The Chancery Bar Litigants in Person Scheme ("CLIPS")

The launch of the CLIPS scheme has been one of the defining features of the Association this year. The drastic cuts in legal aid funding and rising costs mean that increasing numbers of people are having to represent themselves in court, even in a finance, business and property court such as the Chancery Division.

Applications to the Bar Pro Bono Unit have increased by more than 72% year on year. There was therefore an obvious need for further assistance for litigants in person involved in urgent applications for interim relief in the High Court and Central London County Court.

The Association is enormously grateful to the 150 volunteers this year, many of whom volunteer regularly. We would encourage every member of the Association to volunteer at least one day a term.

The feedback from the Judges has been effusive and volunteers regularly report that it is an extremely rewarding experience, not least because it is good to appear in front of a tribunal inclined to be amenable and very grateful. By way of example, HHJ Walden Smith has asked us to pass on her thanks to the volunteers "for their invaluable assistance".

Amanda Hardy



The Chancellor cutting CLIPS' 1st birthday cake

Jersey

Jersey Conference



Our second Jersey conference was held at the Royal Yacht Hotel in St Helier. It was well attended by a wide cross-section of Jersey lawyers. Most of the leading firms were represented.

The Bailiff, Sir Michael Birt, gave a keynote address and the Deputy Bailiff, William Bailhache, chaired the first session of talks. The afternoon was



divided into two sets of three talks, the first dealing, very broadly, with trust matters and the second concentrating on more commercial topics.

In the first half Robert Pearce QC spoke on the extent of a trustee's liability in respect of transactions affecting a trust. Amanda Hardy gave an update on trust taxation and Henry Legge QC spoke about the practical litigation difficulties faced by trustees of trusts with underlying companies as a result of the reflective loss principle.

In the second half Ceri Bryant QC spoke on the future of Jersey's company law reforms and Catherine Gibaud QC spoke on hot topics for finance lawyers in light of the English case law developments resulting from the fallout from the banking crisis. My topic was: 'Mission creep: the rise and rise of fiduciary responsibility' in commercial transactions.

The talks were, I thought, very well pitched to suit the interests of our particular audience and provided an excellent showcase of what the Chancery Bar has to offer. The audience was interested and attentive and the feedback afterwards was positive.

I would recommend anyone who is thinking about concentrating their efforts offshore to join in the next ChBA Channel Islands seminar which will be in Guernsey in 2015.

Sarah Bayliss

In conversation with... Lord Neuberger

Tucked away in the judicial corridors of the Supreme Court is the office of the President of the Court, light, airy and replete with plush armchairs and a view out across Westminster. Although he doesn't think it is the best of the offices allocated to the Justices, Lord Neuberger acknowledges that, as the President, his room 'runs with the job'.

This metaphor is a reminder of Lord Neuberger's career at the Bar as a landlord and tenant and property law practitioner. The start of his career was not easy. When asked whether he had a mentor at the Bar and who it was, Lord Neuberger nominated Derek Wood QC – not least as the person who finally took him on for pupillage after he had been turned away by three other chambers. He says he modelled himself on his then pupil master, who taught him the importance of stating your conclusions at the start of an opinion and being clear in court.

For Lord Neuberger, equally important as having a good mentor at the Bar was the camaraderie he experienced in chambers as a junior practitioner. 'There was a cadre of us in chambers who had enormous mutual respect,' he says. The likes of the now-elevated Morgan J. and Lewison L.J. were rivals who wanted the best work and biggest cases, and frequently fought battles in court against each other, but also frequently picked each other's brains in chambers.

Equally important to his career appears to have been his application. He freely describes himself as having been a 'workaholic' at the Bar and perhaps inevitably



Lord Neuberger

still works at weekends now, accepts 'too many speech requests' and finds his social time filled up with black tie dinners. Asked about his life away from the law, he told us that he tries to relax by reading history, science and thrillers. He is a fan of escapist television in the form of series such as *Breaking Bad*.

We asked Lord Neuberger which were his most memorable case at the Bar – and he came up with two from early in his career. *Swordheath Properties Ltd v Floydd* (1978) was his first outing in the Court of Appeal – an expedited appeal against the refusal of a county court judge to make a 'forthwith' possession order against squatters (the Judge instead made an order for possession suspended for 14 days). The report records that there was material before the court

which suggested that 'a wrong order might have been made deliberately' – but as Lord Neuberger recalls, this was later swiftly clarified between the Court of Appeal judges and the Judge in the court below to have been a 'misunderstanding' of the situation. Nevertheless, he remembers that after raising this on his first appellate outing, county court judges regarded him with a lot more respect.

His second memorable case was also a Court of Appeal decision from the 1970s, *Lloyd v Sadler* (1978). He recalls Megaw L.J. 'hitting him around the head' in submissions, which prompted his decision to go back to court armed with a written list of propositions he wanted to argue – a prototype skeleton argument, at a time when the skeleton argument had not yet been introduced – although it did him no good in that case.

As someone who has moved from a specialist Chancery practice to becoming a Judge in a court where much of the diet of caselaw focuses on human rights issues, we asked Lord Neuberger how far he sees the scope of human rights law expanding into the areas in which members of the Association practise. His view is that human rights issues in the courts are now rather settling down and that the common law has sometimes been 'ignored' and 'left to lie there' as everyone has been so excited about pursuing human rights points. He highlights the decision of the Supreme Court in *Kennedy v Charity Commission* (2014) as a recent examples of a case where the Supreme Court showed that the common law is "alive and well".

One theme of Lord Neuberger's speeches has been the need to encourage better diversity in the legal

profession and the judiciary. He cites a major problem as being the culture of 24/7 availability in the legal industry, which makes things difficult for practitioners with families to go back to. He acknowledges, however, that if solicitors are expected to be available to their clients all the time, it is hard for the Bar not to follow suit. Pressed on what can be done, he emphasises the need to support those who want to work flexibly, and seizes on the ability of larger chambers to absorb such practitioners. He also points to the development in the U.S. of large corporate clients only instructing law firms with a certain level of diversity.

Lord Neuberger is a strong supporter of the Association's CLIPS scheme. He points out three main benefits to CLIPS: the chance for young barristers to get experience, to make sure that more people who need help get it, and to help judges get through cases better. As a former member of the Chancery Bar, we asked Lord Neuberger about the challenges it faces in the years ahead. He believes that it should focus on maintaining its reputation. He also warns about the increasing cost of litigation and the need for the Chancery Bar to avoid pricing itself out of the market.

For someone who has reached such high office, we came away with an enduring sense of Lord Neuberger's genuine humility and approachability. Perhaps that is a reflection of him not forgetting the challenges he faced at the start of his career; more likely it is emblematic of his character. Either way, it is an honour for the Chancery Bar to have one of its former members occupying such a distinguished post.

Amanda Tipples QC and William East

Academic Liaison

It has been a productive year for the Academic Liaison Sub-Committee. On 22 November we held our flagship event, the Annual Chancery Pupillage Fair. The event proved so popular that student applications were closed, despite the venue allowing for a greater capacity than last year. Over 20 chambers were represented at

the Fair, with speakers from a wide spectrum of Chancery work. The fact that several speakers at the Fair were themselves recently student attendees at the fair attests to the success and value of the event.

The ALSC also recently hosted the annual Academics' Dinner, following the excellent ChBA seminar "Fiduciary Duties – protectors, trustees, company directors" on 8 October 2014.

Other work completed by the ALSC includes: redesigning the Chancery Pupillage checklist to ensure that it is up to date, a continuing programme of university visits, panel discussions and attendance at university law fairs and arranging for academic members to speak at seminars and conferences this year.

Lyndsey de Mestre

Equality and diversity

The Association's enthusiastic and dedicated Equality and Diversity Sub-committee has worked on a number of events and projects over the last year, including the following:

- The Summer Conference
- In July the Association, together with the other Rolls Building SBAs, hosted an informal mentoring event for LGBT members, which members of the judiciary also attended.
- Hosting 3 students from Pimlico Academy as part of the PRIME social mobility scheme. We continue

to encourage members to support other such schemes, such as the SMF Bar Placement Week and Inner Temple's Pegasus Access Scheme.

- A Treasury Panel applications seminar.
- A silk applications seminar.
- An event jointly with COMBAR for BME pupils undertaking the BPTC/GDL (Lord Neuberger was the keynote speaker).

We continue to offer support for members through the Association's mentoring scheme. This scheme is open to all, and further information is available on the website should you wish to learn more.

Rebecca Stubbs QC

The Association responded to the following consultations on behalf of its members in the course of 2014

Consultation	Consultor	Contributors
Service of Trust Claims out of the jurisdiction	Civil Procedure Rule Committee	Christopher Tidmarsh QC, Richard Wilson
Court fees	MOJ	Andrew Twigger QC, Timothy Fancourt QC, Jennifer Seaman
Transfer of claims to specialist tribunals	Civil Procedure Rules Committee	Andrew Twigger QC
Wider powers	Land Registry	Nicholas Caddick QC, Rodney Stewart Smith
Employee benefit trusts and the rule against perpetuities	Department for Business, Innovation & Skills	Penelope Reed QC, Leon Sartin, Amanda Hardy
Reform of the law of wills	Law Commission	Alexander Learmonth, Kevin Shannon
Returning instructions	BSB	Timothy Fancourt QC, John Machell QC
Mitchell-type conjoined appeals	Bar Council	Anna Markham, Patrick Harty
Related settlements	HMRC	Christopher Tidmarsh QC, Richard Wallington, Emily Campbell, Alana Graham, Oliver Marre
Entity Regulation costs	BSB	Ruth Hughes, Alexander Learmonth, Joseph Goldsmith
Guardianship of missing persons	MOJ	Katherine McQuail, Alexander Learmonth, Sandy Joseph, Guy Adams, Paul Greenwood

Goodbye to Tim



When Tim Fancourt QC took over as Chairman I remember asking him what his plans were and he said he wanted to consolidate the changes which had been put in place by the previous two chairmen.

Well, he certainly did that but an enormous amount else besides. His chairmanship coincided with a new Chancellor taking office and with that came Briggs L.J.'s Chancery Modernisation Review which he and the Association were very much involved with.

He not only presided over the birth of the CLIPS scheme, he was its first volunteer and took his duties seriously enough to launch a personal hunt for the missing key to room 18 one Friday. CLIPS is an extraordinary legacy to leave behind.

Away from the Rolls Buildings he led us on an enormously successful trip to Singapore and continuing the Island theme to Guernsey and Jersey.

Of course much of the work of the chairman goes on behind the scenes: representing the ChBA on the Bar Council, liaising with QC Appointments and the JAC, all of which he did so successfully. He has done a great deal of work in relation to contractual terms and continues to do so.

One of his achievements (unprecedented as far as I am aware in ChBA history) was becoming the hero of the Criminal Bar when he put into practice the idea of One Bar rather than paying lip service to it.

Throughout all of this hard work and frequent diplomacy he remained good humoured and a joy for the officers and committee to work with. He hosted numerous events for the members including the new Summer Conference and he oversaw the launch of the Junior Chancery Bar.

He is a very hard act to follow. I am not going to say we will miss him because we have simply refused to let him go: he remains heavily involved in many aspects of the ChBA's work and long may it remain so.

Penelope Reed QC

We would like to thank the contributors, photographers and editor for all the time and effort devoted to the ChBA Review 2014

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