

# ChBA Review 2017

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## Chairman's letter

There have been a number of firsts for the Association in 2017. We were the first Specialist Bar Association to visit Hong Kong, ran our first Women at the Chancery Bar event, started a social responsibility initiative for the first time, and our contribution to Wellbeing at the Bar was recognised in the first awards presented by the Bar Council. These achievements are, of course, in addition to everything else we usually do and I am immensely proud that we continue to extend what, as an Association, we are able to offer to our members.

The fact that we are such a successful SBA is, of course, down to the commitment of a large number of our dedicated members who give up their time and I am very grateful to all those who have contributed in the last year. That we are able to do so much is down to our excellent Administrator, Francesca Compton, who ensures that we achieve all that we set out to do.

At the Annual Conference in January the Chancellor told us about his vision for the Business & Property Courts, and the reasons for the change of name. The B&PCs were formally launched in July and came into effect at the start of October. The Chancery Division continues to exist and, of the 10 lists, 7 relate to Chancery business. There is a new Practice Direction and, at the time of going to press, it does not appear that any practical difficulties have emerged from this change.

We have continued to run a full education programme. This included a varied and successful seminar programme, together with the Summer Conference. Briggs LJ (as he then was) gave the Annual

Lecture on *Akers v Samba* and, in September, we hosted an event with the Law Commission to consider their proposals on reforming the law of wills.

Pro bono work remains at the heart of our activities. CLIPS is the gold standard of duty schemes, and we are grateful to those who take part. However, we are always in need of more volunteers. If you have not volunteered before, or have not done so for a while, then please do make time in your diary. The judges really do appreciate it and our new on-line rota, launched in 2017, makes it easy to sign up.

Our long-haul trip to Hong Kong in May was a highlight of the year. In May 2018 we will be putting on a conference in Shanghai, with the support of the Shanghai Bar Association, and the Law Society of Shanghai. We will be the first SBA from the UK to stage such an event.

We have continued to work with the Bar Council and other SBAs in relation to the implications of Brexit on the work that our members do, and the opportunities Brexit may offer. We have responded to several consultations during the course of the year and, at the time of writing, are preparing a response to the BSB's consultations on the Future Bar Training and Transparency Standards. These are of great importance to the Bar. In addition, we will be responding to the recent proposals from the Disclosure Working Group to reform CPR Part 31.

We have gathered feedback on the 2017 Recorder Competition and the recent competitions to appoint Deputy and High Court Judges, and continue to engage with the JAC in relation to their selection processes. We were not aware that any of our members felt disadvantaged in relation to the content of the tests used in the 2017 Recorder Competition, which was welcome news. However, other issues have arisen in relation to these competitions which are of concern, and we will continue to press for changes. We are aware that participation in any competition for judicial appointment is a challenging and time-consuming process and a large pool of talent is too easily alienated and lost. There remains a lot to be done. With all good wishes for 2018!

Amanda Tipples QC



## Equality & Diversity

The E & D Sub-Committee has had a busy year, through a combination of workshops and other diversity initiatives.

In January 2017, we recommended to the Main Committee that all chambers should be encouraged to offer a mini pupillage “stipend” of up to £250, to assist with travel and accommodation expenses of mini-pupils from out of London. This was adopted and a notice containing this recommendation was published in the newsletter.

The following month, we held a well-attended workshop on “Capturing Diversity Data”, with the assistance of Julian Picton QC and Sam Mercer.

We held (jointly with ComBar and TechBar), on 18 May 2017, a Women’s Networking Drinks event at Quadrant Chambers. This was well-received,

with a number of female members of the judiciary attending.

On 20 June 2017, we held a workshop on “Reasonable Adjustments for Disability”. This event was fully booked and included presentations from Katherine Apps (Littleton Chambers) and Kelly Cronin (Zenith Chambers).

Two of our members joined the Bar Council team on the annual “Pride” March in London.

On 7 November 2017, we held a flagship event “Women at the Chancery Bar”, aimed at encouraging female undergraduates to consider a career

at the Chancery Bar. This included a number of presentations from our junior members. From the reactions of those attending, the event was extremely successful. We aim to do it again in 2018, including a regional session in Manchester.

**Marcia Shekerdemian QC**



## Pro Bono

2016 for CLIPS ended on a high note with a visit in December by Andrew Langdon QC, shortly prior to becoming Chairman of the Bar in 2017. Volunteers for the day were Amanda Hardy QC and me (immediate past and present chairs of the Pro-Bono Sub-Committee). His follow up e-mail described the day as “a great education for me” and “Rolls Royce service to those in need who have such low expectations of any help, let alone help for free from committed experts” (a reference to Amanda I’m sure).

As CLIPS celebrates its 4th birthday in January 2018, it has now helped 406 LIPs. Of course, that goes nowhere near recognising the number of volunteers who regularly turn up to assist Court 10 and at the CLCC without whom there would be no scheme. But it is salutary that there have been periods this year when we have had no, or only one volunteer and the Sub-Committee has had discussions about “volunteer fatigue” and how to counteract it. Current initiatives include amending the pupillage checklist so that pupil supervisors in London regard a stint at CLIPS

as essential viewing for chancery pupils. Members of the sub-committee are also working on reviving PILARS in the bankruptcy courts and on possible uses of volunteers for mediations.

Of immense help is the new volunteer rota which went live, initially for the Rolls Building and then the CLCC. Thanks again to Francesca and the sub-committee for hard work done in identifying the appropriate providers and to COMBAR and TECBAR for making contributions to its cost.

As the year drew to an end, thanks go to Laurie Scher and Alec McCluskey for organising the seminar on chambers’ social responsibility on 2 November 2017. Laurie and Alec spoke about various initiatives which they have helped to implement at Maitland and Matthew Smith about the opportunities for barristers to give their time as trustees. Natalie Hearn of Matrix and Lakraj Minhas contributed on how CSR affected barristers, solicitors and their professional clients.

**Lesley Anderson QC**

*“Rolls Royce service  
to those in need who have  
such low expectations of any  
help, let alone help for free  
from committed experts”*

## Junior Chancery Bar

The JCB has continued to represent the interests of the more junior members of the Association, to support their professional development and to provide a social and networking forum.

Recently, we held a joint seminar with the Junior Property Litigation Association on legal and practical issues arising from tenant insolvency and its effect on the landlord and tenant relationship. Speakers included JCB members and an insolvency practitioner from accountancy firm BDO, and there was healthy debate from the floor. We again sponsored attendance at the Young Barristers’ Committee advocacy workshop,

which was very popular. The High Court marshalling scheme has been revitalised and is providing professional development opportunities to our members to support them in volunteering for CLIPS. We were delighted to support the Women at the Chancery Bar event, and we have continued to run a weekly Pilates class (which is open to all members of the Association). We have also provided input on policy issues, including secondments, wellbeing, fixed costs and other issues we have identified that are of importance to JCB members and the Association generally.

The JCB’s database of professional opportunities has been refreshed,

and we are working on a toolkit for junior barristers to navigate the professional and regulatory aspects of the early years of practice. Among other exciting ideas currently in progress, we are developing a seminar on practice development, which will take a wide view of how to think about success and how to work towards it.

Members with ideas for the JCB agenda should feel free to contact the JCB on [jcb@chba.org.uk](mailto:jcb@chba.org.uk).

**Eleanor Holland**

## Wellbeing

Promoting members’ wellbeing has become an increasingly important part of the Association’s work, building on the work done by the Bar Council with its online Wellbeing Portal. Following a one-hour session, put for the first time on the main stage at the Annual Conference, the Association has published a Wellbeing Best Practice Policy together with the Institute of Barristers Clerks.

The policy sets down various strategies which chambers should adopt in order to promote the wellbeing of barristers and staff, and concentrates in particular on the importance of the

barrister-clerk relationship in allowing barristers to manage their practices effectively and minimise difficulties which may arise. The policy was launched at a seminar on 4 October 2017 entitled ‘Manage your working relationship with your clerk’ with an informative panel discussion.

Following this and other work over the past few years, in November 2017 the Association was awarded a Certificate of Recognition by the Bar Council for its record in dealing with wellbeing issues.

**Will East**







## Overseas trips

During the course of this year, the International Subcommittee has organised two very successful overseas trips: the Association's first trip to Hong Kong in May, and a return to Gibraltar in October.

Hong Kong was fantastic. Francesca got us an incredible deal at one of the world's classiest hotels, the Mandarin Oriental. While our Chairman was exercising for us all in the roof top swimming pool, the rest of us were feasting on dim sum for breakfast and admiring the view from the M Bar. Talking of which I was somewhat concerned that the Hotel provided me with binoculars – I very firmly trained them on the Harbour! I should probably tell you about the conference...

We were delighted to get this conference established and to have been so warmly received. We are the first SBA to have staged a conference in Hong Kong which we managed to do

with the full support of Chief Justice Ma (who was unfortunately in London when we were there!) together with the Hong Kong Bar Association and Law Society. We were also fortunate to have our man on the ground, Tim Harry, who was invaluable.

Mr Justice Tang, a Permanent Judge on the Court of Final Appeal, opened proceedings by telling us how his Court was standing up to the Supreme Court. From Hong Kong, we also had their most renowned barrister, Mr Benjamin Yu SC, closing the conference. In between we had excellent panels of speakers on Company Law, Fiduciary Duties, Property and Equitable Compensation from our members. We also had enlightening talks on illegality (Matthew Collings QC) and incapacity (David Rees QC). Our Friday night reception was at the trendy and memorable Armani Privé roof top bar. Some 35 members attended and we cannot wait to return in hopefully 2 years' time. So enamoured were we with the Far East, that we are going to Shanghai on 11 May 2018. Please do

try to come.

As for Gibraltar, unfortunately I could not go but our Chairman did and she has reported as follows: "This was our second visit and, as before, we received a very warm welcome. We were delighted that the Chief Justice was able to open the conference and topics covered ranged from Bitcoin, to privacy and capacity. These were all very well received and, at the end of the afternoon, we hosted an excellent outdoor reception for many local lawyers. Given the links we have established in Gibraltar to date, we are certainly very welcome to return in the future."

We have continued with the Cayman Trainee Placement Scheme, bringing the total number of trainees coming over to spend time in chambers (or booked in to do so) to 9. And we have remained part of the Bar Council's International Grants Scheme for junior members seeking support for attending overseas conferences.

**Michael Green QC**

## Highlights of The Private World of Chancery Winter conference 2017

An excellent programme at the Royal College of Physicians in Regent's Park, London, which gave us (among other things):

- Joshua Rozenberg interviewing the new Chancellor – at which many of us heard the phrase "Business & Property Courts" for the first time

- Many different conversations about the nature of privacy and what that means to the Chancery Bar
- Private Investigators Alaco showing us how much they know (or can find out) about us and our clients.

**Francesca Compton**



## Summer Conference 2017

In the post-CPD world, it was encouraging and gratifying to chair the 4th annual Summer Conference on 26 June for which over 80 members subscribed.

The theme of this year's conference was unashamedly more commercial in orientation. The opening session saw Richard Millet QC and Philip Shepherd QC consider the interface between arbitration and the Courts, particularly with regard to injunctions and the enforcement of arbitrators' orders.

This was followed by two well-received workshops – the first, presented by Andrew Thompson QC and Julia Beer, considered issues of internal conflict within companies and LLPs, as well as unfair prejudice petitions. The second workshop, presented by Tracey Angus QC and Will East, focused on disclosure and the scope of legal professional and mediation privilege.

Equally well received was the tea break and the Royal College of Surgeons' scones. After an all-too-brief break, Prof Virgo QC (Hons) delivered a stimulating and thought-provoking evaluation of the basis of gains based remedies in contract, tort and equity and the conceptual basis upon which such remedies might be awarded.

The final speaking slot fell to Gloster LJ providing "A view from the Bench". Given her experience and involvement in key commercial decisions, her views on bad advocacy habits and her insight into what was "coming up" by way of judicial decision provided welcome signposts not only as to that which irritates at least one judge in the Court of Appeal but what we might expect in the relatively near future

in terms of areas of law likely to be the subject of Court of Appeal judgments.

The Conference finished with the traditional champagne reception. This is the last year, at least for a while, that we will be able to use the Royal College which is due to undergo substantial refurbishment. Accordingly, Conference-goers must "watch this space" for the developments under the able management of Will East, next year's Conference Chair. I would like to thank him and all of those who gave of their time and talents to make this Conference the undoubted success that it was.

**Ian Clarke QC**



## Salvete & Valet

We congratulate... **Briggs SCJ** on his appointment to the Supreme Court; **Henderson LJ** and **Newey LJ** on their appointments to the Court of Appeal; and **Zacaroli J** and **Fancourt J** (former chair of the ChBA) on their appointments to the High Court.

Farewell to... **Peter Smith J** and **Proudman J**, who retire from the High Court; **Chief Registrar Baister** and **Registrar Derrett**.





## Audibility; clarity; simplicity: an interview with Lady Hale

Lady Hale was recently sworn in as President of the Supreme Court. She is only the third person to hold such position following the creation of the Supreme Court in 2009, and she is the first woman to do so (her predecessors being Lord Phillips and Lord Neuberger). This is not the only first that Lady Hale has achieved in a long and distinguished career that has broken new ground on numerous occasions. Brenda Hale, the academic, was a remarkable appointment to the Judiciary in the days when the vast majority of such roles went to practising barristers. Mrs Justice Hale was an eye-catching appointment to the Court of Appeal, as only the second female Lord Justice of Appeal (after Elizabeth Butler-Sloss) in the long history of that Court. Lady Justice Hale was a pioneering arrival as a Lord of Appeal in Ordinary and remains the only woman ever to have been appointed to the Appellate Committee of the House of Lords. Now, since 5 September 2017, she presides over the Supreme Court.

On a crisp November afternoon, and armed with an outrageously long list of questions, we made our way across Parliament Square to the Supreme Court to speak to Lady Hale.

We start by asking about the various roles she has had. "My jobs have all been challenging and all rewarding. The Law Commission was one of the most rewarding times in my life," she says. "It is really easy to work out what is wrong with all sorts of areas of the law; what is difficult is to find a practical, workable and legislatable solution."

Of her work as a Commissioner, she singles out The Children Act 1989 as the "the main project, though not the only one, that I am proud of." It is

an area of law in which she has an abiding interest. She knows all about Ian McEwan's 2014 novel, *The Children Act*. "I read it almost as soon as it was published. It landed in my in-tray without explanation. It is going to be a film now, starring Emma Thompson. Quite a lot was actually filmed in Gray's Inn. It is a very neat idea marrying together the professional life of a Family Division judge with the private life of the judge."

As well as her time at the Law Commission, academia helped Lady Hale prepare for some of the challenges of life as a trial judge. "18 years' close contact with very bright 18 to 21 year-olds teaches you an awful lot about people, and about detecting untruths or economy with the truth, and being prepared to challenge people. "Other aspects of academic life help on the Bench, too. "Examining teaches you a type of decisiveness, and academic writing teaches you how to construct a judgment," she explains.

Asked to name people who have had a particular influence on her career, she picks three. "I had the great good fortune at Cambridge to be taught by Tony Weir at Trinity College. Another big influence is my current husband, Julian Farrand, a property and tax lawyer. He was Dean of Law at Manchester at some pivotal moments in my career. When my shoulder was tapped, I went along and asked his advice and he said 'go for it', while others said 'oh no, you are an academic; you are not a practitioner'." Of the judges she has encountered, she singles out Lord Bingham, someone with whom she had the "great privilege" to sit. "He was a man of enormous intellectual power, legal acumen and moral stature. Even today I ask myself of both substantive questions and other sorts of dilemmas: what would Tom have done?"

Lady Hale is happy to offer advice to young practitioners today. "I tend to say that it is better not to have a game plan, but not to rule anything out. To Bar students, I say spend time in solicitors' offices. I think in this day and age there is not the same unjustified sense of superiority at the Bar but, certainly when I started out, it was there. And to people who really have academic talent, think about teaching because teaching is a wonderful job. You will not earn as much money as you might in practice, but there is a lot of satisfaction in it."

She claims her own career was assisted by "good luck and a degree of entrepreneurship." "Everything I did as an academic led one way or another to a public appointment, but that was not by design on my part: it just happened." As a woman in what still remains largely a man's judicial world, she also comments that she owes some success

to "possibly not frightening the horses too much, and not on purpose, incidentally. "Despite her own rise, Lady Hale comments that she is only too aware that women and ethnic minorities are still hugely underrepresented, a topic on which she has spoken and written on many occasions.

Lady Hale has advice too for more experienced barristers. "Work very hard. Be the best you can at what you are currently doing." As for tips for successful advocacy, she adds: "Number 1: audibility. I am staggered by the number of barristers who cannot make themselves heard clearly. I know the older you get the more difficulty you have in hearing but my hearing is pretty good and I am not alone in finding that even in the Supreme Court there are people who feel they do not have to speak up or project. Number 2: clarity, and simplicity. Over-complication is rarely a good idea especially when dealing with a point of law. If you think of the people who are very effective, they tend to be the simplifiers or the clarifiers."

*"Over-complication is rarely a good thing especially when dealing with a point of law. If you think of the people who are very effective, they tend to be the simplifiers or the clarifiers."*

Asked what she considers to be her most memorable case, Lady Hale comments that it is often the most recent case that springs to mind. On this occasion it is *Ivey v Genting Casinos* [2017] UKSC 67 that is the Supreme Court's most recent judgment, with the UK's highest court abolishing the longstanding *Ghosh* test for dishonesty. Lady Hale keeps her powder dry as to other areas where law students should be on the lookout for forthcoming refinements to common law principles.

On the development of the relationship between the Judiciary and the Executive during the course of her professional life Lady Hale notes three key matters: the development of judicial review; the impact of EU law (Lady Hale's very first published work in 1972 recognised the significance of section 2 of the European Communities Act long before the *Factortame* litigation); and the enactment of the Human Rights Act, requiring the Judiciary to consider the lawfulness or otherwise of conduct "by reference to standards which are a bit different from the usual standards".

We turn to the state of the Supreme Court, now most of the way through its first decade. Lady Hale remarks that "Lord Neuberger has left the Court in a very happy place", noting that the Justices may not always agree on points of law, but they get on personally. "We all have lunch together most Mondays to Thursdays." This collegiality helps the quality of the judgments because they are "the product of debate". It also makes the decisions of the individual members less predictable. "I think it would be very bad if counsel came into a court and they looked at

Continued overleaf



Interview continued

the panel and they said, 'oh he will decide this way, she will decide that way'."

Lady Hale nevertheless has plans for the development of the Court, including ensuring regional sittings continue and reducing the amount of paper used at hearings. "If you are construing an Act of Parliament, you tend to need it in front of you and if you are reading a case you sometimes need the whole thing so that you can read the parts of it

that counsel are not reading; but I would certainly like to have just one or two or even three core volumes. It would save an awful lot of paper and an awful lot of money." She expects the Supreme Court will introduce e-filing at the same time as the rest of the courts in England and Wales.

We end our list of questions by asking Lady Hale how she would spend her time if she unexpectedly found herself with a month off work. With so much to do in her new role,

Lady Hale expresses "horror", possibly with a wry smile, at such an idea; but she spends a week at the Edinburgh Festival every August. "A group of us who are mostly Cambridge contemporaries hire student flats and there is a certain amount of reliving our lost youth." Otherwise, travel is reserved for professional visits. "You learn so much more from a place if you go for a professional reason. Tourism is lovely, but that will be for after I have retired."

We leave the Supreme Court with a spring in our step following a fascinating discussion. We are very grateful to Lady Hale for being so generous with her time, and for providing us with such sage advocacy advice. Audibility, clarity and simplicity are the qualities for us all to keep in mind when preparing for that next court hearing.

**Jonathan Davey QC and  
Oliver Marre**

## ChBA Consultation responses 2017

Title	Consultor
Equal Merit Provision Questionnaire	JAC
Implementing the 4th Money Laundering Directive	DBIS
Pension Funds and Social Investment	Law Commission
Future Bar Training 1	BSB
Inheritance (Cohabitants) Bill	FLBA/Resolution
Future Bar Training 2	BSB
Flexible Hours	HMCTS
Disclosure Reforms	CPR
Harlequin v Wilkins Kennedy – DBAs	Bar Council
Fixed Recoverable Costs	Jackson LJ
Integrity and Soundings	QCA
Standard of Proof in Disciplinary Proceedings	Bar Standards Board
Expert Evidence – Draft Guidelines	ICCA
Strategic Planning	Bar Council
Goods Mortgages Bill	Law Commission
Law of Wills Review	Law Commission
Public Access	BSB
Enforcement of Suspended Possession Orders	CPR Cttee
Money Laundering	Bar Council
Lands Chamber Rules	Tribunal Procedure Committee
Probate Work for Accountants	ACCA
Transparency Standards	BSB
Future Bar Training 3	BSB
Lands Chamber Rules – Costs	Tribunal Procedure Cttee

We are grateful to all those who contributed to these response. **Andrew Twigger QC**

We would like to thank the contributors, photographers and editor for all the time and effort devoted to the ChBA Review 2017

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