



ChBA REVIEW 2015

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Chair's introduction



The year started off with our Annual Conference chaired so excellently by Robert Ham QC. Hot on the heels of that success was our participation in the Government's rather premature celebration of the sealing of Magna Carta, where, together with

COMBAR and TECBAR, we organised extremely well received sessions in the Rolls Building, showcasing the excellence of the English justice system and particularly the bar to an array of offshore lawyers.

The Global Law Summit was not our only chance to shine on the world stage. In March we returned to Singapore for a joint conference with the Singapore Academy of Law which forged closer links between the two jurisdictions and was an enormous success. In November the Association received a warm welcome in Gibraltar.

There was an irony in the Government's celebration of an event in our history, which is widely regarded as heralding access to justice, when continued public funding cuts have had such a deleterious effect on other parts of the bar and has caused an alarming rise in the

number of litigants in person in the courts. The CLIPS scheme in which so many of our members take part has become the gold standard of duty schemes (to use the words of the Chief Executive of the RCJ Advice Bureau, Alison Lamb). That is entirely down to the commitment of our members to pro bono work and to this scheme.

There is a real sense that the Association is in the forefront in terms of projects and campaigns, not only in relation to the CLIPS scheme but also in the report prepared by Amanda Tipples QC in respect of the recent recorder competition which left so many of our members feeling angry and disappointed. The ability of our members to compete for judicial appointments on a level playing field is something we will continue to fight for.

I am always struck by how many of our members are involved in the work of the Association. It is not just those who serve on the main committee and the sub-committees who give up their time but all those who help in responding to the tsunami of consultations, speak at our seminars and conferences, represent us on the Bar Council and other bodies and offer their services pro bono. Of course, none of this would happen if it were not for Francesca Compton organising us all in the background.

Penelope Reed QC

Summer Conference

Over 100 members gathered at the British Library in sticky June for the second Annual Summer Conference and enjoyed an unashamedly high-brow programme. The event opened with a splendid question and answer session, expertly chaired by Christopher Tidmarsh QC, on jurisdictional and other issues in offshore trusts, featuring leading trusts specialists David Brownbill QC and Mark Herbert QC.

After workshops in the Chaucer, Bronte and Eliot rooms and sustained by the summer staple of a cream tea, we were delighted to welcome our academic members

Professor Bill Swadling of Brasenose, Oxford and Dr Stephen Watterson of Trinity Hall, Cambridge for the intellectual equivalent of the Boat Race – a debate on the topic of “Is a Knowing Recipient a Real Trustee?”. We ended with a talk from the Chancellor on the future of the courts and judicial reform and, the cream teas having worn off through sheer intellectual exertion, we retired to the terrace for a drinks reception.

Thanks are due to fellow organisers Richard Millett QC and Anna Markham for their tireless efforts.
Lesley Anderson QC

Academic Liaison and Seminars

There is a lot going on in academia. This year has seen the Academic Liaison and the Seminar Sub-Committees jointly initiate a programme of bi-annual requests to academic members, asking about their current work and other activities of interest. A great response resulted.



Academic Liaison has reviewed the Careers Handbook and the Chancery Pupillage Checklist (which now includes attending CLIPS with a pupil supervisor). The annual dinner brought academics and practising members together in a lively atmosphere. This year the hot topic of conversation was the Bar Standards Board’s consultation on entry and training requirements, which suggests significant changes to the academic qualifications for barristers.

The Seminar Committee put together a rich and varied programme of talks for the year. Some highlights included seminars on the quantification of damages in claims for professional negligence; defending trusts and issues of privacy; corporate governance

and transparency; and capacity. In May Lewison LJ gave the annual lecture on “Metaphors and Legal Reasoning”: he reminded us that metaphors sometimes need unpacking, and then uncovered with learned elegance some of the ideas hidden behind corporate veils or buried in the roots of contracts.

Academic Liaison has organised the successful

Chancery Pupillage Fair for several years. Plans to repeat the event in November 2015 at Inner Temple were well advanced when it was announced that the Bar Council would be hosting a bar-wide pupillage fair on the same day. Despite disappointment about the lack of consultation, the benefits of creating a larger and more all-encompassing event were clear. We negotiated for those Chancery sets, which signed up for the ChBA Fair to be permitted to transfer across to the Bar Council Fair without additional cost. Chancery work received a prominent platform at the event, attended by around 450 students.

Richard Millett QC and Lyndsey de Mestre

Annual Conference 2015



No one organising the Annual Conference could fail to be impressed by the willingness of busy practitioners and judges to find the time to prepare and participate. This year three deserve special mention: Nugee J who found time to prepare and deliver a paper on contractual interpretation despite the very recent loss of his father, Ted Nugee QC, whose presence towards the front of the auditorium was sadly missed; and Arden LJ and Lance Ashworth QC, who both stepped in at the last minute when others had to withdraw because of family illness.

The title of the conference was “Outside the Inns”, and the idea was to broaden its scope. The Master of the Rolls spoke first on the Jackson reforms. This managed to be entertaining and even amusing in spite of the subject matter; the MR himself said the topic did not set the pulse racing. His elegant reconciliation of the decisions in *Mitchell* and *Denton* ranks with Lord Hoffmann’s explanation of *Twinsectra* in *Barlow Clowes*.

There was then a filmed vox pop and debate on the impact of EU law on English law. As well as Martin Howe QC, and Francis Barlow QC, the debaters were Dominic Grieve QC MP, husband to one of our members as well as being a distinguished Parliamentarian, and Evanna Fruithoff, the consultant director of the Brussels office of the Bar Council. Dominic is a well known, and widely respected figure, and I was particularly grateful to him for finding time to join us, but I hope that Evanna’s participation will have brought home to our members the sterling work (pun intended) that she

does representing the English bar in Europe.

A broader perspective was also offered by Dr Birke Häcker of the Max Planck Institute in Munich and All Souls, who has a foot in both the common law and civil law traditions, speaking on interpretation, rectification and formalities in the context of wills. She must also be commended for her sangfroid in the alternating absences from the platform of the chair of the association and the writer. This was occasioned by the non-appearance of the next speaker, a professor of psychology - better not named - scheduled to speak about memory.

Contact eventually made, it transpired that he had forgotten. Asking him to speak was prompted by Leggatt J’s comments in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* that, while everyone knows memory is fallible, the legal system has not sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. Anyone interested may care to read *The Seven Sins of Memory: How the Mind Forgets and Remembers* by Daniel Schacter, or a 2014 article in *The New York Times* (available on its website) on “Why Our Memory Fails Us” by Christopher F. Chabris and Daniel J. Simons.

Happily, in place of the professor we were able to bring forward Mark Herbert QC’s filmed Post-Mortem II in which he skilfully interviewed practitioners about some of their cases.

The workshops remain at the heart of the conference and I would like to thank all the workshop leaders for their hard work in preparing and running the workshops. Finally, I must record my heartfelt thanks to Nick Caddick QC, and Andrew de Mestre for their support.

Robert Ham QC

Caymanian Placement Trainee

Only being nine months into my training at Walkers, it was a privilege to be able to come and work in London. My placement at Maitland Chambers ran for 12 weeks and I rotated between six different members of Chambers. Life in Lincoln’s Inn was very different from life at a law firm but after a few weeks I felt fully immersed in chambers life. Being exposed to the typical routine of Chancery barristers has given

me an understanding and appreciation of life at the Chancery bar. It was inspiring to be in the traditional environment of Lincoln’s Inn and I greatly enjoyed experiencing the culture in Chambers.

Having benefitted so much from the Placement Scheme, I would like to promote support for it and to encourage as many chambers as possible to get involved. I certainly believe that the scheme is an exceptionally beneficial cause for Caymanian articulated clerks and Chancery chambers alike.

Rebecca Peck

Equality and Diversity

We have organised a silk seminar, an LGBT social event and a student event to encourage applicants from a BAME background to consider a career at the Chancery bar. We are working with the Bar Council on its Wellbeing at the Bar and Women's Experience of the Profession projects, and with the BPTC better to understand the perceived barriers to entry to the Chancery bar for BAME students.

We are attempting to formulate a policy which would enable self employed barristers co-parenting a child with an employee to avail themselves of shared parental leave, working to improve parking rights within Lincoln's Inn for those with blue badges, and to ascertain how to collect pupillage equality monitoring data in a way which permits meaningful statistical analysis.

We are also revisiting the mentoring scheme to make it more accessible to junior members of the ChBA and, potentially, to pupils. As to the future, we are gearing up to host - in conjunction with the Sutton Trust - a workshop to demystify the interview process. We plan to film the workshop so that it can be accessible to a wider group than those able to attend it.

Rebecca Stubbs QC



Follow our new Twitter feed! You can find all the latest news from the association @ www.twitter.com/chancery_bar. Our Twitter handle is [@chancery_bar](https://twitter.com/chancery_bar)



It is always the sign of a healthy relationship when partners feel sufficiently secure to be able to say provocative things to one another. The Association had its second visit to Singapore in March 2015 and we felt that we were among old friends. Sundaresh Menon, the Chief Justice of Singapore, once again opened the Conference. In an impressive display of erudition and wit, he threw down the gauntlet by proposing that the streams of equity and the common law had finally merged into a single river and asked whether it was still meaningful to speak of the Chancery bar. Fortunately, our keynote speaker was none other than Briggs LJ. His response was a tour de force.



Sundaresh Menon

More than 30 of our members attended the Conference and most of them spoke. Once again, the Conference was organised in conjunction with the Singapore Academy of Law. Every plenary session and workshop involved a collaboration between English and Singaporean advocates. The workshops were particularly successful in building working relationships. One special highlight was the workshop on mediation, which featured our very own Francesca as the distraught client.

My term as chairman of the International Sub-committee came to an end this year and I would like to thank the members of the Sub-committee for their support, ideas and good humour.

David Halpern QC

Pro bono and CLIPS

Since January 2014, over 300 litigants in person have been assisted by CLIPS volunteers in the Rolls Building and now also in the Central London County Court. And there have been over 200 of those volunteers. The Chancery Judges have described the scheme as "transformative" and "the most important thing the Chancery Bar Association does". The best advert, however, is the testimony of the litigants themselves.

For example we received the following email earlier this year: "The rapidity of the whole action had threatened to overwhelm us, but the fact that the CLIPS scheme worked so effectively to help us in our hour of need and indeed supplied our opponent with sensible advice leading to the withdrawal of the action is a real tribute to its smooth operation. We could not have wished for more positive support from the CLIPS volunteer."

Many thanks go out to the members of the Pro Bono Sub-committee and of course to the volunteers. We would urge everyone to volunteer, whether for the first time, or as a regular!

Amanda Hardy QC



"Chancery work is the love of my life" – with these words spoken by the Gibraltar Minister of Justice, my first conference as Chair of the International Sub-committee began: a promising start to our trip this year. I had the benefit of taking over from David Halpern QC after he had organised everything. A big thank you to him for all that he has done for the Association in foreign climes.

The Gibraltar conference was held, and most of us stayed, on a boat that some thought was straight out of The Only Way is Essex but it proved to be more Made in Chelsea (I don't know what this means!) and provided a superb setting for our reception looking over the Straits of Gibraltar in the sunset. We had a secret mole within

Western Panorama

[Mark West has served on the main committee for ten years, as Treasurer since 2012 and as Seminar Secretary from 2009 to 2011. He reflects on a decade of the Association's activities.](#)

When the editor was drawing up plans for this Review, he asked me, with the benefit of ten years' perspective from the inside, if I might pen some words on what has changed over that time. So, what has changed? The Annual Conference, an experiment in January 2004, is now a hardy perennial and has been joined by a little sibling, the Summer Conference. The ChBA Annual Directory has, by contrast, gone the way of all flesh: with the march of technology, the vanguard of print in 1990 has been superseded by the website of 2012.

We have created a category of academic members, now numbering 25, who play an important role in the life of the Association and a category of international members, now almost 150, to reflect the Association's global profile. We have held the annual Careers Fair to help prospective practitioners understand what practice at the Chancery Bar entails. With an eye to the future, the Junior Chancery Bar has been launched to represent the interests of more junior members; whilst, remembering our historical continuity, Richard Wallington has completed the first volume of his History of the Association and is even now beavering

the Gibraltar judiciary: Adrian Jack, a former member of our Association, now a Supreme Court Justice, secured the attendance of the rest of the Judiciary, including the Chief Justice, who shared his thoughts on the current state of the legal profession and the stand that he is taking on Court fees. The Chairman of the Gibraltar Bar, Keith Azopardi QC, chaired the second part of the Conference and inspired a lively debate following the three talks: Tom Leech QC spoke on mistake; Nicholas Le Poidevin QC on trust firewalls; and Oliver Marre had the nerve to explain the status of Gibraltar under EU Law – as he said, akin to taking coals to Newcastle and particularly as Keith had written a book on the subject! We will have to build on this exciting new relationship with a return trip some time soon.

So what next? Following two trips to Cayman, we have decided to continue to forge strong relationships there and return in 2016, where many of our members have worked and where there remain clear opportunities. I hope that many of you will be able to join us.

Michael Green QC

away on volume two.

2014 saw the introduction of the CLIPS scheme, in the Interim Applications Court, and in the Central London County Court. Over 200 members of the Association now volunteer for CLIPS and it is certainly one of the most important and valuable things that the Association has ever done. We have pioneered a Mentoring Scheme and a Marshalling Scheme to allow junior members to meet the Chancery Judges and understand the nature and breadth of their work.

Above all we have been extraordinarily fortunate as an Association to have two remarkable Administrators. From 1997 to 2011 Mary Block helped to develop the Directory, the seminar programme, the Annual Conference, the website, the weekly newsletter, overseas membership and visits and the Careers Fair. In 2011 we welcomed the incomparable and omniscient Francesca Compton as her successor. Without her drive, skills and expertise the Association simply would not function at all.

I would like to end by paying particular tribute to my immediate predecessor as Treasurer, Catherine Addy, for her extraordinary hard work over 4 years. I would also like to wish my successor as Treasurer well.

Mark West





Meeting Judge Elizabeth Cooke

The Chancery bar is familiar with Professor Elizabeth Cooke's work as a Law Commissioner, and now we are set to become familiar with her in another role. In June this year Professor Cooke became Judge Cooke, the Principal Judge of the First-tier Tribunal, Property Chamber (Land Registration). On a brisk and bright autumn morning we visited her at the Tribunal building at Albert Place where she is now cheerfully based in a light and lofty room under the gabled roof and exposed wooden beams of the top floor.

The shortest chapter of Judge Cooke's legal career was the first. After university, where she read classics, she qualified and practised as a solicitor. But at that stage practice did not appeal to her and she decided to pursue an academic career. She took an LLM specialising in property law and from 1992 to 2008 taught at Reading University, becoming a professor in 2003. Her published work included a prize-winning book on *Estoppel* (2000), *The New Law of Land Registration* (2002), and *Land Law* in the Clarendon series, as well as being one of the authors of *The Family, Law and Society* with Lady Hale and two others.

Judge Cooke. The painting behind her is by Ali Hargreaves - www.alisart.co.uk.

In 2008 she was appointed a Law Commissioner with responsibility for property, family and trust law. We asked what achievement at the Law Commission she was most proud of. "Is pride a sin?" was her first response. Assured by us without authority that it was not, she spoke about the report and draft bill on the law of easements and covenants. This was a huge piece of work built on foundations laid by Stuart Bridge, her predecessor at the Law Commission, covering a wide range of law and history. The bill solves the perennial problem of positive covenants and freeholds. Drafting the bill with parliamentary counsel was a fascinating piece of work. Is it disappointing that this remains only a bill? No, you never hear the last of implementation. But that project was begun before the introduction of the Protocol between the Lord Chancellor and the Law Commission formalising procedures between the Law Commission and departments which will sponsor projects. Since the Protocol, the prospects of projects resulting in legislation are much enhanced.

In addition to her main work exercising the land registration jurisdiction in the Tribunal, Judge Cooke continues to sit in other jurisdictions, about three weeks each year in the Crown Court and three weeks in the Administrative Court, as well as sitting as a deputy judge in the Upper Tribunal (Tax and Chancery Chamber and Lands Chamber). Each provides a different balance of evidence or procedure or law as the point of concentration. She recently presided over a 5-day trial involving a defendant accused of stalking. Five complainants all of similar appearance gave evidence, their complaints gathered into one case by police and CPS prosecutors alert to the similarities between them. Together their evidence formed a powerful case and the jury convicted.

Why as a civil lawyer did she become a criminal recorder? In 2009 the then Professor Cooke was encouraged by a fellow law commissioner to apply to become a recorder because it would help her to provide input on projects of criminal law. In order to decide whether to apply, she sat in on criminal trials beside a judge and thought that perhaps this was something that she could do. As a lawyer who was unfamiliar with the criminal process she felt that it took about two years for her to feel confident of her ability to create a safe and authoritative forum in which to manage the conflict inherent in a criminal trial.

Some years later she asked her daughter, then 17 years old, to sit in the public gallery and watch her conduct a trial. She was pleased, and surprised, to be told by that authority that she did not look ridiculous in a wig.

She is alive to how terrible an experience going to court is for most people and the need to make the process bearable. Nonetheless judging brings serenity; it is a focussed activity: addressing the case in front of you, dealing with it step by step. How does her experience as an academic affect her approach? Everything feeds into everything. Her explanatory style perhaps owes something to her experience of teaching and article writing, but she writes her judgments for the parties, certainly with a thought of potential appeal, but not, despite her years of article-writing, of the possibility of a critical academic readership.

Looking at Judge Cooke's *Land Law* in the Clarendon series, we noticed that she included some novels as recommended reading. So we asked her to suggest some winter reading for the Chancery bar. *The Garden of Evening Mists* by Tan Twan Eng came first: it begins in a familiar court environment in Malaysia, then takes the reader to unexpected places; secondly, a wonderful perspective on gender: Ursula Le Guin's *Left Hand of Darkness*.

Our principal impressions are the width and variety of Judge Cooke's experiences and her open-minded enthusiasm. Few people, we suspect, take up rock-climbing in their forties but one of them is Judge Cooke. A painting in her room depicts her and her daughter scaling a menacing Welsh cliff. Like a mediaeval picture, it shows two stages of the story: at first she establishes the route of ascent; then from a ledge on the rock she supports her daughter who follows her up. Climbing is another focussed activity, enjoyed for its own sake. "It is a marvellous stress-relief, and simply good fun!"

Amanda Tipples QC and Stephen Schaw Miller

Junior Chancery Bar

The Junior Chancery Bar's first full year of events included a joint seminar on arbitration with the Junior London Solicitors Litigation Association and an evening discussing the issues raised in the Bar Council's report on Wellbeing at the Bar, as well as various social events for members.

The JCB has also run the highly successful Chancery Division marshalling scheme. Our 2016 programme of events will begin on 18 February with a joint seminar with the Property Litigators Association on tenant-owned management companies.

William East



Consultation	Consultor	Contributors
Guardianship of Missing Persons	MOJ	Guy Adams, Katherine McQuail, Paul Greenwood, Sandy Joseph and Alexander Learmonth
Fast Track Trial Fees	MOJ	Alexander Learmonth
Call for Evidence on Use of CFAs after Coventry v Lawrence	Bar Council	David Holland QC
Related Settlements IHT	HMRC	Christopher Tidmarsh QC, Richard Wallington, Alana Graham, Emily Campbell and Oliver Marre
Entity Regulation Fee Structure	BSB	Alexander Learmonth
Amendments to Royal Court Rules	Jersey Law Society	Mark Hubbard, Marcus Flavin, Jordan Holland
Call for Evidence on Standard Contractual Terms	BSB	Penelope Reed QC
Financial List	Chancellor	Robin Hollington QC
Shorter Trials	Chancellor	Robin Hollington QC
Register of People with Significant Control	BIS	Malcolm Davis-White QC
CPD Reform	BSB	Richard Millett QC, Jonathan Hilliard, Thomas Robinson and Ruth Hughes
Enhanced Fees and Courts and Tribunals Fees	House of Commons Justice Select Committee	Tim Fancourt QC and Andrew Twigger QC
Deeds of Variation	HMRC	Joseph Goldsmith, Charlotte Edge, Oliver Marre and James MacDougald
Disciplinary Tribunal Rule Reviews	BSB	Edward Denehan and Camilla Lamont
Future Bar Training	BSB	Penelope Reed QC, Lyndsey de Mestre, Ruth Hughes, Joe Curl and William East
Equal Merit Provision Questionnaire	JAC	Equality & Diversity Sub-committee

Judicial Appointments

In 2015 there were two particular competitions of interest to our members.

First, the Recorder Competition to appoint 64 Recorders sitting in crime, and 35 in family. The Judicial Appointments Commission led the ChBA to believe that the Recorder Competition was open to candidates from all backgrounds and there would be a “level playing field” for applicants who did not practise in criminal or family law. Unfortunately, the selection process was profoundly unfair to our members, as the qualifying test and the second stage of shortlisting were based on criminal or family law. Only one member (who had done a criminal pupillage) made it through to the selection day.

With members’ feedback, and COMBAR’s support, the

ChBA submitted two Feedback Reports (available at www.chba.org.uk/chancery-careers/judicial-careers) to the JAC and senior members of the judiciary. Since appointment as a recorder is a very significant access point to the judiciary, fairness in the selection process is crucial. The JAC have not yet responded to the ChBA’s reports, but have asked to meet with the ChBA, probably in January 2016. We will continue to campaign to ensure that any future qualifying tests are based on a hypothetical jurisdiction (as has happened in the past).

Second, there was a competition in the summer to appoint 14 Deputy High Court Judges under section 9(4) of the Senior Courts Act 1981. The ChBA ran a well-attended workshop to help members decide whether to apply and also to help any potential applicants navigate the application process. We will run similar workshops for any future competitions.

Amanda Tipples QC

We would like to thank the contributors, photographers and editor for all the time and effort devoted to the ChBA Review 2015

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