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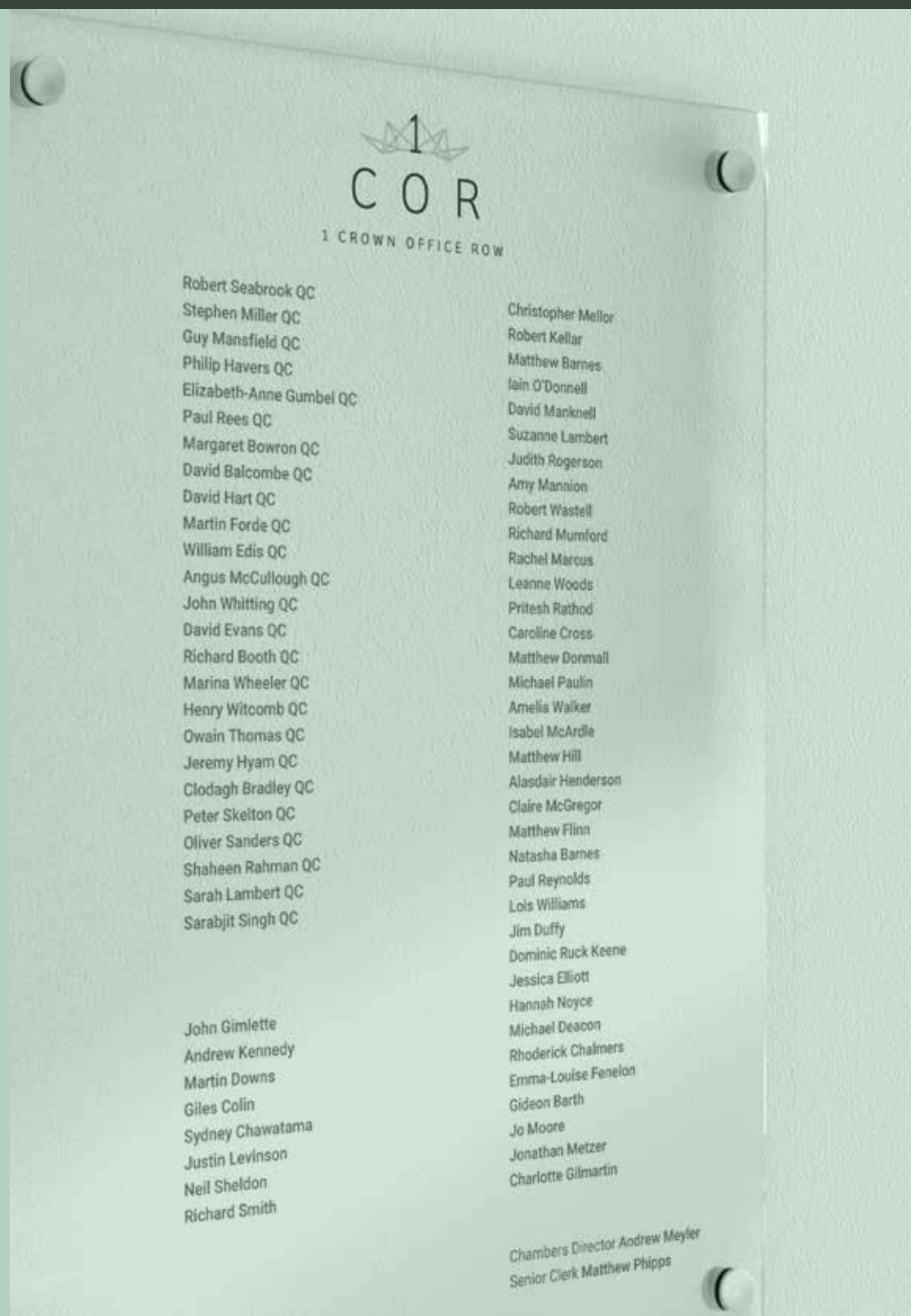
1 CROWN OFFICE ROW

# 1COR Bundle

2018-19

The annual newsletter of  
**1 Crown Office Row**





## Welcome to the 7<sup>th</sup> edition of the 1COR Bundle



I wrote the introduction to the last edition of the Bundle in the middle of an election campaign and noted that seldom had there been such uncertainty not only in politics but also in the law. Little has changed since then. Although our departure from the EU is now only nine months away, the terms of our departure are no clearer now than they were then. Reading about the work we have been doing in Chambers over the last year has provided me with a welcome distraction, as I hope it will you.

Our work has ranged from a raft of health law and clinical negligence claims to public law claims as diverse as historic waterways in Hackney and arms exports to Saudi Arabia. There have been interesting cases in tax, professional regulation, environment, employment and equality and a fascinating case on Crown immunity. We are also involved in most, if not all, current public inquiries including those into Child Sexual Abuse, Undercover Policing, Grenfell Tower and Infected Blood. Our Members are instructed in a wide range of high profile inquests, including those concerned with the Birmingham Bombings, the Westminster Bridge and London Bridge killings and the death of Alexander Perepilichnyy. We have also been involved in the inquests into the deaths of the former patients of Mr Paul Miller and those who died in the Shoreham Air Crash.

Our *UK Human Rights Blog* has now generated 1.4m visits since it was established and we have launched a new 1COR podcast series, "Law Pod UK", with presenter Rosalind English. We are also as determined as ever to open up the Bar and to that end we continue to lead the way with our social mobility initiatives. We are the only set in the country to offer a mini pupillage scheme exclusively for those from non privileged backgrounds which guarantees successful candidates an interview for pupillage and we carry out wide ranging outreach activities. In the last year alone Sarabjit Singh QC has led a team of nearly 50 barristers in Chambers working with the Sutton Trust to spread the word about the Bar to over 1,000 state school students in the 14 to 17 year old bracket.

We also congratulate Dame Christina Lambert on her appointment as a Judge of the High Court and our two new Silks, Sarah Lambert QC and Sarabjit Singh QC.

This will be my last welcome to the 1COR Bundle since I retire as Head of Chambers this September after 12 years. My successor will be Richard Booth QC in whose safe hands I leave the Bundle for the future.

**Philip Havers QC**  
Head of Chambers

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# The Inside Story

# 1

## The last 12 months in Chambers

### Arrivals

#### New tenants join 1COR

**Michael Paulin's** primary practice is in tax litigation, including judicial review claims involving HMRC. More broadly, Michael's work involves the intersection between tax, administrative, and employment law. He is a member of the Attorney General's C Panel.



**Natasha Barnes** has a mixed public law practice including tax, national security, immigration and inquests and is a member of the Attorney General's C Panel. She has a background in criminal law and is particularly interested in judicial reviews and tax litigation arising out of criminal or quasi-criminal proceedings. She also has a busy immigration law practice – particularly at an appellate level.



**Jonathan Metzger** and **Charlotte Gilmartin** have joined Chambers as tenants, following the completion of their pupillages. They have already appeared together for a community group in a planning inquiry. Jonathan is the new Commissioning Editor of the UK Human Rights Blog. Prior to her pupillage at 1 Crown Office Row, Charlotte was the Judicial Assistant to Lord Neuberger at the Supreme Court.



### Staff News

**Alex Fletcher** & **Louis Candy** have joined Chambers as clerks and **Olivia Kaplan** as our marketing manager. Our receptionist, **Sheila Haynes** celebrates her 10<sup>th</sup> Anniversary with 1COR this year.

Chambers celebrated the 40<sup>th</sup> birthday of **Andrew Tull** with bubbles and a beautiful cake.



#### Two Associate Members join chambers

**Christian Howells** joins us as an associate member. **Edite Ligere** returns as an associate member after starting her legal career at 1COR.



Chambers were delighted that **Sarah Lambert QC** and **Sarabjit Singh QC** were appointed Queen's Counsel this year

Sarah was called to the Bar in 1994 and has long been recognised as a leading junior in her primary practice areas of clinical negligence and costs. She is the Head of the Costs

team in chambers and sits as a Deputy Costs Judge in the SCCO.

Sarabjit was called to the Bar in 2001 and at his appointment to silk was a member of the Attorney General's

A Panel. He has a wide-ranging practice which includes public law, tax and clinical negligence. He is believed to be the youngest person from these chambers ever to be made a QC.



## Return to work

**Leanne Woods** has returned from maternity leave. She is on the Attorney General's B Panel. Her practice encompasses clinical negligence, professional discipline and regulation, inquests and public inquiries, police and public law.



**Claire McGregor** is in the process of cross-qualifying for the Ontario Bar and has been working on a mixture of class actions, cases concerning corporate accountability and aboriginal law. A devoted cyclist, she has been adapting to sharing road space with North American-style articulated lorries as opposed to the more familiar Routemaster buses of London.



Our roving barrister returns from his adventures in New Zealand

**Matthew Flinn** returned to chambers having spent 2017 gallivanting around the world! After several months in his native New Zealand, Matthew spent the rest of the year studying Spanish in Spain and Colombia. Matthew, who is a member of the Attorney General's C Panel, is looking forward to returning to his main practice areas of clinical negligence, personal injury, and public law, and is hoping to begin developing a practice in environmental law.



**Hannah Noyce** was awarded a Pegasus Scholarship enabling her to spend three months living and working in Wellington, New Zealand in late 2017. Hannah worked in the litigation team at Chapman Tripp, a leading New Zealand law firm. The trip provided a fantastic opportunity to learn about the practical workings of another common law country, and to forge links with lawyers working there.



## Awards & Plaudits

Chambers was named 'Professional Discipline Set of the Year' at the annual Chambers & Partners UK Bar Awards.

**Lizanne Gumbel QC** was shortlisted for personal injury and clinical negligence silk of the year by *The Legal 500* - after winning the award the previous year. She was also ranked as a Star Silk by Chambers & Partners for both personal injury and clinical negligence.

**David Hart QC** was named one of the most highly regarded silks for Environment by Who's Who Legal. This year only 46 barristers were identified by the legal guide with David ranking in the top four silks for his proven track record in this area. It was said of him that, 'the 'brilliant' David Hart QC at 1 Crown Office Row is 'very well respected' by peers who describe him as 'a real environmental law specialist.''

## 1COR makes The Lawyer's Top 20 cases of 2018

The action concerning Harvey Weinstein was named by *The Lawyer* as one of its Top 20 cases of 2018. **Lizanne Gumbel QC** and **Paul Reynolds** are instructed by Fieldfisher to represent the alleged victims of sexual assaults.



## Appointments

### 1COR celebrates a new Justice of the High Court

On 11<sup>th</sup> January 2018 **Christina Lambert QC** was sworn in as The Honourable Mrs Justice Lambert and assigned to the Queen's Bench Division. She took Silk in 2009 and was authorised to sit as a Deputy High Court Judge in 2017. During her 13 years in Chambers, Dame Christina's practice focused on clinical negligence, professional regulation and inquests and inquiries. She was Leading Counsel to the Dame Janet Smith Review into alleged misconduct by Jimmy Savile and the relevant culture and practices at the BBC. In 2013 she was appointed as Lead Counsel to the new inquests into the 96 deaths resulting from the Hillsborough Stadium Disaster in April 1989.

We are delighted to announce that **Owain Thomas QC**, **Jeremy Hyam QC** and **Amy Mannion** have been appointed as Recorders and **Leanne Woods** as an Assistant Coroner for London East.

**Amy Mannion** has been appointed to the Attorney General's A Panel and **Dominic Ruck Keene** to the C Panel.

**Sydney Chawatama** has become a Fellow of the Chartered Institute of Arbitrators. After being awarded a Diploma in International Arbitration by the CI Arb in November 2017, he is now pleased to use the post nominals FCI Arb! He is particularly interested in arbitration in Africa and investment treaty arbitration.



**Emma-Louise Fenelon** was re-elected to the committee of the Human Rights Lawyers Association as Vice Chair.

The new NHS Resolution Mediation Service has now started work in earnest. **Robert Seabrook QC** was selected to be a Mediator for NHS Resolution last year and is now undertaking a substantial number of mediations each month.



**Martin Forde QC** is providing independent advice on the design of the Windrush compensation scheme announced by the Home Secretary. He is himself the son of Windrush parents and brings a wealth of experience in public law.



**Sydney Chawatama** has been appointed to Co-Vice Chair of the Law Reform Committee of the Bar. The committee develops and considers proposals for law reform and to submits views to the Government and others.

**Clodagh Bradley QC** was appointed as Vice Chair and **Leanne Woods** has been elected as an Executive Committee Member of the Professional Negligence Bar Association.



**Jo Moore** has been appointed to the Sports Resolution Pro Bono Panel.



## Other news



## Christmas Card Competition

**Jim Duffy** and our trusty clerking elves **Andy Tull** and Maisie Taylor featured in this year's Christmas Card, and were identified correctly by Sara Miller from the MDDUS. She chose to donate the prize money of £200 to Crohns & Colitis UK. 1 Crown Office Row also made a donation of £200 to Small Steps.

**Lizanne Gumbel QC** and her son Mark Wainwright ran in both the Brighton and London Marathons. They run every year in support of LOOK-UK, a charity which helps visually impaired young people and their families to help develop self-confidence, learn new skills and combat social isolation. This year they were joined in the London Marathon by **Jim Duffy** and **Gideon Barth**. Jim ran for the London Legal Support Trust, which secures access to justice for vulnerable individuals and their families by supporting law centres and legal advice agencies across London and the South East and Gideon was raising money for Shelter.

Ambriel Blanc de Blancs 2010 from the vineyard of **Wendy Outhwaite QC** received a gold medal in the 2018 Decanter Awards.



**David Hart QC** made his operatic debut as Sarastro in Mozart's *The Magic Flute* in a production by North Norfolk Chamber Opera at the Auden Theatre in Holt.

## New logo and website for Chambers

1COR was pleased to launch our new logo and website at the end of 2018. Chambers hopes that users will find the new website, with its modern logo and colour scheme, easy to navigate on mobile devices as well as from computers.



The website contains all the usual contact information and details about our members' areas of expertise, and gives greater prominence to the latest Chambers news and legal resources. The website also offers enhanced opportunities to link directly to our other chambers sites - the UK Human Rights Blog and Law Pod UK - from every page.

Its numbers are already much larger than those of its predecessor. Do come and visit, and don't forget to let us know what you think!

**Sally Smith QC** appeared in the BBC TV series *Murder Mystery* and *My Family* about one of Marshall Hall's murder trials. This follows on from the success of her biography about the star of the criminal bar. She is currently writing a new book.



## A tribute to HH Oddie

It is with sadness that Chambers learned of the death of former member and later distinguished Circuit Judge, **Christopher Oddie** following a long illness. Christopher was recruited to Chambers in 1960 specifically to handle work on the Oxford Circuit as John Wood and Harry Woolf had expressed a desire to concentrate on London work. Christopher was appointed as a Circuit Judge in 1974 at the relatively young age of 45. He also sat as a Deputy High Court Judge, served as Chairman of the County Court Rule Committee, as a member of the Judicial Studies Board and as member of the Council of St Mary's Hospital Medical School. He also found time to edit Butterworth's County Court Precedents and Pleadings.

## Special Dinner pays tribute to 1COR silks

Chambers held a special dinner at Lutyens Restaurant to celebrate the careers of some of Chambers' most distinguished Members. As would be expected of such a famed after-dinner speaker, the main speech was given by **James Badenoch QC**, who marked his 50 years in Chambers working in the fields of clinical negligence, personal injury and professional discipline. More recently James appeared in such high profile cases as *Montgomery v Lanarkshire Health Board*.

The dinner also heard tributes to **Kieran Coonan QC** who has been, for so many years, a dominant presence in the fields of clinical negligence, professional disciplinary and regulatory law. He also chaired public inquiries relating to mental health issues as well as appearing for the defence both when a junior and a QC in high profile criminal cases involving difficult scientific or medical issues.

As a writer, speaker and barrister, **Joanna Glynn QC** was the doyenne of the professional discipline and regulatory Bar. She was also involved with Amnesty International and the Bar Human Rights Committee, undertaking trial observations in Kenya and Turkey. She was a former Trustee and then Chair of Board of Trustees of the Redress Trust.

**Terence Coghlan QC** was a highly regarded silk who represented all the health authorities in England and Wales when they were sued in the Myodil multi-party litigation. Passionate about music, he has been a Director of the City of London Sinfonia and Temple Music Foundation.



**Sally Smith QC** had a stellar reputation in clinical negligence, acting for both claimants and defendants, including class actions as well as professional regulatory work. She recently sold an option on the TV rights to her book, *Marshall Hall, A Law Unto Himself*.

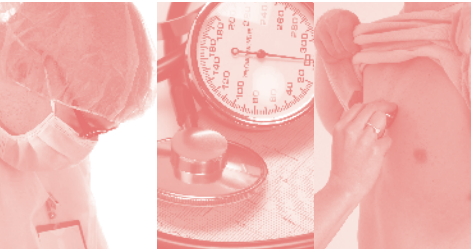
Chambers marked the retirements of two very popular staff members: **Lorraine McHale** and **Gloria Scaramuzza**. Lorraine joined Chambers in 1994 as the first ever Chambers Administrator and saw Chambers double in size over this period. Gloria was for 20 years the Chambers Housekeeper.



This year also saw the retirement of **HHJ Coltart**, the longest serving Circuit Judge in England and Wales. He was a popular member of Chambers and one of the founders of the annex in Brighton.



## Health Law



### Supreme Court to weigh in on hospital receptionist duties



In a time of increasing pressure on public health services, what duty of care is owed by receptionists in hospital emergency departments, in relation to providing information about waiting times? That was the question addressed by the Court of Appeal in *Darnley v Croydon*

*Health Services NHS Trust* [2017] EWCA Civ 151. **Philip Havers QC**, who successfully represented the Defendant on appeal, has recently appeared in the Supreme Court in this matter. Judgment is awaited. Philip was instructed by Capsticks.

### Trial win for an Intensive Care Unit

**John Whitting QC** successfully defended an Intensive Care Unit ("ICU") in *Oliver v North Cumbria University Hospitals NHS Trust* [2018]. A clinical negligence claim was brought after the Claimant suffered a cardiac arrest in the ICU shortly after undergoing major abdominal surgery. The Court accepted the Defendant's case that the post-operative monitoring, and specifically the speed with which a transfusion of blood was ordered and commenced, was entirely appropriate. John was instructed by Ward Hadaway solicitors on behalf of NHSR.

### Forged signature used to gain access to embryo

**Jeremy Hyam QC** and **Suzanne Lambert**, instructed by Hempsons, were successful in their defence of the claim in damages against a fertility clinic, which permitted the thawing and implanting of an embryo. In *ARB*

*v IVF Hammersmith Ltd* [2017] EWHC 2438 the Court found that a mother had forged her estranged partner's signature to gain access to a fertilised embryo, and the father claimed the cost of raising the healthy daughter that resulted.

The court held that there was no negligence, and that a claim for breach of contract (between the father and the clinic) could not succeed on public policy grounds.

### The boundaries of *Montgomery* continue to be explored

**Richard Booth QC**, instructed by Browne Jacobson, has successfully defended a clinical negligence claim where it

was alleged that doctors had negligently failed to inform the Claimant, who was suffering from post-thrombotic syndrome following an ilio-femoral deep vein thrombosis (DVT) after giving birth, of an experimental treatment option which was only potentially available in a few centres in Europe. In *Bayley v George Eliot Hospital NHS Trust* [2017] EWHC 3398, the Court concluded that the relevant treatment (ilio-femoral venous stenting) was not a sufficiently recognised treatment at the relevant time (in 2008), so that it was not negligent under *Montgomery* to fail to inform the Claimant about it.



### Salisbury nerve agent attack

In *Secretary of State for the Home Department v Skripal* [2018] EWCOP 6, **Owain Thomas QC** and **Matthew Hill** successfully applied for a court order allowing the Organisation for the Prohibition of Chemical Weapons ("OPCW") to conduct an analysis of blood samples taken from the victims of the Salisbury nerve agent attack. Owain and Matthew were instructed by the GLD and led by First Treasury Counsel, Sir James Eadie QC. The Order was sought in the Court of Protection under the Mental Capacity Act 2005 as Sergei and Yulia Skripal



lacked capacity to consent to the required interventions.

In this highly publicised case, the Order was granted by Williams J on the basis that it was in the best interests of Mr Skripal and his daughter, Yulia Skripal, for the samples to be taken and analysed to assist with the OPCW's work.



### Scope of the duty of care where there are multiple birth conditions

In *Meadows v Khan* [2017] EWHC 2990, the Claimant's GP admitted that she had negligently failed to arrange the appropriate tests to show whether the Claimant was a carrier of haemophilia. That led the Claimant to believe that her children would not have haemophilia. In the event, her child was born with both haemophilia and severe autism.

Acting for the Claimant, **Philip Havers QC**, who was instructed by McMillan Solicitors, established a chain of causation entailing that, but for the lack of appropriate testing, the pregnancy would not have been proceeded with. The Defendant accepted liability for the additional costs of bringing up the Claimant's child due to the child's haemophilia, but argued that the additional costs associated with the autism, which was an entirely unrelated condition, were outside the scope of the duty of care. The Court did not agree, finding that although the autism was unrelated to the haemophilia, it was a natural consequence of a birth which would otherwise not have occurred.



## NHS Trust vindicated in non-accidental injury case

### Emma-Louise Fenelon

successfully represented an NHS Trust at a fact-finding hearing to determine the cause of multiple fracture injuries to a minor. The hearing of *M (Care Proceedings: Finding of Fact Hearing: Fractures)* [2017] EWFC B50 occurred in the context of care proceedings brought by the Local Authority in relation to the child's parents. The parents denied having caused any injury and suggested that they were the result of a combination

of injuries sustained during caesarean section and M being roughly handled by one or more of the sonographers at the hospital during the course of an ultrasound scan. The Trust were joined as intervenors and, after hearing from a range of experts, the Court concluded that no Trust employee had caused or contributed to the injuries sustained.

Emma was instructed by Capsticks.

## Premature birth and complex brain injury

1COR members were instructed for each side in a complex case involving brain injury sustained at birth. In *OXJ v North Bristol Trust*, following a premature birth and subsequent complications, it became clear that the Claimant was suffering severe kernicterus damage including dyskinetic cerebral palsy with significant mobility problems and status dystonicus, auditory neuropathy problems, stained tooth enamel and behavioural problems. Liability was partially admitted with an admission of breach of duty and causation. However, it was argued that the Claimant's cognitive disability could have arisen from her prematurity rather than the admitted negligence.

**Lizanne Gumbel QC** (instructed by Enable Law for the Claimant) and **Richard Booth QC** (instructed by DAC Beachcroft for the Defendant) reached a settlement to the satisfaction of all involved.

## Delayed cancer diagnosis in private care

**Pritesh Rathod** successfully represented the Claimant in the High Court claim of *Scaddon v Morgan* [2017] EWHC 1481, which related to negligent treatment provided by a Consultant Gynaecologist on a private basis. Pritesh was able to satisfy the court that the Claimant's gynaecologist had breached his duty of care in failing to spot that she had suffered from a prolapsed uterine fibroid. The diagnosis was delayed by six months, at which point the Claimant underwent a hysterectomy to remove the fibroid. Damages were awarded for the suffering endured during the delay in treatment, and a general anxiety disorder arising from the incident.

Pritesh was instructed by Fieldfisher.

## Full House of 1COR members in patient confidentiality appeal

In *ABC v St George's Healthcare NHS Foundation Trust* [2017] EWCA Civ 336 the Appellant argued that her father's doctors owed her a duty of care, which required that they informed her about her father's diagnosis of Huntington's disease – a genetic condition she stood a 50% chance of inheriting. When she became pregnant, the doctors decided not to disclose her father's diagnosis, in accordance with the principles of patient confidentiality and the father's express wishes. At first instance, the Defendant/

Respondent succeeded in having the claim struck out on the basis that there was no duty of care owed to the Claimant in these circumstances. However, the claim was reinstated by the Court of Appeal, which held that it was arguably fair, just and reasonable that such a duty be imposed.

**Lizanne Gumbel QC**, **Henry Witcomb QC** and **Jim Duffy** appeared for the Claimant, instructed by Fieldfisher, while **Philip Havers QC** and **Hannah Noyce** represented the Defendant, instructed by Capsticks.

## Inherent jurisdiction to extend mental health detention

**Sydney Chawatama**, instructed by Capsticks, appeared in an urgent hearing in the High Court dealing with the detention of a minor ("P") under section 136 of the Mental Health Act 1983. After showing signs of severe disturbance, P was placed in a hospital's section 136 suite. However, two assessments carried out under the Mental Capacity Act 2005 showed that P did not lack capacity in certain

key respects, and his detention could not be extended. The issue for the court was what should happen to P on his release, as he clearly needed to be transferred to a supportive environment. The High Court agreed to exercise its inherent jurisdiction permitting an extension of P's detention to enable a suitable residential placement to be found.

## Lessons from the Paterson litigation

In the aftermath of the long-running and high-profile litigation brought against disgraced breast surgeon Ian Paterson, on 22<sup>nd</sup> February 2018 1COR members convened a presentation on the lessons to be learned. **Hannah Noyce** spoke about vicarious liability and the employment relationship (or one akin to employment) and a sufficiently close connection between that and the tort. **Dominic Ruck Keene** followed

this with a recap on non-delegable duty of care and the importance of contractual context. A lively debate then ensued, as Dominic was joined by **Lizanne Gumbel QC** and **Robert Kellar** in arguing a hypothetical case study for the Claimant, whilst Hannah, **John Whitting QC** and **Jeremy Hyam QC** stepped up for the Defendant. The evening was chaired by 1COR alumnus **Dame Christina Lambert**.

Episodes from this presentation are available on LawPodUK.

Law Pod UK

## 1COR offers training on case management

In March **Judith Rogerson** and **Rhoderick Chalmers** were pleased to speak to an audience of claims managers in Leeds as part of the Capsticks Diploma in Clinical Risk and Claims Management. They provided training on counsel's perspective of settlement and ADR, with tips and ideas on how to manage cases based on their experience of acting for both sides in clinical negligence claims.

## Negligent midwife advice over the phone

In *TW (A Child) v Royal Bolton Hospital NHS Foundation Trust* [2017] EWHC 3139 the High Court held that a midwife who had taken a phone call from a mother in labour had, given the information relayed to her, been negligent in not inviting the mother to come into the hospital for assessment.

That breach was causative of the brain injury that the mother's son had sustained following his birth.

**Lizanne Gumbel QC**, instructed by Harrowells, acted for the Claimant, whilst **Angus McCullough QC**, instructed by Hamptons, represented the Defendant.



## Public Law



### Life, Liberty & Security



Chambers' Annual Public Law seminar was held this year at King's College London and was dedicated to the theme of 'Life, Liberty & Security'.

At its heart was a panel discussion chaired by Mrs Justice Whipple and which drew together a number of streams with **Jeremy Hyam QC** leading the conversation on detention and deprivation of liberty and **Marina Wheeler QC** and **Shaheen Rahman QC** covering sensitive evidence and secret hearings. The central seminar paper was written by

**Martin Downs** who also spoke about Radicalisation and the *Prevent* strategy.

There was also a fringe programme with breakout sessions on privacy and information law led by **Oliver Sanders QC** and **Amelia Walker**, Inquests and Article 2 facilitated by **Peter Skelton QC** and **Rachel Marcus** and an unlawful detention masterclass delivered by **Suzanne Lambert**, **Alasdair Henderson** and **David Manknell**.

### Judicial review on the boundary between a public and a private decision

**David Manknell** appeared in a case exploring the scope of justiciable decisions. In *R (Underwritten Warrancy Co Ltd (t/a Insurance Backed Guarantee Co) v FENSA Ltd* [2017] EWHC 2308 the High Court dismissed a claim brought against "FENSA", the well-known operator of a building self-certification scheme, which requires its members to have suitable insurance in place to protect consumers.

FENSA had refused to authorise the insurance product provided by the Claimants, with the result it would not be sold to members of FENSA's scheme. The Claimants sought judicial review of that decision, but the court refused on the basis that it was not a public law decision amenable to judicial review, as well as on the substance of the challenge.

David was instructed by the GLD, on behalf of the Department for Communities and Local Government, which appeared as an intervenor in the proceedings.

### PII Certificate in extremism case need not preclude a fair trial

The High Court has determined that the courts should seek to establish whether or not there is a risk to children from the extremist views of their parents even when a PII Certificate prevents them from considering part of the evidence. In *Re C (A Child: Application for dismissal or withdrawal of proceedings)* (No. 3) [2017] EWFC 37 (27 June 2017), Mrs Justice Pauffley frankly conceded that she had changed her mind as a result of **Marina Wheeler QC's** submissions on behalf of the Home Secretary. The Court went on to determine that there could be a fair trial using evidence that was in the public domain.

### Supreme Court case considers immigration appeals from abroad

**Neil Sheldon** appeared in the Supreme Court in *R (Byndloss) v Secretary of State for the Home Department* [2017] UKSC 42. The Court had to consider whether or not certificates issued under section 94B of the Nationality, Immigration and Asylum Act 2002, which required individuals who sought to challenge deportation orders against them to appeal from abroad, were lawful under Article 8 of the European Convention on Human Rights.

### The "Jungle" in Calais

In *Citizens UK v the Secretary of State for the Home Department* [2017] EWHC 2301 the Claimant challenged the lawfulness of an expedited process established by the British and French Governments immediately before and in the immediate aftermath of the French Government's closure in October 2016 of the camp in Calais known colloquially as 'the Jungle'. Under the process around 550 children with close family in the UK, within the meaning of Article 8 of the Dublin III Regulation, were transferred to the UK between October and December 2016. The High

Court dismissed the challenge, concluding that the process was fair and reasonable, and that there was no systemic failure.

**David Manknell** and **Amelia Walker** appeared for the Home Secretary, instructed by the GLD.



### Refusal to transfer foreign national prisoner to Albania unlawful

The High Court decided that the Secretary of State for Justice unlawfully refused to transfer a foreign national prisoner, Mr Bucpapa, back to his home country of Albania, to complete his sentence there. Mr Bucpapa

had been involved in a £53 million armed raid at a Securitas depot in February 2006. He was convicted on kidnap, robbery and firearms charges in 2008. The Secretary of State refused to send Mr Bucpapa back to Albania on the basis that he would be released around three years earlier than he would have been released in the UK. However, The Court held that this was the inevitable consequence of the operation of a 2013 Prison Transfer Agreement between the UK and Albania – a fact about which the Minister had not been adequately briefed. The Court concluded that the decision was irrational and had to be quashed. **Philip Havers QC** acted for Mr Bucpapa, instructed by Duncan Lewis Solicitors.





## Extraordinary Rendition claims not an abuse of process

**Angus McCullough QC** appeared as Special Advocate in *Kamoka and Ors v Security Service and Ors* [2017] EWCA Civ 1665 which considered claims by a number of individuals from Libya for damages for unlawful detention pending deportation and the imposition of Control Orders. The primary question was whether or not the claims represented an abuse of process, in that they might be seen as a collateral attack on earlier determinations by SIAC. The Court of Appeal held that the Claimant's case had fundamentally changed following the elucidation of evidence which showed the extent of UK complicity in the extraordinary rendition and torture of Libyans by the Libyan and US security agencies. Accordingly, their claims did not amount to an abuse.

## Limitation trial on Greek Cypriot abuse claims

**Alasdair Henderson** is acting for the Foreign and Commonwealth Office and the Ministry of Defence in a group action brought by 35 Greek Cypriots. They allege that they were tortured or ill-treated by British forces during the Cyprus Emergency of 1955-1959. Following a hearing in *Sophocleous v Secretary of State for the Foreign and Commonwealth Office* [2018] EWHC 19 (which is now going to appeal), a trial on limitation issues is due to take place in October 2019.

## Disclosure in closed judicial review proceedings

In an important decision on the closed material procedure under section 6 of the Justice and Security Act 2013, the High Court has decided that there is no common law right to a "core minimum of disclosure". In *Khaled v Secretary of State for Foreign & Commonwealth Affairs* [2017] EWCA Civ 1665 the Court held that such a common law right would be inconsistent with the overall

scheme and objectives of the statute. **Angus McCullough QC** appeared as a Special Advocate in the proceedings.



## Arms exports to Saudi Arabia challenged

**Angus McCullough QC** is acting as Special Advocate in a judicial review case concerning export licenses for the sale of UK-produced arms and military equipment to Saudi Arabia.

The Campaign Against Arms Trade group ("CAAT") challenged the decision of the Secretary of State for International Trade not to suspend these export licenses and to continue granting new ones. The claim was advanced on

the basis that the exported items might be used in serious violation of international humanitarian law in Yemen. Although the claim was initially dismissed by the Divisional Court in July 2017, in *R (Campaign Against Arms Trade) v Secretary of State for International Trade* [2018] EWCA Civ 1010 the Court of Appeal decided that the grounds of challenge were arguable, and the matter will proceed to a substantive appeal hearing.

## Former Prime Ministers' spending – a right to know?

**Matthew Hill** has been instructed to act for the Cabinet Office in an information rights case concerning former Prime Ministers and their entitlement to the Public Duty Costs Allowance.

The Allowance was established in the early 1990s to assist former PMs with meeting the costs of continuing to fulfil duties associated with their previous positions in public life. A request

was made under the Freedom of Information Act for the disclosure of certain documents relating to the Allowance. The Information Commissioner upheld a decision to withhold release of these documents, a decision that was subsequently challenged. Matthew has acted in the long-running proceedings before the FTT and Upper Tribunal. The case continues.

## Tax Law



## Statutory appeal process to take precedence following judicial review challenge

**Owain Thomas QC** and **Isabel McArdle** acted for HMRC in judicial review proceedings brought by Universal Cycles Ltd and related companies, part of the Sports Direct Retail group. The claim concerned decisions to charge the Appellants anti-dumping duty, VAT and customs duty on bicycles which, HMRC says, originated from China but were inaccurately declared as originating from

Sri Lanka. Of particular significance was whether the judicial review challenge could proceed in the High Court, given the existence of a statutory route of appeal. HMRC argued successfully that the statutory appeal process should take precedence and the case will now proceed to an appeal before the FTT.



## Successful challenge to Accelerated Payment Notices

**Michael Paulin** acted for the taxpayer in a case concerning two Accelerated Payment Notices ("APNs") issued by HMRC's counter avoidance unit. He was initially instructed via licensed access to advise on prospects and thereafter by Duncan Lewis Solicitors. Michael argued that HMRC had failed to take into account relevant and material considerations in issuing the APNs and that the APNs were ultra vires the statutory scheme and a breach of Article Protocol 1 to the ECHR. Following service of the taxpayer's judicial review pre-action protocol letter, HMRC withdrew both APNs, obviating the taxpayer's purported liabilities in their entirety.





## CJEU decides VAT 'Cultural Exemption' case

**Sarabjit Singh QC** successfully appeared before the Court of Justice of the European Union (CJEU) in Case C-592/15, *Commissioners for HMRC v British Film Institute* [2017] STC 681. Sarabjit's success means that the UK and all other Member States will be permitted to choose which cultural services to treat as exempt from VAT, as many do already, and will not be obliged to exempt any service under the cultural exemption that could be deemed to be 'cultural' somewhere on European territory. This ruling gives the UK the green light to continue to treat certain cultural services such as theatre admissions as exempt, whilst declining to extend that exemption across the board to all cultural services.

## Successful WOWGR revocation appeal results in important guidance

**Amy Mannion** acted for HMRC in case concerning the revocation of approval of Beehive Wines to trade in duty-suspended alcohol under the Warehousekeepers and Owners of Warehoused Goods Regulations ("WOWGR") as a result of their non-compliance with Excise Notice 196. The original hearing of Beehive's appeal in 2016 was among the first of its type, and the FTT

directed that HMRC should review its decision. HMRC appealed to the Upper Tribunal, which overturned the FTT, holding that it had not approached the appeal correctly. The Upper Tribunal gave important guidance to the FTT in hearing these appeals. HMRC was successful at the recent rehearing. Amy has represented HMRC throughout.

## Court Of Appeal success in VAT case concerning Talacre 'Carve Out'

**Jeremy Hyam QC**, instructed by HMRC, was successful in an appeal concerning the circumstances in which a Member State can carve out 'concrete and specific' parts of a wider supply, and apply different rates across a CPP single supply. The case concerned whether Parliament intended that the 'concrete and specific' supply of fuel (electricity) for static caravans in the course

of the wider supply of serviced holiday accommodation attracted the reduced rate. The Court of Appeal unanimously rejected the Appellant's arguments.

## Alcohol excise WOWGR - approval revocation appeal

**Isabel McArdle** and **Gideon Barth**, led by Stephen Nathan QC of Blackstone Chambers, represented HMRC in a six-week long appeal, *Whittalls Wines (1) European Food Brokers Ltd (2) v HMRC* [2018] UKFTT 0036 (TC). HMRC revoked the approvals of the Appellant companies to trade in duty-suspended alcohol. The judge dismissed the appeal, finding that

the case in favour of revocation was only strengthened by the evidence heard during the trial. In particular, in upholding HMRC's decision, the judge found that documents had been deliberately backdated, key witnesses had lied to both the Tribunal and to HMRC, and there were significant failures to conduct adequate due diligence checks.

## Owain Thomas QC appears before Grand Chamber of the CJEU

**Owain Thomas QC** appeared before the Grand Chamber of the CJEU in a VAT case involving Volkswagen Financial Services. The case concerned recovery of VAT on overheads of Volkswagen's hire purchase transactions and raised important issues as to the

scope of input tax recovery for finance leases and the scope of the derogations for Member States to agree special methods for partially exempt traders. Owain Thomas QC was instructed by HMRC and led **Amy Mannion** in the UK courts.

## Amy Mannion to appear in the Supreme Court

The Supreme Court has granted permission in *OWD Ltd & Another v HMRC* [2017] UKFTT 411 (TC), which concerns the Alcohol Wholesalers Registration Scheme ("AWRS"). The Supreme Court will consider whether and to what extent HMRC has power, when it has refused a trader an AWRS approval, to grant an 'interim' approval whilst the trader appeals to the FTT.

**Amy Mannion** acts for HMRC and the Supreme Court will hear the case in July 2018.

## Success for HMRC in revocation appeal

**Natasha Barnes** was instructed by HMRC in an appeal against its decision to revoke the approval of Rurkhee Trading to trade in duty-suspended alcohol. The FTT dismissed the appeal having heard evidence from both HMRC Officers and the Appellant's director. It found that the Appellant had failed to comply with the due diligence requirements of Excise Notice 196 and refused to contemplate that its goods might have been caught up in excise fraud.

## Court Of Appeal abuse of law case

**Owain Thomas QC** and **Isabel McArdle**, instructed by HMRC, were successful before the Court of Appeal in *HMRC v Newey T/A Ocean Finance* [2018] EWCA Civ 791. The case raised issues concerning what abuse means in the context of an offshore structure, created to reduce the tax payable in relation to trade with consumers in the EU and has resulted in a reference to the CJEU on questions arising from the abuse principle. The Court of Appeal allowed HMRC's appeal, finding that the correct legal test had not been applied to the facts of the case.



## Public Inquiries and Inquests



### 1COR instructed in recent major Inquests & Public Inquiries

#### The Independent Inquiry into Child Sexual Abuse

- Lizanne Gumbel QC
- Henry Witcomb QC
- Peter Skelton QC
- Robert Kellar
- Iain O'Donnell
- Hannah Noyce
- Emma-Louise Fenelon
- Matthew Hill
- Alasdair Henderson
- Lois Williams
- Neil Sheldon
- Amelia Walker
- Dominic Ruck Keene
- Paul Reynolds
- Matthew Flinn

#### Undercover Policing Inquiry

- Oliver Sanders QC
- Amy Mannion
- Jim Duffy
- Jonathan Metzger
- Peter Skelton QC (Litigation)
- Emma-Louise Fenelon (Litigation)

#### Grenfell Tower Inquiry

- Neil Sheldon
- Leanne Woods

#### Infected Blood Inquiry

- Matthew Hill

#### Birmingham Bombing Inquests

- Peter Skelton QC
- Matthew Hill
- Gideon Barth

#### Inquest into the death of Alexander Perepilichnyy

- Peter Skelton QC
- David Evans QC
- Robert Wastell
- Leanne Woods

#### Westminster Bridge Inquests

- Neil Sheldon
- Matthew Hill

#### London Bridge Attack Inquests

- Neil Sheldon

#### Inquests into the deaths of former patients of Mr Paul Miller

- Sarah Lambert

#### Inquests and Investigation into the Shoreham Air Crash

- Martin Downs
- David Manknell



### Inquest into death of a newborn raises a number of criticisms



**Jo Moore** and **Emma-Louise Fenelon** were involved in a six-day inquest into the death of a baby shortly after being born at St Mary's Hospital, on the Isle of Wight. Jo was instructed on behalf of the family by AvMA. Emma-Louise was instructed to represent a Paediatric Registrar at St. Mary's, by the Bar Pro Bono Unit. The Coroner made a number of criticisms, undertook to visit St Mary's and dealt with concerns regarding staffing levels, training, and emergency transport links with the mainland in a Prevention of Future Deaths Report.

### Matthew Hill instructed as Lead Junior Counsel to the Infected Blood Inquiry

The inquiry will examine the use by the NHS of blood products, many of which were obtained from high-risk donor pools contaminated with HIV, Hepatitis C and other infections. Thousands are thought to have died as a result of what Professor Robert Winston has described as 'the worst treatment disaster in the history of the NHS'. Following decades of campaigning and a government consultation, an inquiry has been established under the Inquiries Act 2005 and former High Court Judge, Sir Brian Langstaff, has been appointed as Chair.

**Matthew Hill** has been instructed by the Solicitor to the Inquiry, Brian Stanton, of the GLD.



### Inquest into post-abortion death

**Martin Forde QC** and **Sydney Chawatama** were instructed by Slater and Gordon to act for the family in an inquest investigating the death of a woman who collapsed in a taxi following a late surgical termination of pregnancy. She had travelled from the Republic of Ireland for the procedure.

The Coroner recorded a narrative conclusion criticising the deceased's treatment by the clinic.



### Inquest into the death of Alexander Perepilichnyy

**Peter Skelton QC**, **Robert Wastell** and **Leanne Woods** acted as Counsel to the Coroner in the inquest into the death of Russian businessman and whistleblower Alexander Perepilichnyy, who died unexpectedly in 2012 while jogging near his home in Surrey. At the time of his death, Mr Perepilichnyy was reportedly helping the Swiss authorities and Hermitage Capital Management, an investment fund, to identify the perpetrators of an alleged \$230 million tax fraud

involving organised criminals in Russia. The full inquest was held over four weeks at the Old Bailey and the conclusion is awaited. Before it took place, the UK Government successfully applied to the High Court to withhold sensitive documents on the grounds of public interest immunity (*Secretary of State for the Home Department v Surrey Senior Coroner* [2017] 4 WLR 191).

### Coroner finds gross failure in Downs Syndrome death

**Dominic Ruck Keene** appeared for the family in an inquest investigating the death of 33-year-old man with Down's Syndrome who lived in supported living with 24/7 care. The Coroner held that the 'gross failure' in the care given by Ipswich Hospital to

treat his faecal impaction through a failure to escalate his deteriorating condition to senior doctors sufficiently promptly represented a missed opportunity to prevent the death. Dominic was instructed by Hodge Jones & Allen.



## Inquest halted pending potential manslaughter charges

Sophie Burgess, an 11-month-old baby, had a history of febrile seizures and was given a very large overdose of Phenytoin, which was administered manually by a hospital doctor rather than by syringe driver. She died following a sudden cardio-respiratory arrest in A&E. The issues at the inquest included how the overdose came to be given and why the drug was given at all, given that the baby was 'stable' and despite a nurse challenging doctors about their treatment of the baby. Proceedings were halted on the final day of the inquest as police are re-opening their enquiries into potential manslaughter charges. **Clodagh Bradley QC** represented the family, instructed by Leigh Day.



## Family obtains neglect finding at inquest into respite care death

**Matthew Hill** represented the family of a 21-year-old woman with Niemann-Pick Disease, a rare genetic condition that left her wholly dependent on others for all of her needs. During a five day stay at Douglas House, her ventilation equipment was incorrectly changed by a nurse with no training to do so.

Consequently, a vital piece was discarded, resulting in her deterioration and ultimately her death. The Coroner returned a narrative determination, finding that her death was contributed to by neglect.

Matthew was instructed by Slater and Gordon.

## Bonfire Night death investigated

In November 2015, whilst attending a Bonfire Night display at her son's school, Caixia Sun was crushed to death by a car. The young driver, who worked in the kitchen, went to park the school's Ford Galaxy car and, whilst in the process of parking, reversed

backwards and pinned Mrs Sun against another car. A jury at Reading Coroner's Court recorded a conclusion of accidental death. **Robert Wastell** represented the family and was instructed by Fieldfisher.

## Hospital discharge found to be premature

**Dominic Ruck Keene** appeared for the family via Direct Access in a recent two-day inquest into the death of a 71-year-old grandfather. The Coroner found that failures in the hospital's care and wrongful premature discharge were responsible for his death. The Coroner has written a report with recommended changes to East Sussex Healthcare NHS Trust regarding prevention of future deaths.



## Death in a mental health unit results in neglect finding

**Caroline Cross** represented the family in an inquest into the death of Heather Loveridge, a grandmother who set herself on fire at a mental health unit using a cigarette lighter. Upon her admission into the unit for depression with psychotic symptoms, the family contacted the staff to advise them of her significant history of self harm including self-immolation. The Trust admitted that Mrs Loveridge's handbag was not searched and she should not have had access to a lighter. The jury concluded that she died of misadventure contributed to by neglect.

## Inquest into death allegedly caused by inappropriate cancer treatment

**Sarah Lambert** is representing the family of a man whose death from cancer is alleged to have been caused by inadequate treatment. The treating urologist, Mr Paul Miller, has since been dismissed from his NHS Trust and is subject to interim GMC conditions. A number of other deaths have been linked to the same treating doctor, and this inquest, which has

already been through several Pre-Inquest Reviews, will be the lead and first to be heard when it comes to full hearing later this year. The case has wide implications for patient safety and is the subject of an ongoing BBC Panorama investigation and significant press interest. Sarah is instructed by Scrivinger Seabrook Solicitors.



## Truth? Justice? Accountability?

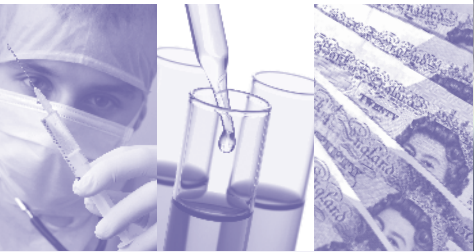
Members of 1COR participated in a flagship seminar dedicated to the theme of modern challenges of major inquests and inquiries. **Matthew Hill** spoke about lessons learned from Hillsborough, **Gideon Barth** on the challenges of getting involved in seeking a public enquiry, and **Emma-Louise Fenelon** on secret and sensitive information. Mrs Justice Lambert and Mr Justice Garnham led a

panel discussion involving Deborah Coles from INQUEST and interesting points were raised on issues of funding, jury involvement and composition of panels in inquiries

Episodes from this seminar are available on LawPodUK.

Law Pod UK

## Regulatory Law



### GMC appeal MPT decision dismissed

**Andrew Kennedy**, instructed by the Bar Pro Bono Unit, acted for the Defendant doctor in *General Medical Council v Nooh* [2017] EWHC 2948. The case involved one of the first appeals brought by the GMC against the Medical Practitioners Tribunal ("MPT"), which had made a decision to restore the Defendant to the register of medical practitioners.

After being erased from the medical register in 2009, the

Defendant made a successful application to the MPT to have his name restored under section 41 of the Medical Act 1983. The GMC's appeal was dismissed in the High Court, with the judge holding that the decision was within the MPT's ambit of discretion, and adequate reasons had been provided for the decision, even if the GMC did not agree with them.

### Unblemished record of osteopath remains intact

In *General Osteopathic Council v Z* (2018), **Clodagh Bradley QC** represented a Defendant osteopath who performed a cranial technique on a four week old baby. The parents alleged that excessive force was used and that baby's breathing was compromised. The Council's expert suggested that it may have been a deliberate attempt to induce a life threatening event. The Fitness to Practice

Committee found all of the allegations relating to the treatment of the baby not proven and only found one allegation proven in relation to a demonstration on the parents, resulting in the conclusion that the osteopath was not guilty of Unacceptable Professional Conduct. As such, his unblemished record of 26 years remains intact.

### High Court examines "dishonesty" in professional regulation

In *General Medical Council v Chaudhary* [2017] EWHC 2561 the High Court carried out a detailed examination of the correct approach to be taken by Medical Practitioners' Tribunals ("MPTs") to issues such as dishonesty and impairment. The Court allowed the appeal of the GMC on the basis that the MPT had failed to balance the three public factors of maintaining public confidence in the profession, maintaining professional standards and protecting public health. It emphasised that all three considerations had to be considered. However, The Court also decided that in the circumstances of this particular case, the public interest was best served by a direction that no further action be taken against the doctor. Those circumstances, and the arguments based upon them, were advanced by **Martin Forde QC**, instructed by DAC Beachcroft.

### Complete exoneration for cosmetic surgeon

**David Balcombe QC** successfully defended a cosmetic surgeon in the Medical Practitioners Tribunal ("MPT"). The surgeon had been accused of improperly anaesthetising a patient in 2012 and then lying to cover it up. After

a lengthy hearing, the surgeon was entirely exonerated, with the Tribunal being critical of the GMC and its experts, and finding that none of the allegations had been proven. Categorising the investigations that had led to the surgeon's referral as being fundamentally flawed, the Tribunal acknowledged that the practitioner had been obliged to investigate and find the necessary evidence

for himself in order to refute the charges. David was instructed by Plexus Law.



### 56 charges and no impairment

**Richard Smith** represented a dentist before the Professional Conduct Committee of the General Dental Council against whom 56 charges of various kinds were levelled. These charges included dishonesty, treating vulnerable patients without consent and

inappropriate conduct towards staff. Following a four-week hearing the Committee found that the dentist's fitness to practice was not impaired and therefore no sanction was appropriate. Richard was instructed by RadcliffesLeBrasseur.

### Subject Access Request win for GP

**Jim Duffy** successfully defended a GP who refused to comply with a Subject Access Request made by a father in respect of his children's medical records.

A Child Protection Plan was in place under the category of 'Emotional Abuse'. When Dr A refused to disclose the children's medical records and related information, the father complained to the Information Commissioner's Office ("ICO"). Dr A explained to the ICO that she considered that disclosing the information would not have been in the children's best interests.

The ICO investigated and found that Dr A had correctly applied the provisions of a statutory exemption under which a data



controller is not obliged to comply with a request where to do so would be likely to cause 'serious harm' to a person's health.

The father issued proceedings challenging the doctor's determination using section 7 of the Data Protection Act 1998. The Court found the exemption had been properly applied, and that Dr A's decision had been reasonable in the circumstances. This meant that she had not been obliged to comply with the request, pursuant to section 7(4) of the 1998 Act. Jim was instructed by the MDDUS.

### 1COR Professional Regulation Conference 2017

In June 1COR convened a major seminar at the Royal College of Surgeons, discussing the latest developments in Professional Disciplinary law. Chaired by **Dame Christina Lambert** and **Martin Forde QC**, the speakers addressed a range of topical issues and developments.

**Andrew Kennedy** and **Michael Deacon** carried out a detailed examination of Healthcare Regulatory Appeals, including The Court's approach to the meaning of "serious misconduct".

**Clodagh Bradley QC** and **Matthew Hill** discussed the powers of the Professional Standards Authority and the new power vested in the GMC to appeal decisions of the Medical Practitioners Tribunal Service which are considered to be insufficient to protect the public. Finally, **Matthew Barnes** and **Emma-Louise Fenelon** considered when it is appropriate to apply for judicial review of a regulatory decision, in particular where it could provide a speedy resolution to a serious procedural defect.



## Feature Article



### Etiquette of Round Table Meetings



John Gimlette

**It still makes me laugh, to think of the way we used to negotiate settlements. Until things changed in 1998, there was no easy way of starting discussions.**

Personal injury litigation was largely a battle of wills, and just got louder and bloodier until eventually someone blinked. It was no different with clinical negligence; the lawyers were just the legal equivalent of Bodie and Doyle, all bluster and brawn. We had no real idea what the other side were up to, and so – provided no-one chickened out – we'd turn up at trial, all tooled up and ready for a fight. There would be more posturing at the doors of court but then (as often as not) there'd be the proverbial screech of tyres, and a settlement would appear. Punch-drunk, we'd all then head for home, leaving behind a trail of hefty bills.

As we know, all that changed with the Woolf reforms, 20 years ago. It would no longer be a sign of funk to suggest talks – but a legal obligation. The courts would be constantly shepherding old bruisers into negotiations

[CPR 1.4(2)(e) and (f)], and, if necessary, the judge could stay proceedings to get the parties talking [CPR 26.4]. There were punishments for the recalcitrant too: if, without good reason, you failed to engage in discussions, you could be wacked in the wallet [CPR 44].

As I remember, the CPR brought no immediate outbreak of harmony. Lawyers liked the round table meetings (or RTMs), but many struggled with the 'soft skills' involved. Some of the early encounters were like cage-fights. Even in the early 2000s, there were



still a few old hands, pounding around like gladiators. I remember one silk launching into my leader with an excoriating blast of oratory. By then, he'd become well-known for these tirades, and, when it had subsided, my leader just smiled gently. 'Funny, isn't it,' he said, 'how all your geese are swans?'

Eventually, an etiquette evolved. In a small community like the clinical negligence bar, this wasn't surprising. Everyone recognised the need for a little mutual understanding, and, besides, no one wanted to be thought of as a prima donna or a pitbull. At heart, the unofficial rules are therefore simply matters of common courtesy. Don't be late; don't be rude; don't interrupt. If you're hosting the talks, make sure your opponent has whatever they need. It goes without saying that you should never lose your rag although – as seasoned negotiator, Angus McCullough QC says 'It may do no harm to show irritation, if you consider that your opponent is being unconstructive. But always remain polite; apart from anything else, it tends to show that you are confident and unruffled.'

As to how you present your case, the rules are more nuanced. Certainly, it's bad form to present a new claim at an RTM, and it may also be unrealistic (most NHSTs and MDOs – being complex bodies – are like supertankers, and take days to change direction). Equally, as a defendant, it's churlish to turn up announcing – without warning – that you've no offers to make (such an approach may also leave you exposed on costs). But, beyond that, we must all expect the unusual. Even in liability-only proceedings, a claimant should

appreciate that he/she may be faced with a cash offer, and should be ready to respond. The RTM is essentially a creative process, and we cannot grumble at having to adapt. 'Be flexible,' advises David Evans QC, 'No battle plan survives first contact with the enemy.'



Lambasting your opponent's case will probably do little more than irritate (you can take it they already know what you're saying). On the other hand, it is acceptable to probe at the other side's weaknesses, and to see how they justify certain points. At a recent RTM, the silk on the other side described my enquiries as unfair and 'an ambush'. I still don't think his riposte was appropriate; we should all be ready to justify our position (and that was especially so in that case, where the questions had already been raised twice in correspondence).

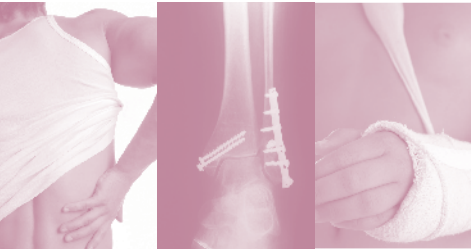
We all know it's good practice to reduce concluded agreements to writing. But it may also make for good diplomacy to do the same with offers. This is particularly so

with complex proposals (involving indexing, undertakings, start dates etc). It is better – and fairer – to advance all the detail very clearly at the start, especially if you're asking for something unusual. No-one wants to hear your wacky views on ASHE 1066 after a day spent dabbling in the millions.

RTMs are now a big part of life at 1COR. There are often several in the morning, and several more in the afternoon. It's hard to believe how things have changed over 20 years. It's no longer necessary to bludgeon your opponent into submission, and, nowadays, the only squeals come from the kettle. Although the issues are as hard-fought as ever, the sounds of battle are now not so much blood-curdling as collegiate. If you do see someone crashing through the windows, it probably won't be one of us but Tom Cruise, on another of his little missions.



## Personal Injury & Abuse Law



### Supreme Court grants permission in Social Services liability case



**Lizanne Gumbel QC** and **Iain O'Donnell** will act for the Appellants before the Supreme Court in the case of *CN & GN v Poole Borough Council* [2017] EWCA Civ 2185, in which the issue is not of whether private law claims in professional negligence can be brought by children against local authorities for the failures of their social services departments. The appeal is anticipated to address various substantial legal

issues including the extent to which domestic law must mirror the Human Rights Acts 1998 and European Convention rights, and an assessment of the law on assumption of responsibility, liability for actions of third parties, and liability for omissions rather than positive acts. **Philip Havers QC** and **Hannah Noyce** have been instructed to intervene on behalf of the AIRE Centre.

### Justin Levinson involved in numerous abuse group actions

**Justin Levinson** has been acting for victims in the Leeds Children's Homes Group Litigation, Medomsley Detention Centre Group Litigation and Caldey Island Litigation. The claims arise out of historic child abuse in different settings. The Medomsley Group has over 1,000 claimants and is the largest group action of this type ever in the UK.

### Compensation claims for IICSA survivors of abuse

**Iain O'Donnell** is acting in several compensation claims for Core Participant survivors of abuse who have given evidence to IICSA. He has achieved a significant settlement for a Core Participant who gave evidence regarding the extent to which her anticipated operatic career was ruined as a result of her being subjected to sexual assaults by her music tutor. Iain's other IICSA-related civil claims are ongoing.

### Secondary victimhood following Grenfell

In October 2017, **Clodagh Bradley QC** and **Jessica Elliott** were invited to speak to Hodge Jones & Allen LLP on the topic of 'Proximity, Perception and Victimhood: Recovery for Psychiatric Damage'. They discussed the implications of the challenges in bringing nervous shock claims on behalf of secondary victims within the context of those involved in the fire at Grenfell Tower and in particular the recent decisions of *Werb v Solent NHS Trust & The Priory Hospital* [2017] (in which Clodagh appeared on behalf of the Claimant, instructed by Fieldfisher), *RE, LE & DE v Calderdale & Huddersfield NHS Foundation Trust* [2017] EWHC 824 (in which **John Whitting QC** acted for the Defendant, instructed by Hempsons) and *Farnworth v Wrightington Wigan & Leigh NHS Foundation Trust* [2016].

### Successful settlement for secondary victim

**Sarah Lambert QC** has been successful in recovering damages on behalf of a secondary victim by way of an agreed settlement. The claim was for psychiatric injury suffered by the father of baby Frank Gamble, the Claimant's firstborn son, who died shortly after being born from injuries sustained during a trial



### Landmark Supreme Court decision on police liability

**Duncan Fairgrieve** appeared for the successful Claimant in a landmark decision of the Supreme Court in *Robinson v Chief Constable of West Yorkshire* [2018] UKSC 4. The Court held that there is no general rule denying liability of the police when discharging their function of preventing and investigating crime and that the police owe a duty of care to avoid causing by a positive act foreseeable personal injury to another person in accordance with the general law of tort. Duncan was instructed by Grieves Solicitors.

### Group Actions 1COR instructed in:

#### Mau Mau Litigation

- Guy Mansfield QC
- Peter Skelton QC
- Matthew Donmall
- Lois Williams
- Jessica Elliott
- Michael Deacon
- Rhoderick Chalmers
- Jo Moore

#### Paterson Inquiry

- Lizanne Gumbel QC
- Henry Witcomb QC
- Isabel McArdle
- Peter Skelton QC
- Robert Kellar
- Dominic Ruck Keene
- Jessica Elliott
- Hannah Noyce
- Matthew Flinn
- Richard Mumford
- Christina Lambert QC (now Mrs Justice Lambert)

#### Leeds Children's Homes Group Litigation

- Justin Levinson

#### Medomsley Detention Centre Group Litigation

- Justin Levinson

#### Caldey Island Litigation

- Justin Levinson

#### Sophocleous v Foreign and Commonwealth Office

- Alasdair Henderson



## Employment & Equality



### Supreme Court finds discrimination by Regulators can be challenged in Employment Tribunals

**William Edis QC**, instructed by RadcliffesLeBrasseur, represented Dr Ewa Michalak in the Supreme Court in her long-running dispute with the General Medical Council. The GMC was appealing against the Court of Appeal's judgement that decisions of regulators for which there was no dedicated statutory route of appeal and that were alleged to be unlawfully discriminatory under the Equality Act but were amenable to judicial review could nevertheless be

brought in the Employment Tribunal. Such claims were not required to be pursued in the Administrative Court. The GMC's appeal was dismissed. *Michalak v General Medical Council and others* [2017] UKSC 71 is significant for all regulators and those affected by their early decision-making as the ET is a forum that has significant advantages in terms of resolving such disputes, not least in relation to costs.

### Bank vicariously liable for sexual assaults by a GP

In *Various Claimants v Barclays Bank PLC* [2017] EWHC 1929 **Lizanne Gumbel QC** and **Robert Kellar** were successful in establishing that Barclay's Bank was vicariously liable for any sexual assaults committed by a GP in the course of pre-employment health checks.

Applying the Supreme Court's decision in *Cox v Ministry of Justice*, the Court rejected the bank's submission that it was not liable because the GP was an independent contractor in private practice. The Court held that the relationship between the GP and bank was sufficiently 'akin to employment' to justify the imposition of vicarious liability. Lizanne and Robert represented 126 claimants in a group litigation against the bank. The health checks took place between 1967 and 1984 when many of the Claimants were as young as 16. Lizanne and Robert were instructed by Slater and Gordon.

### Court approves injunction to prevent disciplinary proceedings against doctor facing criminal charges

**Jeremy Hyam QC** successfully obtained an injunction for a Consultant Anaesthetist in *Gregg v North West Anglia NHS Foundation Trust* [2018] EWHC 390. Dr Gregg is a consultant anaesthetist at North West Anglia NHS Trust who was being investigated by the police and the GMC with respect to the alleged inappropriate hastening of the deaths of two patients. At a final injunction hearing before Justine Thornton QC, the Court

granted injunctive relief against the Trust to prevent them from proceeding with their disciplinary hearings in respect of the death of two patients pending a charging decision being made by the Crown Prosecution Service. The Court also prevented the Trust from stopping his pay on the ground that he had been suspended from practice by the GMC. Jeremy was instructed by RadcliffesLeBrasseur.



### EAT clarifies circumstances in which a lawyer's unavailability might justify an adjournment

In a case which attracted widespread attention amongst employment specialists, the EAT found in *Lunn v Aston Darby Group* [2018] UKEAT 0039/18BA that the difficulties for a party in obtaining alternative legal representation at short notice should justify a postponement even in expedited proceedings such as those which concern interim relief. **Michael Paulin** appeared for the successful Appellants in the EAT.



### Alasdair Henderson appointed to the Equality and Human Rights Commission

**Alasdair Henderson** has been appointed as a Commissioner at the Equality and Human Rights Commission. Alasdair brings to the role his experience in litigation and advisory work in the fields of public law and employment law. He has a particular interest in equality issues relating to religion and belief, and the protection of religious freedom.

He has been a major contributor to the UK Human Rights Blog. Before coming to the Bar, Alasdair worked for International Justice Mission in Kigali, Rwanda, dealing with cases of land rights violations and sexual violence against children. He is looking forward to assisting the EHRC in its partnership with other national human rights institutions,

as well as helping it fulfil its important role as Great Britain's expert body on equality and human rights issues.





## Human Rights



### Prevent Guidance survives challenge

In *R (Butt) v Home Secretary* [2017] EWHC 1930, Ouseley J rejected a challenge to the lawfulness of: (1) the Prevent Duty Guidance issued to universities on external speakers attending campus events; and (2) the work of the Home Office's Extremism Analysis Unit which conducts research into extremism and extremists, including using open source materials and social

media. The Court also dismissed an Article 10 challenge and found that the use of data was lawful. **Oliver Sanders QC** and **Amelia Walker** acted for the Home Secretary instructed by the GLD. The Claimant's appeal is due to be heard by the Court of Appeal in December 2018.

### Non-disclosure of Child Restraint manual upheld



The Court of Appeal refused a challenge by Carolyne Willow of *Article 39*, who had sought disclosure of a training manual on the restraint of 12-17 year-olds in custody. The case raised issues about the competing public interests in disclosure and non-disclosure and the relevance of the UN Convention on the Rights of the Child to the handling of requests under the Freedom of Information Act 2000. The Court of Appeal dismissed the appeal in *Willow v Information Commissioner & Ministry of Justice* [2017] EWCA 1876, finding that the Convention is not engaged as a matter of domestic law and that the decisions reached were compatible with Article 3 in any event. **Oliver Sanders QC** acted for the Ministry of Justice in the Upper Tribunal and the Court of Appeal, instructed by the GLD.

### High Court challenge to Dubs child refugee scheme dismissed

The High Court dismissed a judicial review concerning the number of unaccompanied minors being given sanctuary in the UK under the *Dubs* amendment.

**David Manknell** and **Amelia Walker** defended the government against a challenge brought by the charity *Help Refugees* to the Home Office's consultation process and resulting setting of the number of how many children could be admitted and rehoused in the UK. The Court also dismissed arguments in respect of alleged delay in making arrangements for the children to be admitted, and in respect of the procedures that have been followed or selection of the children. David and Amelia were instructed by the GLD.

### Supreme Court delivers judgment in prison smoking case

The Supreme Court has delivered its judgment in *R (Black) v Secretary of State for Justice* [2017] UKSC 81 – the long-running case concerning whether Crown Immunity applies to the smoking ban introduced by the Health Act 2006.

The judgment, given by the President, Lady Hale, contained a number of points of importance about statutory interpretation:

- They noted that the goal of all statutory interpretation is to discover the intention of Parliament. That intention is to be gathered from the words used by Parliament, considered in the light of their context and their purpose. In this context, they considered it clear that Lord Hobhouse's dictum in *R (Morgan Grenfell & Co Ltd) v Special Commissioner of Income Tax* [2002] UKHL 21; [2003] 1 AC 563, at para 45, that 'A necessary implication is one which necessarily follows from the express provisions of the statute construed in their context' must be modified to include the purpose, as well as the context, of the legislation.
- They rejected the contention that it was necessary for the purpose of the legislation to be 'wholly frustrated'. This has been accepted as a requirement in many cases (including by the Court of Appeal in this case) since the use of that term in *Province of Bombay v Municipal Corporation of the City of Bombay*

[1947] AC 58. The Supreme Court clarified that this is only one example of where the Crown would be bound by necessary implication. Other examples include where an important purpose would be frustrated.

- They considered that it was neither necessary nor desirable to add any further gloss to the test or to characterize it by adjectives such as 'strict'.
- They held that, in principle, it is not an objection to the Crown being bound that the Act imposes criminal liability, rejecting the Respondent's argument that a particularly high threshold applied in such circumstances and noting that this has no basis in the leading English and Scottish cases.

The court also considered academic criticisms of the presumption that a statutory provision does not bind the Crown save by express words or 'necessary implication'. While declining to reverse or abolish the rule altogether the Court urged Parliament, perhaps with the assistance of the Law Commission, to give careful consideration to the merits of doing so. It is striking that the rule has been reversed in a number of foreign jurisdictions.

**Philip Havers QC** and **Shaheen Rahman QC** appeared for the Appellant, instructed by Leigh Day.





## Court of Appeal gives new Article 8 Guidance on Immigration Rules

Following **Neil Sheldon's** success in the Supreme Court last year in *R. (on the application of Agyarko) v Secretary of State for the Home Department* [2017] UKSC 11 on the principles that should govern the application of Article 8 in the context of immigration decisions, Neil was again instructed by the GLD – this time to defend two appeals against the Secretary of State for the Home Department's (SSHD) decision not to grant leave to remain in *TZ (Pakistan) v Secretary of State for the Home*

*Department : PG (India) v Secretary of State for the Home Department* [2018] EWCA 1109.

The FTT's approach to adopt an evaluative mechanism, consistent with the Supreme Court decision and following existing good practice, was considered correct. The decision to uphold the SSHD's decision not to grant leave to remain was agreed with by the Court of Appeal. The appeals were dismissed.



## Annual JUSTICE Human Rights Law Conference

**Shaheen Rahman QC** and **Matthew Hill** both spoke at the annual JUSTICE Human Rights Law Conference held at the London offices of Freshfields. Shaheen provided an analysis of recent developments in judicial review, focusing in particular on fees, costs and access to justice. Matthew spoke about public inquiries and inquests, looking at the lessons to be drawn from the various investigations into Bloody Sunday and the Hillsborough stadium disaster and how they could be applied today.

## The rights of the child in International Relocation

**Martin Downs** represented a successful appellant in an international relocation appeal: *A v B (International Relocation)* [2018] EWHC 328. This is one of a series of cases where Martin has represented Polish families in Appellate cases in England and Wales. Martin was instructed to undertake the appeal by Setfords Solicitors.

## A marriage of convenience

**Jonathan Metzger** succeeded in an appeal on behalf of a married couple at the FTT in *Kaziu and Nowak v Secretary of State for the Home Department*. The Secretary of State's decision that the couple had entered into a marriage of convenience to secure residency rights for the husband, an illegal

immigrant from Albania, was overturned. Jonathan's approach was singled out for praise with the judgment referring to his 'thoroughly professional attitude, in keeping, of course, with the time honoured traditions of the Bar.' Jonathan was instructed by Huneewoth Solicitors.

## Law Pod UK



## Listener milestone for new podcast series



1 Crown Office Row have launched a new podcast series with presenter

**Rosalind English**, to discuss developments across all aspects of civil and public law in the UK. With previous experience working at the BBC World Service and BBC Radio 4's Law in Action, Rosalind

conceived the series, with post production help provided by Whistledown Studios and expert input from barristers at 1COR. You can listen to it on iTunes, Overcast, Audioboom and other podcast platforms.

Since its launch, Law Pod UK has been named among the top 10 legal podcasts by Scottish Legal News

and The Attic. As we go to press, it is approaching its 40th episode and been listened to over 50,000 times. Popular episodes include interviews on Artificial Intelligence, the progress of the Independent Inquiry into Child Sexual Abuse and the Right to be Forgotten.

Law Pod UK

## UK Human Rights Blog



## New Commissioning Editor for the Blog



**Jonathan Metzger** has been appointed the new Commissioning Editor of the

UK Human Rights Blog. Jonathan practises across a range of human rights-related areas, including public law, immigration, inquests and public inquiries. He wants to develop the work of the editorial team in ensuring that the Blog remains one of the go-to resources for any reader interested in the

latest developments in human rights law. In particular, he aims to increase some of the coverage of Supreme Court judgments in the UK as well as cases from the European Court of Human Rights. It is a little known fact about Jonathan that he appeared in University Challenge for Worcester College, Oxford in 2011.

We thank the outgoing commissioning editors **Michael Deacon** and **Hannah Noyce** for their excellent work in the previous year.

## By the numbers

The UK Human Rights Blog now has 18,000 followers on twitter (@ukhumanrightsb) and over 17,00 people who receive updates by email on a regular basis and 2018 has seen the number of hits received by the Blog grow month on month – the longest period of consistent growth for six years. The most popular pages remain those that discuss individual Articles of the European Convention – such as Articles 3 and 8 but, those aside, the top three posts from 2017 – 2018 were:

- 1 10 cases that defined 2017 by **Jonathan Metzger**
- 2 Charlie Gard: Strasbourg Court rules parents' case inadmissible: *Yates v United Kingdom* by **Rosalind English**
- 3 High wire walking without a mat: doctors, patient safety and public confidence: *General Medical Council v Dr Bawa Garba* by **Jeremy Hyam QC**



## Environment & Utilities



### Success in Court of Appeal in utilities case

In *Southern Gas Networks v Thames Water* [2018] EWCA Civ 33, the Court of Appeal found the defendant water company liable to Southern Gas Networks for the cost of customer compensation payments made after leaking water mains caused a gas outage in Christmas 2012. Reversing a

decision of the High Court, the Court of Appeal analysed the law on ouster clauses and held that the statutory scheme was not incompatible with SGN's common law rights. **David Hart QC** and **Jessica Elliott** acted for the successful appellant, instructed by Kennedys.



### M4 Relief Road planning inquiry

**Alasdair Henderson** represented the Gwent Wildlife Trust, who are one of a large number of objectors to the proposal to build an M4 Relief Road in South Wales. The proposed new motorway would destroy part of the Gwent Levels, a designated Site of Special Scientific Interest and an area of wetland which is a crucial habitat for many species of bird, animal and insect. The Trust adduced

evidence raising concerns about whether the economic benefits of the new road would be as significant as the Welsh Government claims, and whether the project was in keeping with the Welsh Government's overall economic strategy and the Well-being of Future Generations (Wales) Act 2015. **Dominic Ruck Keene** and **Hannah Noyce** also acted for the Wildlife Trust.

### Successful judicial review challenge concerning Regent's Canal

**Jessica Elliott** acted for one of the Claimants in *R (Holborn Studios Ltd) v Hackney Council* [2017] EWHC 2823 where it was found that the local authority had failed to re-consult on changes to a planning application. The proposed development would have replaced a number of industrial buildings on the Regent's Canal and the case raised issues about the protection of historic waterways and the requirements of the duty to act fairly when applications are changed following an earlier statutory consultation exercise. **Hannah Noyce** drafted grounds for review and assisted the Claimant at an earlier stage. Jessica was instructed by Shakespeare Martineau, acting pro bono on behalf of the Environmental Law Foundation.



### Environmental law after brexit

**David Hart QC** commented in *The Times* on how the proposed Brexit Bill might affect environmental law. Asked about how new plans might affect the rights of individuals and companies, he said: 'This seems to be a blatant way of government seeking to avoid responsibilities. If you take an area like pollution

it means that the government will escape any liability under the Francovich principle for past and future breaches.' David was also invited to speak at the 2018 Land Symposium where he appeared as a panelist discussing how land pollution will evolve over the next 25 years.



### Success for woodland charity

**Owain Thomas QC** successfully represented Will Woodlands, a private woodland charitable trust in an appeal against HMRC's decision to resile from a business/non-business method for the recovery of input tax incurred in the running of several large woodland estates. The case amounted to a full scale challenge to the ability

of charities to recover input tax where the ultimate purpose of the economic activity is charitable and where the business may not be immediately or ever profitable. The FTT dismissed HMRC's objections to the method and upheld Will Woodlands' position. Owain was instructed by Hays Macintyre.

### Planning inquiry into proposed development in Farringdon

**Jonathan Metzger** and **Charlotte Gilmartin** appeared on behalf of a local community group at a seven-day planning inquiry into a proposed development to knock down an existing Farringdon multi-storey car park and replace it with a large new hotel, retail and office complex. Jonathan and Charlotte represented the Catherine Griffiths and Clerkenwell Community Tenants' and Residents' Association, instructed pro bono through the Environmental Law Foundation. They led evidence from two experts in design & heritage, and delivery & servicing, and raised arguments involving planning policy, whether the design was unsympathetic to the local architectural context, the impact on safety of vehicles and pedestrians and amenity of local residents.

### Liabilities arising from Japanese Knotweed in the Court Of Appeal

**David Hart QC** and **Jessica Elliott** are acting for Network Rail in a case about liabilities arising out of Japanese Knotweed on their land, which the claimants say have caused them property blight. The Court of Appeal considered the case in June 2018 and judgment is awaited.



## Equality and Diversity



### Opening up the Bar

**As a chambers we are determined to do whatever is in our power to make the Bar as representative of society as possible, and to that end chambers continues to lead the Bar with our social mobility initiatives. We are the only set in the country to offer a mini-pupillage scheme exclusively for those from non-privileged backgrounds which guarantees successful candidates an interview for pupillage.**

We also carry out wide-ranging outreach activities. In the last year, I have led a team of nearly 50 barristers in chambers that has worked with the Sutton Trust to spread the word about the Bar to over 1,000 state school students in the 14-17 year-old bracket.

**Martin Forde QC, Clodagh Bradley QC, Oliver Sanders QC, Sarah Lambert QC, Neil Sheldon, Rob Kellar, Caroline Cross, Michael Paulin, Amelia Walker, Jim Duffy, Hannah Noyce, Emma-Louise Fenelon and Jo Moore** have attended conferences, question & answer sessions, workshops, law fairs and graduation ceremonies, and through work experience and shadowing we have opened our doors in chambers

to students who are then able to take that first crucial step into what seemed to many of them to be a closed profession.

Examples of the activities that other members of chambers have carried out in the last year include:

- **Jonathan Metzger** and **Charlotte Gilmartin** concluded that people may be lost to the Bar by the age of 14 and so they decided to focus on Peter Hills primary school children in Rotherhithe.
- **Vanessa Long** has mentored a secondary school student with The Girls Network, an organisation that seeks to inspire and empower girls from some of the least advantaged communities in the country.
- **Judith Rogerson** spoke to 150 sixth formers in Solihull about her route to the Bar and both she and **Alasdair Henderson** are mentors for the Social Mobility Foundation.
- **Henry Witcomb QC** has supported two Open University graduates and several Sutton Trust and other graduates with work experience and mentoring.

- **Richard Booth QC** and **Richard Smith** have continued their involvement with the Lord Edmund Davies Legal Education Trust, which helps Welsh students from disadvantaged backgrounds get a taste of legal London.

- **Timothy Bergin, Susan Healey, Lynn McFadyen** and **Richard Ager** from our Brighton Annex have undertaken a number of events in Sussex, including speaking to students from various backgrounds at the University of Brighton.

All the thousands of young people we've reached now have on their radar a career at the Bar or in the professions more generally. They tell others - the word spreads - and gradually stereotypes about the Bar are dispelled and access increases. We do not intend to let up with our efforts and indeed hope to reach many more people with our positive message of inclusion for years to come.

**Sarabjit Singh QC**







We welcome any feedback  
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### Meet the editorial team




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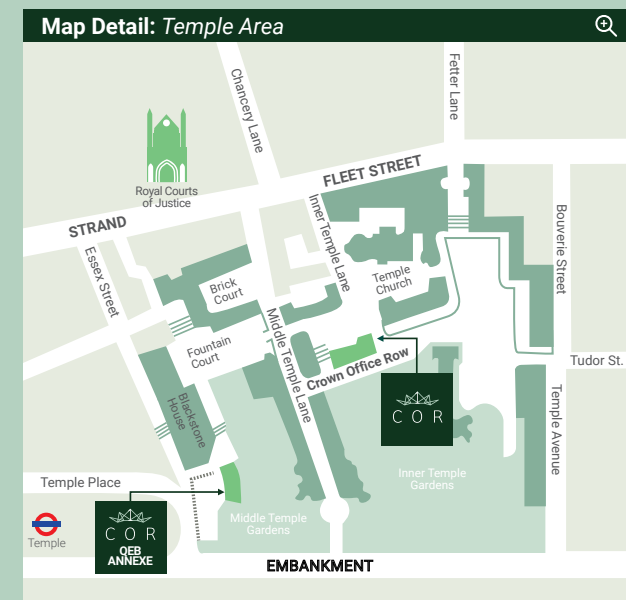


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