C O R

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1COR Bundle

2019-20

The annual newsletter of
1 Crown Office Row

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Stephen Miller QC
Philip Havers QC
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Paul Rees QC
Margaret Bowron QC
David Balcombe QC
David Hart QC
Martin Forde QC
William Edis QC
Angus McCullough QC
John Whitting QC
David Evans QC
Marina Wheeler QC
Henry Witcomb QC
Owain Thomas QC
Jeremy Hyam QC
Clodagh Bradley QC
Peter Skelton QC
Oliver Sanders QC
Shaheen Rahman QC
Sarah Lambert QC
Sarabjit Singh QC
Neil Sheldon QC
Robert Kellar QC

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Michael Deacon
Rhoderick Chalmers
Emma-Louise Fenelon
Gideon Barth
Jo Moore
Jonathan Metzer
Charlotte Gilmartin
Rajkiran Barhey
Michael Spencer

Chambers Director Andrew Meyler
Senior Clerk Matthew Phipps

Welcome to the 8th edition of the 1COR Bundle

It is my very great privilege to welcome you to the eighth edition of a publication which so many of our professional clients seem to value so highly (if only to check whether any of their cases have made the cut!).

This, of course, is my first welcome note in the 1COR Bundle. On 2nd October 2018 I took over as Head of Chambers from the legend that is Philip Havers QC. Philip served as Head of Chambers for a remarkable 12 years from 2006. Back in 2006 Chambers had 55 Members in London (14 of them QCs) and 34 in Brighton. In the following 12 years, not only did Philip preside over the steady growth of Chambers, which now has 69 members in London (26 of whom are QCs) and 56 in Brighton, but he also maintained his own highly successful Clinical Negligence, Human Rights and Public Law practice. Philip led Chambers very successfully with his characteristic intelligence, judgment, good humour and authority. He has always been generous with his time and I have been particularly grateful to Philip for the wisdom which he has shared with me over the past months.

In addition to having Philip Havers QC still very much in practice in Chambers, we are also fortunate to have his predecessor as Head of Chambers, Robert Seabrook QC, still in practice. Robert and Philip are the only two Heads of Chambers I have known since I arrived in Chambers as a pupil in October 1993. The strong leadership and stability which they have provided have been invaluable. They have set the tone for the success of Chambers. Long may they both continue in practice!

One among us who retired from practice this year was Guy Mansfield QC. We owe Guy our enormous thanks for the thousands of selfless hours which he (expecting no reward) gave to Chambers in his 45 years at 1 Crown Office Row. Chambers Treasurer, ethical guru, all round good egg, the list could go on. All this while also having been a very successful Chairman of the Bar Council and a huge contributor to the life of Middle Temple. We shall miss Guy.

You will read in these pages of the wonderful range and quality of work done by our members. None of this would be possible without either the extremely interesting instructions we receive from our professional clients or without the efforts of our superb clerking team led by our Senior Clerk, Matthew Phipps. We are very lucky both to have such loyal professional clients and to have such dedicated clerks and support staff. We thank you for choosing to use barristers at 1 Crown Office Row – we really are very grateful to you.

January brought great news - I am delighted to congratulate our two new 2019 Silks, Neil Sheldon QC and Robert Kellar QC, on their richly deserved appointment.

We are also very pleased to be building ever closer links with the Sutton Trust, contributing many members to outreach days involving schoolchildren from disadvantaged backgrounds finding out about careers in the law. This voluntary work has never been more important.

I hope you enjoy reading the 1COR Bundle. For more detailed discussions about many of the cases within, please listen to our podcast at Law Pod UK, with more than 80 episodes available.

Richard Booth QC
Head of Chambers

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The Inside Story

The last 12 months in Chambers

Arrivals

A warm welcome to two new tenants

Rajkiran Barhey and **Michael Spencer** both joined Chambers as new tenants this year. Rajkiran has worked previously in Rome, for the *UN World Food Programme*, in Dhaka, for the *Bangladesh Legal Aid Services Trust* and in London, for the *Bingham Centre for the Rule of Law*. She has also volunteered with *Southall Black Sisters*, assisting survivors of domestic violence access help and support, including legal advice. While studying in New York on the Fulbright Exchange Programme, she worked for NYU's Reproductive Justice Clinic.

Prior to coming to the Bar, Michael had a career as a solicitor advocate specialising in public law and human rights, with a particular emphasis on asylum support and social security. He has worked at Freshfields Bruckhaus Deringer LLP, the *Asylum Support Appeals Project*, the *Child Poverty Action Group*, and as Judicial Assistant to Lord Kerr at the UK Supreme Court. Michael is particularly interested in working in cases concerning Clinical Negligence, Personal Injury and Public Law and Human Rights.

Appointments

Two New Queen's Counsel

Chambers was delighted to celebrate the appointment of two new Queen's Counsel this year: **Neil Sheldon QC** and **Robert Kellar QC**. Neil's appointment came hot on the heels of being named 'Public Inquiries Barrister of the Year UK' by The Lawyer Monthly. He has been on the Attorney General's A Panel since 2010, has particular experience of national security work, and holds developed vetting security clearance. He has been much in the news recently with his involvement in high profile inquests such as that into the killings on Westminster Bridge. Rob was also formerly a member of the Attorney General's A Panel of Counsel and has a broad civil, regulatory and public law practice which encompasses: clinical negligence, personal injury, professional discipline, judicial review/human rights, healthcare inquests and employment law.

He was prominent as junior counsel for the Claimants in the Ian Paterson group litigation and is a familiar face in Manchester before the MPTS as well as in regulatory appeals – especially those with an employment law element.

New Head of Chambers

We are delighted to announce that **Richard Booth QC** is our new Head of Chambers. He succeeds **Philip Havers QC** who served three terms of four years from 2006 when he took over from **Robert Seabrook QC**. Both Philip and Bob continue their very busy practices. Richard, a native of South Wales, took Silk in 2013 and has developed a successful practice in Clinical Negligence, Professional Discipline, Personal Injury (especially brain and sports injuries), Costs, Inquests and Sports Law. He is described by Chambers and Partners as 'an excellent negotiator with exceptional analytical and organisational skills' – in other words, he is perfectly suited to the role of Head of Chambers.

Panel Celebrations

Chambers is delighted to announce that **Jim Duffy** and **Jo Moore** were appointed as Junior Counsel to the Crown (C Panel) from 1st March 2019 and **Michael Paulin** has been promoted to the B Panel. **Natasha Barnes** and **Michael Spencer** have been appointed by the Equality and Human Rights Commission to their Panel of Counsel. The appointment is until 2023.

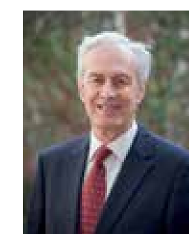
New Senior Coroner appointment

Emma Whitting has been appointed as the new Senior Coroner for the Bedfordshire and Luton Coronial Area.

Assistant Coroner to Southwark

Caroline Cross has been appointed to the fee-paid/part-time post of Assistant District Coroner for Southwark.

Guy Mansfield QC retires



Guy has retired from practice after 45 years in chambers. He took Silk in 1994 and appeared in many reported cases, in particular, in the fields of legal practice/negligence, funding of litigation and clinical negligence. He left the Bar on a high note after he prevailed for the FCO in the marathon Kenyan Emergency Group Litigation – where the trial lasted 232 days. Guy is a Bencher of Middle Temple and a former Chairman of the Bar Council. Guy sat for many years as a Recorder and latterly as a Deputy High Court Judge. He was also a prodigious writer whose works included the sections on costs and conditional fees: in 'Human Rights and the Common Law', (Hart Publishing); and 'Personal Injury Handbook' (Sweet & Maxwell).

Isabel McArdle has returned from maternity leave. She has an extensive practice in healthcare law (including clinical negligence, personal injury and inquests), public law (she is an Attorney General's C Panellist) and indirect tax. She acts for both Claimants and Defendants.

Awards & Plaudits

The Legal 500 UK names 1COR 'Personal Injury/ Clinical Negligence Set of the Year'

Chambers was honoured at The Legal 500 UK Awards 2019 ceremony in the Guildhall. The citation said that '1 Crown Office Row houses a number of prominent clinical negligence practitioners undertaking some of the most high-profile, cutting edge cases'.

1COR hits the headlines in The Lawyer's 2019 Hot 100

Chambers was delighted to have three members featured in The Lawyer's Hot 100, the most members from a single chambers in 2019 with **Martin Forde QC**, **Jeremy Hyam QC** and **Matthew Hill** recognised for having had an outstanding year.

'Public Inquiries Barrister of the Year'

Neil Sheldon QC was named by the Lawyer Monthly, 'Public Inquiries – Barrister of the Year – UK' in recognition of his high profile practice. He was instructed by the Home Secretary in a series of major inquests and inquiries, including the Westminster Bridge, London Bridge and Manchester Bombing Inquests.

Coroners, Cremation & Burial

We are delighted that **Caroline Cross** has been appointed Consultant Editor to the Halsbury's Laws sections on *Coroners, Cremation and Burial*. Caroline is a specialist in this area of law and the Co-Editor of *The Inquest Book: The Law of Coroners and Inquests* with Mr Justice Garnham.

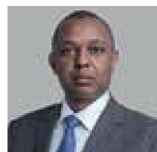
'Band 1 Set'

Chambers & Partners has ranked 1COR as a Band 1 Set in Clinical Negligence, Inquests & Inquiries and Professional Discipline. Chambers is also highly ranked for Personal Injury, Civil Liberties & Human Rights and Environmental law. Chambers is particularly proud of our 'Star Individuals' **Lizanne Gumbel QC**, **David Hart QC** and **Philip Havers QC**. Chambers & Partners recommend 1COR for its excellent client service and strong bench of specialists. Interviewees say they receive 'consistently excellent service from the barristers to the clerks,' further noting that 'it makes this set stand out above others.' Great to see our clerks gain recognition as 'the best clerking team of any set I've ever worked with – they do not let you down.'

Young Pro Bono Barrister of the Year'

1COR was delighted that **Jonathan Metzer** was nominated by clients and peers for the award of 'Young Pro Bono Barrister of the Year'. Since 1997, the Bar Pro Bono Awards have been given in recognition of outstanding commitment to pro bono work by a barrister.

Other news



International Arbitration at the 21st Commonwealth Law Conference 2019:

Sydney Chawatama FCIArb spoke at the 21st Commonwealth Law Conference 2019, held in Livingstone, Zambia on 'Working with Barristers in International Arbitration' at a popular session hosted by the Bar Council of England and Wales. His report on the conference is available on the Bar Council website and is well worth a read for more on business development - and intrusive wildlife.

Bready, Steady, Bake for Justice!

Well-known for our brilliant bakers and famous chambers tea, feast your eyes on one of our Great Legal Bakes in aid of the London Legal Support Trust. **Rajkiran Barhey** received particular praise for her homage to *Donoghue v Stevenson*.

Sport Resolutions Panel

Sydney Chawatama was appointed this year to the Sport Resolutions Pro Bono Panel. This is an independent, not-for profit, dispute resolution service for sport based in the United Kingdom. It provides sport specific arbitration and mediation services and operates the National Anti-Doping Panel ("NADP") and National Safeguarding Panel ("NSP"). He joins our other panellists **Leanne Woods**, **Pritesh Rathod** and **Jo Moore**.

Lord Chancellor's Breakfast

Richard Booth QC and **Sarabjit Singh QC** were delighted to attend the Lord Chancellor's Breakfast to mark the start of the legal year with Mrs Justice Whipple, Mrs Justice Lambert, Mr Justice Garnham and, now recently retired, Mr Justice Foskett.

Mooting Competitions

The University of Leicester held its seventh annual mooting competition focusing on medical law. 1 Crown Office Row and Lime Solicitors jointly sponsor this event, with **Henry Witcomb QC** sitting on the panel of judges for the final. Well done to the 16 teams who took part and congratulations to the joint winners, UCL and Northumbria University! **Owain Thomas QC** was a Judge at the 2019 LSE-Featherstone Sexual Orientation and Gender Identity Moot while **Jonathan Metzer** and **Charlotte Gilmartin** did the honours at this year's King's College London Human Rights Moot.

1COR Christmas Card Competition 2018

Thank you to everyone who entered our competition to identify the mystery individuals on our Christmas card this year! A winner was chosen and a donation made to the Institute of Cancer Research. The answer: it was **Pritesh Rathod** and **Caroline Cross** who featured in our recreation of the scene from *Holiday Inn*, with Bing Crosby and Marjorie Reynolds singing 'White Christmas'. Pritesh and Caroline started on the same day together as pupils at 1COR, so it was lovely to have them both appear on the 2018 Christmas Card.

Taking strides for justice in the London Legal Walk

1COR joined thousands of other lawyers to raise funds for the London Legal Support Trust which funds Law Centres and pro bono agencies in and around London.

1COR go the distance:

This year marks a decade of marathon running for **Lizanne Gumbel QC** and her son, Mark Wainwright. They run both the Brighton and London Marathons each year to raise funds for *Look UK*. Earlier in the year **Charlotte Gilmartin** completed the Royal Parks Half Marathon in aid of the *Public Law Project*.

Staff Team News

1COR welcomes new clerks Emma Buckland and Kelly Schaer

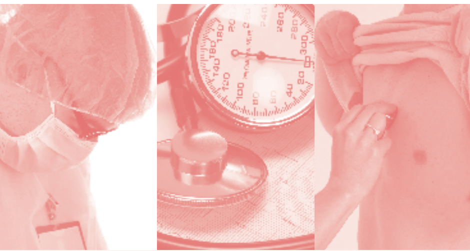
Chambers was delighted to welcome two fantastic additions to our clerking team: Emma Buckland and Kelly Schaer, who joined us as 6th and 7th junior clerks respectively.

Andy Tull walks the Isle of Wight for the Earl Mountbatten Hospice

Andy Tull walked the Isle of Wight from coast to coast (26½ miles) in May 2019 to raise money for the Mountbatten Hospice in Newport, which provides services to those facing death and bereavement.

This year marks 15 years since the first time **John Mclaren** walked through the door of chambers as a junior clerk and 10 years since the arrival of **Chloe Turvill**.

Health Law



Patient falsely imprisoned in hospital

What are the obligations and duties of hospitals when maintaining the admission of inpatients, against the wishes of the patient and their family, due to their deteriorating condition? This difficult issue was explored by the High Court in *Esegbona v King's College Hospital NHS Foundation Trust* [2019] EWHC 77.

Alasdair Henderson, instructed by Leigh Day, successfully represented the family of Christiana Esegbona, who had been kept in hospital for nine months, before being discharged to a care home miles away from her family where she died nine days later. The Court found that there had been a failure on the part of the hospital to adhere to the deprivation of liberty safeguards in the Mental Capacity Act 2005 to undertake a full capacity assessment of Christiana and, if she did not have capacity, a best interests assessment. The hospital also intentionally kept Christiana's family in the dark about the discharge until the last minute, so that they could not object. The Court awarded damages for false imprisonment and negligence. Aggravated damages were awarded because of the deliberate exclusion of the family from the discharge planning process.

High Court considers victim categorisation

In *YAH v Medway NHS Foundation Trust* [2018] EWHC 2964, the Defendant Trust admitted a negligent delay in the delivery of a baby who then suffered cerebral palsy. The negligence occurred whilst the baby was still in her mother's womb. The mother went on to suffer psychiatric injury which was contributed to by the traumatic labour, her first sight of her baby around 12 hours later and the stresses of caring for a child with cerebral palsy.

In those circumstances, did the mother fall to be classed as a primary victim or a secondary victim for the purpose of determining liability? Further, if she was a primary victim, did she need to prove that "shock" or "a truly shocking and horrifying event" caused or materially contributed to her injury? These were the key questions explored by **Richard Booth QC**, who was instructed by Boyes Turner for the Claimant.

In the High Court, Mrs Justice Whipple had little hesitation in concluding that the Claimant mother was a primary victim and that she did not need to prove that her injury was caused by "shock".

Supreme Court weighs in on the duties of hospital staff

The Supreme Court has handed down its judgment in *Darnley v Croydon Health Services* [2018] UKSC 50. After the Claimant was struck on the head by unknown assailants, he attended the Defendant's A&E Department. The trial judge made factual findings that the receptionist told the Claimant that he would have to wait up to four to five hours before somebody looked at him. He waited 19 minutes, and then left without telling anyone in the Department. The judge also found that he would in fact have been seen within about 30 minutes by a triage nurse, but he was not told this. If he had been provided with that information, he would have waited to be seen. After returning home, the Claimant's condition deteriorated, and he suffered serious permanent injuries, which the Court found would have been avoided had he not left.

The question of what duty of care was imposed on the hospital on these facts went up to the Supreme Court, which found in the Claimant's favour. This important decision underscores that all hospital staff must take reasonable care to ensure patients are not provided with "misinformation", including information about when medical assistance is likely to be available. **Philip Havers QC** was instructed by Capsticks for the Defendant Trust.

Record clinical negligence settlement

In 2012, the Claimant contracted Herpes Simplex virus at birth, which developed into a brain infection. A two day delay in prescribing and administering the necessary anti-viral medication at the Watford General Hospital led to his sustaining a catastrophic brain injury. He now suffers from significant cognitive and motor impairment as well as behavioural issues and requires 24-hour care. Following an admission of liability from the Defendant Trust, an agreed settlement was approved by past 1COR member Mrs Justice Lambert sitting in the High Court. The Claimant will receive a lump sum together with annual, index-linked and tax-free payments to cover the cost of his care and case management. The capitalised value of the settlement, calculated over the Claimant's lifetime, is in the region of £37 million. This is thought to be the biggest settlement ever for a clinical negligence case in the UK.

Henry Witcomb QC, instructed by Fieldfisher, acted for the family. **John Whitting QC**, instructed by Capsticks, acted for the NHS Trust.

No negligence in rare post-natal collapse claim

Cerys Clements was less than an hour old when she collapsed on her mother's breast and suffered severe hypoxic brain damage. Her parents claimed that she had suffocated on her mother's breast and that they should have been advised by the midwifery staff at the hospital to keep Cerys' nose clear and continuously to check that she was breathing.

Following a week-long trial in the High Court, Mrs Justice May dismissed the claim and gave judgment for the Hospital (*Clements v Imperial College Healthcare NHS Trust* [2018] EWHC 2064). She found that the care provided to Cerys' parents was entirely appropriate, and that the precise cause or causes of extremely rare events of sudden untoward postnatal collapse in newborns remain unknown. The evidence did not demonstrate on the balance of probabilities that Cerys was suffocated by her mother's breast, and accordingly the claim had to fail.

John Whitting QC was instructed by Capsticks to represent the Defendant hospital.

Scope of duty the key in *Chester v Afshar* arguments

In *Pomphrey v Secretary of State for Health and Another* [2019] WLUK 483, the Claimant sought damages for disabilities arising from complications following spinal surgery. A broad range of allegations were made against various clinicians for alleged failures to act upon the Claimant's symptoms, which were rejected on the facts. However, the Court did decide that there was a negligent delay of 10 days in the Claimant undergoing surgery.

The Claimant therefore advanced a *Chester v Afshar* argument, saying that he would not have suffered complications had he undergone surgery on a different day, on the balance of probabilities. That argument was also rejected by the Court, which noted that the decision in *Chester* was based on the fact that the risk which manifested in that case was the precise risk of which the surgeon ought to have warned, but failed to do so. In other words, the injury which arose fell directly within the scope of the Defendant's duty of care. That was not the case in the present claim, which accordingly had to fail.

Andrew Kennedy, instructed by DAC Beachcroft, represented the Defendant.

Probing the law on Part 36 offers

In *Holmes v West London Mental Health Trust* [2018] 4 Costs LR 763, the Claimant suffered from lithium toxicity in 2012, resulting in a prolonged stay in intensive care. She issued a claim in February 2015 against the Defendant claiming damages for clinical negligence.

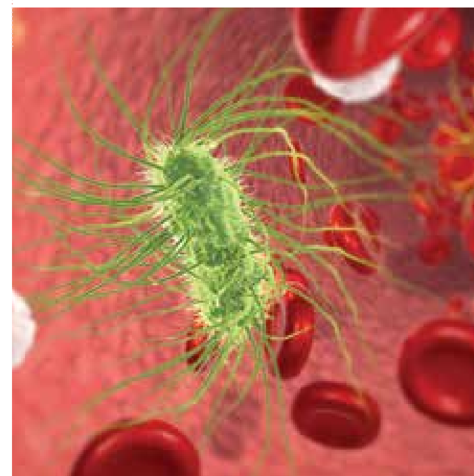
Although the Defendant's own SUI report was highly critical of the care she received, liability was denied. The Claimant made a 95% liability offer under Part 36 in February 2017. That was initially rejected by the Defendant, but ultimately accepted at a later stage in the litigation on the condition that costs were awarded on the standard basis. The Claimant disputed this 'condition' and sought her costs on an indemnity basis from the date of the expiry of her 95% offer, claiming that the Defendant's conduct of the litigation was such as to justify an award of indemnity costs.

The Judge ruled that the Claimant's 95% offer had been accepted and that the condition the Defendant's solicitor purported to impose was invalid. However, on reviewing the Defendant's conduct of the litigation, it was deemed not to be out of the norm, and indemnity costs were not justified on the facts.

Jeremy Hyam QC was instructed by Leigh Day for the Claimant, whilst **Matthew Barnes** was instructed by Bevan Brittan for the Defendant.

Developing the law of consent and causation

In *Duce v Worcestershire Acute Hospitals NHS Trust* [2018] EWCA Civ 1307, **Philip Havers QC** and **Richard Mumford**, instructed by Capsticks, successfully resisted the Claimant's appeal on the judge's findings on consent at first instance. The case concerned allegations of failure to warn of the risk of pain following a hysterectomy. At trial, the Trust (represented by Richard) was successful in establishing that the warning given to the Claimant satisfied the requirements set out by the Supreme Court in *Montgomery v Lanarkshire Health Board* and that the Claimant, even if given a different warning as to risk, would nonetheless have undergone surgery at the time she did. The claim was therefore dismissed. On appeal, the Court considered *Chester v Afshar* [2004] UKHL 41, and reaffirmed that the modified test for causation established in that case does not negate the requirement for a claimant to demonstrate a "but for" causative effect of the breach of duty, and specifically to prove that the operation would not have taken place when it did.



Couple reunited in final days

Sivasakthy Mahindan was left catastrophically brain damaged after doctors failed to note a blood clot in her leg. The clot moved into her lungs over the next few months, leading to her suffering hypoxic brain injury and being put on life support in February 2014. After four months in a coma she was transferred to two care facilities in a minimally conscious state until her death in October 2017. Mr. Mahindan was denied access to his wife at the care home as a condition of his bail after allegations of abuse were made by a care worker. However, after 19 months the police cleared him of all charges and the case was dropped. He was reunited with his wife for nine months before her death. The clinical negligence claim was settled by the hospital, which is implementing measures to prevent such errors from happening again. **Robert Wastell** acted for Mr. Mahindan and was instructed by Fieldfisher.

Chester and *Montgomery* applied

In the sad case of *Keh v Homerton University Hospitals NHS Foundation Trust* [2019] EWHC 548, the Claimant's wife died as a result of sepsis following an emergency Caesarean section.

Relying on *Chester v Afshar,* the Claimant argued that because C-sections don't often result in infection, his wife's infection would probably have been avoided had the procedure taken place at a different time. The High Court found that there was a *Montgomery*-style breach of duty as the Deceased should have been offered an elective C-section and been given more information about her particular risk factors. However, there was no causation between the breach and her infection arising from the emergency C-section, as she was likely to have followed her consultant's advice and opted for an induction in any event.

Angus McCullough QC was instructed by Bevan Brittan for the Defendant.

No damages for bringing up a healthy child

In a fascinating case, a mother forged her ex-partner's signature on a consent form which resulted in an embryo transfer taking place, with a healthy child the ultimate result (*ARB v IVF Hammersmith* [2018] EWCA Civ 2803). The Claimant father sought substantial damages from the IVF clinic – which had failed to detect the forgery – because the embryo had been transferred without his informed written consent and as a result he was the father of an 'unwanted' child for whom, he said, he had a moral obligation to pay her past and future financial upkeep. The claim included the cost of private school fees, bedroom decoration, a larger car, babysitting, skiing holidays, gap year funding, a new car at 18, and the future costs of the child's wedding.

At first instance the Court dismissed the claim. The clinic's systems for obtaining consent were *Bolam* reasonable in tort, and although there had been a breach of a strict contractual obligation to obtain informed consent, damages were not recoverable for the cost of bringing up a healthy child as a matter of policy (per *McFarlane v Tayside Health Board* [2000] 2 A.C. 59 and *Rees v Darlington Memorial Hospital NHS Trust* [2003] UKHL 52). On appeal, the Court held that the clinic was in fact in breach of duty in negligence as well as in contract, but agreed that damages were irrecoverable on grounds of legal policy.

Jeremy Hyam QC and **Suzanne Lambert** were instructed by Hempsons for IVF Hammersmith.

1COR introduces Quarterly Medical Law Review

Long-established as a leader in fields relating to medical law, 1 Crown Office Row has now introduced a quarterly periodical highlighting important recent decisions and interesting emerging themes in this field.

Dealing with both substantive law and relevant aspects of procedure, the 1COR QMLR is intended to assist professional clients to digest quickly and easily the latest developments in clinical negligence and regulatory law, with elucidating commentary from 1COR's specialist barristers. **Jeremy Hyam QC** leads an editorial team composed of **Shaheen Rahman QC**, **Suzanne Lambert**, **Matthew Flinn**, **Dominic Ruck Keene** and **Rajkiran Barhey**. Look out for the next issue in July!

Classic application of *Bolam* and *Bolitho* in Court of Appeal

Giles Colin, instructed by Shared Services Partnership Legal & Risk, appeared for the Defendant Local Health Board in the Court of Appeal in *Williams v Cwm Taf Local Health Board* [2018] EWCA Civ 1745.

The Claimant sought damages for complications arising from a sympathectomy to treat critical limb ischaemia, arguing that he ought to have undergone an angiogram and angioplasty instead. At first instance, it was established that a reasonable body of medical opinion supported treatment by way of sympathectomy, and so the claim failed on standard *Bolam* principles. On appeal the Claimant argued that there was no logical basis for that body of opinion, and so the claim ought to succeed, applying the *Bolitho* test.

The Court rejected that argument, finding that the trial judge had the *Bolitho* test in mind, and reached a reasonable conclusion. It is a heavy burden to show that a body of medical opinion is nevertheless unreasonable due to a lack of logic, and making out this case would normally require express expert evidence to that effect.

Public Law

Court of Appeal examines counter-extremism strategy

The Court of Appeal considered a human rights challenge to two aspects of the Government's counter-extremism strategy in *R (Butt) v Home Secretary* [2019] EWCA Civ 256.

Oliver Sanders QC and **Amelia Walker** were instructed by GLD to represent the Home Secretary. The claim challenged: (1) the work of the Home Office Extremism Analysis Unit which conducts research into extremism and extremists, including using open source materials and social media; and (2) the Prevent Duty Guidance issued to universities on external speakers on campuses. The claim failed on every ground at first instance and the Claimant's appeal was dismissed on four grounds, but allowed in relation to one paragraph of the Guidance. The court held: (1) the Extremism Analysis Unit's use of the Claimant's personal data was lawful and did not involve 'surveillance' or engage his article 8 privacy rights and, even if it had done, any interference would have been compatible with article 8(2); and (2) the Guidance did not interfere with the Claimant's Article 10 freedom of expression rights and was substantively lawful, save that one paragraph was not sufficiently balanced and required 'very easily achievable' amendment.

Marina Wheeler QC recently discussed this case on Law Pod UK.

Windrush compensation scheme launched

After months of consultation with individuals and families affected by the Windrush Scandal, the government launched a Compensation Scheme in the Spring of 2019. **Martin Forde QC** has been closely involved as the Independent Advisor appointed by the Home Secretary and has spoken widely on the lessons to be learned from the scandal. Upon the scheme's launch he commented that it 'has been built on feedback from affected communities, and their personal stories have been crucial in its design.' A taskforce has been established to help eligible individuals secure British Citizenship and a review set up to avoid any repeat of this failure.

Tommy Robinson contempt case reconsidered

Angus McCullough QC was appointed by the Attorney General to act as advocate to the court (a role previously known as "amicus curiae") in the remitted contempt of court proceedings involving far-right activist Stephen Yaxley-Lennon, better known as Tommy Robinson. Angus' role was to provide independent advice on legal issues to the Court, and he did not represent or act on behalf of the Attorney General.

Mr Yaxley-Lennon was originally found to have been in contempt of court in May 2018 after filming and broadcasting (on the internet) footage relating to a criminal trial, in breach of a court order. He was committed to prison for a total of 13 months, including activation of a previous suspended sentence. The finding was overturned by the Court of Appeal in a judgment handed down on 1 August 2018 (*Re Yaxley-Lennon* [2018] EWCA Crim 185), when he was released from prison and granted conditional bail. The Crown Court referred the case to the Attorney General, who in May 2019 obtained permission from the High Court to bring contempt proceedings once again.

Mau Mau litigation comes to a close

After 232 hearing days, the collation of 40,000 documents and no fewer than 16 reserved judgments, the Kenyan Emergency Group Litigation against the UK Government, that began in 2013 is at an end. On 21 November 2018 Mr Justice Stewart gave judgment in the second of 25 test cases to be heard to conclusion, and then dismissed all the remaining test cases. This decision binds all Claimants on the Group Register on which some 40,000 names had been entered.

The Claimants alleged abuse during the Kenyan Emergency

(Mau Mau insurgency) in the period 1952 to 1962. The judge declined to exercise his discretion under section 33 Limitation Act 1980 to extend time in the Claimants favour. **Guy Mansfield QC** was instructed by GLD as first Leading Counsel. Other members of 1COR who have appeared or advised in the course of the litigation are **Peter Skelton QC**, **David Manknell**, **Matthew Donmall** and **Jo Moore**.

Extending time for unpaid work

In *National Probation Service v The Crown Court Sitting At Blackfriars* [2019] EWHC 529 the Divisional Court decided that the Probation Service can extend the time for completion of the unpaid work requirement in community sentences, even where this would take the timeline beyond that originally set by the sentencing court. **David Manknell** appeared for the Probation Service in this test case, which affected the management of thousands of community sentences. The hearing took the form of an appeal by way of case stated against the Crown Court's decision, which initially held that there was no power to extend time.

Big Brother in print

Oliver Sanders QC and **Dominic Ruck Keene** analysed the enormous, complicated and much misunderstood judgment of the European Court of Human Rights in *Big Brother Watch & Others v UK* (which followed the Snowden revelations) in Counsel Magazine.

Media denied access to Shoreham footage

In *BBC v Secretary of State for Transport* [2019] EWHC 135 the BBC and the Press Association sought disclosure of Go-Pro cockpit footage from the Shoreham air crash under the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2018. In normal circumstances, such material is protected under the Regulations for use by the Air Accidents Investigation Branch ("AAIB") pursuant to its investigatory functions.

The main issue for the Court was whether the disclosure of the footage to the media would be beneficial enough to the public interest to outweigh the potential adverse impact on future safety investigations. The AAIB, represented in these proceedings by **David Manknell**, successfully argued that disclosure should not be ordered in this case. The High Court took into account the contents of the Chicago Convention, the media's inability to control distribution of the disclosed footage when it could be disseminated at no cost on the internet, the adverse effect that such disclosure could have on pilots' behaviour, and the potential damage to the UK's standing in the world of international air investigation should the standards in the Chicago Convention not be followed. David was instructed by the GLD for the Secretary of State for Transport in his role as the minister responsible for the AAIB.

Court confirms powers of stop and search at airports

In *Karia v Secretary of State for the Home Department* [2018] EWCA Civ 1673 the Appellant arrived from Amsterdam and attempted to leave the airport through the non-EU customs exit. He was stopped and asked to submit his luggage for an examination; this revealed nothing untoward. He was told that the search was permitted under the Customs and Excise Management Act 1979. No records of searches were kept, no records were accessible to him and no reason for his selection was given. The Appellant's judicial review of his search was unsuccessful at first instance, and in the Court of Appeal, **Amelia Walker**, instructed by the GLD, successfully argued that the first instance decision should be upheld. The Court found that since the test of "reasonable suspicion" in relation to stop and search powers had been removed by the Finance (No. 2) Act 1992, the clear intention of Parliament was to broaden the basis of those powers. There was no requirement to show the necessity of a search on an individual basis, and as a result, there was no requirement on customs officials to provide reasons for the search.

Supreme Court rule on assessment of medical evidence in asylum claims

Neil Sheldon QC and **Matthew Hill** appeared in the Supreme Court over the correct approach to the assessment of medical evidence in asylum claims. At issue was whether an asylum seeker's scars were inflicted by torture or as the result of a planned procedure carried out under anaesthetic. The Supreme Court gave great weight to the 1999 *"Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment"*, known as the *"Istanbul Protocol"* as guidance to medical experts, while accepting that credibility was ultimately a matter for the Tribunal. Neil and Matthew were instructed by the GLD.

Allegations of sexual abuse on St Helena

Neil Sheldon QC represented the Foreign Secretary in *Gannon & Warsama v Foreign Office and Sasha Wass QC* [2018] EWHC 1461, a case which concerned the application of Article IX of the Bill of Rights 1689.

The Claimants were social workers employed on St. Helena who made allegations of widespread sexual abuse on the island. The allegations prompted the Foreign Secretary to commission an Inquiry, led by Sasha Wass QC. The Inquiry's report was extremely critical of the Claimants, effectively ending their careers as social workers. They brought a damages claim under Article 8, which the Defendant sought to strike out on the grounds that the report was a "proceeding in parliament" and that parliamentary privilege provided a complete defence. This is one of the few recent cases to examine the nature and application of Article IX of the Bill of Rights and the appeal is to be heard by the Lord Chief Justice later this year.

1COR members in appeal to Privy Council

Philip Havers QC and **Hannah Noyce** acted for the Chief Justice of Trinidad and Tobago in an appeal to the Judicial Committee of the Privy Council. The case concerned the lawfulness of an investigation by the Law Association of Trinidad and Tobago into allegations made against the Chief Justice in the local press. The Chief Justice argued that the investigation was prohibited by s137 of the Constitution, and was tainted by apparent bias and contrary to the requirements of natural justice. Philip and Hannah were instructed by Simons Muirhead and Burton.

Stateless, but admissible to a State

In *Teh v SSHD* [2018] EWHC 1586 the Administrative Court concluded that a British Overseas Citizen of Malaysian origin was stateless, in circumstances where he was no longer a Malaysian national. However, before the UK Government would accept that the Claimant was stateless, he had to show under the Home Office Immigration Rules that he was also not "admissible" to Malaysia. The Government persuaded the court that because it had a procedure in place under which the Claimant could theoretically be returned to Malaysia, he was "admissible" to that state, and therefore the Government was not required to treat him as stateless under the Immigration Rules. This was despite the fact that there was 'no evidence' of a single successful return to Malaysia ever taking place under that procedure. **Sarabjit Singh QC** was instructed by Barnes, Harrid & Dyer as leading counsel for the Claimant.

Assad family members refused British citizenship

The Claimants in *R (LA, MA, SA) v SSHD* [SN/63- 7/2015] were members of the extended family of President Assad of Syria who sought to challenge the decision of the Home Secretary to refuse their applications for British citizenship on international relations grounds. **Neil Sheldon QC**, instructed by GLD, acted for the Secretary of State in this judicial review, which was heard by SIAC because it engaged national security issues. SIAC upheld the decisions in each case on the grounds that the Secretary of State was reasonably entitled to reach the conclusion that granting citizenship to members of the Assad family would damage the UK's standing as a leading member of the coalition seeking a peaceful conclusion to the Syrian conflict, and that any defects in the decision making process made no material difference to the outcome.

Tax Law

Will this be the last reference to the CJEU from a domestic court before Brexit?

Owain Thomas QC represented HMRC in the First-tier Tribunal in a case arising from proceedings between Kaplan International Colleges (UK) Ltd and HMRC. It involves a company set up by the Kaplan Group in Hong Kong to act as the costs sharing group supplying services to the Kaplan Group in the UK, and involves Kaplan's claim for an exemption from VAT. The case follows a flurry of case law from the CJEU on this exemption including *Case C-326/15 DNB Banka* and *Case C-605/15 Aviva*, where Owain represented the UK in the CJEU. The FtT made a reference to the CJEU in January 2019 following which the case was accepted by the court registry. Written observations were filed by the parties in May 2019. Any oral hearing should take place later this year with the prospect that this may be after the UK has left the EU.

Devolution and VAT

Natasha Barnes successfully represented HMRC in the Upper Tribunal in two lead cases in *The Learning Centre and Life Services Ltd v HMRC* [2019] UKUT 2, which has important implications across the VAT sector. Both are now due to be heard by the Court of Appeal.

The First-tier Tribunal previously held that UK VAT legislation, which exempted state-regulated commercial welfare providers, breached the EU principle of fiscal neutrality. This was because, when read in conjunction with devolved healthcare legislation, it resulted in private day care services being exempt from VAT in Scotland and Northern Ireland but liable to VAT in England and Wales. The Upper Tribunal allowed HMRC's appeals. It held that, to the extent there was a difference between supplies across the devolved nations, this was not caused by a lack of neutrality in the VAT legislation. It was instead caused by the fact that the UK had devolved regulation of the welfare sector and the devolved nations had made different decisions as to which services to regulate, which they were entitled to do.

Colleges ‘of’ universities can exist outside Oxbridge

Sarabjit Singh QC appeared in the Supreme Court for HMRC in *SAE Education Ltd v Comrs for HMRC* [2019] UKSC 14. The issue was whether the School of Audio Engineering in the UK was a college “of” Middlesex University, the significance of this being that such a college would not have to charge VAT on its tuition fees.

Upon reaching the highest court in the land, detailed consideration was given to the word “of”. Whereas it might be thought that a college “of” a university is a college that forms part of that university, the Supreme Court decided that what was more important was whether the college shared the same educational objects as the university, and if it did it could be “of” the university even if it was not literally “of” the university. The Supreme Court’s decision opens up this particular VAT exemption to colleges other than Oxbridge colleges and the like, although how generously or strictly the Supreme Court’s guidance will be interpreted in other cases will only become clear over the next five or 10 years.

UK Courts assess tax “fall back” provisions for the first time

Natasha Barnes was instructed by HMRC in the lead case of *Ampleward* (in *Ampleward v HMRC* [2018] UKFTT 715) concerning the lawfulness of tax “fall back” provisions. Acquisition tax is normally due in the Member State to which goods are delivered but the fall back provisions enable HMRC in certain circumstances to assess a UK trader for acquisition tax even where the goods have never physically entered the UK. This was the first time the fall back provisions have been fully considered by the UK courts, and a large number of high value appeals stood behind this case.

The central issue for the First-tier Tribunal was whether the fall back provisions could apply to excise goods traded under duty suspense. This involved a complex question of statutory interpretation. The FtT concluded that, on a literal interpretation of Value Added Tax Act 1994, the fall back provisions did not apply to goods traded under duty suspense. However, it accepted HMRC’s argument that those provisions could apply to goods traded under bond when the proper conforming construction was applied, taking account of various provisions of the EU VAT Directive. This has considerable implications for HMRC’s regulation of wholesale alcohol trade and potentially affects hundreds of millions of pounds of acquisition tax. The matter is now under appeal to the Upper Tribunal.

VAT, customs and anti-dumping duties all in one case

Owain Thomas QC and **Isabel McArdle** are acting in an ongoing judicial review and Tax Tribunal proceedings for HMRC (see *Universal Cycles Ltd v Revenue and Customs Commissioners* [2018] UKFTT 564 (TC) for the decision of the First-tier Tribunal). The case concerns liability to pay VAT, customs duty and anti-dumping duty. The Appellant contests HMRC’s position that it is liable for the sums claimed because bicycles imported into the UK were in fact manufactured in China, not Sri Lanka as stated on importation documentation. The case raises interesting questions about the operation of European law limitation provisions.

Tribunal considers disclosure of tax auditor’s confidential papers

Michael Paulin made successful submissions on behalf of corporate entities to the First-tier Tribunal in *Re Revenue and Customs Commissioners’ Application* [2018] UKFTT 541, in which the Tribunal considered an application by HMRC pursuant to paragraph 3 of Schedule 36 of the Finance Act 2008, on the basis of which HMRC sought the Tribunal’s approval of a third party information notice seeking disclosure of an auditor’s confidential working papers. In line with Michael’s submissions, the Tribunal held that the prohibition on disclosure in paragraph 24 of Schedule 3 of information held in connection with the performance of the person’s functions as an auditor could not be displaced by the reference to “tax accountant” in paragraph 26 of the Schedule. The fact that the auditors in question may also be the taxpayer’s accountants does not displace the prohibition under paragraph 24. The case emphasised the importance of full candour being deployed when a without-notice application is made, as in this case, in light of the omission initially to bring paragraphs 24 and 26 to the Tribunal’s attention.

High Court considers Council Tax bands

Paul Reynolds represented a tax payer in the High Court in an important tax case in which the Court will rule upon the correct test for determining when a dwelling’s council tax band may be altered. This will have significant implications for the council tax scheme more generally. Judgment is awaited. Paul was instructed by Brown Rudnick.

Public Inquiries & Inquests

1COR instructed in recent major Inquests & Public Inquiries

The Independent Inquiry into Child Sexual Abuse

- Peter Skelton QC
- Robert Kellar QC
- Neil Sheldon QC
- Iain O'Donnell
- Matthew Donmall
- Isabel McArdle
- Amelia Walker
- Matthew Hill
- Alasdair Henderson
- Matthew Flinn
- Paul Reynolds
- Lois Williams
- Dominic Ruck Keene
- Hannah Noyce
- Emma-Louise Fenelon
- Gideon Barth

Undercover Policing Inquiry

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

Grenfell Tower Inquiry

- Neil Sheldon QC
- David Manknell
- Leanne Woods
- Rhoderick Chalmers
- Rajkiran Barhey

Infected Blood Inquiry

- Neil Sheldon QC
- David Manknell
- Leanne Woods
- Matthew Hill
- Michael Deacon
- Charlotte Gilmartin
- Christian Howells (Associate Member)

Birmingham Bombing Inquests

- Peter Skelton QC
- Matthew Hill
- Gideon Barth
- Emma-Louise Fenelon

Inquest into the death of Alexander Perepilichnyy

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

Westminster Bridge Inquests

- Neil Sheldon QC
- Matthew Hill

London Bridge Attack Inquests

- Neil Sheldon QC

Guildford Pub Bombing Inquests

- Oliver Sanders QC
- Matthew Flinn

Manchester Arena Bombings

- Neil Sheldon QC
- Alasdair Henderson

Inquests and Investigation into the Shoreham Air Crash

- Martin Downs
- David Manknell

Stephen Port Inquests

- Peter Skelton QC
- Natasha Barnes

Coroner concludes that Alexander Perepilichnyy likely died of natural causes

Peter Skelton QC and **Rob Wastell** acted as Counsel to the Coroner in this inquest into the death of Russian millionaire, Alexander Perepilichnyy.

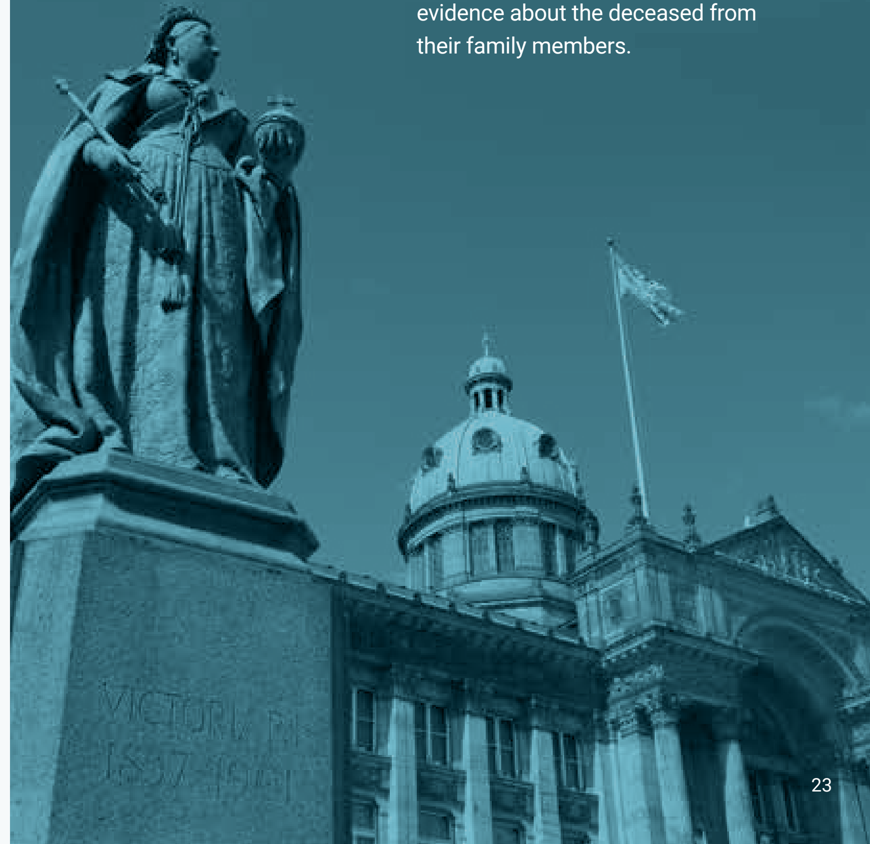
The inquest opened in 2014 and, following a number of interlocutory hearings including two public interest immunity applications, and complex cross-border investigations, the case was heard at the Old Bailey in June 2017 and April 2018 with final submissions in September and October 2018.

Amid suggestions of seafood poisoning, assassination or a sudden cardiac arrhythmia, the Coroner, His Honour Judge Nicholas Hilliard QC, found that Mr Perepilichnyy was likely to have died from Sudden Arrhythmic Death Syndrome ("SADS").

The Birmingham Pub Bombings Inquests concludes

On 5th April 2019, the jury returned its determinations in inquests which concerned the deaths of 21 people in the Birmingham Pub bombings of 21 November 1974. The jury concluded that all 21 victims were murdered, that the bombs were planted by the IRA, and that the inadequacies of a warning call made by an IRA member contributed to the deaths. **Peter Skelton QC** led the Counsel to the Inquests team, which comprised **Matthew Hill**, **Gideon Barth** and **Emma-Louise Fenelon**, instructed by Fieldfisher. The Coroner was His Honour Sir Peter Thornton QC, the former Chief Coroner. The Inquests lasted six weeks. Two IRA members were called to give evidence, including the Director of Intelligence of the IRA at the time of the bombings.

The journalist and former MP, Chris Mullin, gave evidence about his interviews with other IRA members who were said to have been involved in the bombings. Mr Mullin's work led to the release of the Birmingham Six, who had been unsafely convicted of the bombings in 1975 and who spent 16 years in prison as a consequence. Other witnesses included police officers who responded to the warning call, people who had been in the pubs at the time of the explosions, and doctors and members of the emergency services who were on duty that evening. Expert witnesses included specialists in bomb blasts and bomb injuries, a pathologist, an historian, and a sociologist who has researched terrorist warning calls during the Troubles. The Inquests also heard moving evidence about the deceased from their family members.



Two members of Chambers instructed in the Westminster Bridge Inquests

Neil Sheldon QC and **Matthew Hill** were instructed in inquests into the deaths arising from the Westminster Bridge terror attack in March 2017. The inquests investigated the deaths of Kurt Cochran, Leslie Rhodes, Aysha Frade, Andreea Cristea, PC Keith Palmer and the attacker, Khalid Masood. Neil appeared for the Home Secretary, instructed by GLD. Matthew appeared for the London Ambulance Service, instructed by Capsticks.

High-Profile Inquest explores impact of social media

Jessica Elliott represented the family at an inquest exploring the impact of Instagram on teen suicide. Molly Russell took her own life in the early hours of 21 November 2017 after handing in her homework and packing her bags for school. Her family had seen no obvious signs of severe mental illness in the preceding months.

In the days after her death, Molly's family uncovered a large number of disturbing social media posts on her Instagram account linked to suicide, self-harm and depression. They hope that the inquest into her death will help raise awareness about the impact of the image sharing platform on mental health, and the effect of algorithms which suggest similar images and accounts to users. This comes at a time when the government is taking a stricter stance on social media, urging companies to take responsibility for harmful content. Jessica represented Molly's family at the inquest pro bono, instructed by Leigh Day.

Coroner highlights 'lamentable number of individual failings' at inquest into infant death

During labour at Kingston Hospital Sebastian Clark's mother was diagnosed with suspected chorioamnionitis, a cause of sepsis. However the Coroner, Dr Cummings, concluded that there was a "lamentable number of individual failings" and inadequate leadership in managing Mrs Clark and Sebastian. Sebastian's delivery was not expedited, as it should have been, and he was born in extremely poor condition. He died four days later. Following the death, Kingston Hospital NHS Foundation Trust drew up guidelines on the management of chorioamnionitis. Dr Cummings announced he would be writing to the Royal College of Obstetricians and Gynaecologists to acquaint them with the guidelines, with a view to rolling them out nationwide. He would also ask them to consider whether to introduce Group B strep screening, which is not common practice in the UK.

Caroline Cross was instructed by Tees Law to represent the family.

Prison death inquest considers the implications of *R (Maughan)*

Emma-Louise Fenelon recently represented The Forward Trust, a national charity providing substance misuse and psychosocial services in prisons, at an inquest into the death of a man in HMP Lewes in February 2017. The Assistant Coroner heard submissions on the recent decision in *R (Maughan) v Senior Coroner for Oxfordshire* [2018] EWHC 1955 to assist him with jury conclusion directions. The jury returned a conclusion of suicide with an additional narrative.

Emma-Louise was instructed by Bates Wells Braithwaite.

Coroner criticises crisis response team at hospital in double inquest

Thomas and Katherine Kemp were a married couple aged 32 and 31. Thomas suffered from significant anxiety and body dysmorphia, for which he had been in contact with mental health services for almost a year.

Late one night, Thomas attempted to get hold of a large kitchen knife to harm himself, in what his psychiatrist considered was likely to have been a psychotic episode. Katherine prevented him from stabbing himself and a police team was dispatched, which took the couple to the A&E department of Ipswich Hospital. Later that morning, the couple were found dead at their home with multiple stab wounds.

The Coroner concluded that Thomas had died from self-inflicted knife wounds following a likely psychotic episode and Katherine had died from wounds inflicted by her husband as she attempted to prevent him from self-harming. At an inquest convened under Article 2, the Coroner recorded a narrative conclusion which included a number of significant criticisms of the care provided at the hospital.

Jonathan Metzer acted on behalf of the family, instructed by Fosters Solicitors.

Inquest into the death of a woman fatally injured by a lorry who was under the care of a residential care home at the time

Colette McCulloch was diagnosed as high functioning on the autistic spectrum and was under the care of a residential care home when she was fatally injured by a lorry on the A1. The Coroner found failings on the part of the Care Home and local AMHP service, but did not find that her death was contributed to by neglect.

Robert Wastell appeared on behalf of the East London Foundation Trust and was instructed by Hempsons. **Richard Smith**, instructed by RadcliffesLeBrasseur, appeared on behalf of a Consultant Psychiatrist.

Coroner persuaded to re-open inquest into death of woman following childbirth

Michelle Roach, 32, died from a pulmonary embolism after giving birth to the couple's first child in 2013. No inquest into her death was held at the time.

Sarah Lambert QC, instructed by Slater & Gordon, is representing the widower in a resumed inquest regarding the death of his late wife. She is also representing the family in a concurrent civil claim. The Royal Berkshire NHS Trust has made formal public admissions and apologised to the family following an internal review of Michelle Roach's care.

Inquest finds meningitis vaccine could have avoided death

Lauren Sandell was a few weeks into her university career when she contracted a deadly strain of meningitis which caused her death. Her age and the higher risk of contracting meningitis among students meant that she should have been given the MenACWY vaccination before going to university. This was in accordance with the guidance published by Public Health England and contractual obligations entered into by her GP practice. Unfortunately Lauren was not notified of the need for this vaccination, and the Practice mistakenly believed that they could not order sufficient stocks to ensure she was vaccinated before departing for university. The Coroner returned a narrative conclusion, stating that if Lauren had received the vaccine her death could have been avoided. She issued a Prevention of Future Deaths report encouraging more education in schools.

Richard Smith was instructed by Leigh Day to represent the family.

Inquest explores effect of missed vaccination for meningitis

Tim Mason, 21, started exhibiting flu-like symptoms and sought medical help at Tunbridge Wells Hospital a week later. He was discharged in the morning, but was driven back to A&E by his parents and suffered cardiac arrest that evening.

Jessica Eliott represented the family at the inquest in which the Coroner ruled that Tim died through a failure by the hospital to diagnose and treat his sepsis on his initial attendance at A&E. The Coroner issued a Prevention of Future Deaths report to the Trust to address their sepsis protocols. He issued a further report to Public Health England to address systemic problems with the national meningitis vaccination programme. Maidstone and Tunbridge Wells NHS Trust accepted breaching their duty of care by discharging Tim, and have undertaken further training for the medical staff involved.

Jessica was instructed by Enable Law to represent the family.

Inquest into the death of a woman who choked to death

Anne Roberts had been detained for her own safety under the Mental Health Act. Despite suffering a number of choking or near-miss events, she went on to suffer a further fatal choking incident. The inquest was heard over four days at Reading Coroner's Court in front of a jury. In its conclusions, the jury made a series of critical findings regarding Anne's care including that 'staff actions were inadequate to minimise the risk of choking'. The jury concluded that these failings caused or contributed to Anne's death. The Coroner issued a PFD report highlighting four outstanding areas of concern relating to the management of patients who have choking risks.

Paul Reynolds represented the family, instructed by Leigh Day.

Inquest into the deaths of the patients of Paul Miller continues

Clodagh Bradley QC, instructed by Scrivenger Seabrook, is acting on behalf of the family in the ongoing inquests into Graham Stoten's death, aged 57, and the deaths of nine other patients of Mr Paul Miller. Mr Miller, an urological surgeon, was dismissed for gross misconduct by Surrey and Sussex Healthcare NHS Trust, owing to his mismanagement of Mr Stoten and other patients as he failed to offer curative surgery for his bladder cancer and instead pursued experimental treatment options.

AvMA Conference explores disclosure in inquests

Leanne Woods was invited to speak at the AvMA Inquests Conference in May 2018. The conference was designed to be a comprehensive guide to practice and procedures when representing a family at an inquest. Her talk covered: obligations to disclose and management by coroners, typical documents to be expected on disclosure, redaction of documents and when it might be appropriate to give the coroner an undertaking, Serious Incident Reports and the Coroners' decisions to withhold documents.

Three members of Chambers instructed in Infected Blood Inquiry

During the 1970s and 1980s, thousands of people in the UK (the precise number remains unknown} were infected with hepatitis C and/or HIV by blood products administered to them, in most cases in order to treat haemophilia. Many have died and the lives of many others have been profoundly affected. **Matthew Hill**, **Michael Deacon** and **Charlotte Gilmartin** have been appointed as Junior Counsel to the Inquiry, which is Chaired by Sir Brian Langstaff.

Coroner returns neglect finding in mental health inquest

Jim Duffy appeared for the family of Joyce Patterson, who was being treated at St Helier Hospital following a prescription drug overdose. She absconded having been transferred back there from Springfield mental health hospital due to a deterioration in her physical condition. A short time later she was struck by a train. Joyce's death was held to engage Article 2; she was not sectioned, but a handover note from the transferring ambulance crew stated that she was not to be allowed to leave. The Coroner found that Joyce's death was contributed to by neglect. Communication failures meant that adequate measures for Joyce's mental health needs had not been put in place. A transfer escort from Springfield had been given inadequate instructions. A health care assistant who witnessed an initial attempt to abscond did not tell anyone. Joyce's 12-hour wait before being transferred to Springfield might also have contributed to her death. Jim was instructed by Leigh Day.

Cabin crew training and food packaging policies reviewed following inquest into the death of Natasha Ednan-Laperouse

Natasha Ednan-Laperouse was travelling from Heathrow to Nice with her father and a school friend. She had a severe sesame allergy and bought a Pret a Manger baguette before boarding the BA flight to Nice. She collapsed on the flight and, despite her father administering two EpiPen injections, died later at a hospital in Nice.

Jeremy Hyam QC represented her family at an inquest that drew national attention to food packaging policy.

Jeremy was instructed by Leigh Day.

Inquest investigates death following police restraint

Christopher Mellor represented a Forensic Medical Examiner in the inquest into the death of Terrence Smith, a 33-year-old man who died after being detained by police, under section 136 of the Mental Health Act 1983, and then being restrained. The medical cause of death included 'Amphetamine induced excited delirium in association with restraint'. The inquest commenced in February 2018 and, following many weeks of evidence, the jury handed down their conclusion on 5 July 2018. It is thought to be the longest individual inquest to have been held in the UK.

Chris was instructed by RadcliffesLeBrasseur.

Regulatory Law

Welsh Government sale of real estate proves controversial

John Whitting QC has been instructed to act for the Welsh Government in an action concerning the sale by the Welsh Government of a portfolio of publicly owned real estate to finance, in partnership with the EU, a series of regeneration schemes across the country.

The transaction has proved highly controversial and led to an investigation by the Welsh Audit Office as well as by the Public Accounts Committee of the Welsh Assembly. Former First Minister Carwyn Jones apologised to the Assembly over the matter. The Welsh Government was advised throughout by Lambert Smith Hampton and Amber Fund Management against whom an action for professional negligence and breach of contract has now been brought.

John is leading Peter Ratcliffe of 3VB and is instructed by Geldards.

Charges of sexual misconduct against senior gynaecologist dropped

Robert Wastell successfully defended a senior gynaecologist from allegations of sexual misconduct in GMC proceedings in which it was alleged that he had engaged in sexual misconduct with a longstanding patient. After a six day hearing each of the charges against him was dismissed and he was cleared of all allegations of misconduct. Rob was instructed by Clyde & Co.

Osteopathic tutor accused of bullying

In *General Osteopathic Council v TD* [2018] **Clodagh Bradley QC** represented an osteopathic tutor of undergraduates, who also sat as a member of the GOsC's Professional Conduct Committee, who was accused of bullying and intimidation towards a student. She was suspended by her employer as a result of the allegations pending further investigations.

In the proceedings brought by the GOsC against her, the Committee were persuaded that the allegations of bullying and intimidation were not proved. They concluded that the failure to self-report about her suspension and sitting on 3 PCCs justified a three-month suspension rather than a more substantial suspension or removal from the register, as had been argued on behalf of the Council.

Clodagh was instructed by Setfords Solicitors.

Dishonesty finding overturned in the Court of Appeal

Robert Kellar QC and **Michael Deacon** successfully defended a paediatrician in proceedings brought by the GMC alleging him to have been dishonest in the way he prepared notes of a patient consultation and in relation to the way he had subsequently discussed that matter with senior colleagues. The MPTS found that the paediatrician had not been dishonest, but the GMC appealed to the High Court which substituted a finding of dishonesty by applying the Supreme Court case of *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67 and, further, found his fitness to practise to be impaired. Robert and Michael argued before the Court of Appeal that, correctly applying *Ivey* to the facts found at first instance, no finding of dishonesty should have been made. The Court of Appeal agreed and quashed the High Court's finding of dishonesty and impairment. The Court further observed that it should in future require a very strong case for a court to overturn a finding of the MPTS, or any comparable tribunal, that a doctor had not acted dishonestly. The Tribunal was well placed to make its assessment having heard directly from the relevant witnesses including the doctor himself. This case is also of note because it considered in some depth – and by reference to Article 6 ECHR – whether the GMC had jurisdiction to appeal MPTS warnings, in circumstances where there was no corresponding right of appeal for doctors. The Court of Appeal ultimately found that the High Court did have jurisdiction. Robert and Michael were instructed by the MDU.

Professional Negligence claim against Leigh Day dismissed in strong terms

Mrs Justice Andrews dismissed a claim brought by Gabrielle Shaw, a former client of Leigh Day, for damages arising out of the firm's representation of her at her father's inquest in 2011.

In a strongly worded judgment, Mrs Justice Andrews found that there was *'no basis for criticism of their performance of their retainer in this matter. They carried out their instructions diligently and competently. The vague assertions [made by Mrs Shaw] come nowhere near establishing any fault or failing on their part… Indeed, it is one of the more extraordinary features of this case that Mrs Shaw was constrained to concede in cross-examination [by John Whitting QC] that there was no evidential basis (whether cogent or otherwise) for any of the propositions that she criticised Leigh Day for not having pursued either at the Inquest or in the Clinical Negligence proceedings.'*

John Whitting QC led Elizabeth Boon of Crown Office Chambers and was instructed by Womble Bond Dickinson.

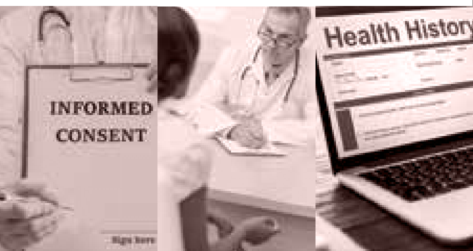
1COR hosts Professional Discipline Seminar

Clodagh Bradley QC chaired a seminar entitled 'Erasure, Remediation and Rights of Appeal' hosted by 1 Crown Office Row in Inner Temple Hall. Following introductory remarks by **Richard Booth QC**, **Robert Kellar QC** and **Jeremy Hyam QC** addressed the General Medical Council's right of appeal, **Owain Thomas QC** looked at upholding public confidence, **Matthew Barnes** discussed remediation, and **Christopher Mellor** reviewed the utility of undertakings.

The talks were followed by an interesting Q&A session.

The seminar is available on Law Pod UK.

Feature Article



Isabel McArdle

Montgomery four years on

It has been four years since the Supreme Court brought major change to the law of informed consent in the case of *Montgomery v Lanarkshire Health Board* [2015] UKSC 11. **James Badenoch QC**, a now retired member of 1COR, argued successfully for a patient-centred approach to consent. A doctor is under a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments. A risk is material where a reasonable person in the patient's specific position would be likely to attach significance to it, or the doctor should reasonably be aware that the patient would attach significance to it. The implications of the decision have been felt throughout clinical negligence and regulatory law, and beyond, and 1COR members have been at the forefront of exploring its boundaries.

Only a month after the decision, in *Spencer v Hillingdon Hospital NHS Trust* [2015] EWHC 1058, **Peter Skelton QC** successfully argued that a doctor's duty to keep a patient informed extended to advising, following treatment, on the signs and symptoms of complications and the need to seek urgent medical help if they arose. Montgomery was specifically relied upon in the formulation of the modified *Bolam* test in relation to aftercare advice, of "would the ordinary sensible patient be justifiably aggrieved not to have been given the information at the heart of this case when fully appraised of the significance of it?"

The patient-centred approach was emphasised in *Crossman v St George's Healthcare NHS Trust* [2016] EWHC 2878, in which **John Whitting QC** acted for the Defendant. The High Court found that there was a failure to obtain informed consent for surgery where a patient had previously agreed to conservative management then accidentally been entered on to the surgical waiting list. The patient queried this but after being told he would go to the end of the list if he failed to attend pre-surgery appointments, he did not raise the matter at those appointments. The fact that he had had the opportunity to raise the question of the treatment plan again, but had not exercised it, did not prevent the success of his claim: the duty upon medical practitioners to obtain informed, *Montgomery*-compliant consent is a strong one.

The landmark Court of Appeal decision, *ARB v IVF Hammersmith* [2018] EWCA Civ 2803, was a case which considered the issue of a father's consent to the thawing of an embryo that led to the birth of a child, in the context of his signature being forged by the child's mother on a key document in the consent process. *Montgomery* played a central role in the Court finding that a clinic's policy, which permitted the delegation of the taking of consent from one parent to the other parent, was an abrogation of the clinic's duty to obtain consent from both parents. **Jeremy Hyam QC** and **Suzanne Lambert** acted for IVF Hammersmith.

Montgomery was also central to the Court of Appeal's reasoning in *ABC v St George's Healthcare NHS Foundation Trust* [2017] EWCA Civ 336, in which the Court overturned the strike out of a claim brought by the daughter of a patient who had suffered from Huntington's Disease, a hereditary condition. The daughter was not informed of the diagnosis prior to having a child. She claimed she would not have proceeded with her pregnancy had she been informed of her father's diagnosis by the Defendant. Despite the powerful duty of patient confidentiality borne by doctors, the Court overturned the strike out given the strong emphasis on the autonomy of the patient in recent jurisprudence including *Montgomery*. **Lizanne Gumbel QC**, **Henry Witcomb QC** and **Jim Duffy** acted for the Appellant, with **Philip Havers QC** and **Hannah Noyce** for the Respondent Trust.

The Court of Appeal also explored *Montgomery in Duce v Worcestershire Acute Hospitals NHS Trust* [2018] EWCA Civ 1307, in which Philip Havers QC and **Richard Mumford** acted for the Respondent Trust. The Court dismissed an appeal against a Judge's finding that, at the material time, the state of knowledge of gynaecologists was such that there was an insufficient basis to impose a duty to warn a patient of the risk of chronic or neuropathic pain when obtaining consent for an abdominal hysterectomy. The Court described the *Montgomery* test as twofold: "(1) what risks associated with an operation were or should have been known to the medical professional in question. That is a matter falling within the expertise of medical professionals...(2) whether the patient should have been told about such risks by reference to whether they were material. That is a matter for the Court to determine... This issue is not therefore the subject of the *Bolam* test and not something that can be determined by reference to expert evidence alone..."

The question of whether a material risk exists was explored in the case of *A v East Kent Hospitals University Foundation Trust* [2015] EWHC 1038, in which John Whitting QC acted for the Defendant. Restriction of foetal growth was identified antenatally, but the possibility of this being caused by a chromosomal abnormality was not notified to the mother, and she was not offered amniocentesis as a consequence, which would have identified a chromosomal condition. Her child was born with such a condition. The High Court found that, in the context of the known facts of her pregnancy, the risk of a chromosomal condition had been negligible or theoretical only, and consequently could not be regarded as material.

The question of what constitutes a reasonable alternative treatment of which a patient must be notified in order for consent to be suitably informed has been explored by Scotland's Court of Session in *AH v Glasgow Greater Health Board* [2018] CSOH 57 and three other joined cases, all concerning vaginal mesh products. The Court found that the definition of reasonable alternatives are "those that the doctor considers reasonable exercising his or her skill and expertise as a reasonably competent doctor (the *Hunter v Hanley / Bolam* test) and are available".

The matter of what makes for a reasonable alternative is likely to be fertile ground for future jurisprudence, along with what 'available' really constitutes in context. Does a treatment have to be available at the Trust or Health Board in question? What if it is only available at a small minority of providers far away from the patient's home? These questions are yet to be fully explored.

The legacy of *Montgomery* is a patient-centred, autonomy-focused approach to consent. The days of "doctor knows best" are over. But it is unlikely all of the ramifications of this landmark case have yet been felt.

Personal Injury & Abuse Law

Highest ever award for survivor of abuse in the UK

The High Court recently made an award of just over £1,112,000 for damages arising out of abuse committed by a PE teacher against a 13 year-old boy over a four year period. In *FZO v Adams and LB of Haringey*, Mrs Justice Cutts held that vicarious liability applied for both the period during which the Claimant was at school as well as the period after he had left. She awarded general damages of £85,000 as well as a significant claim for loss of earnings.

Robert Seabrook QC and **Justin Levinson** acted for the Claimant instructed by Bolt Burdon Kemp solicitors.

Civil damages claim following failure to implement IICSA recommendation to set up compensation scheme

Justin Levinson is representing UK child migrants relocated to Australia and Zimbabwe after WWII. IICSA has been reviewing the resettlement schemes which forcibly relocated children after the war until 1970. The IICSA investigation into the final 4000 children sent from Britain to Zimbabwe and Australia has found that the children suffered forced labour and emotional and sexual abuse. It recommended a compensation scheme be set up. However, as no such scheme was set up, the claimants have commenced an action for damages in the High Court. Justin is instructed by Hugh James to represent the claimants.

The Lambeth Redress Scheme opens

The Lambeth Children's homes Redress Scheme was set up to compensate survivors of abuse at a borough home and/or the Shirley Oaks Primary School between the 1930s and 1990s. As of 1 January 2019, 1,002 applications had been received by the Scheme which will remain open until 1 January 2020. **Emma-Louise Fenelon** is advising a number of individuals who have applied to the scheme for Individual Redress Payments and been offered settlements.

The Scheme is thought to be the first of its kind set up by a local authority in England. **Richard Mumford** has been appointed to the Scheme's Independent Appeal Panel.

Landmark case awards damages for child abuse committed abroad

Douglas Slade lived in the Philippines for 30 years after leaving the UK to evade prosecution for his involvement in the Paedophile Information Exchange ("PIE") during the 1970s. Although there were several investigations by Filipino police, there were no prosecutions. In 2015 Slade was extradited and, the following year, jailed for the abuse of five boys in the UK.

Justin Levinson secured compensation for Filipino child abuse survivors against him. It is thought to be the first case in which foreign victims of sexual abuse that occurred abroad have brought an action against a British national in the UK. Although not convicted for these offences, Douglas Slade was found to have abused the claimants and so had to pay £127,000 in compensation.

Justin was instructed by Hugh James.

Damages for victim of childhood abuse

In *CMK v Darby* **Emma-Louise Fenelon** succeeded in a damages claim on behalf of a survivor of childhood abuse. In 2017 the defendant was convicted of a number of sexual offences involving the claimant and others. He was sentenced to a term of imprisonment and ordered to sign the sex offenders register. The claimant sought damages for personal injuries and other losses against him. She was awarded £15,000 in general damages and an additional £5,000 for past expenses and future treatment costs.

Emma-Louise was instructed by Slater and Gordon.

Barclays Bank found vicariously liable for sexual assaults

In *Barclays Bank v Various Claimants* [2018] EWCA Civ 1670 **Lizanne Gumbel QC** and **Robert Kellar QC** appeared successfully in the Court of Appeal regarding an employer's vicarious liability for sexual assaults committed by a now deceased doctor during medical assessments of current and prospective employees. They are representing 126 claimants seeking damages and are instructed by Slater and Gordon and Shaw & Co. The Court rejected the argument that the doctor's status as an independent contractor amounted to a "defence" to the bank's vicarious liability, holding that vicarious liability had to be assessed by reference to the tests affirmed by the Supreme Court in *Cox v MOJ, Mohamud v Morrison* and *Armes v Nottinghamshire CC.*

Patient told by doctor that the devil was having a field day with her

The Claimant, who was recovering from bowel surgery and suffering from other mental and physical health problems, including depression, sought help from Apsley Surgery in 2012. Locum GP Dr O'Brien, a Pentecostal Christian, offered an alternative treatment without medication. He subjected her to religious indoctrination for four months and told her not to see her psychiatrist. Dr O'Brien was struck off in 2015 following her case, but she sought compensation from the surgery for the mental trauma caused by this treatment. **Justin Levinson** was instructed by Irwin Mitchell for the Claimant.

Abbot resigns after giving evidence at the Independent Inquiry into Child Sexual Abuse

The Abbot of Ealing Abbey, Dom Martin Shipperlee, resigned over a failure to investigate child abuse allegations. His departure came immediately after he appeared before the Independent Inquiry into Child Sexual Abuse ("IICSA") answering questions about how he handled allegations of sexual abuse against monks and teachers at Ealing Abbey and St Benedict's School dating back decades. **Iain O'Donnell** and **Emma-Louise Fenelon** are acting for the main group of Core Participants, instructed by Slater and Gordon. **Matthew Donmall** is Junior Counsel to the Inquiry.

Test case on abuse in football

Robert Seabrook QC and **Iain O'Donnell**, instructed by Bolt Burdon Kemp, are acting for a group of football survivors in a group action against Leicester City and Aston Villa. The case is being treated by the Premier League Club as a test case in relation to the vicarious liability of clubs for abuse suffered by players. A month long trial is due to begin at the RCJ in 2020.

Iain O'Donnell continues to act for claimants seeking damages from various other Premier League football clubs.

Settlement for victims of child prostitution ring

Justin Levinson represented the claimant in a damages claim against social services. Nine men were convicted of child sex abuse after a child was exploited as part of a prostitution ring. Following on from this prosecution, the victim made a claim against the social services departments who failed to protect him from abuse despite their awareness of the risks he faced.

Justin was instructed by Irwin Mitchell solicitors and the case settled for a six figure sum.

First known settlement for sexual assaults involving primary school pupils

Caroline Cross, instructed by Leigh Day, represented the child claimant in this case involving the sexual assault of a six year-old girl by pupils at the same primary school. Her parents argued that the school failed to prevent the assaults on their child or train staff to recognise warning signs. The local council have not accepted liability but an undisclosed five figure settlement has been reached to help with counselling both now and in the future. This case highlights a growing recognition of the need to prevent peer-on-peer sexual abuse by children.

Seven 1COR members in landmark Supreme Court case

In *GN & another v Poole Borough Council*, the Supreme Court considered the extent to which local authorities owe a common law duty to protect from harm children living within their communities. The Court held that a duty of care could be owed by local authorities when undertaking their social welfare functions (departing explicitly from *X (Minors) v Bedfordshire* [1995] 2 AC 633) and reaffirmed the Court of Appeal's more recent decision in *JD v East Berkshire Community NHS Trust* [2003] EWCA Civ 1151, that the policy arguments underpinning *X* fell away when the Human Rights Act came into force. However, in *Poole*, the court found that it wasn't arguable that the Council owed the appellants a duty of care and there was neither vicarious liability on the part of Poole Borough Council for the negligence of its employees, nor any breach of duty in not removing the children from their mother's care.

Lizanne Gumbel QC, Iain O'Donnell, Duncan Fairgrieve and **Jim Duffy** represented the Appellants, instructed by Leigh Day. **Philip Havers QC** and **Hannah Noyce** appeared for the AIRE CENTRE, (Interveners) with **Martin Downs** among those representing the Coram Children's Legal Centre.

Large damages award for abuse by adoptive parents

In *(1) LXA (2) BXL v (1) Cynthia Willcox (as personal representative of the estate of Edward Willcox, deceased) (2) Cynthia Willcox (2018)*, **Justin Levinson** was instructed by Bolt Burdon Kemp, for the claimants, who sought damages against their adoptive parents. They were adopted in the early 1970s and suffered abuse for much of their childhoods. In 2015, the first defendant was found guilty of child abuse, child cruelty and indecency with a male child, although he was acquitted of rape against the second claimant. Both defendants were found guilty of child cruelty and the claimants instantly brought proceedings against them. The first defendant died in 2017 so the claim continued against his estate, represented by the second defendant. The court disapplied the limitation period and found the abuse proved, including the rape for which the first defendant had been acquitted in the crown court.

Each claimant was entitled to general damages for pain, suffering and loss of amenity, with an element reflecting the aggravated features of the assaults in addition to significant special damages. Overall the first claimant was awarded £115,040 and the second claimant was awarded £186,011.

Employment & Equality

Court of Appeal clarifies law on employment injunctions

Jeremy Hyam QC appeared before the Court of Appeal in an important case on the employment contracts of NHS consultants concerning suspension of pay. In *North West Anglia NHS Foundation Trust v Dr Andrew Gregg* [2019] EWCA (Civ) 387, the Court held that the Trust was not entitled to withhold pay during a period of interim suspension by the Interim Orders Committee of the GMC on the ground that the doctor, even though unable to practise because his licence was suspended, was nonetheless 'ready willing and able to work'. The Court held that in a situation where the contract does not by its express terms deal with pay deduction during suspension, the default position should be that, where allegations are disputed, save in exceptional circumstances, suspension by an external body such as the IOC of the MPTS should not be a justification for deduction of pay.

On the second issue, the Court of Appeal found an employer wishing to commence or continue disciplinary proceedings does not generally have to await the conclusion of a criminal investigation.

Jeremy Hyam QC was instructed in this appeal and in the first instance hearing by RadcliffesLeBrasseur.

Commissioner Henderson

Alasdair Henderson has just completed his first year as a Commissioner at the Equality and Human Rights Commission ("EHRC"). This has been a particularly busy period as the EHRC has been involved in major pieces of litigation on issues such as the gig economy, school exclusion of autistic pupils, and the Government's welfare reforms. It has also started two significant investigations into equal pay at the BBC and anti-Semitism within the Labour Party. Alasdair says it has been a privilege to help set the direction for the Commission and oversee its work.

Dismissal fair despite problem search

Michael Paulin acted for the successful Respondent before a Tribunal in *Olubando v Secretary of State for Justice.* The Claimant, a former prison officer, brought a claim for sexual harassment in connection with the circumstances of a full search that was conducted because of the Respondent's concerns about prison officers smuggling drugs into a young offenders institution. The Respondent conceded that the search in question contravened its policies and procedures.

The Tribunal accepted the Respondent's submission that, notwithstanding its concession, the Claimant's case did not satisfy the tests set out in s.26 Equality Act 2010 and dismissed the Claimant's case in its entirety.

Pupillage

Rajkiran Barhey gives an insight into Pupillage at 1COR

Over the course of 12 months, I worked with David Manknell, Matthew Barnes, Leanne Woods and Robert Wastell, all of whom have quite different practices. The first six months (creatively known as the 'first six') were non-practising, meaning I spent my days accompanying my supervisor to court, conferences or RTMs and drafting paperwork, such as pleadings, skeleton arguments, advices, etc. In my second six I was allowed to practise, which meant that I started heading off to county courts in glamorous locations such as Horsham, Brentford and Wandsworth to undertake hearings in small claims, but still continued to do work for my supervisors. By the end of the third 'seat' the tenancy decision was taken.

The year was enormously varied. I particularly remember watching proceedings at the General Chiropractic Council in a case involving a chiropractor accused of making inflated claims about the ability of chiropractic treatment to cure a variety of ailments. I also spent two days at the Court of Appeal watching my supervisor being led in a case concerning the Calais camp clearances. I sat in on numerous RTMs and conferences in clinical negligence cases, ranging from an alleged missed diagnosis of cauda equina, to a negligent angiography which led to the death of a young mother with four children, to a missed diagnosis of a pulmonary embolism. I also spent some time in the Coroner's courts, most memorably in a case involving a young man known to mental health services who had taken his own life. Another highlight was watching one silk from chambers against another before a High Court judge who was an ex-member in a case concerning an alleged failure by a sonographer to diagnose cardiac abnormalities in a foetus. I was also able to observe a public inquiry at close quarters.

Pupillage at 1 Crown Office Row was a brilliant learning experience. Of course, it was gruelling at times (and, as a tenant, I am allowed to speak my mind now!) but, as a whole, it was a unique and formative process.

1 Crown Office Row given A* for pupillage by Legal Cheek

Chambers were delighted by the results of the 2019 Legal Cheek Pupillage Survey, which saw us highly recommended as an A to A* Chambers across the board. The balance of work from human rights and public law to tax and medical negligence with frequent opportunities for appearing in Court appeared to have kept pupils interested – along with our popular chambers tea!

Find out about our pupillage, mini-pupillage and assessed mini-pupillage under 'Careers' on our website, Chambers Student Guide or apply for pupillage via the Pupillage Gateway.

Human Rights

Criminal records and asylum claims

Jonathan Metzer succeeded in an appeal before the First-tier Tribunal on behalf of a Sri Lankan Tamil who feared being detained and tortured by the Sri Lankan Government on the basis of perceived support for the Liberation Tigers of Tamil Eelam. The appellant had previously been unsuccessful in an application for asylum in the UK and was removed in 2007. Upon his return to Sri Lanka he came to be suspected by the authorities of cooperating with the Tamil Tigers and was detained at Joseph Camp, during which he was tortured. He was eventually 'released' following payment of a bribe by a family member, escaped to the UK, refused asylum and subsequently sentenced to two years imprisonment for conspiracy to steal fuel. As a result, the Home Secretary made a deportation order against him.

On appeal the judge determined that his criminal record should not exclude him from refugee protection – finding he was 'little more than … a foot soldier' and had not reoffended since. The judge found 'all aspects of his claim [for asylum] to be credible'. It was held that in light of the heightened paranoia about the resurgence of the LTTE from within the diaspora, there were strong reasons to believe that the appellant would be at real risk of being targeted by the authorities upon his return. Jonathan was instructed by Raj Law Solicitors.

Children repatriated from North Africa to protect them from "punishment" and threats of forced marriage

Martin Downs appeared in the case of *Re CQ, DQ & EQ (Children)* [2018] EWHC 3979 where Interim Forced Marriage Prevention Orders were used to secure the repatriation of children to the UK from North Africa. At one stage the children had even fled to a British Embassy.

Martin Downs was instructed by Orbis law. This is one in a series of cases where Martin Downs has been instructed this year concerning Forced Marriage, Female Genital Mutilation and Modern Slavery – all involving the human rights of children or incapacitated adults.

JUSTICE Human Rights Law Conference 2018

Shaheen Rahman QC spoke at the JUSTICE Human Rights Law Conference 2018 on Privacy, Security and Surveillance, drawing on her experience as a special advocate and discussing the extension of closed material proceedings into multiple courts and tribunals over the years and the standards of disclosure that apply in different contexts. The session was chaired by the former independent reviewer of terrorism Max Hill QC and her co-speaker was Jonathan Glasson QC, who addressed similar procedures adopted in the Investigatory Powers Tribunal.

When can an individual be deprived of their citizenship?

Natasha Barnes appeared for the Secretary of State in the Court of Appeal in the latest twist in the case of *Pham v Secretary of State for the Home Department* [2018] EWCA Civ 2064 concerning the powers of the state to deprive somebody of their citizenship.

The Appellant was a Vietnamese national by birth and a committed Islamist extremist. In 2011, he travelled to Yemen where he received terrorist training before returning to the UK with the intention of detonating a bomb at the arrivals area at Heathrow Airport. The Secretary of State had deprived the Appellant of his British nationality on the basis that deprivation was conducive to the public good. Since that decision, the Appellant had been sentenced in the US to 40 years' imprisonment for terror offences. The Secretary of State subsequently applied, successfully, to strike out his appeal against the deprivation order on the basis that it had no realistic prospects of success. The issue for the Court of Appeal was whether deprivation action was appropriate when an individual no longer posed a risk to nationality security, in the Appellant's case by virtue of his imprisonment in the US.

The Court held that a person could be deprived of his status as a British citizen on the ground that it was conducive to the public good, on the basis that he had repudiated his obligation of loyalty to the UK, even where he did not pose a current risk to national security..

Natasha Barnes was led in this matter by Robin Tam QC and instructed by GLD.

The cost of past Prime Ministers

Matthew Hill successfully defended the right to privacy and confidentiality of former Prime Ministers and their employees in a claim arising from the Freedom of Information Act. The case concerned the Public Duty Costs Allowance established in 1991 to help meet the costs of former Prime Ministers. The annual amount claimed by each Prime Minister is published but this case arose from a request to obtain the invoices submitted in support of the claims made by Baroness Thatcher, Sir John Major, Tony Blair and Gordon Brown. Matthew appeared before both the Upper and First Tier Tribunals, arguing successfully that the information should not be released on the basis that it was confidential and there was no public interest that justified breaching that confidence. Matthew was instructed by the GLD.

Online data breach appeal

Oliver Sanders QC and **Michael Deacon** appeared in the Court of Appeal in *Home Secretary v TLU* [2018] EWCA Civ 2217. The case arose out of damages claims for misuse of private information and breach of the Data Protection Act 1998 brought following a Home Office data breach in 2013 when a spreadsheet containing personal data relating to 1,600 lead applicants in the government's "family returns process" was inadvertently posted online. The Court held that the spreadsheet contained the private information and personal data not only of the applicants named in the spreadsheet, but also their family members. Oliver and Michael were instructed by the GLD.

Court of Appeal considers the fairness of 10,000 fast track asylum appeals

Natasha Barnes, led by Robin Tam QC, appeared for the Secretary of State before the Court of Appeal (who also sat as the Divisional Court) in *TN (Vietnam) & Anor* [2018] EWCA Civ 2838 which considered the status of 10,000 asylum appeals heard under the 2005 Fast Track Rules (in force until 2014). Ouseley J had found in an earlier case that the 2005 Rules were ultra vires but the Court of Appeal agreed with him that this did not imply that all appeals heard under those rules fell to be quashed.

PM makes unreserved apology in rendition case

Shaheen Rahman QC worked with a team of four Special Advocates appointed to represent the interests of Abdel Hakim Belhaj and his wife Fatima Boudchar in closed material proceedings arising from their claim for compensation for the alleged involvement of the UK in their rendition, detention and ill-treatment by the Gaddafi regime in Libya in 2004. The long-running litigation culminated in a settlement without admission of liability and £500,000 being paid to Ms Boudchar. An unprecedented and unreserved apology was also offered to the pair by the Prime Minister for the UK's role in sharing information and failing to take steps to reduce the risk of mistreatment to them, read out in the House of Commons by the Attorney General in the presence of Ms Boudchar and her son, with whom she was pregnant at the time of the rendition. Leigh Day solicitors were instructed by the Claimants to bring the claim.

Ministers' human rights duties in a privately run prison

The case of *LW & Ors v Sodexo Ltd & Anor* [2019] EWHC 367 concerned unlawful strip searches of female and transgender prisoners by staff at a prison run by a private contractor, Sodexo. The case was a JR about the extent of the residual duties owed by the Secretary of State for Justice in circumstances where Sodexo had the duty to run the prison and were a public authority for the purposes of the HRA. **David Manknell** acted for the SSJ.

Law Pod UK & UK Human Rights Blog

A great year for the Blog and Podcast

In January contributors to the UK Human Rights Blog and Law Pod UK held a Great British Vermouth tasting session at 1 Crown Office Row to celebrate a fantastic year. We were delighted to be joined by special guests David Prest and Simon Jarvis from Whistledown Productions. Former 1COR member and now distinguished wine-maker Wendy Outhwaite QC presented bottles of her Ambriel wine to the volunteers who write for the Blog. Founder and co-presenter of Law Pod UK **Rosalind English** was also thanked for all her outstanding work with both blog and podcast.

Blog update from Commissioning Editor, Jonathan Metzer

This has been an excellent year for the UK Human Rights Blog, with the most significant increase in 'hits' on Blog articles since 2015. This is thanks to the excellent work of 1COR writers, who continue to do a stellar job (with help from our friends outside Chambers). 16,000 people have now chosen to receive updates from our new email and we have over 19,000 followers on Twitter.

We look forward to receiving your contributions and ideas for the coming year.

The most viewed posts this year were:

1. No Deal Brexit may be unlawful – a view from **Rose Slowe**.
2. 10 cases that defined 2018 by **Jonathan Metzer**.
3. Supreme Court rules that hospital receptionist owes a duty of care to a patient by **Owain Thomas QC**.

Podcast Races towards 200,000 listens

1 Crown Office Row's podcast series is presented by **Emma-Louise Fenelon** and former BBC presenter **Rosalind English**, who conceived of the series in May 2017. With post production by Simon Jarvis of Whistledown Productions, it has reached almost 200,000 listens over the past two years. Popular episodes this year include our interview with Mrs Justice Philippa Whipple about Ruth Bader Ginsburg, **Marina Wheeler QC's** examination of the Government's anti-extremism programme, and **Robert Kellar QC** discussing causation in clinical negligence. Law Pod UK covers a wide range of developments in civil and public law, and topics from the regulation of artificial intelligence, to historical child abuse, to psychiatric harm and childbirth. It is available on Spotify, iTunes, Audioboom, Podbean and other podcast platforms.

Twitter on the Podcast

Listened to this yesterday. Inspirational in almost every conceivable way! #NotoriousRBG **Budding Barrister**

Highly recommend this short #LawPod podcast by @1CrownOfficeRow on the recent #PreventDuty judgement; the facts behind the headlines may surprise you. **William Baldét**, Prevent Practitioner

Thanks @1CrownOfficeRow great idea. **Ross Williams**, Irwin Mitchell

Environment & Utilities

Insufficient benefit from large residential development

Charlotte Gilmartin appeared on behalf of The Isleworth Society at a planning inquiry into a proposed residential development at the Park Road Allotment site in Isleworth. The inquiry also considered a linked proposal to construct allotments at Syon Park. **Jonathan Metzer** was also involved in the preparation of The Isleworth Society's case.

The inquiry considered whether the proposed development on the allotment site would cause harm to the heritage assets at Syon Park and in the Isleworth Riverside Conservation Area, and if so, whether that harm was outweighed by the proposed benefits of the development – namely, financing £13 million worth of repairs to Syon House. Also in issue was whether the loss of the Park Road Allotment site was a loss of local open space which was contrary to planning policy.

The Isleworth Society supported a previous refusal of planning permission, and after eight days of hearings during the Inquiry, the Planning Inspectorate upheld that refusal, concluding that the harm caused by the developments would not be outweighed by the proposed benefits. Charlotte and Jonathan were instructed by the Environmental Law Foundation.

A flourishing Planning Inquiries team

1COR has been developing a cracking team of junior barristers with expertise in Public Planning Enquiries. Members including Charlotte Gilmartin, Jonathan Metzer and Rajkiran Barhey have all accepted pro-bono instructions from the Environmental Law Foundation.

A knotty problem

David Hart QC and **Jessica Elliott** have appeared in the Court of Appeal to argue that property owners have no basis for a claim in nuisance based on the presence of Japanese Knotweed on Network Rail's adjoining land.

At first instance, the court held Network Rail liable for failing to deal with the knotweed sufficiently once they became aware of the risks it presented. The property owners were awarded damages including diminution in the value of their properties. In the Court of Appeal, David and Jessica argued that there had been no physical damage to the properties concerned, and the soil beneath the foundations of the properties had not been affected. Accordingly, the roots did not cause damage for the purposes of a claim in nuisance. The Court of Appeal allowed the appeal against the judge's finding but upheld the claim on the basis that any root encroachment amounted to damage. David and Jessica were instructed by BLM.

Environmental protection post-Brexit

In October 2018, **David Hart QC** participated in a Castle Debates event examining the merits of the Environmental Principles and Governance Bill.

The European Union (Withdrawal) Act 2018, which repeals the European Communities Act 1972, ensures that existing environmental law will continue to have effect in UK Law post-Brexit. It also requires Government to bring forward a draft bill on Environmental Principles and Governance which would, amongst other things, establish a new, independent, statutory environmental body to hold the Government to account on its environmental ambitions and obligations. In addition it would have powers to take legal proceedings. The debates considered whether the wording of the Bill is adequate to retain current environmental principles and enforcement mechanisms and to deliver the vision of environmental improvements set out in the 25 Year Environment Plan.

Sandridge remediation notice

In 2010 one of the very few remediation notices ever served under the contaminated land regime in the Environment Protection Act 1990 was confirmed by the Department for Environment, Food and Rural Affairs. It related to pollution by bromate and bromide which had escaped from a factory near St Albans for many years. This followed judicial review proceedings. **David Hart QC** (instructed by Norton Rose Fulbright) represented Crest (a house building company) which had redeveloped the site in the 1980s after purchasing it from the factory owners. The Environment Agency is now considering making a further remediation notice in respect of the same pollution, and David has been working on the consultation process.

Planning permission refusal appealed by Dangstein Conservancy

Rajkiran Barhey and **Charlotte Gilmartin** instructed by the Environmental Law Foundation, are acting in an appeal against the refusal of planning permission on behalf of the Dangstein Conservancy.

The Conservancy seek planning permission for a woodland site in the South Downs National Park to regularise the running of education and tourist activities. These include a limited number of residential courses, a community outreach event, star gazing, forest schooling, and the building of a small number of structures to accommodate limited overnight camping. Planning permission was initially refused on the basis that the proposals would lead to a level of activity which would not conserve or enhance the National Park landscape and its tranquillity.

There are two complicating features of the appeal, involving an Enforcement Notice against certain activities occurring on the site, and a Certificate of Existing Lawful Use Development granted in respect of archery continuing on the site. This means that the site is a mixed use site, to include recreational use. The legality of that certificate has now been challenged in separate judicial review proceedings brought by a local interested person.

Equality & Diversity

New head of Outreach at 1COR

Jo Moore has taken over from **Sarabjit Singh QC** as head of Outreach at 1 Crown Office Row. Chambers continues to lead the Bar with social mobility initiatives and the last year has seen us involved in a variety of outreach events including:

Amy Mannion joined Jo on a panel with other lawyers at LSE and took part in speed sessions with 16-18 year olds who were learning, for the first time, about the basics of the profession.

Judith Rogerson joined Jo for an evening of networking with Pathways to Law students to help prepare them for upcoming work placements.

Clodagh Bradley QC, **Amy Mannion**, **Emma-Louise Fenelon**, **Charlotte Gilmartin** and Jo volunteered at Inner Temple's 'Becoming a Barrister' day for 16-18 year olds aimed at challenging stereotypes about the profession and providing information about the journey to the Bar.

Richard Booth QC presented a live webcast on a career at the Bar to schools in Wales for Careers Wales.

Five Years of Social Inclusion Pupillage Scheme

In 2019 Chambers made a fifth round of awards in its assessed mini-pupillage scheme first launched in 2015 and targeted at socio-economically disadvantaged applicants. The scheme guarantees a first-round interview for pupillage to those applicants who performed well in their

assessments. The project now offers between 6 and 10 assessed mini-pupillages which take place in June and July.

Work experience

1COR is proud to announce that we will be hosting a group of up to six work experience students in autumn half term.

The Sutton Trust Pathways to Law programme promises its 16-18 year olds a legal placement. Almost all get assigned to City firms, despite many of them wishing to pursue careers at the Bar. Students who are very motivated to come to the Bar will now have a chance to apply to spend three days at 1COR, going to court, meeting members and trying out advocacy exercises based on real-life cases.

We look forward to hosting these enthusiastic future barristers.

Sarabjit Singh QC appointed Bar Social Mobility Advocate

Sarabjit Singh QC has been appointed as an 'I Am The Bar' Social Mobility Advocate and was featured in a piece in The Times by Frances Gibb on 'The changing face of the modern bar'. Follow this campaign and read about other barristers with non-traditional backgrounds using #IAmTheBar.

Events Timetable

11th July - Garden Party

12th September - Professional Discipline Seminar

10th October - Public Law Seminar

We welcome any feedback you would like to give us:

events@1cor.com

Meet the Editorial Team

Martin Downs

Matthew Flinn

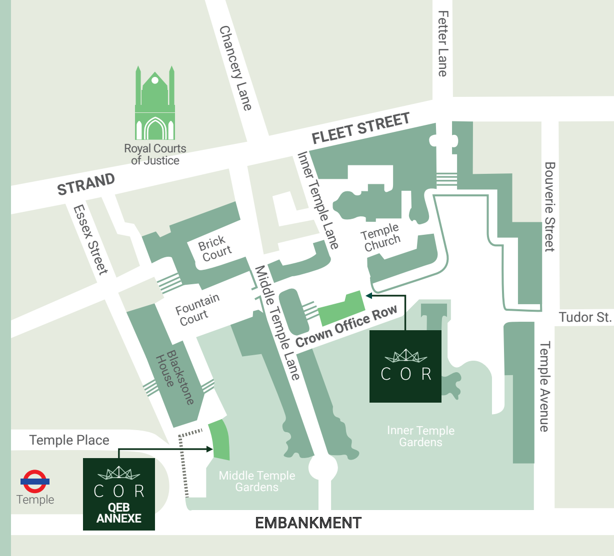
Emma-Louise Fenelon

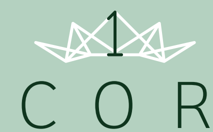
Olivia Kaplan

Where we are

Map Overview: *Central London*

Map Detail: *Temple Area*





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