



C O R

1 CROWN OFFICE ROW

1COR Bundle

2020-21

The annual newsletter of
1 Crown Office Row



Welcome to the 9th edition of the 1COR Bundle



2020 has so far been the most tragic and strange year that the majority of us have experienced. Tens of thousands have died in the UK with Covid-19, many of them alone save for hospital staff, with few family members permitted to attend their funerals. Millions with underlying conditions have been advised to 'shield' and not to leave their homes. We have all experienced a lockdown which has restricted and revised our usual ways of seeing our families, of working, of playing, of travelling, of keeping fit, in short, of living. We view the immediate future and the coming winter with understandable nervousness. First and foremost this year, our thoughts are with each of you who has lost someone to Covid-19.

Given these unprecedented circumstances over the past months, it is remarkable that the pages which follow describe so much activity by the members and staff at 1 Crown Office Row. From Askham Bog to St Helena, via undercover policing and the Empire Windrush, there seem to be few paths of the common law which have not been travelled by a 1 Crown Office Row barrister over the past year.

Tragically, 2020 has also been a year marred by the needless deaths of black people in Minneapolis and elsewhere, resulting in the Black Lives Matter movement with its powerful message. We are deeply saddened by events which exemplify systemic racism and violence against black people. Racism in any form is evil. 1 Crown Office Row resolutely supports the principles of justice, fairness and the rule of law.

We reaffirm our commitment to the promotion of equality, diversity and inclusion within Chambers, within the legal profession and within the community we serve. Although we recognise that there is always more that we can do to promote equality of opportunity, we are proud of our record on diversity and inclusion, and proud of our close relationship with the Sutton Trust. We will continue to strive for a fairer society in all that we do. A strong Bar is one that reflects the society it serves.

Mention of the Sutton Trust reminds me of our amazing outreach work which makes me incredibly proud. Social mobility initiatives remain a subject very close to my heart. You can read about our outreach work, for which so many members have volunteered, later in the Bundle.

The exceptional range and quality of work done by our members is illustrated for you in these pages. However, none of this would be possible without the loyalty of our professional clients. May I thank you on behalf of Chambers for choosing to use barristers at 1 Crown Office Row.

Moreover, it is right that I should thank our excellent clerking team led by our Senior Clerk, Matthew Phipps, and our dedicated support staff for the superb service which they provide, lockdown or no lockdown!

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 120 episodes available.

Richard Booth QC
Head of Chambers

Contents

	The Inside Story	06
	Health Law	12
	Public Law	19
	Tax Law	24
	Public Inquiries & Inquests	26
	Regulatory & Employment Law	35
	Feature Article	38
	When the Courts closed their doors: remote hearings, should they stay with us?	
	Personal Injury & Abuse Law	40
	Human Rights	43
	Law Pod UK & UK Human Rights Blog	45
	Environmental Law	46
	Diversity & Inclusion	47
	Meet the Editorial Team	49



The Inside Story

The last 12 months in Chambers



Quarterly Medical Law Review

The 1COR Quarterly Medical Law Review (QMLR) celebrates its first year. The publication – whose Editor in Chief is **Rajkiran Barhey**, supported by an editorial team consisting of **Jeremy Hyam QC**, **Shaheen Rahman QC**, **Suzanne Lambert**, **Matthew Flinn** and **Dominic Ruck Keene** covers recent developments in all areas

of medical law including clinical negligence, regulatory, healthcare judicial review and inquests. Special editions were also produced to cover the fast-moving developments concerning COVID-19. Previous issues of QMLR can be found in News & Events on the 1COR website under 'Newsletters.' You can also follow us on Twitter @1corQMLR.



Environmental Law Accolade

Chambers is delighted that **David Hart QC** has once again been named by Who's Who in the legal world as a *recommended silk* for his expertise in Environmental Law and in recognition of the landmark cases in which he has appeared.



International Women's Day

Chambers published a special series of interviews with **Joanna Glynn QC**, **Clodagh Bradley QC**, **Suzanne Lambert** and **Leanne Woods** to celebrate International Women's Day. Joanna said, "My son, born five years before I took silk, said that our relationship and his attitude to women benefitted from growing up with a busy professional mother, and I think he is right."

Legal Cheek Awards

Chambers was particularly pleased to have been shortlisted as the 'Best Chambers for Colleague Supportiveness' at the Legal Cheek Awards 2020. **Richard Booth QC** said that this commendation meant more than virtually all the other awards received by Chambers this year.



Judicial Appointment

We are delighted that **Pritesh Rathod** has been appointed a Deputy District Judge on the South Eastern Circuit, in addition to his full-time practice.

New Tenants



We are delighted to welcome four new tenants this year. **Darragh Coffey** and **Thomas Beamont** joined chambers on completion of their pupillage. Prior to coming to the Bar, Darragh pursued a Ph.D. in human rights law at the University of Cambridge and spent six years as an Officer in the Irish Defence Forces. Thomas began his legal career



Walk for justice

As they have done each year since its inception, 1COR walkers were prepared to walk in their distinctive green garb but are instead training (while maintaining social distancing) to prepare for the walk in October. Each year legal professionals walk through central London to raise money for the London Legal Support Trust (LLST) which funds Law Centres and pro bono agencies who do important work preventing homelessness, resolving debt problems, arranging care for the elderly and disabled and fighting exploitation.

as a volunteer with the School Exclusions Project and worked with the death penalty abolitionist charity Reprieve on preparation for strategic litigation in Pakistan. He also worked at a homeless shelter and as a Parliamentary caseworker for an MP.

In addition, we are thrilled that established practitioners **Cara Guthrie** and **Rory Badenoch** have joined chambers. Cara brings extensive Medical Law experience with a strong Clinical Negligence focus.

Rory has particular expertise in clinical negligence, inquests and personal injury cases.

Whilst it has been lovely to see Rory at our virtual events, we're looking forward to welcoming him in person in true chambers style.





Attorney General's Panel of Counsel Appointments

This year saw the re-appointment of **David Manknell** to the A Panel, **Suzanne Lambert**, **Natasha Barnes** and **Alasdair Henderson** to the B Panel whilst **Paul Reynolds** was appointed to the C Panel.



Pegasus Scholars

Jonathan Metzger and **Charlotte Gilmartin** were both awarded Pegasus Scholarships by Inner Temple this year. Charlotte undertook a three-month placement at the European Court of Human Rights, in Strasbourg working in the UK Division led by the UK Permanent Judge. This gave her the opportunity to analyse the merits of individual applications brought to the Court and enhance her knowledge of the case law and procedures of the Court, as well as practise her French.

Jonathan got the opportunity to travel and work in Washington DC, Sacramento California, Roanoke Virginia, Cheyenne Wyoming and Annapolis Maryland. Highlights of his time included a unique dinner at Francis E. Warren Air Force Base, where Jonathan carried out a launch of an Intercontinental Ballistic Missile (at a training console), and the privilege of observing part of the trial of Roger Stone, a former senior Republican strategist who was convicted of obstruction of justice arising from his conduct during the 2016 presidential campaign.

Memorial volleyball by the sea

Last summer saw 15 teams competing on Brighton beach at the annual Ghulam Hussain Cup, named after a much missed barrister in chambers. The tournament is held by our Brighton annex to raise money for the Rockinghorse Appeal. The London team consisted of **Richard Booth QC**, **Jim Duffy**, **Charlotte Gilmartin**, **Darragh Coffey**, **Thomas Beamont** and clerks **Jack May**, **Louis Candy**, **Connor Curtin**, led by team captain **Alex Fletcher**. Well done to winners Quality Solicitors Barwells!

New Chair for Professional Negligence Bar Association



Clodagh Bradley QC has become the new Chair of the PNBA with effect from January 2020.

Leanne Woods has been re-appointed as an Executive Committee Member. Clodagh is looking forward to promoting the Association's work in continuing professional development and reform of law and policy in the field of Professional Negligence.



Front cover tribute for Windrush Day 2020

Counsel Magazine published an in-depth interview with **Martin Forde QC** in June 2020 conducted by Natasha Shotunde and accompanied by a special front cover. In the piece, Martin spoke reflectively of the experiences of his father who came to the UK from Barbados in the 1950s and those of his mother from St Lucia and how it informed him when he undertook his work on the Windrush Compensation Scheme, which has now been extended to April 2023.

Interviewed at the height of the COVID-19 pandemic, Martin reflected on the fact that the government estimates that the

number of non-white medical staff in the NHS amounts to 44.3% and that the sacrifices made by those individuals reinforce the need to change the attitude to migration. More widely, he decried the failure of the media to focus on black intellect and academic achievement.

Against that background, it is particularly pleasing that Martin was named one of Britain's 100 most influential people of African or African Caribbean heritage in the Power List 2020. This independent annual publication aims to provide professional role models for the next generation.

Chambers recognised for Diversity & Inclusion Initiative of the Year

1COR Head of Outreach **Jo Moore**, along with **Suzanne Lambert**, accepted the award of Initiative of the year at the UK Diversity Legal Awards, founded by the Black Solicitors Network (BSN) and held to celebrate work done to engender greater diversity in the legal profession.



Bar Council Appointments



Sydney Chawatama has been re-elected to the Bar Council to represent self-employed barristers over seven years in practice. In the past year he has coordinated responses by the Bar Council to consultations on the Mental Capacity Act Code of Practice, Driverless Vehicles and Coronial investigations into stillbirths. He is also the Vice Chair of the Law Reform Committee where he is joined by fellow Chambers associate member, **Edite Ligere**.



Chambers is delighted to remain a top tier set in Chambers & Partners and The Legal 500. Even more humbling was to be named 'Personal Injury/Clinical Negligence Set of the Year' and for **Lizanne Gumbel QC** to be named 'Personal Injury/Clinical Negligence Silk of the Year' at The Legal 500 Awards 2020. We are really grateful to all those who recommended us.

Set of the Year



Dress for Success

Sarah Lambert QC

has been volunteering with Dress for Success, a registered charity that empowers and supports disadvantaged or vulnerable women of all backgrounds towards independence in their current or potential workplaces. Sarah assists with interview coaching, appropriate workplace dress codes and obtaining panellists for their events.



More Mooting News

Henry Witcomb QC sat on the panel of judges for a "very closely fought final" at the eighth national University of Leicester Medical Law Mooting Competition. Congratulations to winners from UCL and the runners-up from Gray's Inn.

Rajkiran Barhey judged the UK rounds of the Jessup Public International Law Moot Court competition, held for the first time this year in Lincoln Inn's new Ashworth Centre.

Human Rights Lawyers Association

Emma-Louise Fenelon was re-elected to the committee of the Human Rights Lawyers Association (HRLA). They had an interesting year marking 30 years of the Children Act and the First 100 Years of women in law – amongst other matters. **Shaheen Rahman QC** joined a panel at the annual end of year

event to discuss changes to human rights in 2019.

Additionally, **Martin Forde QC**, Independent Advisor on the Windrush Compensation Scheme spoke at the seminar organised by HRLA entitled, 'Windrush and the Hostile Environment: A Human Rights Perspective.'



Remembering the Clapham Rail Disaster, 30 years on

John Gimlette gave a memorial lecture at Emanuel School in Battersea to mark the 30th Anniversary of the Clapham Rail crash and subsequent Inquiry. John had appeared at the inquiry instructed by the Treasury Solicitors as second junior (**Philip Havers QC** was first junior). The school was significant due to its proximity to the crash scene, and several pupils had displayed

great courage in rescuing passengers. Present pupils were horrified to learn of what had gone on: a three-train collision, with 35 killed and nearly 500 injured. Back then, it had taken the inquiry three months to unravel the causes and make recommendations. Nowadays, such an accident could never happen thanks to a simple invention: the mobile phone.



The Lawyer's Hot 100

Justin Levinson was named in the The Lawyer's Hot 100 2020 for his landmark cases in the field of personal injury, abuse and child compensation law.

Read all about It



This year has been a busy one for writers in Chambers. **Caroline Cross** has updated all three sections of Halsbury's Laws on Coroners, Cremation & Burials and Oxford University Press have published the second edition of *The Negligence Liability of Public Authorities* which is co-authored by **Duncan Fairgrieve**.



Shaheen Rahman QC has written the chapter on Health and Safety Law in the UK Supreme Court Yearbook commenting on key cases including the smoking ban in prisons, in which Shaheen appeared. Additionally, **Michael Spencer** has contributed to the 3rd edition of *Disabled Children: a legal handbook* published by LAG. Michael wrote the section on welfare benefits, looking at what public bodies must do as well as what they may do.

Staff News



Andy Tull grew a moustache for Movember for the eighth consecutive year in an initiative by him which has now raised over £10,000 to support health programmes that combat prostate and testicular cancer. Andy said, "Raising money for the Movember Foundation is my little way of putting something back to help further research and treatment for others who are unfortunate enough to experience the same diagnosis as my dad did back in 2015."



Jack May celebrated five years as a Clerk in Chambers. It is a little-known fact that before joining Chambers, Jack was a ski instructor in Switzerland. He is also a vocal Brighton & Hove Albion fan.



Brilliant Baking for the Great Legal Bake Off

Another amazing year of the Great Legal Bake Off with GLD-seconded pupil **Gareth Rhys** making a lemon drizzle dripping with syrup, marketing manager **Olivia Kaplan** offering a martini cake with delicious vermouth buttercream icing and barrister **Rajkiran Barhey** bringing in an absolute showstopper: a miniature gingerbread chambers, accurate down to the windows, roof and clock.



Who is bringing the figgy pudding?

1COR's annual Christmas Card Competition saw **Michael Deacon** and **Emma Buckland** sitting down to enjoy figgy pudding, brought in by our mystery member... **Leanne Woods**. Congratulations to Gurpreet Lalli, Irwin Mitchell for guessing! 1COR donated £200 to her charity of choice, Cancer Research UK as well as our Christmas charity, Lord Edmund-Davies Legal Education Trust.



Pomphrey: a key trial examining causation and the scope of duty

In *Pomphrey v Secretary of State for Health and anr* [2019] Med LR 424, the Claimant alleged a failure to diagnose compression of the cauda equina nerve roots and a delay in operating to decompress his spine. During the operation the Claimant sustained a dural tear which it was accepted was a non-negligent complication of the surgery.

All of the allegations of breach of duty were dismissed, save for a finding that there had been a 10-day delay between the decision to operate and the operation itself.

As to causation, the Claimant invited the court to follow the approach in *Crossman v St George's NHS Trust* [2016] EWHC 2878; i.e. that as the operation carried a small risk of a dural tear had the Claimant undergone surgery on a different date that complication would have been avoided. The judge accepted the Defendant's submission that it was difficult to reconcile that decision with the House of Lords case of



Chester v Afshar [2005] 1 AC 174 as to the problems with reliance upon conventional causation principles in such circumstances (i.e. where there had been no material alteration in risk). Moreover, he found that the effect of the Court of Appeal's decision in *Khan v MNX* [2018] EWCA Civ 2609 as to the limitations of 'but for' causation given scope of duty considerations was impliedly to overrule the decision in *Crossman*.

Andrew Kennedy was instructed by Stuart Keyden of DAC Beachcroft for the Defendant.

Richard Booth QC chairs AvMA's Medico-Legal Issues in A&E Care Conference

Richard Booth QC chaired this comprehensive conference including topics ranging from Sepsis, Emergency Care and who provides it and Common Orthopaedic Injuries. **Jo Moore** partnered with Caron Heyes of Fieldfisher to give insight into 'Representing Clients with an A&E Claim.'

Psychiatric Injury: Primary Rules

Suzanne Lambert examined whether a claimant who suffers psychiatric injuries associated with their child's birth is a primary or secondary victim in the April 2019 #174 Personal Injury Law Journal.



Catastrophic brain injury compensated



A girl was left catastrophically injured as a result of a delay in her delivery. She suffers from cerebral palsy, learning difficulties and developmental delay. Liability was admitted by the NHS Board and a settlement with a capitalised value of over £11m agreed.

Matthew Barnes, instructed by Kerstin Scheel of Royds Withy King, was led as a junior for the Claimant. **Richard Booth QC** was instructed by Settor Tenney of NWSSP Legal & Risk for the Health Board.

Hill Dickinson's Healthcare Hub: using data to improve clinical outcomes

Artificial Intelligence (AI) is increasingly being used to great effect in health and care. **Oliver Sanders QC** chaired this seminar run by the Hill Dickinson Healthcare Team to explore how AI is driving improvement in patient outcomes and satisfaction. There was also a review of the law regarding the use of personal data and how to ensure that the development of AI products complies with the GDPR.

Talks were given by Sven Bunn, deputy director of strategy at Barts Health NHS Trust, Prof. Paul Leeson, professor of cardiovascular medicine at the University of Oxford, Jamie Foster, partner and Rohana Abeywardana, associate, at Hill Dickinson.

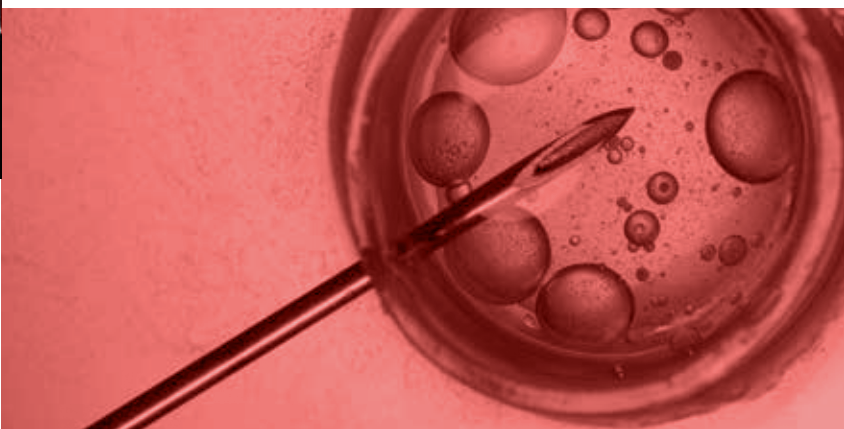
Supreme Court refuses permission to appeal in *ARB v IVF Hammersmith Ltd*

The Supreme Court refused to grant permission for ARB to appeal the decision of the Court of Appeal [2018] EWCA Civ 2803. **Jeremy Hyam QC** and **Suzanne Lambert** acted for the respondent clinic, instructed by James Lawford-Davies of Hill Dickinson.

The case concerned a couple who underwent successful fertility treatment at an IVF clinic and froze five embryos after the birth of their first child. The couple separated, but the mother returned to the clinic to inform staff that they both wanted a child. She forged her ex-husband's signature, and an embryo resulted in the birth of a second child.

The father claimed substantial damages on the grounds that the embryo had been transferred without his informed written consent and he was now the father of an unwanted child for whom he said he had a moral obligation to provide financial support.

The Panel held that the application "did not raise a point of law which ought to be considered at this time". It therefore remains good law that the recovery of damages for the birth of a healthy but unwanted child is barred by legal policy, whether the claim is brought in contract or tort.





Scope of Duty and Causation: *Chester v Afshar* Revisited

We spent a delightful spring evening debating the Claimant and Defendant perspectives on the scope of duty and causation in medical claims in Leeds. The seminar was based on *Chester v Afshar* [2005] 1 AC 134, which has come to the fore in recent cases such as *Pomphrey v Secretary of State for Health* [2019] 4 WLUK 483 and *Khan v Meadows* [2019] 4 WLR 3.

£30m birth injury settlement

The Claimant, a young boy, was deprived of oxygen at birth, causing brain injury. He exhibited volatile behaviour, and had some right-handed difficulties which significantly affected his education and family life. The Claimant was later diagnosed with Autism Spectrum Disorder and ADHD.

The Defendant made an early admission of liability in respect of the Claimant's right-sided physical difficulties, but causation of his neurodevelopmental and neurocognitive problems remained in issue.

A settlement for over £30 million to provide for his future care was Approved by HHJ Graham Robinson in the High Court.

Lizanne Gumbel QC was instructed by Jane Weakley of Fieldfisher for the Claimant.

Richard Booth QC was instructed by Harjit Talwar of Hempsons for the NHS Foundation Trust.



Fatal Claims at the AvMA Practice & Procedure Conference 2020

At the AvMA Conference, **Leanne Woods**, Assistant Coroner for London East, gave insight into Fatal Accident Act claims, the role of the Coroners Courts, statutory bereavement and dependency claims.

Recently, Leanne talked about working with the Coroner during COVID-19 at our webinar, Inquests in Interesting Times with **Clodagh Bradley QC**, **Peter Skelton QC**, **Shaheen Rahman QC**, **Christopher Mellor** and **Caroline Cross**.

Damages for oxygen starvation at birth

A boy sustained brain damage from oxygen starvation at birth in a hospital managed by Cambridge University Hospitals NHS Foundation Trust. The hospital admitted a negligent delay in his delivery, and liability for the brain damage. However, experts agreed that the hospital was not responsible for a stroke after his birth which contributed

to his brain damage. He will require lifelong care and support.

Mrs Justice Whipple approved a settlement of almost £5m, together with lifelong annual payments. **Angus McCullough QC**, instructed by Richard Lodge of Kingsley Napley, represented the claimant.



Liability admitted in death of city banker

Henry Witcomb QC, instructed by Paul McNeil of Fieldfisher, represented the family of city banker Robert Entenman. The married 57-year-old American with two children died at London Bridge hospital a year after suffering irreversible brain damage. This was caused by a failure to provide humidified oxygen, leading to respiratory compromise. Henry secured a £2.1m settlement from the hospital's operator, following an early admission of liability.

Anaesthetic not negligently administered

Matthew Donmall successfully represented a hospital trust against a clinical negligence claim relating to a colonoscopy procedure. The Claimant alleged that anaesthetic was negligently administered outside of the vein, causing him injury to his hand. Following a four-day trial, the judge dismissed the claim. Matt was instructed by Browne Jacobson.

Causation contested

In *AB v East Lancashire Hospitals NHS Trust* [2019] EWHC 3542 (QB), the Claimant suffered a perinatal arterial ischaemic stroke at birth. She sustained significant disabilities and alleged she should have been delivered earlier, thus avoiding the stroke. The Defendant denied negligence and said that she would still have suffered a stroke if delivered earlier.

Significantly, in finding for the Defendant and as to the role of statistical correlation in legal causation, Mrs Justice Lambert found: '...a widely held hypothesis, or presumption, is not proof on the balance of probabilities of cause, or in the legal context, of causation.' **John Whitting QC** was instructed for the Defendant by Judith Baxendale of Hempsons.

A duty to disclose?

In the high profile case, *ABC v St George's Healthcare NHS Foundation Trust and others* [2020] EWHC 455, the High Court ruled that health authorities owed a duty of care to the daughter of their patient, who suffered from the hereditary condition Huntington's disease.



The Defendants were responsible for treating ABC's father, XX, whilst he was detained under the Mental Health Act after killing his wife, ABC's mother. Doctors suspected that he might be suffering from Huntington's Disease, an incurable genetic condition. XX refused to consent to the doctors disclosing this information to his two daughters.

Mrs Justice Yip held that, on the facts, the duty had not been breached and that causation had not been established.

Lizanne Gumbel QC represented the Claimant, instructed by Jonathan Zimmern at Fieldfisher. **Philip Havers QC** and **Hannah Noyce** represented the Defendants, instructed by Catherine Bennett at Capsticks.



Securing a Wasted Costs Order against Claimant Expert

In a landmark costs application in *Thimmaya v Lancashire NHS Foundation Trust* [2020] P.N.L.R. 12, **Giles Colin**, acting for the Defendant Trust, secured a Wasted Costs Order of £88,801.68 against a Medico-Legal Expert.

At trial, the Consultant Spinal Surgeon and expert for the Claimant was unable to articulate the correct test for breach of duty. Following the discontinuance of the claim,

the Defendant Trust successfully pursued a Wasted Costs Order against the expert, arguing that he was not competent generally for the case because he had only conducted that surgery twice under supervision, he wasn't aware of the correct legal test and was unfit to act as an expert because he was suffering from psychiatric illness.

Giles was instructed by Leona Beaumont of Hempsons Manchester.

Material increase in risk, but no material contribution...

Richard Smith represented the Aneurin Bevan University Local Health Board and successfully resisted the claim that its admitted negligence did not materially contribute to the patient's death seven years later.

The Claimant alleged that his late wife's need for a tracheostomy, which was accepted to have been a result of negligence, increased her risk of death from cardiac

arrest and when she died from a cardiac arrhythmia a causal link to that negligence was established by a material contribution. The Judge was persuaded that this was not the case as the Claimant could not establish which of the risk factors had caused or contributed to the death.

Richard was instructed by Gareth Rees of NHS Wales Shared Services Partnership, Legal & Risk.

Right to choose your treatment

Richard Mumford represented the widow of a lung cancer patient who was negligently denied the opportunity to decide whether to undergo life-prolonging surgery or radiotherapy. The court upheld the Claimant's argument that a proper consent process required all

reasonable treatment options to be discussed with a patient in order for him to exercise an informed choice as to treatment. However, the judge found that in the case under consideration the Claimant could not show that her husband would have gone against the

Challenge to Do Not Resuscitate ("DNR") orders

Jeremy Hyam QC and **Jessica Elliott** have been instructed by Merry Varney of Leigh Day in a legal challenge to the Government's lack of guidance for Do Not Resuscitate ("DNR") orders during the coronavirus pandemic.

Kate Masters, the daughter of David Tracey, who brought a successful judicial review regarding DNRs in 2014, seeks to challenge the government for failing to use their emergency powers to ensure patients and their families understand how DNR decisions are made during the current coronavirus pandemic. Health secretary Matt Hancock is to issue updated guidance on DNR orders for doctors. The case is ongoing.



Maternal consent for Down's Syndrome Screening required

Clodagh Bradley QC successfully represented the Claimant at this liability trial for 'wrongful birth', instructed by Richard Money-Kyrle of Boyes Turner. In *Mordel v Royal Berkshire NHS Foundation Trust* [2019] EWHC 2591 no Down's syndrome screening was carried out at the first trimester screening appointment. The case raised important issues around informed consent, including insufficient questioning at the time, follow-up over why she hadn't been screened and failing to offer quadruple testing. The Claimant would have had diagnostic testing and terminated the pregnancy. Damages are to be assessed.



Always read the papers!

A 60-year-old woman was doubly unfortunate. First, she fell down the stairs and fractured her neck. Then her neck was negligently mobilised in the Accident & Emergency Department. By the time she arrived at the next hospital for surgery, her neurological condition had deteriorated substantially. Unsurprisingly she alleged that the negligence caused the deterioration.

Cara Guthrie, instructed by Kennedys, represented the Defendant at a JSM, advancing a case that the negligence could

not have caused the deterioration because she did not deteriorate for many hours, although there was no other explanation for the deterioration. In the week before trial, while turning every page of the trial bundle, Cara came across an ambulance record for the journey between hospitals which said 'Patient kept moving her neck AGAINST advice!' None of the experts nor any member of the Defendant's team had previously seen this record. The Defendant's prospects of success dramatically improved and the case settled two days before trial.



Psychiatric injury for stillbirth

A mother who suffered serious psychiatric injury following the stillbirth of her first child was awarded damages in an out of court settlement. It was found that the midwife missed a reduction in SFH at 40 weeks, which should have triggered a scan to check the baby's health. The mother was told that the stillbirth was due to an infection, which led to her developing obsessive-compulsive disorder regarding cleanliness as well as PTSD and a distrust of medical professionals. **Leanne Woods** was instructed for the mother by Adele Wilde and Nicola Rawlinson-Weller of Enable Law.



Freeing up hospital resources for COVID-19

Simon Sinnatt, instructed by Sophie Barbour, Hempsons, on behalf of University College London Hospitals NHS Foundation Trust, acted in an application (*UCLH NHSFT v MB* [2020] EWHC 882 (QB)) for an injunction requiring the Defendant to leave a hospital, freeing up resources for COVID-19 patients.

The defendant suffered from complex medical condition but had no clinical need to remain in hospital. It was not possible to proceed by way of substantive possession proceedings because of Practice Direction 51Z, which introduced a 90-day stay of proceedings.

The Judge considered the Article 3, Article 8 and Equality Act issues raised, but ultimately decided that there were clear grounds for ordering an injunction, with care conditions in place for the patient.



Supreme Court grants permission to appeal

The Appellant consulted her GP to determine if she carried the haemophilia gene. As her GP later admitted, she was not referred for the correct test so was wrongly reassured that she was not a carrier. In due course, she gave birth to a son diagnosed with severe haemophilia and severe autism. Yip J held that, as a matter of law, the GP was liable for the additional losses associated both with his haemophilia and

his autism [2018] 4 WLR 8 but the Court of Appeal disagreed [2019] 4 WLR 26. On 1 July 2019 the Supreme Court granted permission to appeal.

The Appellant is represented by **Philip Havers QC** leading Eliot Woolf QC, instructed by McMillan Williams of Sevenoaks. The hearing has been fixed for November 2020.



Junior A&E doctor exonerated

Richard Mumford successfully represented a Health Board in Wales at a five-day trial concerning double below-knee amputation following sepsis. The Claimant had presented to A&E on Christmas Day 2012 with symptoms of low grade fever and joint pain. He was seen by a junior doctor and after a thorough examination was discharged home. He presented again the following day in a condition of advanced sepsis, the progression of which was made more rapid by his undiscovered myeloma. The claim was dismissed following Richard's cross-examination of three witnesses of fact and two experts.

Richard was instructed by Mark Harris of NWSSP Legal & Risk Services.

Public Law



Impact of Windrush Compensation Scheme post-Brexit

In March, **Martin Forde QC** delivered a keynote speech at Embassy Magazine's conference focusing on consular assistance. He addressed foreign consuls about the Windrush Compensation Scheme, which

also affects Commonwealth citizens, and lessons being learnt from this issue. This is particularly relevant as the UK leaves the EU because their immigration status abroad could be impacted under the 'Settled Status' scheme.

What is the law on internal relocation?

Sarabjit Singh QC appeared in the Court of Appeal for the SSHD in *AS (Afghanistan) v SSHD* [2019] EWCA Civ 873. This significant case considered the law on internal relocation and the circumstances in which relocation of a person with a well-founded fear of persecution in one part of his home country to another part could be said to be unduly harsh.

The Court of Appeal remitted the appeal to the Upper Tribunal. This case is being followed with interest by the asylum and refugee law community.



Judicial review trends and forecasts 2019: Public Law and technology

1 Crown Office Row took part in the Public Law Project's one day conference with talks and workshops examining the intersection between public law and technology. **Michael Spencer** chaired the afternoon sessions, which looked at accountability in the digital state, online courts, compliance with the Human Rights Act and the future of environmental judicial reviews. The conference closed with a look at the challenges facing public law and human rights in the future which have come to the fore in recent months.



Linked Judicial Reviews examine British nationality

In *R (Hassan & others) v Secretary of State for the Home Department* 2019 EWHC 1288 (Admin),

Sarabjit Singh QC and **Jo Moore** successfully represented the Secretary of State for the Home Department, instructed by the Government Legal Department, in four linked judicial review claims brought by holders of British Overseas Citizenship (BOC), challenging a refusal to grant them full British Citizenship.

The Claimants contended that despite holding Somali passports, they were not Somali citizens and had no nationality other than BOC status. They produced letters from Somali authorities supporting their claim not to be citizens.



Safeguarding child informants

Natasha Barnes appeared on behalf of the Secretary of State in high-profile litigation challenging the use of children as informants in criminal investigations. The case was brought by the charity, Just 4 Kids, who argued that there were inadequate safeguards in place to protect the best interests of the child.

The High Court rejected the challenge concluding that there was an adequate "system of oversight" in place and that the scheme as a whole was lawful. Natasha Barnes was led by Sir James Eadie QC.

In February 2020 permission to appeal to the Court of Appeal was granted.

The high profile question of Shamima Begum's citizenship

In October 2019, the Special Immigration Appeals Commission (SIAC) heard the first part of Shamima Begum's appeal against the decision by the Home Secretary to revoke her British Citizenship. The preliminary issues included whether she could have a fair and effective appeal, whether the decision left her stateless and so was unlawful. **Angus McCullough QC** acted as Special Advocate for Shamima Begum.

As widely reported, Ms Begum left the UK aged 15 to join Islamic State in Syria. She married a Dutch fighter and gave birth to three children, none of whom survived. She launched a legal challenge on various grounds,

challenging the decision to revoke her citizenship.

SIAC found in favour of the Home Office on preliminary issues and held that removal of her British Citizenship would not leave her stateless given her residual Bangladesh nationality.

This case has been recently heard in the Court of Appeal.



Sikhs challenge Census

Neil Sheldon QC represented the Cabinet Office in a challenge by the Sikh Federation to the recommendation by the Office for National Statistics that 'Sikh' should not be included as a tick-box response option to the ethnicity question in the 2021 census.



The case, which has received extensive media coverage, is being presented by the Claimants as the culmination of a 15-year campaign for modification of the census questionnaire. It raises important issues of Parliamentary Privilege concerning the jurisdiction of the Court pre-emptively to declare that an Order in Council would be unlawful. Neil is instructed by the Government Legal Department.



Investigation into the Labour party's leaked report

Martin Forde QC has been appointed by the Labour Party to chair an investigation into the leaked anti-Semitism report on staff. Martin, who has been acting as the independent advisor to the Windrush Compensation Scheme since its inception, will chair a panel comprised of Lord Whitty, Baroness Lister and Baroness Wilcox. The investigation will cover the report's contents and the circumstances of its release.



Disclosure in closed material proceedings: what has to be revealed?

In Judicial Review, Issue 2, Volume 24 (2019) **Angus McCullough QC** and **Shaheen Rahman QC** consider

the approach to disclosure in closed material proceedings (CMPs). They address the background and rules of disclosure surrounding open and closed material in CMPs, as they arise in different contexts, courts and tribunals. The impact of fair trial rights (Article 6) under the ECHR, and the

effect of EU rights, is analysed and current areas of debate explored.



Is lockdown lawful?

Leading UK businessman Simon Dolan has launched a legal bid to challenge the lawfulness of the Government's COVID-19 lockdown. He sought a Judicial Review of the UK Government's justification of the decision-making process which led to the lockdown. Whilst the courts dismissed his application, the Prime Minister has promised a future independent inquiry into COVID-19 pandemic.

Philip Havers QC was instructed as lead counsel, with junior Francis Hoar, by Michael Gardner of Wedlake Bell.



Mrs Justice Lang dismissed all four claims, holding that the Claimants' Somali passports were prima facie evidence that they were validly issued on the basis that the holder was a Somali citizen. The Secretary of State had been entitled to find on the information before him that they did not fulfil the requirements of s.4B of the British Nationality Act 1981.

Challenge to delay over decision-making

The High Court considered a complex judicial review, involving a systemic challenge to the speed of Home Office decision-making regarding unaccompanied asylum-seeking children. It was held that there was no breach of the duty to treat the best interests of children as a primary consideration, nor did the Home Office's arrangement breach

Articles 8 and 14 of the ECHR. Additionally, the individual delay was not unlawful or a breach of his Article 8 rights.

David Manknell and **Jo Moore** were junior counsel for the Secretary of State, instructed by the Government Legal Department.



Sure Start Maternity Grant for refugees



In *SK & LL v SSWP*, **Michael Spencer** successfully represented a refugee mother and a kinship carer in a discrimination challenge to the rules for awarding a Sure Start Maternity Grant (SSMG). They appealed against a rule excluding new mothers who already have a child in the household, arguing that it unlawfully discriminated against refugee mothers with children born pre-flight and kinship carers of children who came into their care after their first birthday, since neither class would have had any opportunity to retain baby items from the elder child. Michael was instructed by the Child Poverty Action Group pro bono for the appellants.



Can MI5 agents engage in criminal activity?

Natasha Barnes, instructed by the Government Legal Department and led by Sir James Eadie QC, David Perry QC, and Victoria Wakefield QC was part of the team representing the Government in this challenge to MI5's policy authorising agents to engage in criminal activity. Human rights campaigners Reprieve, Privacy International, the Pat Finucane Centre and the Committee on the Administration of Justice sought to make public the limits of that policy and challenged its underlying lawfulness.

In December 2019, the Investigatory Powers Tribunal (IPT) held that, on a proper interpretation of the Security Service Act 1989, the UK Security Service's policy on agent participation in criminality was lawful and did not contravene the ECHR.



Success in Supreme Court of St Helena

David Manknell appeared in the Supreme Court of St Helena in a case concerning contested jurisdiction between St Helena and South Africa.

A claim had been brought in St Helena against the island's Attorney General for negligent medical treatment provided to a patient. Whilst initially treated on the island, after complications the patient was transferred under the Medevac scheme to a hospital in South Africa, where sadly she died during surgery. The Attorney General counterclaimed against the South African hospital, and having obtained permission to serve proceedings out of the jurisdiction, sought to have the claim and counterclaim

determined together in St Helena. The South African hospital contested jurisdiction and service. The Judge accepted that there were factors which connected the claim to South Africa, but overall held that he was satisfied St Helena was clearly the proper forum to decide this case.

The hearing took place remotely, with the Judge located in France, the Hospital's solicitors in South Africa, the Attorney General's staff in St Helena, and Counsel for all parties in the UK.

David Manknell acted for the Attorney General of St Helena, instructed by Bianca Huggins, Crown Counsel (Civil) St Helena.

Permission to appeal granted by the Supreme Court in 10,000 asylum appeals

Natasha Barnes, led by Robin Tam QC, appeared for the Secretary of State in the Court of Appeal concerning the status of 10,000 asylum appeals heard under the *ultra vires* 2005 Fast Track Rules in *TN (Vietnam)* & *US (Pakistan)*. These rules governed the procedure for detainees to appeal the refusal of their asylum claim.

The Court of Appeal found for the Secretary of State on all issues, dismissing TN's appeals and her judicial review claims. The Court ruled that appeals heard under *ultra vires* procedure rules were not automatically rendered a nullity and the Court had to assess whether there was unfairness on an individual basis. The Supreme Court has granted permission to appeal to TN.





Complex partial exemption dispute resolved

Natasha Barnes appeared in a complex VAT dispute between N Brown and HMRC concerning historic assessments totalling £42 million and future assessments of approximately £10 million per annum. A three-week trial took place to determine the extent to which N Brown could recover VAT incurred on marketing costs. N Brown argued that it was entitled to recover VAT on the vast majority of its marketing costs since they mainly related to the sale of goods. HMRC said a substantially higher proportion of VAT could not be recovered because the marketing expenses related to both the taxable sale of goods and the exempt supply of financial services. The First-tier Tribunal found for HMRC. Natasha was led for HMRC by Hui Ling McCarthy QC.



Offshore structure and abuse of law

Isabel McArdle, instructed by HMRC, appeared in *Wilmslow Financial Services v HMRC*, concerning the questions of the correct characterisation of supplies of loan broking and advertising services for VAT purposes, and whether use of an offshore structure in a loan broking business amounted to an abuse of law.

VAT up for debate in EU law case

The High Court held that Article 1 of the VAT Directive did not confer rights on individuals in *Richard Allen v HMRC* [2019] EWHC 1010, with **Amy Mannion** representing HMRC. Accordingly, the Claimant businessman could not recover damages from the UK tax authorities following the collapse of his business, which he claimed was as a result of the government's failure to halt an alleged abuse of a VAT relief for suppliers from the Channel Islands.

VAT and property insights

Owain Thomas QC joined a panel of experts to provide an update on VAT and property at the Bloomsbury Professional Property Tax Conference 2019 in November. The conference covered demergers of property investment companies, capital allowances and tax treatment for property investment and property development as well as many other topics. Visit the News & Events section of the 1COR website to stay up to date with the latest webinars, talks and conferences.



Supreme Court considers HMRC's powers under AWRs

Amy Mannion acted for HMRC in *OWD and another v HMRC* [2019] UKSC 30 concerning the Alcohol Wholesaler Registration Scheme ("AWRS"). Unanimously allowing HMRC's appeal, the Supreme Court held that where HMRC had determined that a wholesaler was not a fit and proper person to carry on wholesale supply of

duty-paid alcohol, it had no power to grant temporary approval pending the wholesaler's appeal to the First-tier Tribunal. The Supreme Court also considered whether the High Court could grant interim relief given the limits on HMRC's powers, but did not make a definitive ruling on the point.

Court of Appeal upholds HMRC's requirements for alcohol traders

Natasha Barnes acted for HMRC in *R (on the application of Seabrook Warehousing Ltd) v HMRC* [2019] EWCA Civ 1357. The Claimant taxpayer challenged (i) the condition that all overseas traders, trading in duty suspended goods, appoint a UK-established duty representative and (ii) the lawfulness of due diligence requirements imposed on over 3,000 alcohol wholesale traders. The Court of Appeal dismissed the taxpayer's challenge on both grounds, holding that the regulations and due diligence requirements imposed on alcohol traders were justified and proportionate.

The last case referred to the European Court of Justice before Brexit

Owain Thomas QC appeared before the CJEU on 23rd January 2020 in this VAT case concerning Kaplan Colleges. The case was referred by the First tier Tribunal in the UK in January 2019 and concerns the operation of the VAT exemption for costs sharing groups. The case raises issues concerning VAT groups, cross border application of the exemption and application of the costs sharing outside the EU. The Advocate General's opinion was released in April 2020.



What value is in a museum?

Sarabjit Singh QC was instructed by the Appellant in *Hughes (Valuation Officer) v Exeter City Council* [2020] UKUT 7 (LC), which raised the issue of whether museums occupied for socio-economic rather than profit reasons and which are loss-making ought to pay any non-domestic rates at all. The Upper Tribunal ultimately decided that occupation for

socio-economic purposes was worth less than occupation for profit, and did not consider that the value of the occupation of the museum was sufficient to justify any positive rateable value. The decision potentially has an impact on billions of pounds of rateable value, not just museums but also local authority sports and leisure centres and industrial and transport properties.



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
- Darragh Coffey
- Peter Skelton QC (Litigation)
- Emma-Louise Fenelon (Litigation)

Grenfell Tower Inquiry

- Neil Sheldon QC
- David Manknell
- Leanne Woods
- Rhoderick Chalmers
- Rajkiran Barhey
- Thomas Beamont
- Michael Spencer

Stephen Port Inquests

- Peter Skelton QC
- Natasha Barnes

Guildford Pub Bombing Inquests

- Oliver Sanders QC
- Matthew Flinn

Brook House Inquiry

- Jo Moore

Infected Blood Inquiry

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

Westminster Bridge Inquests

- Neil Sheldon QC
- Matthew Hill

London Bridge Attack Inquests

- Neil Sheldon QC

Inquests and Investigation into the Shoreham Air Crash

- Martin Downs
- David Manknell

Manchester Arena Bombings

- Neil Sheldon QC
- Alasdair Henderson

Operation Kenova

- Oliver Sanders QC

Deaths could have been prevented

Jonathan Metzer was instructed by Marianne Harrington of Fosters Solicitors, to represent the family of Thomas Kemp. He was a young man with mental health issues, who fatally stabbed his wife and himself shortly after

treatment at Ipswich hospital. At an Article 2 inquest, the Coroner returned a narrative conclusion which included a number of significant criticisms of the care provided at the hospital.

Birmingham Pub Bombings (1974) Inquest concludes

The Inquests into the death of 21 people in the Birmingham Pub Bombings of 21 November 1974 have now concluded.

The jury determined that the 21 people were murdered by bombs planted by the IRA and the inadequacies of a warning call by an IRA member contributed to their deaths. The call gave imprecise

locations and did not mention the pubs. Seven minutes after the call was received by a local newspaper the first bomb exploded.

Peter Skelton QC led the Counsel to the Inquests team, **Matthew Hill, Gideon Barth** and **Emma-Louise Fenelon**. They were instructed by Tim Suter of Fieldfisher. The Coroner was His Honour Sir Peter Thornton QC, the former Chief Coroner.



Support for vulnerable people

In February 2017, a young man's mental health diagnoses had been rescinded and secondary mental health care withdrawn, following clinical opinion that his problems were related to drug induced psychosis rather than any enduring mental health issues. Following successive admissions to hospital under section, he was discharged with no secure home to go to and no plan for follow up. He was found barely breathing in a local park and later died in hospital.

Charlotte Gilmartin, instructed by Marianne Harrington at Fosters Solicitors, represented the family pro bono at the inquest.

After hearing a wide range of evidence relevant to the issues raised, the Coroner concluded that he had died accidentally from a head injury, likely caused by a fall when intoxicated.



London Bridge & Borough Market terror attack inquests

Neil Sheldon QC acted for the Secretary of State for the Home Department in the inquests into the deaths arising from the terror attacks on London Bridge and in Borough Market on 3rd June 2017. The Chief Coroner, His Honour Judge Mark Lucraft QC, conducted the Inquests.

Eight people died on 3rd June 2017 when three attackers drove a van into pedestrians on the bridge, before exiting the vehicle and continuing their attack with knives.



The Inquests, which opened in May 2019, concluded that they were unlawfully killed but there was little which the police and MI5 could have done to prevent it, aside from erecting barriers, which have now been erected. Neil also acted for the Home Secretary in the subsequent Inquests into the deaths of the three attackers. It was concluded that they were lawfully killed by the Police.

Undercover parenting

Peter Skelton QC represented the Metropolitan Police Commissioner in a hearing, arising from the personal injury claim brought by 'TBS' the son of a former undercover police officer, Bob Lambert.

TBS was born after Bob Lambert, who was working undercover as an animal rights activist, had an illicit sexual relationship with his mother. He is claiming damages for psychiatric injuries suffered following the news that his father was a police officer.



The Commissioner is seeking to add Bob Lambert as a co-defendant to answer the allegations made against him.

Gross failure contributed to infant's death

Oliver Hall died from Meningitis B less than 24 hours after first showing symptoms of the bacterial infection. Throughout the day his parents contacted the GP practice, paramedics and 111 NHS call service as his condition deteriorated, before being told to take him to hospital that evening. Evidence was heard that a six year old boy would have survived if diagnosed more quickly.

The Coroner concluded that gross failure to provide

medical treatment contributed to Oliver Hall's death, and wrote a Prevention of Future Deaths report after the inquest highlighted a failure in communication between NHS 111 and the ambulance service

Rachel Marcus, instructed by Kashmir Uppal and Michael Burrell of Access Legal solicitors, acted for the family.

Byron Burger Anaphylaxis

Clodagh Bradley QC, instructed by Thomas Jervis of Leigh Day, acted on behalf of the family of 18-year-old Owen Carey who died of anaphylaxis after eating a grilled chicken breast from Byron Burger, not knowing that it had been marinated in buttermilk, as the menu did not say this. Owen had multiple food allergies, including to dairy, and the server was informed of this, as the Coroner found at the conclusion



of the inquest. The Coroner issued a Prevention of Future Deaths report raising the concerns Clodagh had highlighted on behalf of the family. Since Owen's death, Byron Burger staff ask all customers about any allergies.

Inquest into button battery death

Matthew Flinn was instructed in a complex jury inquest touching upon the death of a mentally disabled patient who inserted a button battery up his nose. Matthew represented the consultant anaesthetist who attempted to save the deceased's life when he suffered severe ventilation difficulties during an endo-tracheal tube exchange, which resulted in cardiac arrest. The events surrounding the tube exchange were the focus of several days of evidence and multiple expert opinions, but the jury ultimately made no criticism of the anaesthetist's care. Matthew was instructed by Joshua Morrison at Gordons Partnership LLP.

IICSA: Accountability and Reparations

In 2019 the Independent Inquiry into Child Sexual Abuse published a report in its Accountability and Reparations Investigation.

The Investigation considers the effectiveness of the criminal and civil justice systems in delivering accountability and reparations for victims and survivors. It is focused on the civil justice system, criminal compensation and support services. During a three-week hearing, it looked in detail at five case studies from the 1960s to the present and

heard from victims and survivors as well as police officers and lawyers. The report made a number of recommendations, including calling for a code of practice governing the way defendants approach civil claims for historic child sexual abuse.

Peter Skelton QC, Lois Williams and **Gideon Barth** were instructed as Counsel to the Investigation.

Neil Sheldon QC represented the Ministry of Justice.

Neglect in emergency care

On admission to St Peter's Hospital, Caroline Pearson-Smith was prescribed phenytoin but suffered a fatal cardiac arrest.

The coroner made a finding of neglect, as the amount of phenytoin prescribed and administered far exceeded a therapeutic dose. **Matthew Donmall** was instructed by Leigh Day for the family.

Safeguarding and disclosure for toddlers

Five-year-old Alex Malcolm was beaten to death by his mother's boyfriend for losing a trainer in a park. The offender had a history of violence, including against previous partners, and had recently been released from prison. He was convicted of

murder, and sentenced to life in jail with a minimum of 21 years.

The inquest explored child safeguarding and disclosure by relevant agencies. **David Manknell** represented the National Probation Service (NPS).





Safety for cyclists in London

Prof. Bitner-Glindzicz was cycling to work in central London when a van driver opened his door into her path, either knocking her off balance or causing her to swerve. She fell into the path of a taxi and was run over, dying of her injuries in hospital the next day. Senior Coroner Mary Hassell returned a narrative conclusion in which she was highly critical of the van driver who, she found, had caused

a hazard by his poor parking and had opened his door without first checking that it was safe to do so.

Neil Sheldon QC was instructed by Dushal Mehta, Fieldfisher, to represent the family of Prof. Maria Bitner-Glindzicz. **Charlotte Gilmartin** was instructed by John Luckhurst, Michael Demidecki & Co, for the taxi driver.

Undercover Policing Inquiry

Peter Skelton QC has been instructed to represent the Metropolitan Police at the ongoing Undercover Policing Inquiry (UCPI).

Oliver Sanders QC is acting for the core participant group of more than 100 former Metropolitan Police officers represented by the Designated Lawyers. These officers were members of the undercover units at the heart of the inquiry, the Special Demonstration Squad and National Public Order Intelligence Unit. Oliver is leading a team of 10 juniors from a variety of other chambers.

The Inquiry is chaired by Sir John Mitting and was set up by the Home Secretary in 2015 to



investigate the work of undercover police officers England and Wales since 1968, including sexual relationships between officers and civilians, and to provide recommendations for the future. The Designated Lawyer team sits within, but is independent of, the Metropolitan Police.



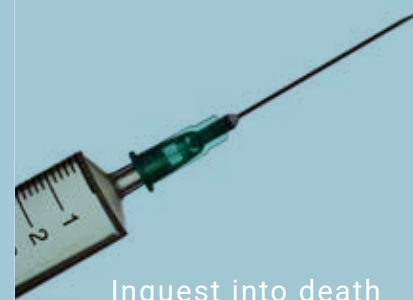
Landmark disclosure request for social media companies

In what is thought to be the first time a British Coroner has made such an order, Senior Coroner Andrew Walker requested social media firms to provide account information at an inquest exploring the impact of social media on a teenager's suicide. Following the request, Pinterest representatives agreed to assist.

Molly Russell took her own life in 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. **Jessica Elliott** instructed by Merry Varney of Leigh Day, represented her family at the inquest.

On 5th February 2019 digital minister Margot James spoke about new laws planning to tackle, amongst other areas of potential online harm, the responsibility of social media firms to remove harmful content.

Instagram pledged to remove content showing methods of self-harm, banned graphic self-harm images and restricted accounts with suicidal themes. Instagram is also planning on removing the 'like' feature on its images.



Inquest into death after plastic surgery

A 36-year-old mother of three, Louise Harvey, died of a pulmonary embolism shortly after plastic surgery. As an inpatient, one dose of prophylactic anticoagulants was given late, a second dose was not given and she was not provided with prophylactic anticoagulant medication when discharged. She later collapsed and died in hospital.

The five-day Inquest considered expert evidence but the Coroner found that the lack of medication did not cause or contribute to her death.

Caroline Cross, instructed by Tim Deeming of Tees Law, represented the family. **Christopher Mellor**, instructed by Sian Davies and Jason Howarth of Keoghs, represented the Administrators for Transform, the company that managed the hospital at the time. **Matthew Flinn**, instructed by Carolyn Stevenson of Kennedys, represented the Resident Medical Officer.



Unlawful killing of Natasha Wild

Jim Duffy represented the family of Natasha Wild at the eight-day inquest into the 23 year old's death in November 2016. Natasha was stabbed by her boyfriend, who suffered from paranoid schizophrenia. Mr. Brackenbury had not been taking his required medication and was discharged from secondary mental health services weeks before Natasha died. At the inquest they admitted to failing to zone him as a high-risk patient.

The jury returned a conclusion of unlawful killing and found a number of failures by the local mental health trust and Police had possibly contributed to her death. These included failure to arrest him at the couple's home shortly before Natasha's death.

Jim was instructed by Sarah Westoby of Leigh Day.

Infected Blood Inquiry

The first public hearings of the Infected Blood Inquiry have been held in London, chaired by Sir Brian Langstaff.

During the 1970s and 1980s, thousands of people in the UK were infected with hepatitis B, hepatitis C and/or HIV by blood or blood products administered to them by the NHS. Many have died as a result of what is now regarded as one of the most significant adverse public health events in the history of the NHS.

The first phase of the Inquiry focusses on the experiences of those directly or indirectly infected by blood or blood products.

Matthew Hill, Michael Deacon and **Charlotte Gilmartin** have been appointed as Junior Counsel to the Inquiry. **Christian Howells** is instructed by Watkins and Gunn for 300 Welsh and Northern Irish Core Participants.



Investigation into prison healthcare after publicist's death

A three-day inquest concluded that the disgraced publicist Max Clifford died of natural causes.

Mr Clifford was a high-profile PR consultant best-known for creating headlines such as 'Freddie Starr ate my hamster'. He was convicted of historic sexual offences in 2014 and sentenced to eight years in

prison. He died whilst serving his prison sentence, of a rare heart condition in 2017. Although his family had raised concerns about the quality of his medical treatment and the conditions in prison, the coroner found that nothing could have prevented the disease taking its course and that

prison conditions had nothing to do with his death.

Alasdair Henderson, instructed by Sophie Barbour of Hempsons, represented the healthcare team at HMP Littlehey at the inquest.

Inquest into Butlins choking death

Darragh Coffey, instructed by Julia Tracy at Capsticks, represented East Sussex Healthcare NHS Trust at the inquest into the death in 2018 of James Manning, a two year old boy, who choked on a piece of sausage at Butlins in Bognor Regis.

James Manning had a history of breathing difficulties. He had been referred to Conquest hospital managed by East Sussex. There he was diagnosed with enlarged tonsils and severe obstructive sleep apnoea. He was referred to Royal Sussex County



Hospital to be assessed for an Adenoidtonsillectomy. Before the outpatient appointment, he choked on a family holiday, causing an ischemic hypoxic brain injury which led to his death. The inquest is ongoing.

Whistleblowing investigated at inquest

Richard Smith is representing a Consultant Anesthetist in a high-profile inquest into the death of a woman in the intensive care department of the West Suffolk Hospital. Press interest has been attracted by the approach of the Trust to its investigation into the identity of the author of an anonymous letter sent to the deceased's family. The inquest has been adjourned while the coroner obtains expert evidence.

Catalogue of failures caused anaphylactic death

18-year-old Shante Turay-Thomas, died of acute anaphylaxis after her mother called NHS 111 and waited almost an hour for an ambulance. The Coroner identified a catalogue of failures in this high-profile Article 2 ECHR inquest with nationwide implications, including the discrepancy between call prioritisation in respect of anaphylaxis for NHS 111 calls compared to 999 calls, inadequacies in the training of NHS 111 call handlers and inadequacies in the prescribing of Emerade adrenaline auto-injector

pens and training in their use. The Coroner wrote a lengthy PFD report following the inquest.

Clodagh Bradley QC, instructed by Jill Paterson & Thomas Jervis of Leigh Day represented the family.



Inquest into death of Prince Fosu at an Immigration Centre

Christopher Mellor, instructed by Sam Flew at RadcliffesLeBrasseur, and **Emma-Louise Fenelon** instructed by James Stevenson at the MDU, were instructed to represent two different GPs at a five-week jury inquest investigating the care of Prince Fosu, who died at Harmondsworth Immigration Removal Centre ("IRC") in October 2012. Although the CPS initially considered that charges should be brought against two of the organisations involved in running the detention centre and its health service, these charges were ultimately dropped.



Date set for inquest into Shoreham Airshow Disaster

Senior Coroner Penelope Schofield has announced a date for the inquest into the death of 11 men at the Shoreham Airshow Disaster. She thanked the families for their patience and confirmed that the inquest would take place without a jury in September 2020. It is expected to last for four to six weeks.

David Manknell is instructed by the GLD for the Air Accidents Investigation Branch (AAIB).

Systemic failures in prison death

An Article 2 inquest examined the death of a prisoner who had undergone a double lung transplant, following failures to provide him with the correct dose of anti-rejection medication. A jury found that there were systemic failures contributing to the death, including relating to the system for screening and writing

prescriptions, and the staffing, role allocation and time management in the prison's healthcare services. Several opportunities were also missed to pick up on the prescription error.

Isabel McArdle, instructed by Benjamin Burrows and Maya Grantham at Leigh Day for the family.



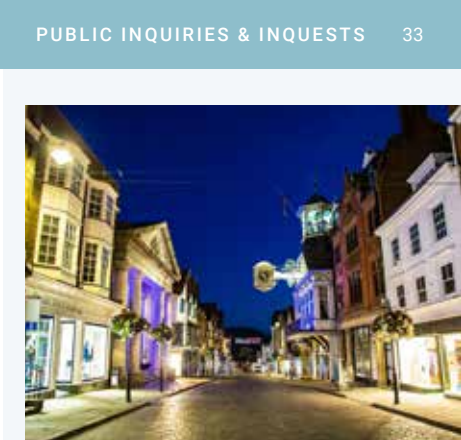
Inquest into death of Kevan Watts

Sarah Lambert QC is representing the family of renowned investment banker and non-executive director of Tottenham Hotspur, Kevan Watts. He died in November 2019 after heart transplant surgery. The inquest is anticipated later this year, with independent cardiology and anaesthetic experts assisting, and the coroner investigating a failure to turn on post-transplant pacing as well as the misplacement of the nasogastric tube. Sarah is instructed by Leigh Day.

Inquest following cardiac arrest and overmedication with opiates

Dominic Ruck Keene, instructed by Hempsons, represented the Royal Berkshire Hospital in an inquest into the death of Stephen Gray. Erroneous and ambiguous electronic discharge documentation, compounded by the failure at the Royal Berkshire to identify that the deceased had a fentanyl patch in situ, led to the deceased being significantly

over-prescribed Oxycodone. At post mortem the level of opiates in his blood was sufficiently high to be a potential cause of respiratory arrest. However, having heard a spectrum of conflicting clinical evidence, the Coroner reached a short form conclusion of natural causes in light of the deceased's co-morbidities.



1974 Guildford Pub Bombings

Oliver Sanders QC and **Matthew Flinn** are instructed as Leading and Junior Counsel to the Inquests into the deaths of the five young people killed by the Guildford Pub Bombings in 1974. Following on from similar major inquests, such as the Birmingham Pub Bombings Inquest (1974), the Guildford inquests will investigate the events leading to the deaths, but not the subsequent criminal proceedings involving the conviction and later acquittal of the so-called "Guildford Four" or related allegations of police misconduct.





Grenfell Tower Inquiry

Rajkiran Barhey, Thomas Beamont and Michael Spencer are instructed by the inquiry into the Grenfell Tower fire. Rajkiran is looking at issues of construction and design of the lifts. Thomas's work centres on the fire risk assessment of the Tower.



Legacy investigations into the Northern Ireland Troubles

Oliver Sanders QC continues to act for Operation Kenova, the independent police investigation team led by former Chief Constable Jon Boutcher. The team is examining more than 150 murders and other cases of abduction, explosives, misfeasance in public office, perjury, perverting the course of justice and torture. A key concern relates to the alleged activities of the alleged state agent known as "Stakeknife" and of the Internal Security Unit of the Provisional IRA. Oliver's focus is on civil and public law issues.

Care home death from sepsis investigated

Caroline Cross was appointed by the East Sussex Senior Coroner as Counsel to the Inquest into the death of Peter Dray, a 64 year old man. He died from sepsis and infection of the legs in 2016. He was deemed to lack capacity to make decisions about his care and treatment and was placed in a care home in 2015. Whilst there was an initial DOLs order in place, the order lapsed and was not renewed. He displayed complex needs and challenging behaviour and refused all personal care and assistance. Consequently, his legs became ulcerated and grossly infected, which ultimately caused his death. Multiple organisations

and individuals were involved in his care and treatment throughout his placement.



Inquiry into Immigration Centre conditions

Jo Moore is instructed as junior counsel to the Brook House Inquiry.

The Inquiry is investigating the decisions, actions and circumstances surrounding the mistreatment of detainees at Brook House Immigration

Removal Centre (IRC) shown in the 2017 BBC Panorama programme "Under-Cover: Britain's Immigration Secrets".

Jo is instructed as a member of the Inquiry's legal team by Solicitor to the Inquiry Ellis Pinnell.

Regulatory & Employment Law

NHS consultant challenges suspension of pay

In *North West Anglia NHS Foundation Trust v Dr Andrew Gregg* (2019) EWCA Civ 387, the Court of Appeal held that an NHS Trust was not entitled to withhold a doctor's pay during a period of interim suspension by the General Medical Council. The doctor, whilst unable to practise, was nonetheless 'ready willing and able to work'. The Court decided that, in a situation where the contract 'does not expressly deal with pay deduction during suspension while allegations are disputed, the default position should be that suspension by an external body should not be a justification for deduction of pay, save in exceptional circumstances.

Jeremy Hyam QC was instructed for the doctor by Ian Sadler of Radcliffes LeBrasseur.



Vet not complicit in theft of puppies

Richard Booth QC, instructed by James Preece of Clyde & Co, successfully defended a veterinary surgeon accused of dishonesty and of having been complicit in the taking of newborn French Bulldog puppies by two staff in the practice where he was working. The case turned on whether the vet was aware he had delivered six puppies, rather than the four that he recorded in his notes nine hours later, and of his colleagues' plan to take a puppy each after delivery.

The Disciplinary Committee found that dishonesty had not been proved by the College. Although the clinical records were in fact misleading, the vet had not intended to mislead when writing them and his record-keeping failings did not amount to disgraceful conduct.



Use of banned substance not intentional

Jo Moore represented a semi-professional rugby player in proceedings brought by UK Anti-Doping ("UKAD"). She was instructed pro bono by Jason Torrance of Fisher Jones Greenwood LLP. The athlete admitted testing positive for the presence of a banned substance, clomiphene, but argued that he had taken it at a time when he was not playing rugby due to a serious injury and believed he would never return. The UKAD sought a four-year ban on the grounds that the violation was 'intentional'. The Panel found that UKAD had not proved that the violation was intentional nor that the athlete was competing at the time. He received a two-year ban, backdated to the date he provided his sample for testing.



Reflections from an EHRC Commissioner



Alasdair Henderson has completed his second year as Commissioner

of the Equality and Human Rights Commission. It's been an eventful year for the Commission. The reports from two in-depth investigations are due to be published this summer: one into equal pay at the BBC and the other into antisemitism in the Labour Party (on which Alasdair has been the lead Commissioner).

Other highlights of the Commission's work have included an inquiry into the experiences of disabled people in the criminal justice system and the launch of a powerful new online tool for anyone interested in understanding and monitoring the UK's compliance with the international human rights framework, at humanrightstracker.com. The Commission is also at the forefront of trying to understand and tackle the ongoing racial inequalities in British society, an issue brought vividly into public consciousness by the disproportionate impact of the COVID-19 pandemic on ethnic minorities, and the recent protests in response to the death of George Floyd.



MPTS reject allegations of dishonesty in treatment of trans patient

Richard Smith represented a GP accused of dishonesty by the GMC which required an unnecessary investigation, for refusing to prescribe hormone treatment to a transgender patient. The Medical Practitioners Tribunal dismissed the allegations. In reaching its decision the Tribunal had to consider the sometimes difficult position that GPs find themselves in when asked by Gender Identity Clinics to prescribe medications off licence without sufficient communication, training or guidance. The Tribunal was

satisfied that the GP's approach was justified and was not persuaded of the malign motive alleged by the patient and the GMC. Richard was instructed by James Doake at the MDDUS.



Vet exonerated after death of whelping Chihuahua



Clodagh Bradley QC, instructed by Gill Nevin of Keoghs, successfully defended a vet with an unblemished record against allegations of failing to recommend an emergency Caesarean section for a whelping

Chihuahua. There was a factual dispute over the advice given. The bitch died two days after. The owners left her in a cold car following a long journey, despite veterinary advice to keep her in a quiet calm environment. All of the disputed facts were found in the vet's favour. The Disciplinary Committee concluded that the admitted parts of the charge did not amount to disgraceful conduct in a professional respect, so that the vet's record remains untainted.

"Artificial Intelligence, Real Headache?"

Robert Kellar QC and **Edite Ligere** were joined by Consultant Oncologist Nick Plowman at a breakfast seminar event in March 2020. AI is already in use in diagnostics today, and its importance in healthcare seems set to increase exponentially, particularly following the

COVID-19 pandemic. But unlike most other developments in healthcare technology, AI has the potential fundamentally to alter the nature of the medical profession, clinical negligence claims, and medical indemnity insurance.



Manchester reborn

Our Manchester Annex in the beautiful St James' Buildings in the city has undergone a refurbishment, representing a deep commitment to the city and being convenient for the courts and professional regulatory work.

We look forward to running social events, talks and meetings there, when we are able to do so.



Landmark Supreme Court Judgment on Vicarious Liability

In a key decision, the Supreme Court has clarified the scope of vicarious liability for independent contractors. In *Barclays Bank v Various Claimants* [2020] UKSC 13 the Court held that there was nothing in the caselaw to cast doubt on the classic distinction between employees (and those in relationships "akin to employment") and independent contractors, in respect of whom vicarious liability did not arise.

The key question remained whether the tortfeasor was "carrying on business in his own account" or whether he was in a relationship "akin to employment".

Where it was clear that a tortfeasor was carrying on business in his own account it was not necessary to consider the criteria described in previous Supreme Court decisions. **Lizanne Gumbel QC** and **Robert Kellar QC** appeared for the Respondents, instructed by Slater and Gordon and Shaw & Co.



Interim relief and employment status

Michael Paulin has appeared in a series of cases in the last year on employment status, whistleblowing and interim relief – this culminated in a sequence of appearances in the EAT and Tribunal representing the Oxfordshire Taxi Company Ltd.

Feature Article



When the Courts closed their doors: remote hearings, should they stay with us?



Marina Wheeler QC

So much has changed. In mid-March in the midst of a public health emergency, the Courts slammed their doors shut. Judges, court staff, lawyers, litigants, the press and the public, we were all told to go home and stay put. But the system kept going. After a brief intake of breath (it had all happened so fast), remote hearings began.

For many practitioners handling the tech meant a steep learning curve. We shared tips and tribulations. Our underappreciated IT support came into their own. The digitally literate guided the fearful and the frustrated (most people, some of the time). In a transcript doing the rounds, a High Court Judge regretted his "crustiness", "because anything technical" he confessed to Counsel, "I'm not very keen on". But cases were heard.

Correction. Some cases were heard. The technical feasibility of a hearing was one thing. A separate question was whether it would be effective and fair. Responding to COVID-19 gave us chance to think about the essentials, about what we are doing and why. The Bar Council and others are already considering what we might keep in a post-emergency world. Here at 1 Crown Office Row we have been doing the same.

The Family Courts had to think fast. Lockdown placed additional strain on struggling families adding to the urgent workload. The President of the Family Division gave guidance that cases where the court needed to assess the credibility of witnesses, may be ill-suited for final resolution online. Getting to the truth is at the heart of the system and cross-examination of witnesses is central to this. The advocate observes body language and subtle variations in speech as possible signs of discomfort. This is not possible remotely. The delay in transmission, the absence of proximity, dulls the encounter. A judge has various tools to assess credibility. Witness demeanour is one. As the President explained, a judge observes the behaviour of a person facing allegations in the witness box but also sitting in the well of the court.

Even in hearings with no witness evidence, members of Chambers reported that something vital was lost when conducted remotely. Oral advocacy also suffered from the absence of immediacy. Without a rapport with the judge, you can't assess the reaction to a submission and tailor it accordingly. Some compared it to appearing before the

Courts in Luxembourg or Strasbourg where proceedings depend heavily on written submissions. There, a colleague observed "the Judges sit so far away. You can't see the whites of their eyes."

The judicial perspective is similar. A colleague/ arbitrator reported, "the time lag made it harder to ask Counsel questions or clarify a point. Interrupting causes confusion so you don't. Counsel get an easier ride but the quality of the hearing probably suffers."

During full-lockdown some Public Inquiries continued to take oral evidence remotely. Others such as the Grenfell Tower Inquiry considered that doing so would compromise the process too much. They placed a high value on those affected by the tragedy being physically present (some needing the help of interpreters) while public officials were asked to account for their actions. The dignity and solemnity of the Inquiry's physical space was also considered vital to the Inquiry's work.

Many personal injury and clinical negligence trials were adjourned, but members of chambers managed other types of hearings remotely. Round-table-meetings (RTMs) appeared to work well. Opinion though was divided over hearings to approve settlements. Some felt that in high value cases, interaction with the family should be in person. One colleague explained "many families want to hear a Trust issue an apology in public and explain that lessons have been learnt. Often the local press sits in and reports what has happened. That is important." Another colleague would happily forgo travelling hours for a 10 minute hearing which, she says, many Claimants would prefer not to attend.

This raises two issues. First, in designing new systems we shouldn't assume we know what parties want. Second, how do we ensure adequate access for the public and press? Open justice is well-established in some kinds of proceedings. Others are just starting to let in some light. In some members' cases the press successfully dialled in but they were ad hoc, imperfect solutions. A question for the future will be whether a reduction in openness is an acceptable price for the convenience of remote hearings.

Hearings without live evidence which are not final determinations, but involve significant travelling and waiting should, many suggested, continue to be dealt with remotely. These might include appearances before the Interim Orders Tribunals in GMC disciplinary proceedings (leaving plenty of seats free on the future high speed train service to Manchester). There is scope too in judicial review. A colleague who defended (remotely) many challenges to immigration detention during the pandemic was converted to remote hearings for permission applications. "If you are in the RCJ permission list" he reported "you can sit about all day waiting. That time could be better spent working in Chambers and appearing – electronically – when the Court calls the case".

Unsurprisingly, there is a strong support for remote case management hearings continuing post-emergency.

A huge HMCTS-led reform is already underway to digitalise justice. Paper bundles are on the way out, although patchy experiences underline that none of this can be done on the cheap and Judges at all levels need proper support. "Online Courts" to resolve low value civil disputes are also in the pipeline.

Recognising the great advance made in responding to COVID-19 there are now calls to extend this much further. In responding we must avoid "crustiness" and be open to new ways of doing things. This is a chance to do better, to inject more impetus into arbitration and mediation, clear the backlog of cases choking Employment Tribunals, find ways to use technology to bring in, and protect, vulnerable court-users. But we must also be clear about what it would be wrong to give up. This includes the part of the system where direct human interaction is essential to delivering justice.



Personal Injury & Abuse Law

Highest ever compensation for survivor of abuse awarded in the UK

Robert Seabrook QC and Justin Levinson were instructed by Bolt Burdon Kemp in the landmark case of *FZO v LB Haringey* [2020] EWCA Civ 180. The Court of Appeal upheld the trial judge's award of £1.2M to the claimant who suffered serious sexual abuse at the hands of his PE teacher. The appeal concerned the correct approach to limitation, causation and injury, and two commonly recurring scenarios in this area. The first was whether the operators of the school could be vicariously liable for assaults perpetrated after the claimant ceased to be a pupil. The Court of Appeal held that the later assaults were sufficiently closely connected because he

had groomed the claimant whilst he was a pupil. The second was the test for consent in cases of alleged sexual assault. The Court of Appeal agreed that the civil and criminal tests were the same and involved considering whether or not a person was truly free to consent or was merely submitting to sexual activity.

Success in damages claim for survivors

In *CMK v Darby* (2019) **Emma-Louise Fenelon** was instructed by Kim Harrison and Victoria Kenworthy of Slater & Gordon for the Claimant.

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.

Sexual abuse in the showbusiness industry

Iain O'Donnell is instructed by Slater & Gordon to act for the claimant in a case brought against a well-known Hollywood actor for sexual assault. It is anticipated that this claim will go to trial in 2021.

First ever sexual assault claims against Uber drivers in the UK



In what is thought to be the first case of its kind, **Justin Levinson** was instructed by Emma Crowther of Irwin Mitchell to represent two women who were sexually assaulted by their Uber drivers in Leeds. The claim was contested by Uber

on the basis that it operated a technology platform rather than a taxi business and thus had no employment type relationship with its drivers. The claims were settled prior to trial with the claimants receiving substantial compensation.



Independent Inquiry into Child Sexual Abuse

Iain O'Donnell and **Emma-Louise Fenelon**, instructed by Slater & Gordon, represented the main survivor groups in the Roman Catholic Church and Anglican Church modules of IICSA, both of which concluded at the end of 2019. Iain acts for the main survivors groups in the Lambeth and Residential Schools modules of IICSA in 2020, instructed by Slater & Gordon and Verisona Law.

The Lambeth module of IICSA is anticipated to examine the severe

and systemic abuse that was inflicted on children in the Shirley Oaks Children's Homes, in relation to which Lambeth Borough Council has now established a Redress Scheme for survivors. Iain O'Donnell has been instructed by various of the survivors' solicitors to act in their claims for redress through the Scheme. Iain has already been involved in multiple appeals within the Scheme.

Supreme Court rules on the liability of social services

In *CN & GN v Poole BC* [2019] UKSC 25 the Supreme Court, made important statements of principle concerning the negligence liability of public authorities for the harm concerning third parties.



The appellants were represented by **Lizanne Gumbel QC**, who led **Iain O'Donnell**, **Duncan Fairgrieve** and **Jim Duffy** instructed by Leigh Day. **Philip Havers QC** and **Hannah Noyce** appeared for the AIRE Centre, one of a number of organisations granted permission to intervene along with **Martin Downs** who represented the Coram Children's Legal Centre. **Sarah Lambert QC** prepared the appellant's costs submissions to the Supreme Court following the Court's decision, instructed by Leigh Day.



APIL Abuse Conference 2019

Iain O'Donnell outlined the ramifications of the Supreme Court decision in *CN & GN v Poole BC* [2019] UKSC 25 at the APIL Abuse Conference 2019, held in conjunction with ACAL. He acted as senior junior for the appellant, led by **Lizanne Gumbel QC**, in this significant case, featured on page 41.

Justin Levinson discussed broader legal updates after a year of high profile abuse cases.



Group Action against Premier Football Clubs

A group action brought by survivors of sexual abuse whilst they were schoolboys or youth academy football players at Premiership football clubs has settled. This had been anticipated to be a test case for the many football-club abuse survivors who are now coming forward.

The Defendant Premiership clubs agreed to compromise these claims after all of the evidence demonstrating the links between the abusers and the clubs had been disclosed.

Iain O'Donnell was instructed by Bolt Burdon Kemp Solicitors for the claimants.



Settlement secured for abuse survivor

Henry Witcomb QC represented a man who suffers from PTSD as a result of sexual abuse in his early teens. He was instructed by Alison Millar and Catriona Rubens of Leigh Day.

The abuse was carried out at a boarding school in the late 1970s by a teacher who was convicted in 2016 of sexual offences involving the claimant and others. A psychiatric expert diagnosed the Claimant as suffering from permanent PTSD arising from the abuse which significantly affected his life. The school accepted that they were vicariously liable and the case settled for £540,500.

Human Rights



Can children consent to transgender treatment?

Jeremy Hyam QC and **Alasdair Henderson** have been instructed by Paul Conrathe of Sinclairs Law for the Claimants in *R (A & Sue Evans) v Tavistock and Portman NHS Foundation Trust*. This claim is brought by an ex nurse from the clinic and mother of a young girl on the waiting list for treatment.

The claim challenges the legality of hormone blocking and cross sex hormone treatment for under 18's on the grounds that, without an appropriate statutory framework for the protection of the children's rights, the treatment is unlawful as the children cannot, give informed *Gillick/Montgomery* consent to this life-changing and generally irreversible treatment.



Judgment handed down in CAAT appeal over sale of arms to Saudi Arabia

Angus McCullough QC acted as lead Special Advocate in this case concerning export licences for the sale of UK-produced arms and military equipment to Saudi Arabia.

The Court of Appeal allowed the appeal brought by Campaign Against Arms Trade (CAAT) against the Divisional Court's dismissal of its judicial review claim against the International Trade Secretary. The case concerned the government's decision not to suspend licences for the export of arms to Saudi Arabia for possible use in the conflict in Yemen.



JUSTICE Human Rights Conference

Sarabjit Singh QC joined a panel of speakers at a "sold out" session on Judicial Review at the annual JUSTICE Human Rights Conference. His talk was memorable for the inclusion of a relevant case concerning badgers.

Challenge to counter-extremism strategy

The Court of Appeal handed down judgment in the case of *R (Butt) v Home Secretary* [2019] EWCA Civ 256. This case concerned a human rights challenge to two aspects of the government's counter-extremism strategy: (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 where the Court described the required changes as "very easily achievable." The Appeal Court found their use of personal data was lawful and did not involve "surveillance" or engage any Article 8 privacy rights and, even if it had done, any interference would have been compatible with Article 8. The Guidance also did not interfere with the claimant's Article 10 free expression rights and was substantively lawful. The Supreme Court refused permission to appeal.

Oliver Sanders QC and **Amelia Walker** were instructed by the GLD and represented the Secretary of State for the Home Department.



Deportation to Barbados found to be 'unduly harsh'

Jonathan Metzger was successful in an appeal on behalf of a national of Barbados who was set to be deported by the Home Office for historic criminal offending. A middle-aged man was notified of deportation following a three year imprisonment in 2004 for supplying cocaine. He complied with immigration bail conditions and heard nothing further. In 2016 he lost his job after his employers were informed that he didn't have the right to work and, after inquiring, he was informed he was

to be deported. In the intervening years during which he had lived an ordinary life in the UK the appellant had married a British citizen and had two children who were born in 2005 and 2009. Unusually for an immigration case involving criminal offending, the Home Office did not seek permission to appeal further and he was granted leave to remain in the UK.

Jonathan acted *pro bono* and was instructed by Advocate.

Asylum challenge succeeds concerning contested Kurdish territory

Jonathan Metzger successfully persuaded the First-tier Tribunal that asylum should be granted to a 19-year-old Kurdish man in the Kirkuk Governorate in northern Iraq, who fled IS violence. The Tribunal found that as a young,

male, Sunni Kurd, the Appellant was at a significantly increased level of risk of serious harm if sent to the contested area of Kirkuk. It was not reasonable for him to move to Baghdad, as he does not speak Arabic and would have no support there.

Jonathan was instructed by Kaweh Beheshtizadeh of Fadiga & Co.



Law Pod UK & UK Human Rights Blog



Blog marks an extraordinary year

Thanks to its many contributors – from 1COR, academia and elsewhere, the UK Human Rights Blog continues to welcome an extraordinary number of readers

Having averaged over 600,000 annual site visits, all signs suggest that the extraordinary events this year have generated even more traffic. Commissioning Editor, **Jonathan Metzger** said that, "with a range of articles across areas including administrative, asylum & immigration, coronial and environmental law, the Blog continues to maintain its reputation for clarity, rigour and insight."

Law Pod UK remains top recommended legal podcast



Law Pod UK has enjoyed increasing listenership over the past 12 months

and its wide-reaching discussions are attracting an ever-broader audience, from legal practitioners to other professionals, students, journalists, and members of the public who are interested in developments in the law.

Popular episodes have featured a panel discussion prompted by Lord Sumption's Reith lectures, (kindly reproduced with the permission of the ALBA), **Robert Kellar QC** discussing consent and causation, **Jonathan Metzger** and **Jo Moore** on Miller 2 and prorogation, and **Shaheen Rahman QC** on gender pay discrimination at the BBC. Recently, **William Edis QC** covered the new laws surrounding commercial surrogacy. We also celebrated a Century of Women

in Law at Middle Temple with a guided tour of the exhibition by curator Rosalind Wright CBE QC, a reflective discussion with legendary journalist Frances Gibb and a look at Ruth Bader Ginsburg's career.



Co-presenters **Rosalind English** and **Emma-Louise Fenelon** are enormously grateful to the producers at Whistledown Studios, in particular Simon Jarvis who brings high production standards to our output.

The podcast has been recommended by Player FM, the ICLR, Inner Temple Library, The Attic, and was recently cited in a speech by Supreme Court Justice, Lord Hodge.

Blogging in a time of COVID-19

Amid the COVID-19 pandemic, the Blog is playing host to a detailed and wide-ranging debate around the legal basis and effects of the Government's lockdown, showcasing a breadth of different perspectives. The three most popular new articles over the last 12 months have been:

- 1 'A disproportionate interference: the Coronavirus Regulations and the ECHR' (guest piece by Francis Hoar, with arguments made forming part of a legal challenge in which Philip Havers QC is acting as lead counsel)
- 2 'A Tale of Two Judgments: Scottish Court of Session rules prorogation of Parliament unlawful, but High Court of England and Wales begs to differ' (by Jo Moore)
- 3 'Corona-vires: Has the Government exceeded its powers?' (by Jim Duffy)

Environmental Law



M4 Relief Road not to be built

The Welsh Government has decided against building a £1.4bn M4 relief road because of the environmental impact and cost of the project. The six lane road would have been 14 miles long around Newport in SE Wales. While cost remained a critical factor, the environmental impact was also a major concern. **Alasdair Henderson**, **Dominic Ruck Keene** and **Hannah Noyce** represented the Gwent Wildlife Trust in the planning inquiry, instructed pro bono by the Environmental Law Foundation.



South Downs National Park planning inquiry

Rajkiran Barhey and **Charlotte Gilmartin** acted for Mr Paddy Cox, a small woodland owner, in a successful appeal against the Park Authority's refusal of planning permission. They were instructed by Emma Montlake of the Environmental Law Foundation.

Mr Cox sought planning permission to change the use of



the land from forestry to a mixed use for field archery, eco-tourism

and 'life-long learning' as part of his "multifunctional woodland management" model. The decision opens the door for other small woodland owners to adopt a similar management scheme. An enforcement notice was upheld by the Inspector but some guidance was provided as to what activities may be deemed as 'ancillary' to a lawful forestry use.

Askham Bog saved: a change in attitudes to conservation?

A 12-day planning inquiry considered a proposed housing development near Askham Bog, a site of special scientific interest near York.

Emma-Louise Fenelon and **Darragh Coffey** represented the Yorkshire Wildlife Trust pro bono, instructed by the Environmental Law Foundation. They proposed that building 516 residential housing units close to Askham Bog would cause irreparable harm to a unique habitat and area of natural beauty, described by Sir David Attenborough as "irreplaceable." Planning permission was refused and the developer's appeal to the Secretary of State was dismissed.



Diversity & Inclusion



Inner Temple reaches out to schools

Members of 1 Crown Office Row have been participating in the Inner Temple's Schools Day. These events aim to challenge stereotypes about the profession and provide information about the journey to the Bar. The sessions are open to motivated students aged 16-18, from backgrounds currently underrepresented at the Bar.

Head of Chambers **Richard Booth QC**, together with **Pritesh Rathod** and **Michael Deacon** participated in panel sessions, speaking about their pathway to the Bar and giving insight into the life of a barrister, while **Angus McCullough QC** and **Caroline Cross** led workshops developing the pupils' legal analysis and advocacy skills – and giving them a chance to try on a wig and gown (pre-pandemic.) **Lizanne Gumbel QC** and **Sarabjit Singh QC** shared their own stories and gave tips to those thinking of a career at the Bar. **Rajkiran Barhey** led a practical workshop, encouraging students to debate legal topics and try out a plea in mitigation. Schools Days are organised by Inner Temple with The Sutton



Trust as part of their Becoming a Barrister initiative, aiming to encourage more diverse applicants to the Bar. Feedback from the sessions has been overwhelmingly positive

Sarabjit Singh QC drew on his experience as Bar Council Social Mobility Advocate at a careers event by the School of Oriental & African Studies (SOAS) and SOAS Law Society. He joined a panel of speakers including a solicitor, mediator and arbitrator to offer their perspectives on the variety of legal careers. This event gave insight into the differences between the careers of solicitors and barristers and encouraged students to network afterwards to ask any additional questions.



#IAmTheBar

The Bar Council released a video featuring their Social Mobility Advocates for their flagship #IAmTheBar social mobility campaign. The Social Mobility Advocates, including 1COR's **Sarabjit Singh QC**, spoke about their atypical backgrounds, how they became barristers and offered words of advice and encouragement to potential barristers. It marked the beginning of Bar Placement Week, where sixth form students from non-traditional backgrounds are paired with practising barristers to get an idea of life at the Bar.

Pathways to Law

In 2019, 1COR ran a work experience programme as part of its ongoing outreach activities. The six A-level students who took part are currently on Sutton Trust's 'Pathways to Law' course, and are academically gifted young people from backgrounds not traditionally well-represented at the Bar. Members of 1COR ran a number of workshops, from advocacy to overcoming imposter syndrome. The students visited Lincoln's Inn and observed a complex murder trial at the Old Bailey, giving them a chance to see advocacy in action. On the last day, a full mock trial allowed the students to showcase everything they had learned.

Additionally, 40 Pathways to Law Year 10 Summer School students learnt about how a trial works before bravely facing each other to be judged in a Mock Trial organised by Roehampton University. 1COR's Head of Outreach **Jo Moore** with **Michael Spencer** and **Thomas Beamont** offer their insight during the



morning workshop discussion about the different people involved in the process e.g. Clerk, Judge,



Prosecution, Defence Witness. In a separate event, in conjunction with the LSE, **Emma-Louise Fenelon** spoke to Year 12 students about the profession and her own journey to the Bar.

The Pathways to Law programme, arranged by the Sutton Trust, aims to widen access to the legal profession.

We have been delighted to continue running virtual workshops and events with the Sutton Trust Online.

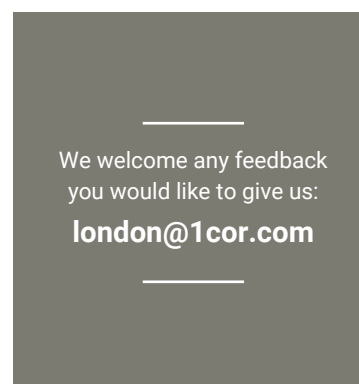
Sutton Trust Alumni Event

1COR's Head of Outreach **Jo Moore** participated in a panel to discuss overcoming barriers: succeeding in the world while staying true to yourself at the Sutton Trust Alumni Event in London. Jo joined Gina Martin, Tahmid Chowdhury and Rachel Carvell-Spedding to discuss their journeys overcoming obstacles and their experiences of making a difference. This was followed by an opportunity for the alumni to catch up and meet others from similar backgrounds.



Social Mobility Mentorship

Judith Rogerson has become a mentor for the Social Mobility Foundation, a charity which supports and encourages young people from disadvantaged backgrounds when they are applying to university and embarking on professional careers in sectors including Law, Medicine and Politics.



We welcome any feedback you would like to give us:
london@1cor.com



Meet the Editorial Team



Martin Downs



Thomas Beamont



Michael Spencer

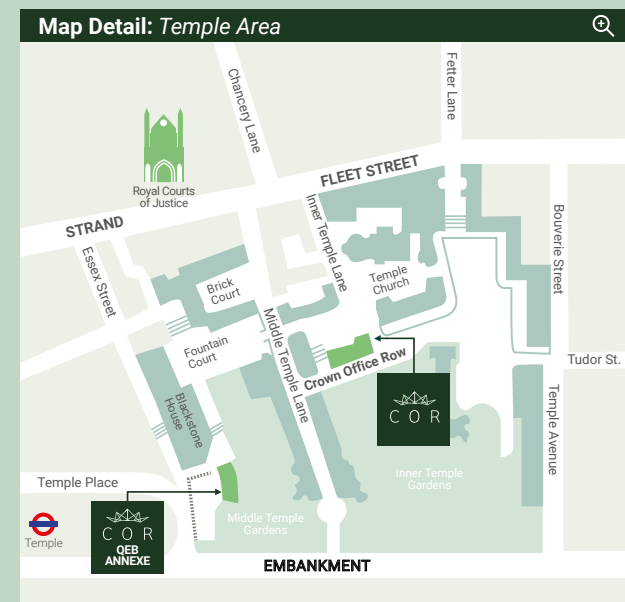


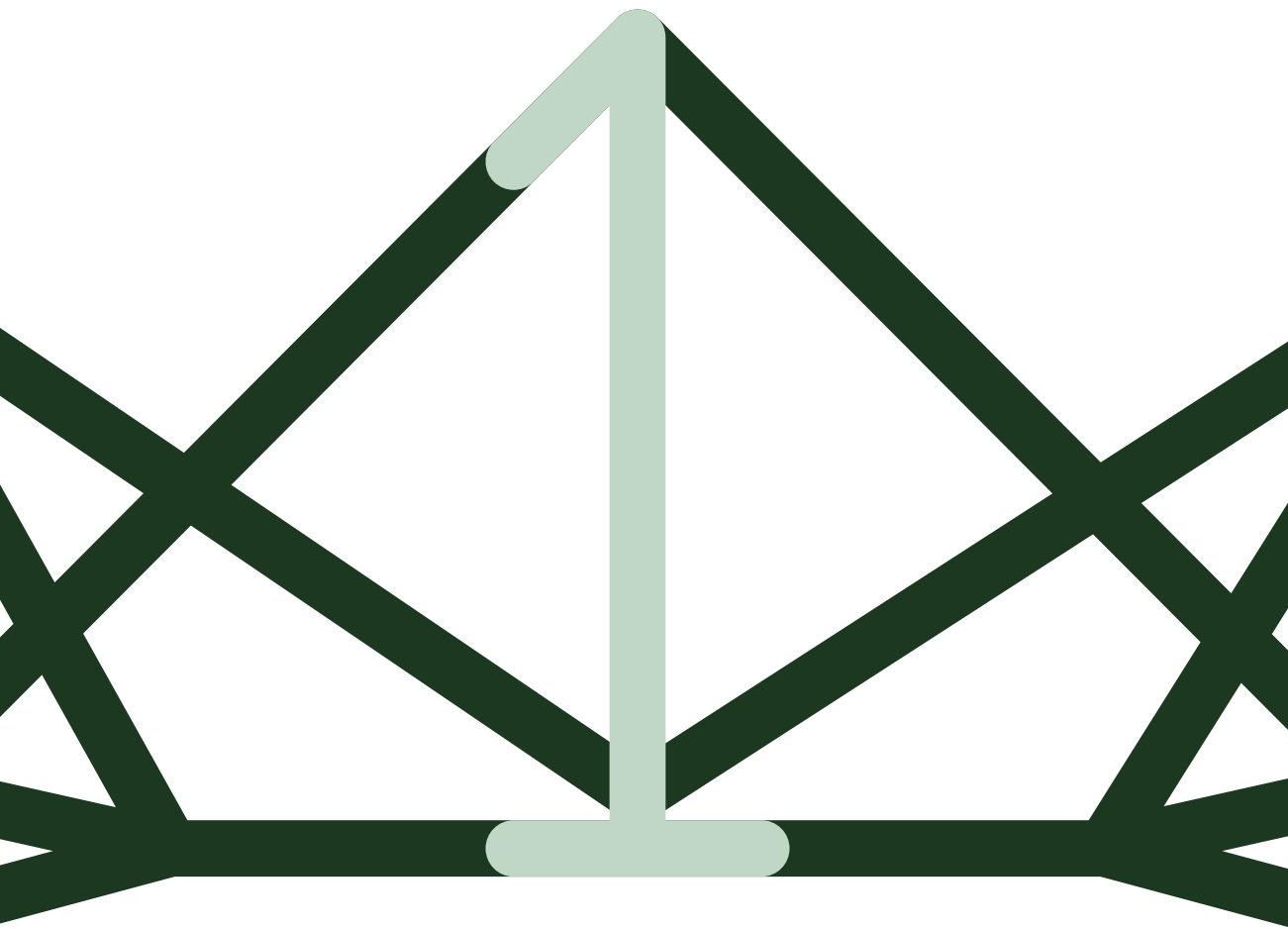
Olivia Kaplan

Subscribe to our Quarterly Medical Law Review (QMLR) by emailing medlaw@1cor.com or by visiting 'newsletters' on our website.



Where we are





1 Crown Office Row

Temple
London
EC4Y 7HH
DX LDE 1020

T 020 7797 7500

www.1cor.com