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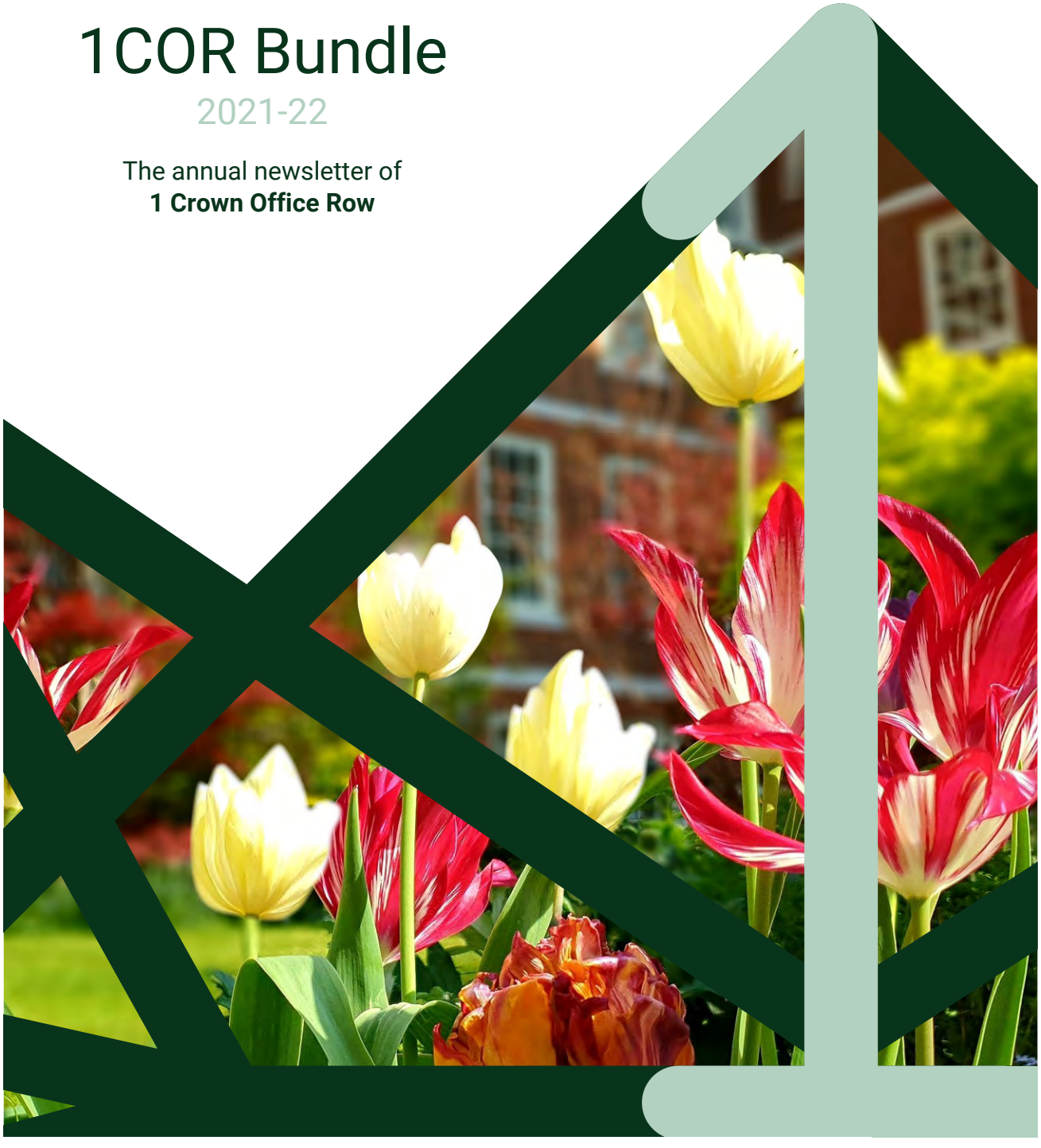
1 CROWN OFFICE ROW

1COR Bundle

2021-22

The annual newsletter of
1 Crown Office Row



Welcome to this, the 10th anniversary edition of the 1COR Bundle!

Who would make predictions?

After the many tragedies brought upon us by Covid-19 in the first half of 2020, and with some concern for the then forthcoming winter of 2020-21, I was reasonably confident that the Spring of 2021 would see a return to normal life and that the lovely buzz around Chambers would have returned. Sadly, this has not turned out to be the case.

We pay tribute to all the clinical and caring professions who have looked after us, made us well and vaccinated us in recent months. The value of their service has been immeasurable. I am delighted to say that several 1 Crown Office Row barristers have been volunteering at vaccination centres in their spare time.

You will read in this Bundle of the impact of Covid-19 on the way in which we work and on the substance of the work which we are doing. It is likely to have a lasting effect in both respects. In particular, Shaheen Rahman QC and Sarabjit Singh QC focus on emerging themes in Covid litigation.

As you will see, our work has ranged over topics far and wide over the past year. From high profile public inquiries and inquests through ECJ tax litigation to concussion in professional rugby, our work has been stimulating and diverse (if conducted a little too frequently on screen for some of our liking).

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 instruct barristers at 1 Crown Office Row.

Further, it is right that I should thank our wonderful clerking team led so ably by our Senior Clerk, Matthew Phipps, and our dedicated professional support team, not forgetting our Chambers Director, Andrew Meyler, for the excellent service which they provide, even in trying circumstances.

The Covid impact has been particularly grim for young people seeking to gain a flavour of the workplace before making key decisions about their studies. I am delighted to say that our outreach work has given practical help and that so many members have volunteered to assist with it.

As for predictions, it is with a smile that I recall that nobody (including me) predicted the 2021 Welsh 6 Nations win. I may be a little biased, but we all hope for more smiles like this in the year ahead.

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, visit the UK Human Rights Blog or read our Quarterly Medical Law Review (QMLR).

I look forward to seeing many of you in person again over the next year!

Richard Booth QC
Head of Chambers

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The Inside Story

The last 12 months in Chambers

The Times Lawyer of the Week:

We were delighted that two members of Chambers were named The Times Lawyer of the Week in the last year: **Alasdair Henderson** and **Jeremy Hyam QC**.

In addition to his full time practice, Alasdair is a Commissioner for the Equality and Human Rights Commission (EHRC) which recently included leading the investigation and report into antisemitism in the Labour Party.

Jeremy was named by the Times only weeks after Alasdair. He recently led Alasdair representing claimants Keira Bell and Mrs A in the challenge to the provision of puberty blockers to children and adolescents with gender dysmorphia. He also edits the 1COR Quarterly Medical Law Review (QMLR).

THE TIMES

Andrew Kennedy appointed to Queen's Counsel

Chambers is delighted with the appointment of Andrew Kennedy as Queen's Counsel. He has received his letters patent but given the pandemic this was done virtually and the usual celebrations have been postponed. Andrew is based in Somerset and London and has had a busy year with a significant number of remote appearances in Manchester. His lockdown was enlivened by the arrival of two puppies who have had to be removed from his room during hearings. Andrew has a civil and regulatory practice in clinical negligence, personal injury, inquests and professional discipline, representing both claimants and defendants.

Mindful Movement

Perfectly timed to coincide with the start of the pandemic, our members arranged weekly remote yoga classes to improve their physical and mental wellbeing as well as to stay connected with each other. Each week members practised their warrior poses, pranayama and downward facing dog.

Welcoming new tenants

After an unusual pupillage, we are delighted to welcome **Alice Kuzmenko** and **Henry Tufnell** as tenants.

Alice Kuzmenko was called in 2018. On starting her second six she went straight into the First-tier Tribunal (FtT) representing an asylum seeker and familiarised herself with the County Court, acting for the Claimant in a personal injury case. She is a keen swimmer, cyclist, and badminton player, and takes part in the annual Gray's Inn Miscellany show as an actress and dancer. Alice is fluent in Russian.

Henry Tufnell was called in 2018. He found his feet quickly, drafting submissions for an Article 2 inquest on behalf of the family and advising on the prospects of an appeal from the Employment Appeal Tribunal. Prior to coming to the Bar, Henry majored in history at Brown University, Rhode Island. After graduating, he ran professionally at 800m and 1500m, spending months training at altitude in the Pyrenees and Kenyan mountains.

Panel appointments

Isabel McArdle and **Matthew Hill** have been appointed to the Attorney General's B Panel of Counsel, with **Jessica Elliott**, **Gideon Barth**, **Emma-Louise Fenelon** and **Jonathan Metzer** appointed to the C Panel. They join our burgeoning Panel team, bringing the number of members appointed to 20.

In addition, we celebrated the reappointment of **John Whitting QC** to the Welsh Government Panel of Queen's Counsel. John recently represented the Welsh Government in the Regeneration Investment Fund for Wales litigation. **Christian Howells** was appointed to the Welsh Government's A Panel of Counsel.

Set and Silk of the Year

1COR are delighted to remain ranked as a top tier set by both Chambers & Partners and The Legal 500. Particular congratulations to **Philip Havers QC** for being named 'Clinical Negligence Silk of the Year.' Chambers also won the award for 'Clinical Negligence Set of the Year' at the Chambers Bar Awards.

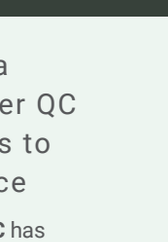
It is heartwarming and encouraging to read the positive comments about our barristers and clerking teams in both London and Brighton each year. A huge thank you to all our clients for their continued support in the strangest of years.

TOP RANKED Chambers UK Bar 2021 1 Crown Office Row

The Legal 500 TOP TIER SET 2021

Marina Wheeler QC returns to practice

Marina Wheeler QC has recently returned to Chambers following the publication of her family memoir, *'The Lost Homestead'*. In the employment and healthcare field, she has decided to prioritise mediation work, offering clients a speedy and cost-effective means of resolving disputes at an early stage. She has represented NHS Trusts and commissioning bodies as well as individuals in cases ranging from employment disputes involving discrimination and unfair dismissal to judicial reviews about governance issues and NHS service reconfigurations. Since qualifying as a mediator in 2011, she has mediated private, local authority and commercial cases, and has trained others in mediation and conflict resolution.

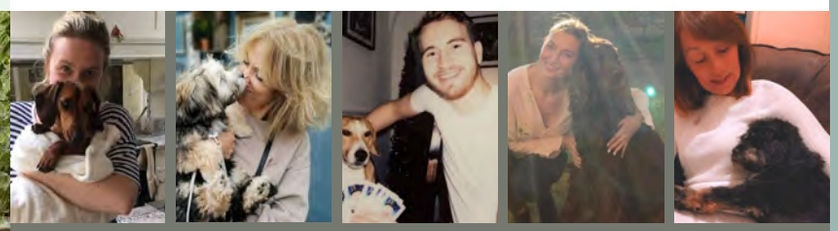


1COR sets Twitter ablaze with Battenburg debate

Those plugged into the Twittersphere will know that **Rajkiran Barhey's** incredible gingerbread model of the 1COR building led to a heated Twitter debate over the complexities of baking Battenburg cake. Moved by the discussion, Mary Furniss CBE kindly offered her vintage Battenburg Cake divider and delivered it to chambers before the pandemic, where it was happily received by **Martin Downs**. We're looking forward to seeing a Battenburg at the next Great Legal Bake Off!

Righting Wrongs

Congratulations to **Martin Forde QC** on being named in the annual *Powerlist* as one of the most influential people for the second year running in recognition of his impact on the legal landscape. The *Powerlist* is an independent publication celebrating Britain's 100 most influential people of African or African Caribbean heritage in order to provide professional role models for the next generation.



Dog of the Week

During the first lockdown, The Lawyer ran their 'Law Against Loneliness' series with stories, songs and quizzes to help lift spirits and keep the legal community connected. We were delighted to see **Jack May's** lovely dog Dora featured as their 'Dog of the Week'. Inspired by Dora's success, we asked our clerks to pose with their puppies; **Chloe Turvill** with Frank, **Alison Ebdon** with Nala, **Connor Curtin** with Hunter (now cancer-free!), **Kelly Schaer** with Jameson and **Nicky Matthews** with Trixie.

Leanne Woods returns from maternity leave

Chambers welcomed **Leanne Woods** back from maternity leave this year. Described as having 'an eye for detail' and being 'extremely sensitive with clients' in the Legal 500 2021 guide, Leanne has a broad practice encompassing clinical negligence, professional discipline and regulation, inquests and public inquiries, police law, and public law. She is on the Attorney General's B Panel of Counsel and is Assistant Coroner for London East.

Oliver Sanders QC called to the Bar of Northern Ireland

Congratulations to **Oliver Sanders QC** who was called to the Bar of Northern Ireland in October 2020. His connection to Northern Ireland dates back to his work on the peace process as a Legal Adviser to the Northern Ireland Office in 1998-1999 and he is delighted to have become a member of the Bar there. He is currently retained to advise the Operation Kenova independent police investigation into legacy cases arising out of the Troubles.

Talking to the telly

John Gimlette *reflects on the last twelve months:*

'Well done, everybody, you've survived a year of CPD and meetings, delivered virtually. You've suffered amateur camerawork and terrible sound, and we've learnt that 45 minutes is about as much as we can take before other things become more interesting (like putting on the kettle or loading the tumble-drier). Just like Netflix, a bit of terror helps maintain attention. With some subjects – like accommodation – the prospect of ignorance is so terrifying, that we find ourselves glued to the screen. Early on in our tele-education, **John Whitting QC** and **Lizanne Gumbel QC** brought *Swift v Carpenter* to an enraptured QMLR audience.

If Teams talks are tough on the listener, spare a thought for the speaker. It's like delivering a lecture in Outer Space (except they can hear you scream): you're all alone, and wondering if anyone can see you. I've done about 10 talks like this, into the void. There's also the constant worry the camera might accidentally pan away revealing your slippers or, in my case, an Aladdin's Cave of junk.

Will we still do all this post-Covid? Yes, sometimes. I'm never going to gather people from Penzance to Carlisle together in a single talk and it's good to remember the fuel we've saved (and the shoe leather). But, on other occasions, I'm sure we'll all happily flock together again, rubbing shoulders and clinking glasses.'

Access to laptops

The pandemic has further highlighted the disadvantage suffered by children whose parents cannot afford to buy them the basic necessities. This year, laptops became essential so that pupils could access home schooling. 1COR is extremely proud of **Cara Guthrie**, who initiated a campaign to raise money for her local primary schools to enable them to buy laptops for their students. More than forty laptops were purchased and loaned to pupils. They are now a resource that can be used by the schools and their students for many years to come.

Advocate's Young Pro Bono Barrister of the Year Award

Emma-Louise Fenelon, **Charlotte Gilmartin**, **Rajkiran Barhey**, **Darragh Coffey** and **Thomas Beamont** were nominated jointly for Advocate's Young Pro Bono Barrister of the Year Award. They were shortlisted after their incredible environmental work preserving Askham Bog, on a key case concerning woodland management models and representing the Dangstein Conservancy instructed by the Environmental Law Foundation (ELF).

According to the Director of Casework at the Environmental Law Foundation, all five barristers have, between them, "given many hundreds of pro bono hours" to support underfunded communities and NGOs and given "a voice for local nature protection". She described the level of work as "unique amongst ELF's chambers members".

New Director of Politeia

1COR is delighted that **Edite Ligere** has been appointed as the new Director of Politeia, a global forum for discussing economic, constitutional and social policy.

'I am delighted and honoured to have been appointed to this prestigious post at such an important, troubling, yet promising time in our nation's history, and one of rapid change throughout the world. I look forward to continuing Politeia's valuable contribution to the evolution of the key constitutional, economic, social and legal policy themes.'

"Forward Thinking: The Bar of the Future"

This year's remote Annual Bar and Young Bar Conference "Forward Thinking: The Bar of the Future" opened with **Martin Forde QC** and other expert speakers discussing positive and practical action to help address systemic discrimination as well as equality of opportunity and equal outcomes in recruitment and progression at the Bar.

London Legal Support Trust x10 Challenge

Each year 1COR members raise money to provide access to justice through their support of the London Legal Support Trust (LLST), usually through a 10km walk and the Great Legal Bake Off. This year, instead of walking on a (sometimes) sunny afternoon, we participated in the LLST's x10 challenge. Special mention to **Lizanne Gumbel QC**, a running enthusiast, for running 10 marathons in three months! She ran her first marathon on 4th October and finished her final one on 30th December for the LLST.

Pegasus Scholarship

Charlotte Gilmartin has returned to full time practice in Chambers after seven months working as an Assistant Lawyer at the European Court of Human Rights in Strasbourg, an extension of her Pegasus Scholarship awarded in 2019. Charlotte processed individual applications and urgent requests for interim measures in the UK Division, as well as assisting with the processing of more complex Chamber cases before the Court.

Mediation thrives in virtual world

The enforced shift to remote working during the pandemic and disruption to the courts has led to a further growth of mediation according to two of Chambers' Mediators, **Robert Seabrook QC** and **Marina Wheeler QC**. "I have always been an enthusiast for mediation" says Marina, "but there can be a lot of waiting around as the mediator shuffles between the parties. Mediating online dramatically cuts this down, which the parties, and their advisors, have warmly welcomed."

Chambers' expanding Mediation Team looks forward to resuming face-to-face mediations while offering clients the option of continuing to resolve disputes online.

Chambers Tea

Unable to sample the creations baked by members, clerks, staff and pupils at our usual chambers tea, many at 1COR turned to home baking. Below is a tried and tested recipe for those of you who have been inspired by the pandemic banana bread craze:

- 225g plain flour
- 2 tsp baking powder
- 80g butter
- 1 large egg
- 110g caster sugar
- 4 medium bananas
- zest of 1 orange
- zest of 1 lemon
- 1 tbsp demerara sugar
- 50g chopped walnuts (optional)

Preheat your oven to 180°C
Line a 900g (2lb) loaf tin with baking paper.

Sift together flour and baking powder before adding the butter, egg and caster sugar and whisking. Separately, mash your bananas and whisk them into the mixture. Fold in orange and lemon zest and walnuts.

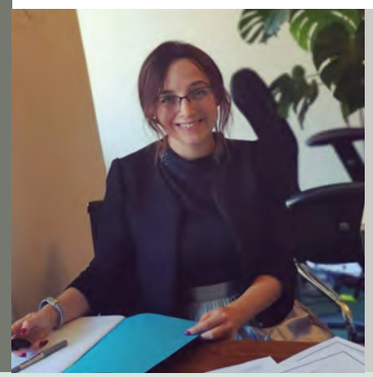
Spoon your mixture into the tin and level with spoon or by gently wobbling. Sprinkle with demerara sugar and bake on the lower shelf for c. 70mins. Cool in the tin for 10mins before removing to cool completely before slicing. Enjoy!

Top 100

Martin Forde QC was recently named in the Oxford University Black History Month top 100. His nomination recognises his role as Independent Advisor to the Windrush Scandal, his recent appointment to lead the Labour Party's investigation into a leaked report regarding anti-Semitism in the party, and his advocacy regarding the impact of Covid-19 on key workers.

Did you guess who was dashing through the snow?

Thank you to everyone who made a guess about our Christmas Card! Congratulations to Carol Maunder of Dutton Gregory, who correctly identified **John Gimlette** as Santa Claus and **Sheila Haynes** as an elf. She chose Hope in the Community Bournemouth, a charity close to home. 1COR's Christmas donation went to Magic Breakfast's Big Give Campaign 2020, providing healthy breakfasts to school children and support to help pupils at risk of hunger.



Rising Star at Women In Law Awards

Congratulations to **Jo Moore** on being a 2020 finalist for the Rising Star – Barrister/Advocate of the Year by Women In Law Awards. We're proud to have her hard work recognised and we commend all the fantastic finalists.

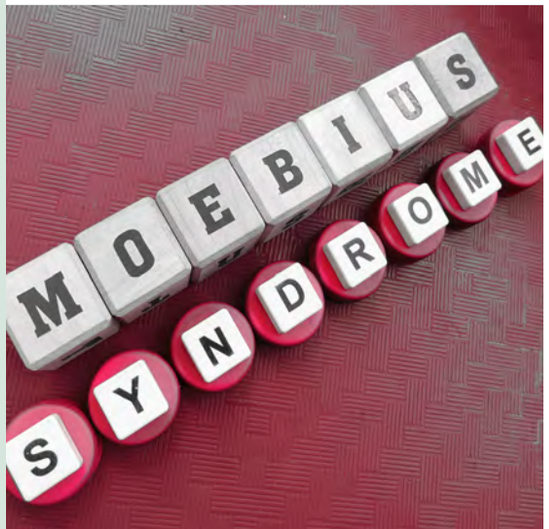
1COR Direct launches

As the legal world continues to grow and develop we're moving with the times to give our Direct Access website an upgrade. Formerly known as BarristerForMe, you can now explore our brand new website 1COR Direct Access: **www.1cordirectaccess.com**. Meet our specially trained and qualified barristers, read about our expertise, and steer lay clients to our FAQs page to help them understand the legal process. Stay up to date with our latest insights by following us on **Twitter @1CORDirectAcces** and connecting with us on **LinkedIn**. We always welcome feedback so please don't hesitate to get in touch with us via **directaccess@1cor.com**.

Health Law

How to quantify the unquantifiable?

A couple unsuccessfully tried to conceive a second child for many years. They embarked on IVF and the second cycle was successful. Tragically, due to admittedly negligent care, their son was stillborn at 38 weeks. **Cara Guthrie** was instructed by Leigh Day to represent the mother, who was diagnosed as suffering from Post-Traumatic Stress Disorder. A further six cycles of IVF were unsuccessful; the couple had to accept that they were not going to have a second child. The parties disagreed about the assessment of general damages. Relying on *Bagley v North Herts Health Authority* 1986 NLJ 136, the Claimant contended damages should reflect her psychiatric injury, unsuccessful IVF attempts and the fact that she could not complete her family. Helpfully, the judge in *Bagley* said that the loss associated with losing a child included "proper compensation for being thwarted in her ambition of completing her family by adding to it a second child. This [...] involves compensation for what can sensibly be otherwise described as the loss, through being denied the pleasure of bringing up an ordinary healthy child". The settlement secured by Cara on behalf of the mother included about £70,000 for general damages.



£20,000,000 settlement for brain damaged child

John Whitting QC led **Emma-Louise Fenelon** in representing a young girl who suffered a hypoxic brain injury sustained in utero, causing her global developmental delay as well as, unusually, a variant of Moebius Syndrome. Liability was eventually admitted by the Defendant Trust and damages agreed after lengthy, and hard fought, negotiations. The approved settlement was by way of a periodical payments order but was worth just under £20,000,000 on a fully capitalised basis. John and Emma were instructed by Helen Barry at Slater and Gordon Solicitors.

Anonymity Orders: an approved template

Anonymity orders are routine for those practising in the field of personal injury and clinical negligence. Given that they are so frequently obtained, it is perhaps surprising that no standard form of order has emerged. More concerningly, some forms of order either lack clarity or are remarkably burdensome to comply with; indeed, unnecessarily so for the purposes of achieving proper protection of the identity of a vulnerable party.

Prompted by these concerns, **Angus McCullough QC** has worked to produce a standard template for anonymity orders, protecting the identity of a claimant who is a protected party in personal injury or clinical negligence cases. This template has been refined with the help of other practitioners, including through consultations with the Personal Injury Bar Association (PIBA) and the Professional Negligence Bar Association (PNBA).

The current version has been approved by both of those Associations and is available on the UK Human Rights Blog post 'Straining the Alphabet Soup pt.2'. If you have comments or suggestions about the template, these are welcome.

Delayed diagnosis of brain tumour

In a high value claim arising from the negligent failure to diagnose optic neuropathy **Robert Kellar QC** is instructed by Emma Doughty of Slater and Gordon to represent the Claimant. A hospital eye service failed to diagnose a brain tumour causing a young girl's loss of vision. There were breaches of duty by both the ophthalmologist and members of the orthoptic team.

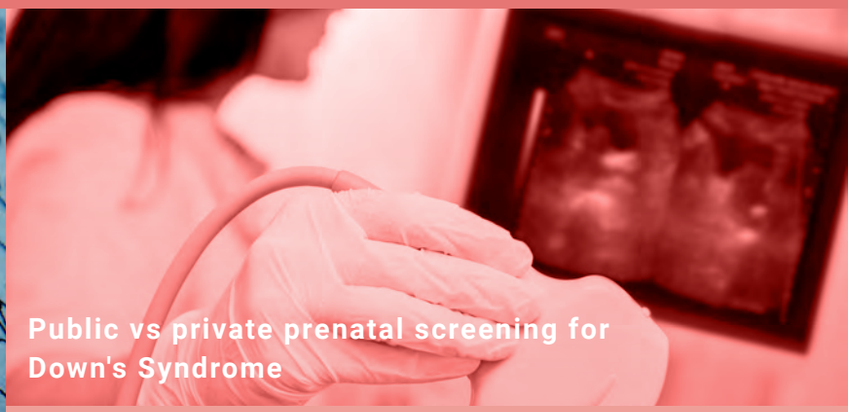
This rendered the Claimant permanently visually impaired as a result of the delayed diagnosis. Liability has been settled with a trial of quantum set for 2022.

Successful mediation in post-Caesarean necrotising fasciitis case

Pritesh Rathod was instructed by Michelle Armstrong at Burnetts to act for a woman who developed necrotising fasciitis after delivering her first child by Caesarean section. This rare, potentially life-threatening complication was caused, on the Claimant's case, by the failure of the anaesthetist to provide prophylactic antibiotics. This was supported by the fact that the anaesthetic chart did not contain references to the usual antibiotic to be provided in theatre. Liability was robustly denied; the Defendant contended that the antibiotic had been given. Unusually, the anaesthetist in question had prepared a witness statement days after the Caesarean, recording that she had provided the antibiotic, notwithstanding its omission from the anaesthetic chart. Pritesh secured a settlement for the Claimant after extensive negotiations in a mediation. Notably, this was an early example of a remote mediation, necessitated by the first lockdown. Although some time was needed for participants to find their feet with the new arrangements (which are now commonplace), the mediation ran smoothly thanks to the cooperation and patience of all concerned.

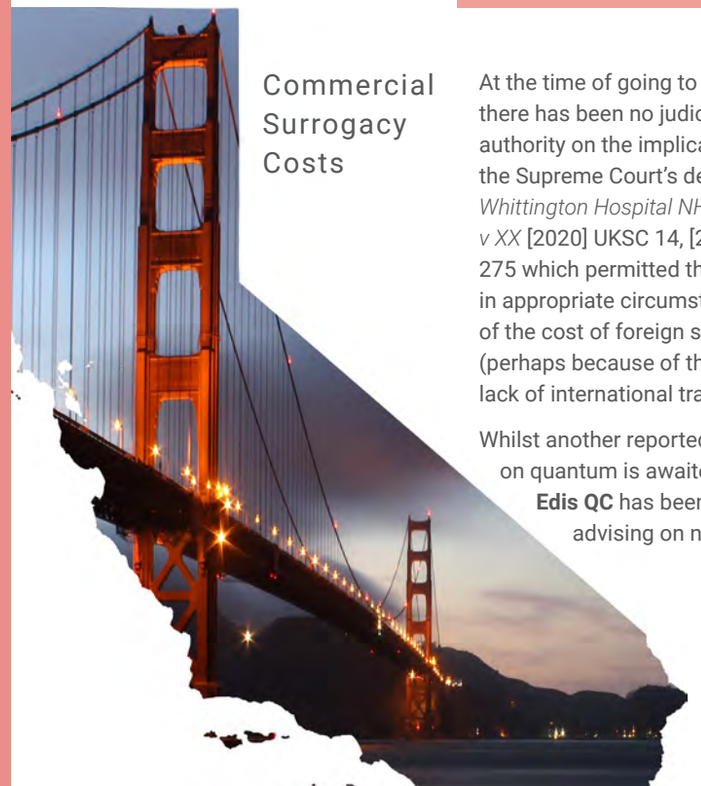
Shaheen Rahman QC settles unusual brain injury case

In a claim pleaded at £14 million, where liability was admitted but the Claimant was alleged to have factitious disorder, **Shaheen Rahman QC**, instructed by Lisa Spencer of Weightmans for the Defendant, secured a £485,000 lump sum settlement.



Public vs private prenatal screening for Down's Syndrome

Sarah Lambert QC, instructed by Gadsby Wicks, acted for the Claimant in a wrongful birth claim arising from the birth of a child with Down's Syndrome. This sensitive claim raises issues as to the interplay and differences between prenatal screening available on the NHS and privately. The claim also focuses on the level of risk profile that should trigger further investigation by way of amniocentesis, in particular in an anxious parent with a family history of Down's but who nonetheless does not meet NHS criteria for further investigation. Hingeing on whether an NHS screener ought to advise expectant parents of wider options for screening available in the private sector, the claim also considers the availability of free foetal DNA testing. In 2020 the claim was successfully compromised on liability, sparing the Claimant the public ordeal of trial. The claim now proceeds in respect of quantum, with an anonymity order in place.



Commercial Surrogacy Costs

At the time of going to print there has been no judicial authority on the implications of the Supreme Court's decision in *Whittington Hospital NHS Trust v XX* [2020] UKSC 14, [2020] AC 275 which permitted the recovery in appropriate circumstances of the cost of foreign surrogacy (perhaps because of the recent lack of international travel!).

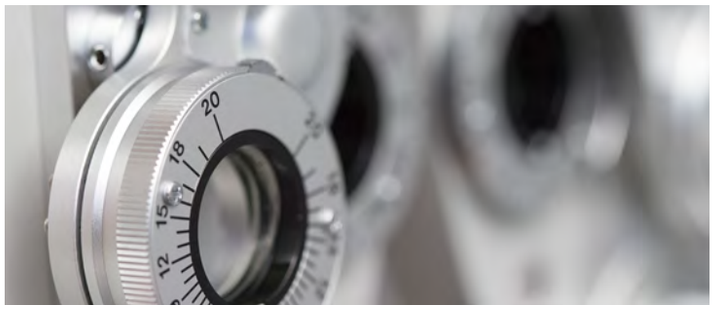
Whilst another reported decision on quantum is awaited, **William Edis QC** has been busy advising on numerous discrete issues, including the recovery and quantum of legal costs in the USA and UK, the recovery of consequential expenses (e.g. air fares, accommodation and subsistence costs) and the evidential requirements for a finding of "reasonableness" in relation to the initial decision to seek surrogacy abroad. You can listen to his analysis of the *Whittington Hospital NHS Trust* case on Ep. 110 of our podcast Law Pod UK or read more on the UK Human Rights Blog.

Exploring the boundaries of secondary victim claims

A wife and her two adult children brought claims for psychiatric injury arising out of witnessing their husband/father's death in hospital. The deceased suffered a massive stroke and was expected to die within hours or days but was not provided with appropriate crisis medication. This would have prevented excessive and unnecessary suffering and eased his passing. The Defendant admitted breach of duty and causation in respect of the suffering caused to the Deceased prior to his inevitable death. However, the Defendant disputed the secondary victim claims of his family members who watched the last stages of his life, on the basis that the *Alcock* criteria were not established. **Rory Badenoch**, instructed by Shantala Carr of Girlings Solicitors, represented the Claimants at a mediation, shortly after which all three claims were settled for reasonable sums. Had the matter gone to trial, it would have been argued that the shocking, avoidable suffering witnessed far exceeded ordinary expectations of a loved one's death in hospital.

Delay in diagnosis and treatment in opthalmic case

Richard Mumford was instructed by David Gabell of Fosters Solicitors to represent a patient in a claim concerning delay in diagnosis and treatment of wet macular degeneration leading to blindness and significant care costs. Liability was disputed; the Defendant denied that earlier treatment would have avoided deterioration in vision. Notwithstanding this, Richard achieved a favourable settlement for the Claimant at a remote settlement meeting. The claim is one of several ophthalmic cases Richard has been instructed on in the last year.



IVF and surrogacy costs settled using mediation

Leanne Woods, instructed by Fieldfisher, acted for a Claimant in an unusual claim arising from private IVF treatment. The Claimant had her eggs frozen and later thawed. However, after thawing, most of her eggs perished with no clear factual explanation for why this had happened. The Claimant's case was that, because of the catastrophic outcome, the freezing or thawing processes must have been performed negligently. The Claimant maintained that had she been treated properly, she would have delivered a healthy child. The claim also included allegations that inadequate and misleading information was provided to the Claimant during the consent process. Both breach of duty and causation were hotly contested involving complicated statistical evidence. The Claimant went on to have a child through an international donor-egg surrogacy arrangement and her claim included these costs, which were also controversial. The claim went to a challenging full-day mediation, and was settled for significant damages.

How can I search for individual QMLR articles? By using our new Archive!

Want the latest case summaries? Looking for all the articles on a practice area? Need one place with all our special guidance for Covid-19? Take a look at our new QMLR website by visiting www.1corqmlr.com

A year after Chambers began the **1COR Quarterly Medical Law Review** (QMLR), we have launched this special archive website in which you can find individual articles by issue, author and practice area. Well done to the Editor-in-Chief **Rajkiran Barhey** and the Editorial Committee; **Jeremy Hyam QC**, **Shaheen Rahman QC**, **Suzanne Lambert**, **Matthew Flinn** and **Dominic Ruck Keene** for putting together an excellent resource.

Visit the QMLR website, subscribe by emailing medlaw@1cor.com and follow us on Twitter **@1corqmlr**.

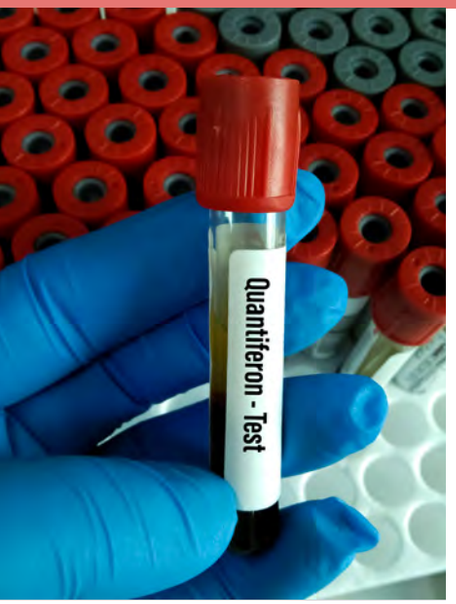
QMLR Special Release: *Swift v Carpenter*

In a special QMLR issue, **Lizanne Gumbel QC** explained the Court of Appeal's much-awaited *Swift v Carpenter* judgment concerning accommodation claims. She explained the judgment and provided a worked example.

Lizanne also went head-to-head with **John Whitting QC** in a webinar in which they debated the judgment and its impact. The action was transcribed by **Henry Tufnell** in QMLR Issue 7. A recording is available on request from medlaw@1cor.com.

How much bone is too much to remove?

Richard Smith represented an NHS Trust at a trial in which the Claimant alleged that a neurosurgeon had negligently removed an excessive amount of bone during spinal decompression surgery. The case raised complex issues of spinal anatomy, and neurosurgical judgment and practice, in determining how much bone was too much to remove in the circumstances. Quantum was not straightforward as the Claimant had pre-existing Parkinson's Disease and developed an opioid addiction. The trial was conducted on a hybrid basis and judgment is awaited. Richard was instructed by Charlotte Kistell-Gough at DAC Beachcroft.



Witness evidence at APIL Procedure Special Interest Group

At the APIL Procedure Special Interest Group, coordinator Nicola Wainwright and secretary Matthew Tuff opened with an update on APIL activity followed by a discussion of Witness Evidence: From the First Call to the Courtroom. **Jo Moore**, **Rajkiran Barhey** and **Thomas Beamont** covered the three stages of witness evidence: obtaining initial evidence and drafting statements, pre-trial preparation, and witnesses in the courtroom. They gave practical tips for maximising the impact of witness evidence, cost and time saving hints, and advice on avoiding common pitfalls by adopting a trial-focused approach throughout.

Robust hospital defence leads to withdrawal of tuberculosis claim

Suzanne Lambert represented a hospital in a claim brought for alleged failures to undertake appropriate investigations and diagnose the Claimant's spinal multi-drug resistant tuberculosis (TB) in 2011 and 2014. Experts in five disciplines provided evidence on breach and causation with partial admission of breach.

However, it was disputed that the Claimant had TB in 2011 and that any treatment in 2011 and 2014 would have resulted in a different outcome. The claim was withdrawn following mediation. Suzanne was instructed by Kerry Barlow and David Locke of Hill Dickinson.

Hourly expense rates: a review at last?

Sarah Lambert QC joined a stellar list of expert costs speakers at the annual Costs Law Reports Conference. The conference was held entirely remotely, bringing together practitioners and judiciary from the costs world. Sarah spoke about 'Hourly Expense Rates: A Review at last?', explaining the history of guideline hourly rates and the gathering of evidence for the long awaited review into the rates, which were last set in 2010. The Civil Justice Council has since published its report on the guideline rates, based on the evidence gathered between September and December 2020, and increases are recommended across the board. Sarah has been re-booked to speak at this popular conference in September 2021.

Premature discharge of mental health patient

Robert Kellar QC is currently instructed by Kate Rohde and Sevim Ahmet (Fieldfisher) to represent a Claimant in an ongoing claim against two NHS trusts following the Claimant's attempted suicide. The Claimant suffered serious and persistent vaginal bleeding following the birth of her child. This was not diagnosed promptly resulting in the onset of severe depression. The Claimant was placed under the care of the second Trust's mental health team. However, the Home Treatment Team discharged the Claimant prematurely and without an adequate risk assessment. Following her discharge, the Claimant jumped from a high building, rendering her blind and permanently disabled. Liability has been settled in the Claimant's favour on an 80/20 split.

Settlement for parents as secondary victims

Rory Badenoch, instructed by Laura Preston of Slater & Gordon, successfully represented the parents of a baby who died a day after his birth as a result of the negligent management of labour and his delivery. The parents, who had been trying for many years to have a baby, brought claims for significant psychiatric injury, the cost of further IVF treatment as well as the costs of and associated with adopting and repatriating a child from abroad. The settlement reached was substantial.

Charges dismissed

An athlete charged with a doping offence after banned substances were found in his urine sample was represented by **Sydney Chawatama** before an arbitration panel of Sport Resolution. The case, in which Sydney acted pro bono, raised issues of pre-existing medical conditions that might impact on and/or mitigate adverse analytical findings.

In a separate case, Sydney successfully acted for an athlete charged with evading the collection of a urine sample, an extremely rare occurrence. The charges brought against the athlete were dismissed.

Eight-figure settlement for home birth negligence

John Whitting QC and **Jo Moore**, instructed by Caron Heyes at Fieldfisher, represented a young claimant who suffered a severe hypoxic ischaemic brain injury owing to the negligent management of a home birth, leaving her with profound and permanent disabilities. A full admission of liability was made shortly before the parties were due to exchange expert evidence, while resolution of the claim was delayed pending the judgment of the Court of Appeal in *Swift v Carpenter*. The claim was settled for an eight-figure sum only days before the hearing was listed to commence in the High Court. **Margaret Bowron QC** was instructed by Karen Kendall-Smith
of Hempsons for the Defendant.

Challenge to hospital reconfiguration

The High Court has dismissed a judicial review challenge to West Herts Valleys CCG's alleged failure to carry out formal public consultation prior to reconfiguring of services at their hospitals. The Court clarified that the duty of public involvement, and related statutory guidance does not entail a duty to carry out a formal consultation exercise whenever there is a substantial change or variation to services.

Unless, in the circumstances, there was no rational alternative to a formal public consultation, significant public engagement and involvement even if falling short of full formal consultation, was sufficient discharge of the CCG's s.14S(2) duties under the NHS Act 2006. **Jeremy Hyam QC** was instructed for the Defendant by Michael Rourke of Hempsons.

Head injury in sport: a story which will run and run

Much has been made by the media recently of the incidence of early dementia in retired professional footballers and the proposed claims by former professional rugby players who say that they are experiencing memory and cognitive difficulties in their 40s. However, negligence claims relating to the mismanagement of concussion injuries are not entirely novel. **Richard Booth QC** has been instructed in each of the three such rugby union claims to come before the courts in England and Wales recently.

Richard was instructed by Katherine Sheldrick of Hempsons to defend a doctor accused of mismanaging a concussion suffered by Sale Sharks scrum-half, Cillian Willis. With the expert advocacy assistance of **Martin Forde QC**, the claim against that doctor was struck out.

Richard was then instructed by Tristan Sayer of the MDDUS to defend the Saracens club doctor in a claim brought by open-side flanker, Matt Hankin, the other defendants being a team-mate, Richard Barrington, and the club. That claim was set for a 13 day trial in March 2021 but settled at a mediation shortly beforehand.

Richard is also currently instructed by Julie Chappell of DAC Beachcroft to defend an NHS Trust in relation to a potentially high value claim brought by a young amateur rugby player in Devon.

avma
action *against* medical accidents

AvMA's Clinical Negligence Conferences

At AvMA's virtual Clinical Negligence: Law Practice and Procedure Conference 2021 **Leanne Woods** spoke about fatal accidents, dependency claims, the role of Coroners Courts and more. **Jessica Elliott** joined Janine Collier of Tees Law to discuss damages. They discussed identifying heads of damages, periodical payments, the Ogden Tables and life expectancy as well as much more in their comprehensive session. **Shaheen Rahman QC** chaired another remote AvMA conference looking at 'Medico-Legal Issues in the Care of Older People' focusing on the issues impacting on older people's care and the huge challenges presented by Covid-19.

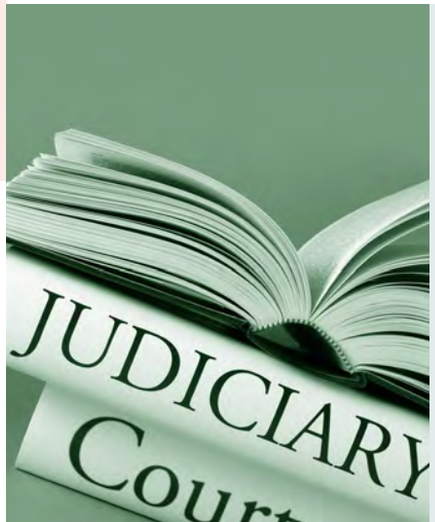
Appeal success before sport arbitration panel

A professional sports coach, who was refused a coaching licence enabling him to work with children and vulnerable adults because of an alleged safeguarding concern, successfully appealed the decision. **Sydney Chawatama**, acting *pro bono*, represented the Appellant before an arbitration panel of Sport Resolution. The panel held, having ruled that the hearing was to be *de novo*, that the Appellant satisfied the appropriate test for the purposes of the relevant governing body. He will therefore be issued with a licence as a coach.

Public Law

Can children consent to puberty blocker treatment?

The case of *R (Bell and another) v Tavistock and Portman NHS Foundation Trust* [2020] EWHC 3274 was brought by two claimants: Keira Bell, a young woman who underwent hormone treatment for gender reassignment, including puberty blockers as a teenager, and subsequently regretted her decision and reverted to living as a woman; and Mrs A, the mother of a 15-year-old autistic girl experiencing gender dysphoria. They challenged the provision of puberty blocker treatment to children suffering from gender dysphoria by the Tavistock NHS Trust's Gender Identity Development Service (GIDS), on the grounds that informed consent could not be given as this use of blockers was experimental, with limited evidence of benefit, and had life-changing and life-long consequences. The Divisional Court found it was unlikely that children under 16 could provide lawful *Gillick* consent due to the nature and consequences of the treatment. It also held that, in the case of 16- and 17-year-olds, it is advisable to seek the Court's authorisation if there is any doubt about whether the treatment is in the patient's best interests. **Jeremy Hyam QC** and **Alasdair Henderson** acted for the claimants, instructed by Paul Conrathe of Sinclairslaw.



Judicial Review by Chief Scientific Advisor

In this high profile judicial review, Professor Ian Young, Chief Scientific Advisor to the Department of Health Northern Ireland, sought to challenge the GMC's decision to open an investigation following public criticisms made by the Public Inquiry into Hyponatraemia Related Deaths in Northern Ireland. He argued that it was not in the "public interest" to pursue him in respect of historic allegations of misconduct dating back to 2005/2006. At the heart of the case was a dispute about the application of rule 12 of the 2004 Rules, which gives the GMC the power to revisit its own prior decisions where they are "materially flawed". **Robert Kellar QC,** instructed by Roger McMillan of Carson McDowell, appeared on behalf of the Chief Scientific Advisor for Northern Ireland.

Investigating allegations of unlawful killing by British forces

This prominent judicial review involves a challenge to the adequacy of an investigation undertaken by the Royal Military Police (RMP) into allegations of unlawful killing by British forces during an operation in Helmand Province, Afghanistan in 2011. The claim raises issues as to (a) whether the operation falls within the jurisdiction of the UK for the purposes of Article 1, ECHR and (b) if so, whether the RMP's investigation was adequate to discharge the UK's investigative obligation under Article 2 ECHR. **Neil Sheldon QC** and **Natasha Barnes** represent the Ministry of Defence and **Angus McCullough QC** appears as Special Advocate.

Challenge to use of Napier Barracks to house asylum seekers

The High Court handed down judgment in a wide-ranging judicial review claim challenging the Home Secretary's decision to house asylum seekers at a former military barracks in Kent. The claim was brought by six asylum seekers who were accommodated at the barracks, all of whom claimed to be survivors of torture and/or human trafficking. The use of the camp was controversial; there was criticism of the conditions, including in an inspection by the Independent Chief Inspector of Borders and Immigration, and the camp experienced a widespread outbreak of Covid-19 amongst residents in early 2021. **David Manknell** represented the Home Office as junior counsel, with **Thomas Beamont** and **Alice Kuzmenko** also working on the case for the Defendant.

Security categorisations of terrorist offenders

Instructed by the Government Legal Department, **Neil Sheldon QC** led **Amy Mannion** and **Matthew Flinn** in a judicial review relating to the security re-categorisation of a prisoner - who had convictions for terrorist offences - in the aftermath of the Fishmongers' Hall terrorist attack (with which he had no connection). The Claimant argued that his security re-categorisation, which had the consequence of seeing him transferred from open to closed prison conditions, was influenced by extraneous and improper considerations. Neil, Amy and Matthew assisted the Ministry of Justice to resolve the proceedings by carrying out an expedited, bespoke review with fresh decision-makers, leading to a final decision in which the department could have confidence.

MI5's policy on agents participating in crimes is lawful

Human Rights campaigners Reprieve, Privacy International, the Pat Finucane Centre and the Committee on the Administration of Justice have sought to make public the limits of the MI5 policy authorising agents to engage in criminal activity as well as challenging its underlying lawfulness. In 2021, the Court of Appeal found for the Government, holding that the Security Service Act 1989 contained implied authority for the policy. This is because it is essential to MI5 performing its core functions to be able to run agents who are embedded in illegal or criminal organisations, and therefore necessary for such agents to be able to participate in criminal activity. **Natasha Barnes** was part of the team representing the Government, led by Sir James Eadie QC. A decision from the Supreme Court on permission to appeal is awaited.

Article 8 and EU rights in asylum transfer challenge

In 2021, the Court of Appeal considered a challenge to delays in transferring asylum-seeking children under the Dublin III Regulation, which set a timetable for EU states to determine responsibility. The challenge concerned the relationship between EU law and Article 8 of the ECHR.

Jo Moore was junior counsel for the Secretary of State, the successful appellant. The Court held that sanctions for delays within the process were provided by Dublin III, and where transfer took place within the overall timetable, there was no breach.

Unlawful decision of Undercover Policing Inquiry quashed

In *R (UCPI Designated Lawyer Officers) v Mitting* [2021] EWHC 247, the Divisional Court quashed a decision taken by the Chair of the Undercover Policing Inquiry. Unusually, very little can be said publicly about this case - the substantive hearing took place entirely in private and the Court's substantive reasons are set out in a closed judgment. **Oliver Sanders QC** acted for the claimant core participant group and **Peter Skelton QC** and **Amy Mannion** represented the Metropolitan Police Commissioner as an interested party.

Moving the deportation goalposts? Harsh, perhaps, but lawful

The Court of Appeal has upheld the Home Office's power to make fresh deportation decisions against those who had previously successfully appealed against deportation, following changes to legislation and the Immigration Rules.

In *R (Abidoye) v SSHD* [2020] EWCA Civ 1425, a Nigerian national with a criminal record and a family based in the UK successfully appealed a deportation order in 2012 on the grounds of Article 8 ECHR. Thereafter the Secretary of State made a fresh deportation order, based on the same evidence, following the changes to deportation law brought about by section 19 of the Immigration Act 2014, and its introduction of a different approach to weighing the public interest in such cases.

To 'move the goalposts' after the earlier decision may have been 'harsh', and the Court of Appeal expressed sympathy for the devastating impact on the Appellant and his family, but found the decision had not been unlawful or unfair. The Court also clearly stated that such proceedings should not have been brought by way of judicial review, when the Appellant could and should have raised his arguments in his statutory appeal. **David Manknell** was instructed by the Government Legal Department to represent the Secretary of State.

Supreme Court hears case relating to the status of 10,000 asylum appeals

The Supreme Court heard the case of *TN (Vietnam)* concerning the status of 10,000 asylum appeals heard under the 2005 Fast Track Rules (FTR 2005). Those rules were in force between 2005 and 2014, and governed the procedure by which detained individuals could appeal against the refusal of their asylum. Those rules have since been held to be *ultra vires* on the grounds that they were systematically unfair.

The Secretary of State successfully argued before the Court of Appeal that the fact that the procedure rules created an "unacceptable risk" of unfairness did not necessarily mean that every case decided pursuant to those *ultra vires* rules was unfair but instead that each case should be determined individually. TN appeals to the Supreme Court against that decision. **Natasha Barnes** represents the Secretary of State as junior counsel.

Tax Law

Court of Appeal to consider tax "fallback" provisions for the first time

Natasha Barnes and **Paul Reynolds** are instructed by HMRC in the lead case of *Ampleaward* concerning the lawfulness of tax "fallback" provisions. Acquisition tax is normally due in the Member State to which goods are delivered, but the fallback provisions enable HMRC in certain circumstances to assess UK traders for acquisition tax where the goods never physically entered the UK. This was the first time the UK courts had fully considered the provisions, and many high value appeals are waiting behind this case. The Upper Tribunal held that the domestic provisions did not accord with the Principal VAT Directive or provide the power to assess for acquisition tax in such circumstances. The Court of Appeal will hear HMRC's appeal in 2021.

Successful strike out of claim for Francovich damages

In *Jersey Choice Ltd v HM Treasury*, the Claimant Jersey Choice Ltd sought Francovich damages, claiming that the UK's removal in 2012 of a low value VAT relief from items sent from the Channel Islands by mail order breached EU law - specifically, its free movement rights under articles 28, 30 and 34 of the Treaty on the Functioning of the European Union. HHJ Johns QC held that the removal of the relief did not engage these articles and struck out the claim as having no reasonable prospect of success and as an abuse of process. **Amy Mannion** acted as junior counsel for HM Treasury.

Where do bicycles come from?

Owain Thomas QC and **Isabel McArdle** act for the Respondent HMRC, instructed by Owen Roberts and Gabrielle Bruno, in this pending First Tier Tribunal (FTT) appeal and judicial review, concerning whether bicycles have their origin, for the purposes of customs, anti-dumping duty, and VAT law, in Sri Lanka or China. The total duty subject to the appeal is more than £10m. The case raises time limit arguments under the Community and Union Customs Codes, and substantive issues about where the bicycles were made. The Appellants also seek to argue that the Right to be Heard letters issued by HMRC before the making of the relevant decisions were flawed, rendering the assessments unlawful.

Look for the bear accessories

Owain Thomas QC and **Paul Reynolds** appeared for HMRC in this case where the Upper Tribunal (UT) dismissed Build a Bear's appeal and allowed HMRC's cross-appeal against the decision of the FtT in this classification dispute about the importation of accessories for bears. The arguments ranged far and wide, but the UT ultimately found that accessories specifically designed for bears should be classified as bear accessories under the import tariff of the EU.

Propelling private pleasure crafts

In Case C-503/17, the CJEU ruled that the UK's legislation was contrary to the Fuel Marker Directive insofar as it allowed rebated fuel (red diesel) to propel private pleasure crafts. In 2020, the Commission initiated further proceedings against the UK, alleging that the UK had failed to implement this judgment. This is the first ever case brought against the UK, seeking a penalty to be imposed for failure to implement a judgment of the CJEU. **Owain Thomas QC** and **Paul Reynolds** are instructed by HMT to defend the proceedings. The Government has filed its defence this year.

Exemption for bodies of a philosophical, philanthropic and civic nature

In a four-day case in the FtT, the United Grand Lodge of England and Wales (the governing body for Freemasonry in England and Wales), sought an exemption for fees charged to its members as a body of a philosophical, philanthropic and civic nature. Supporting evidence was obtained from a Professor of Philosophy on the philosophical roots of Freemasonry in Aristotle and a historian on the historical development of the practice of freemasonry over the last two or three centuries. **Owain Thomas QC** is instructed by KPMG for the United Grand Lodge. The decision is awaited.

Ballet costumes, champagne and… VAT

Matthew Donmall appeared in the Court of Appeal in February 2021 (instructed by HMRC) in a VAT appeal brought by the Royal Opera House. To put on ballet and opera productions (tickets for which are exempt of VAT), the Royal Opera House incurs costs (including costumes, sets and guest performers), upon which it pays 'input' VAT. Royal Opera House argued that those costs were used to promote its (taxable) sales of catering – including champagne – from its restaurants and bars, entitling it to deduct more of the input VAT. HMRC contended that such a linkage does not suffice for the purposes of the deductibility of VAT. The Court of Appeal's judgment is awaited.

One of the last references to the CJEU before Brexit (again)

In one of the last UK Court references to the CJEU, **Owain Thomas QC**, instructed by HMRC, successfully represented the UK in Case C-77/19 *Kaplan International Colleges UK Ltd v HMRC*, involving the application of VAT exemption for costs sharing groups. Judgment was handed down shortly before the Brexit transition period ended. The Court upheld the UK's submission; the exemption was not available unless all members of the VAT group were members of the costs sharing group too. It was widely expected also to rule on whether the exemption applied to groups established outside the EU. Advocate General Kokott took the UK's view that this was not possible. However, it was unnecessary for the judgment to address this.

Feature Article

Emerging Themes in Covid Litigation

In Discussion with Shaheen Rahman QC & Sarabjit Singh QC

Shaheen Rahman QC

"Now that a full statutory public inquiry has been announced, a big question is what Article 2 will require of it, in terms of scope and family involvement. The distinction between matters of high policy that the inquiry should look at and local systemic issues for the Coroners court won't always be easy to draw. And barring every bereaved family being granted core participant status, how are those affected going to participate?

The huge scale of the inquiry is also difficult to comprehend – it will need to consider the knowledge of the risk, the state of preparedness, the scientific advice and the extent to which it was followed, as well as track and trace, border control and what happened in schools and universities. It will surely have to examine health inequalities and the disproportionate impact on ethnic minority groups.

In individual cases, there are also questions to be asked about DNR decisions and potential Article 8 challenges where people have died without any family presence or involvement at all.

This all comes at a time when the Human Rights Act is being reviewed and potentially 'updated'. The use of the Act to challenge lockdown measures may bring new supporters, and one of the more popular achievements of the Act has been in the context of inquests, enabling the broader circumstances to be investigated where the state's obligation to protect the right to life is arguably breached .

The approach to this in a healthcare context has become more restrictive in recent years but the pandemic has presented a whole range of systemic issues that may reverse that trend. Interestingly, the Strasbourg line of authority on substantive breaches of Article 2 in healthcare is if anything more restrictive than the approach adopted here. So even if there were to be some amendment to the obligation to take ECtHR judgments into account, the Convention will be at the heart of the arguments about whether the state bears responsibility for avoidable deaths and other Covid impacts."

Sarabjit Singh QC

"Those are excellent points, Shaheen, and I agree that there is going to be a whole range of Covid-related cases that the inquiry will not touch.

One potentially enormous area of Covid-related healthcare litigation will be claims where treatment for non-Covid conditions was delayed due to pressures caused by Covid on hospital resources. Strictly, the fact that hospital resources may have been stretched by the impact of Covid is no defence to a clinical negligence claim alleging a lack of timely treatment for another condition. As the months and years pass, there will be patients who develop a variety of injuries and illnesses that could have been avoided had they been able to access hospital care in the 2020-21 pandemic era. These could range from relatively mild conditions caused by delays in elective treatment, to far more serious conditions such as terminal cancer caused by the inability to access consultations with medical professionals who could have made a timely and life-saving diagnosis. Only time will tell, but it is a realistic possibility that doctors, the NHS and the courts will face a deluge of such claims over the next few years.

The potential volume and cost of such claims may lead to calls for there to be immunity for medical and other workers from any delayed treatment claims resulting from the allocation of resources to deal with Covid. Such immunity may enjoy public support, given the protection it would provide to public resources and as an act of solidarity with the NHS. However, there would be powerful arguments against immunity, most obviously the need to ensure adequate redress for patients who have not been provided with proper care. Any immunity may have further undesirable consequences; for example, if the NHS enjoys immunity from all Covid-related claims, will this extend to immunity from actions by its own employees for any failure to provide them with protective equipment? No doubt such a blanket immunity would itself be the subject of litigation, including in the judicial review sphere.

An additional and difficult area of litigation will be claims brought by those who could have accessed healthcare during the pandemic, but who did not, whether as a result of fear of contracting Covid in a healthcare setting or due to following government guidance to stay at home whenever possible. Such claims may be defended on the basis that the claimants were contributorily negligent as a result of their own delay in seeking treatment that would have resulted in a better outcome for them. This may lead to the courts having to deal with knotty problems of whether a claimant acted reasonably in, for example, interpreting official guidance to mean that they had to stay at home, which will be compounded by the ever-changing nature of the guidance and the exceptions to it, and the well-established inconsistency between the guidance and the law."

Shaheen Rahman QC concludes:

"It does seem there have been a few more cases recently where contributory negligence has been pleaded in clinical negligence cases, but it is still rare and you would think unattractive in the context of Covid. In the example you give though, it is difficult to see what the healthcare provider could do. The question might be - were reasonable steps taken to ensure the patient understood they should be attending for treatment, despite the pandemic? And what was reasonable during the pandemic – that may be very moot."

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

Manchester Arena Bombings
- Neil Sheldon QC
- Alasdair Henderson

Croydon Tram Inquests
- Peter Skelton QC
- David Manknell

Undercover Policing Inquiry
- Angus McCullough QC
- Peter Skelton QC
- Oliver Sanders QC
- Amy Mannion
- Jim Duffy
- Jonathan Metzer
- Emma-Louise Fenelon (litigation)

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

Stephen Port Inquests
- Peter Skelton QC
- Natasha Barnes
- Gideon Barth

Guildford Pub Bombing Inquests
- Oliver Sanders QC
- Matthew Flinn

Brook House Inquiry
- Jo Moore
- Alice Kuzmenko

Infected Blood Inquiry
- Neil Sheldon QC
- Shaheen Rahman QC
- Andrew Kennedy QC
- Leanne Woods
- Matthew Hill
- Emma-Louise Fenelon
- 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

Operation Kenova
- Oliver Sanders QC

Post Office Horizon IT Inquiry
- Isabel McArdle

Inquest considers procurement of nasogastric tubes

Thomas Beamont represented the family of the late Mr Oakes in an inquest which considered the widespread sale to NHS hospitals of a particular kind of nasogastric tube. Unusually, the inquest, convened under article 2 ECHR, was jointly held in relation to two patients who had died following insertion of the tube. The Coroner was critical of the unsuitability of the tube for its intended purposes, and of the standard of communication between the hospital Trust and tube manufacturer. The Court heard evidence that the tubes remained on sale to NHS hospitals. The Coroner wrote a report to prevent future deaths to the hospital Trust, the manufacturer, NHS Supply Chain, the International Standardization Organization (ISO), and the Nursing Times. Thomas was instructed by Fleur Hallett of AvMA.

Stephen Port inquests soon to begin

Peter Skelton QC and **Gideon Barth** are representing the Metropolitan Police Commissioner in the East London Inquests, which will consider the deaths of the victims of serial killer Stephen Port. Between 2014 and 2015, Port lured four young men to his flat in Barking, where he drugged and killed them. Their bodies were later left at various nearby locations, including the graveyard of a local church. In 2016, Port was convicted of murdering each of the men, and raping several others, and was given a whole life sentence. The Coroner, Her Honour Judge Sarah Munro QC, is considering whether the police failed to recognise early on that each of the men had been murdered and thereby failed to catch Port sooner. The inquest is due to start in October 2021.

After transport worker dies of Covid-19 complications, will there be an inquest?

Peter Skelton QC is acting for GTR, the train operator at Victoria Station, whose employee Belly Mujinga died of complications of Covid-19 in April 2020. Ms Mujinga had been working at the station in the weeks before she died and had allegedly been spat on by a member of the public who said that he had Covid-19. Two million people subsequently signed an online petition calling for an investigation into her death; and a group of over 40 MPs and peers have called for a public inquiry. The North London Coroner, Andrew Walker, is presently considering an application by Ms Mujinga's family to open an inquest. **Martin Forde QC** has also provided legal perspective on the investigation for BBC One's Panorama.

Crossbow murder inquest

Matthew Hill represented Yorkshire Ambulance Service at an inquest into the death of a man who was shot with a crossbow. Shane Gilmer, 30, died following an unprovoked attack in which his neighbour, Anthony Lawrence, removed bricks from the wall separating their lofts and climbed into the house Mr Gilmer shared with his pregnant girlfriend. When they returned home after a meal, Lawrence shot both of them with crossbow bolts, fatally wounding Mr Gilmer. A paramedic attended the scene and, together with three unarmed police officers, entered the property to treat Mr Gilmer at a time when it was not known if Lawrence was still present. The inquest considered the response of the emergency services, and the lack of regulation of crossbow sales. The jury returned a determination of unlawful killing. Matthew was instructed by Caroline Balfour of Yorkshire Ambulance Service NHS Trust.

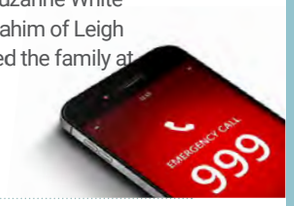
Inquest into the death of Kevan Watts continues

Sarah Lambert QC is instructed by Leigh Day on behalf of the family of deceased investment banker Kevan Watts at both the inquest and in a civil claim for clinical negligence. Mr Watts, formerly Chairman at Merrill Lynch and Vice Chairman, Banking, at HSBC, is best known by many for his lifelong support of Tottenham Hotspur, of which he became non-executive Director in 2010. The NHS Trust responsible for Mr Watts' care recently made substantial admissions of negligence and the Trust admits that Mr Watts' death was avoidable and caused by its admitted negligent treatment. After Covid-19 related delays, the inquest is currently due to conclude in 2021.

Patient called 999 for oxygen from hospital bed

Evan Smith, a 21-year-old football data analyst with a history of sickle cell disease, was recovering from sepsis following a procedure to remove a gallbladder stent. He was in a hospital 'lodger' bed which are added to wards to increase capacity and don't have oxygen or a call bell. The sepsis is thought to have triggered a sickle cell crisis which led him to request oxygen. He first asked medical staff for oxygen then called 999 from his hospital bed.
A haematologist prescribed oxygen later that day but Evan subsequently suffered a series of cardiac arrests and died the next morning.

The coroner noted that the delay in being treated with a blood transfusion caused Mr Smith's death but did not return a verdict of neglect. Since Mr Smith's death the hospital has created a dedicated sickle cell ward and provided extra training for medical staff. **Martin Forde QC**, instructed by Suzanne White and Firdous Ibrahim of Leigh Day, represented the family at the inquest.



Brook House inquiry continues

In the last year, the Brook House Inquiry has continued to investigate the decisions, actions and circumstances surrounding the mistreatment of people detained at Brook House Immigration Removal Centre (IRC) shown in the 2017 Panorama programme "Under-Cover: Britain's Immigration Secrets".

The Inquiry's substantive hearings are scheduled to commence in November 2021. **Jo Moore** continues to be instructed as junior counsel for the Inquiry's legal team by Solicitor to the Inquiry, Ellis Pinnell. Since October 2020, she has been joined by **Alice Kuzmenko**.

Emergency Caesarean outside a hospital setting

Judith Rogerson, instructed by the MPS, represented the air ambulance emergency medicine doctor who attended the scene at the inquest into the death of a lady who tragically choked to death days before she was due to give birth. Emergency services attended within minutes of her collapse but were sadly unable to resuscitate her. Much of the doctor's evidence centred around the circumstances when it might be appropriate to deliver a baby by emergency caesarean section outside a hospital setting. The pathologist's evidence was that the deceased had died before the emergency services reached her. The Coroner concluded that her death was the result of an accident.

High profile stalking inquest

In 2018 Ms Scott was murdered by her ex-boyfriend, who had already served a prison sentence for the murder of his ex-wife and was under licence and being monitored by the National Probation Service. He displayed increasingly severe coercive control and stalking behaviours in the months prior to her death. Her family contended that the probation service did not adequately review his risk to Ms Scott following reports from Ms Scott and mental health services of behaviour which mirrored his previous stalking behaviour. At the high profile inquest, it was alleged that the line manager failed to provide adequate risk management oversight to Mr Mellor's probation officer. Ultimately the Coroner concluded that, even though the probation officer was made aware of serious stalking behaviours, he had not informed his line manager. **Caroline Cross** was instructed by Alistair Hewitt at RadcliffesLeBrasseur to represent the line manager.

Gosport – families call for 'Hillsborough-style' inquests

Peter Skelton QC and **Jim Duffy** are acting for bereaved relatives calling for inquests to be carried out into a number of deaths at Gosport War Memorial Hospital in Hampshire between 1989 and 2000. The families, represented by Emma Jones and Anna Dews of Leigh Day, seek inquests into deaths that have not been previously investigated by the coroner, and for the Attorney General to order fresh inquests where the previous ones were inadequate.

The move follows the publication in 2018 of the Gosport Independent Panel Report. It concluded that the lives of more than 450 people had been shortened because of the routine practice of prescribing and administering opioids until the year 2000.

Birthrights' inquiry into maternal care

Shaheen Rahman QC is chairing the inquiry into disparities in maternal outcomes for ethnic minorities launched by the charity Birthrights. A panel of experts with maternity and legal expertise and lived experience has been assembled by Birthrights to look at this issue. Shaheen comments:

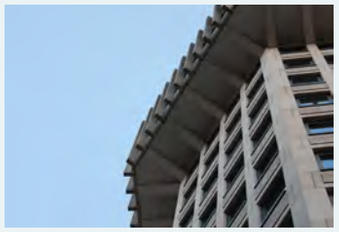
"Birthrights wants to understand the stories behind the statistics showing that ethnic minorities are more likely to die in pregnancy or childbirth and other concerns such as higher rates of maternal illness. The inquiry seeks to examine how people can be discriminated against due to their race and to identify ways that this inequity can be redressed."

Tragic death of voluntary hospital inpatient

Richard Mumford represented a consultant psychiatrist at a three-day hybrid inquest (partially remote) into the death by hanging of a 13-year-old girl. Concerns were raised as to the procedures in place at the inpatient facility at which the deceased had been a voluntary patient. Notwithstanding those concerns, the Coroner raised no criticism of the consultant's care. Richard was instructed by Kirsty Jeeves of the MDU.

A man who choked on a burger was 'unlawfully killed'

Charlotte Gilmartin and **Amelia Walker** were instructed pro bono via Advocate on behalf of a member of staff of a care organisation in this complex jury inquest. The inquest concerned the death of a man who choked on a burger given to him by the carer whom they represented. speech and language therapists had recently advised that the man follow a fork mashable diet. After two weeks of hearing evidence, the jury concluded that the organisation employing the carer had not put in place adequate and robust communications to staff in order that they would be aware of the speech and language therapy advice. It had failed to put in place robust procedures to implement the advice and failed to provide safe care. No criticism was made of the carer. The conclusion was one of unlawful killing.



Coroner makes 11 recommendations in inquest involving a stillbirth

Baby F died following a failed forceps delivery. As the evidence of the treating clinicians and independent expert was that Baby F was born stillborn and did not at any point show signs of life, Senior Coroner Caroline Beasley-Murray ruled that there was no jurisdiction to continue the inquest. However, the Senior Coroner issued a Prevention of Future Deaths report which identified 11 separate areas of concern. The Senior Coroner's recommendations included one directed at the Ministry of Justice aimed at progressing work on its consultation in early 2019 on the coronial investigation of stillbirths, in light of the ruling that Coroners currently do not have jurisdiction to hold an inquest into a stillbirth. **Leanne Woods**, instructed by Punam Sood of Kingsley Napley, represented the family. **Jonathan Metzer**, instructed by Laura Harding of Kennedys, represented the hospital trust.

Infected blood public inquiry continues

Leanne Woods and **Emma-Louise Fenelon** are acting for the Department of Health and Social Care (DHSC) in the Infected Blood inquiry, chaired by Sir Brian Langstaff. This independent public statutory inquiry is examining the circumstances in which people were given infected blood and blood products during NHS treatment. Many thousands of people have died already and this is now regarded as one of the most significant adverse public health events in the NHS's history. Leanne is particularly involved in work on the various support schemes established by the Government since the late 1980s to provide financial and non-financial support to those infected with HIV and Hepatitis C and their families. Leanne and Emma are instructed by the Government Legal Department.

Other members of Chambers are also involved in the Inquiry. **Neil Sheldon QC** represents a leading medical defence organisation and **Shaheen Rahman QC** is instructed on behalf of a Professor of Haematology. **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.

Should pregnant healthcare workers be allowed to work from home?

In 2021, the inquest into the death of Mary Agyapong concluded. Ms Agyapong was a specialist diabetes nurse who continued to work during the pandemic whilst pregnant. In March 2020 she stopped working due to back problems but it was thought she worked on Covid-19 wards. A month later she was seen at hospital after experiencing symptoms of Covid-19 but was discharged because she did not require oxygen therapy. Two days later she gave birth via caesarean section but died in intensive care. Her preliminary cause of death had been given as a combination of pneumonia, Covid-19 and a caesarean. **Martin Forde QC** acted on behalf of her husband, who continues to campaign for pregnant women over 20 weeks to be allowed to work from home or suspended with pay.

How should Coroners approach findings of fact and reach a conclusion?

At the inquest into the death of Linda Johns, Chief Coroner HHJ Teague QC provided some useful guidance on how coroners should approach findings of fact and conclusions. Mrs Johns died of malignant mesothelioma, having lived for many years in a council-owned flat which contained asbestos during the early years of her tenancy. At the inquest, the senior coroner concluded that on the balance of probabilities she was exposed to asbestos at her flat and that this had caused her mesothelioma. The council, represented by **Peter Skelton QC**, challenged this conclusion, arguing that the evidence adduced by the coroner at the inquest established that such findings were possible but not probable. The Divisional Court agreed and quashed the coroner's findings in *Wandsworth Borough Council v HM Senior Coroner For Inner West London* [2021] EWHC 801. In doing so, the Chief Coroner held that at the end of an inquest a coroner should consider the safety of any conclusion or finding that he or she was proposing to make, together with the sufficiency of the evidence available to support it.

Care home death following maggot infestation in man's legs

Leanne Woods and **Caroline Cross** are both instructed in a complex inquest into the death of a man who died from sepsis in a care home. He had been refusing to care for himself and accept medical treatment and, at the time of his death, his legs were infested with maggots. The man had been assessed as not having capacity to refuse care and treatment and the inquest will consider what should have happened in those circumstances, along with other issues as to the adequacy of his care and his placement at the nursing home. The inquest has 13 Interested Persons and is listed for five weeks in 2021. Caroline is instructed as counsel to the inquest and Leanne is instructed by Trowers and Hamlins for Kent and Medway Clinical Commissioning Group (as funders of the deceased's NHS Continuing Healthcare package).

Manchester Arena Inquiry hears of missed opportunities to stop bomber

The bombing at an Ariana Grande concert at the Manchester Arena on 22 May 2017 was the worst terrorist attack in the UK since 7/7, killing 22 people and injuring many more. The public inquiry into the terrible events of that day is now well underway, and amongst other matters has heard dramatic evidence about how a member of the public saw the bomber some time before he detonated his device, thought he was suspicious, and reported him to security staff, yet nothing was done to confront or stop him.

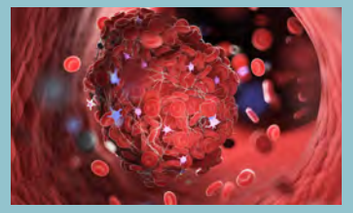
Alasdair Henderson is part of the Counsel to the Inquiry team, instructed by Tim Suter at Fieldfisher, with a focus on the security arrangements at the Arena, what went wrong, and what lessons can be learned to prevent similar atrocities happening in future.

Clarification on applications for fresh inquests

Mary Farrell, whose son had died from a terminal illness in 2016, applied to the court for a fresh inquest into her son's death, based on her suspicions that his death was caused by an overdose of medication administered by his widow, Amanda Burden. Ms Burden opposed the application, arguing that Mrs Farrell had no credible basis for her views, which were contrary to the contemporaneous documentary evidence and to the expert opinion of an independent respiratory physician. The court agreed with Ms Burden and dismissed the application. In doing so, it clarified that fresh inquests will not normally be ordered where there is no real possibility of the new investigation reaching a different conclusion, or of making additional or different fact findings. **Peter Skelton QC** was instructed by Hickman & Rose for the widow.

Failure to treat DVT leads to neglect conclusion

Michael Deacon represented the family of a woman with advanced dementia, who spent five days in hospital without any proper assessment or treatment of her venous thromboembolism risk taking place. The deceased had been suffering from a DVT throughout her admission. The coroner made a finding that the failings of the hospital were gross and amounted to neglect of the deceased, and that, but for those failings, the deceased's death would have been avoided. Michael was instructed by Henry Dyson and Sukhi Duggal of Leigh Day.



Verdict of 'accidental death' from glandular fever

A 19-year-old was unable to contact his GP surgery due to phone problems after suffering from a persistent cough and sore throat. It later transpired his GP registration had moved to his university so he was unable to book an appointment there. Instead, he went to an NHS walk-in centre where he was diagnosed with tonsilitis and prescribed penicillin antibiotics. His condition deteriorated and an ambulance was called the following day. En route to the hospital multiple resuscitation attempts were made and back-up was called, although sent to his home address rather than the location of the ambulance. He died of organ failure shortly after arriving at the hospital. His family used the AvMA pro bono service to instruct **Darragh Coffey**. The Coroner found that medical issues raised at the inquest did not cause or contribute to his death and expressed her condolences to his family for this "extremely tragic and rare event".

No causative failings

Dominic Ruck Keene, instructed by John Holmes at Hempsons, appeared for Camden and Islington NHS Trust at the inquest into the suicide of an in-patient at Highgate Mental Health Centre. The deceased's level of observations had recently been downgraded following a suicide attempt three days before. The Centre had also identified over 18 months previously that the ligature point used by the deceased was a significant suicide risk but had yet to implement the remedial action required. The Serious Incident Review had also identified a number of failings in record keeping and communication of changes in clinical management. HM Senior Coroner for Inner North London concluded that there were no causative failings and made no PFD report.

Momentary lapses mean…unlawful killing?

Matthew Flinn, instructed by the Government Legal Department, represented the Ministry of Justice in relation to the death of a prisoner from HMP High Down. The prisoner had severe COPD and deteriorated shortly after his arrival at the prison. There was a 10–15 minute delay in the ambulance leaving the prison due to a paperwork error, and on arrival at hospital there was a further period of delay before he was assessed by clinicians. He went into cardiac arrest and there was conflicting evidence as to whether or not his handcuffs were removed at an appropriate time so as to enable CPR to take place. The hearing took place just days after the Supreme Court handed down its judgment in *R (Maughan) v HM Senior Coroner for Oxfordshire* [2020] UKSC 46, which decided that the standard of proof for a conclusion of unlawful killing was to be the balance of probabilities. As a result, the hearing listed for nine days stretched into five weeks as the court explored whether or not the ingredients for gross negligence manslaughter could be safely put before the jury for consideration. Ultimately, the conclusion of unlawful killing was not offered to the jury, which returned a narrative conclusion to the effect that, although there were some missed opportunities to render medical care to the prisoner at an earlier point, in light of the severity of his condition it was not possible to say whether or not it made a difference.

Death of toddler at Butlins

In 2018, whilst on a family holiday at Butlins in Bognor Regis, James Manning choked on a piece of sausage which later led to his death from an ischaemic hypoxic brain injury. Prior to this incident he had a history of choking and breathing difficulties. James had been assessed at various hospitals, including one managed by East Sussex Healthcare NHS Trust. This led to referral for assessment for an Adenoid tonsillectomy, which he was waiting for whilst on holiday. After a hearing in 2021, HM Assistant Coroner for West Sussex concluded that James' death was accidental and that, while there were some delays in his referral from Conquest Hospital to Royal Sussex Hospital, these could not be said to have contributed to his death. **Darragh Coffey** was instructed by Lizzie Turner at Capsticks, to represent the NHS Trust.

A preventable tragedy during swimming lessons

Matthew Flinn, instructed by Sarah Saldanha of Leigh Day, represented the family of nine-year-old Leo Latifi, who was tragically killed in an accident during swimming lessons at a local High School. Leo had been playing in the changing rooms when an unsecured locker toppled over and fell on him. The jury found that the death resulted from an accident that "was significantly contributed to by a lack of appropriate assessment of a clear and obvious risk in relation to a locker-unit not being re-secured to a solid wall as per manufacturer's instructions. This remained the case for an extensive period of time…. some six years." They concluded that inadequate precautions were taken to address that failure, and thus prevent Leo's death.

Multiple failings on mental health ward

Rachel Marcus was instructed under Direct Access to represent the family of a retired nurse following lengthy admissions to two older people's mental health wards. She was admitted to the acute hospital with a large sacral pressure sore and died a week later. Her interim death certificate had stated that she died as a result of a pulmonary embolism. The Coroner found multiple failings in the deceased's care while on the mental health wards and that she died in part as a result of sepsis (which was partly caused by the pressure ulcer) and as a result of the immobility which she had developed whilst in NHS care.

Disclosure of images by social media platforms

Facebook, Instagram and Pinterest have disclosed suicide and self-harm related images viewed by Molly Russell ahead of the inquest into Molly's death. In a recent pre-inquest review, the Coroner confirmed that an expert psychiatrist would be required to report on the likely effect of such materials on Molly. Although a date has yet to be fixed for the inquest, the Coroner expressed concerns that 'every day the inquest is delayed poses a potential risk to others exposed to this material.' **Oliver Sanders QC** and **Jessica Elliott** are instructed by Merry Varney of Leigh Day to represent her family.

Care home death investigated

Rachel Johnston died 17 days after surgery to remove her severely decayed teeth. Following the surgery, which was performed as a day case under general anaesthetic, Rachel was discharged to Pirton Grange care home. The hospital believed she would be monitored by trained and registered nurses. The nurses recorded no physiological checks and, over 40 hours after she arrived at the care home, she remained asleep and showed no signs of awareness. During this time she had aspirated and become brain damaged. **Lizanne Gumbel QC**, instructed by Caron Heyes of Fieldfisher, represented the family at the inquest. The coroner concluded that neglect contributed to her death as the care home nurses failed to spot signs of developing hypoxia. If her condition had been properly monitored and had she been re-admitted to hospital she would not have suffered brain damage or died.

Guildford pub bombing inquests continue

Oliver Sanders QC and **Matthew Flinn** continue to act as counsel to the inquests into the deaths caused by the IRA bombing of the Horse and Groom pub in Guildford in October 1974. Evidence has been obtained from Surrey Police, the Metropolitan Police, the Ministry of Defence and the Home Office, and the investigation is now aiming to proceed to a final hearing in April of 2022.

Second inquest into death of toddler

Rajkiran Barhey, instructed pro bono by AvMA, represented the family of Jonnie Meek at the second inquest into his death. Jonnie Meek was a three-year- old boy with a range of complex needs, including feeding issues and a presumed intolerance to cow's milk protein. The first inquest had found that Jonnie died from pneumonia unconnected to the change in feed. With support from the Clinical Commissioning Group, the family obtained an independent review of Jonnie's death which ultimately led to the High Court quashing the first inquest.

Over six years after his death, a second inquest was held with two pathologists and a paediatric allergist giving expert evidence. Despite initial significant disagreement between the experts all eventually agreed his death was likely an adverse reaction to the new feed. This informed the Coroner's narrative conclusion that Jonnie died from an adverse reaction to new feed.

Meeting the Mental Health Act Criteria

An Article 2 inquest was convened to examine the circumstances surrounding the death of Sharon Kelly. She had suffered from a long history of mental health problems, including previous suicide attempts, and had been diagnosed with Emotionally Unstable Personality Disorder, which rendered her poorly able to tolerate any form of stress. The community Home First Team raised concerns that Sharon's risk of suicide meant that she could no longer be safely managed at home but a Mental Health Act assessment the following day found she did not satisfy the Mental Health Act criteria for involuntary detention in hospital. The next afternoon her daughter called 999 but the first ambulance was delayed by the generally high demand for services. A risk marker in the ambulance system indicated police should accompany paramedics. The police were not notified until the first ambulance had already arrived and a lack of available units delayed the police response. Three and a half hours after the 999 call police and ambulance crew discovered Sharon Kelly without signs of life. An Article 2 inquest concluded that Ms Kelly killed herself. In addition, the jury found that the timing of the Mental Health Act assessment was inadequate, that there was a failure by the ambulance crew to initiate a risk assessment on arrival at the property and that there was widespread insufficient communication between all services. **Jonathan Metzer** was instructed by David Gabell of Fosters Solicitors for the family of Ms Kelly. **Judith Rogerson** was instructed by Hempsons for the Essex Partnership University NHS Foundation Trust and the East of England Ambulance Service Trust.

The dangers of Anorexia Nervosa

Following a month-long inquest into the tragic death of 19-year-old Averil Hart, who died as a result of Anorexia Nervosa in December 2012, Assistant Coroner Sean Horstead drew attention to a number of national concerns regarding the reliability and understanding of data concerning anorexia nervosa in his Prevention of Future Deaths report. **Emma-Louise Fenelon**, instructed by Sophie Barbour at Hempsons, represented an individual doctor who was not implicated in the cause of Averil's death.

Death of toddler from Phenytoin

11-month-old Sophie Burgess was admitted to hospital in Surrey in 2016 with a history of febrile seizures when she was given a five-fold overdose of Phenytoin by hospital staff, resulting in her sudden death.

The inquest considered how the overdose came to be given, why the drug was given manually rather than by syringe driver despite concerns raised by a nurse that this would be contrary to policy and other matters including whether clinical records were inappropriately altered to change the account of how Sophie came to die. The inquest was delayed while the police decided to investigate the case further. HM Assistant Coroner Dr Karen Henderson found that neglect contributed to Sophie's avoidable death. The Coroner has written a Prevention of Future Deaths report explaining the need for medical staff to check the amount of drugs prepared before being administered, particularly where they carry a risk of toxicity. Sophie's parents were represented by **Clodagh Bradley QC**, instructed by Suzanne White of Leigh Day.

Undercover Policing Inquiry's hearings begin

The Undercover Policing Inquiry, known as the UCPI, began its hearings with seven days of live-streamed opening statements, followed by seven days of evidence. Find the full schedule and how the hearings will be conducted remotely on its website. **Peter Skelton QC**, **Amy Mannion** and **Darragh Coffey**, are instructed on behalf of the Metropolitan Police Service, **Oliver Sanders QC** is representing the Designated Lawyer Officers and **Angus McCullough QC** is acting for Category M Core Participants (the ex-wives of undercover officers), instructed by Stefano Ruis at Hickman & Rose.

Regulatory & Employment Law

Wear(side) and tear – predicting the resilience of a footballer's knee

Sunderland AFC v Rehman raised novel issues regarding a football club doctor's duties when conducting and reporting on pre-signing medicals. Just before the 2014 summer transfer window closed, the club secured the services of Argentine international, Ricky Alvarez, from Inter Milan. After Alvarez developed knee problems, Sunderland repudiated its agreements with Inter Milan and the player. Awards against Sunderland by the Court of Arbitration for Sport led the club to sue its former head of medical, Dr Rehman, for £13 million, alleging breach of contract and negligence. **David Balcombe QC** and **Richard Smith**, instructed by Keoghs, represented Dr Rehman. The Sunderland Echo recently reported that the claim had been dropped and that the Club considered the doctor to be exonerated.

Failure to attend health assessments found not to be non-compliant

Leanne Woods, instructed by RadcliffesLeBrasseur, acted for a doctor at a non-compliance hearing before the Medical Practitioners' Tribunal Service (MPTS). The doctor was investigated by the GMC for misconduct. During the investigation, concerns were raised about the doctor's health. The GMC directed that health assessments should take place. When the doctor did not attend them, the GMC brought non-compliance proceedings. Leanne argued that the non-attendance was itself due to the doctor's serious ill-health. The MPTS accepted that there was a reasonable excuse for the non-attendance and failure to comply with the GMC's direction, and decided that non-compliance had not been made out.

Professional regulator owes no duty of care

A registered nurse alleged that the Nursing & Midwifery Council (NMC) had exercised its regulatory functions unlawfully, negligently, and without proper foundation, causing the loss of his nursing career. The claim was struck out as an abuse of the court's process: the correct route of challenge was by way of judicial review. Moreover, the NMC owed no duty of care in the exercise of its statutory functions. The case raised important issues as to whether (and to what extent) regulatory bodies owe a duty of care in tort to those they regulate. **Robert Kellar QC,** instructed by Joanne Staphnill of DWF, successfully defended the NMC against this claim for damages.

Consultant successfully defends GMC allegations of physical abuse

Christopher Mellor was instructed by the Medical Protection Society to defend a doctor in GMC Fitness to Practise proceedings before the Medical Practitioners Tribunal, arising out of allegations of mental and physical abuse of a former partner. The doctor admitted the majority of the allegations relating to mental abuse and accepted that such conduct was completely unacceptable; albeit (without it being suggested as any form of excuse) it occurred during a difficult time and was entirely out of character. He vehemently denied that there was any physical abuse. That allegation and all others that had been denied were found not proved.

Return to in-person disciplinary proceedings

William Edis QC, instructed by Sarah Naylor of Keoghs and Tim Phillips of the Veterinary Defence Society, acted in the first full face-to-face disciplinary hearing before the Disciplinary Committee of the Royal College of Veterinary Surgeons. An internationally-renowned veterinary surgeon stands accused of fabricating a Home Office letter, stating that a licence was not required for a piece of animal research – allegedly it was necessary but not obtained. The case was halted when a Committee member fell ill and was unable to continue, rendering the Committee inquorate. The hearing is due to resume later this year.

Dental dishonesty defence

Robert Kellar QC has been instructed by Chris Morris and Amie Roadnight at Hempsons to defend a junior dentist against multiple allegations of financial dishonesty and deficient professional performance. The allegations from 15 separate patients include making excessive and dishonest claims for multiple courses of treatment under the relevant NHS charging regulations. It is understood to be one of the largest of this type of case ever prosecuted by the General Dental Council.

Successful defence of GP surgery in wrongful birth claim

A former patient attended her GP surgery to have her expired contraceptive implant removed. Condoms were to be used until a future appointment discussing contraceptive injections could take place. In the interim she discovered that she had conceived. Deciding against termination, she gave birth to a healthy child. She claimed a failure to provide contraception had resulted in an unwanted pregnancy.

After a five-day trial, the Judge found for the GP practice and an individual doctor; the Claimant had not asked for the injection at the initial appointment, there were sufficient contraception stocks, and she could have booked an injection appointment before she conceived, but did not. Further, it was not unreasonable for the GP to ask the Claimant to return for an injection and to use condoms until then.

Jim Duffy, instructed for the GP surgery by Stephen Hooper of Hempsons, also defended the suggestion that the GP practice could be vicariously liable for the GP. She was employed by another practice licensed to provide implant and coil removal services. The Court accepted that, on the day in question, she had been delivering a service on behalf of that other practice using the defendant surgery's premises.

At the virtual conference of the British College of Aesthetic Medicine (BCAM), **Robert Kellar QC** advised its members as to the impact of the Coronavirus Regulations on the practice of aesthetic medicine. The statutory landscape evolved quickly during the pandemic and often at short notice. The application of the law to cosmetic practitioners was politically sensitive, attracting the attention of the All Parliamentary Group on Beauty, Aesthetics and Wellbeing. Robert discussed the scope of the statutory exception that permitted "medical or health services" to remain open. Could this apply, for example, to the treatment of skin conditions or patients suffering from psychiatric illness. Robert emphasised the importance of careful triage and documentation for those seeking to rely upon the exception.

Courts grapple with the gig economy

In Law Pod UK Episode 139, **Alasdair Henderson** joined **Rosalind English** to discuss the implications of the recent UK Supreme Court ruling of *Uber v Aslam and others* [2021] UKSC 5. The Court concluded that the Employment Tribunal was entitled to find that drivers, whose work is arranged through a smartphone app, were "workers" within the statutory definition. The Court unanimously concluded that this was the only reasonable conclusion the Tribunal could reach. Consequently, the drivers qualify for employment law protections, including minimum wage and paid holiday leave. They also touched upon the challenges by ride-hailing app Ola in the Dutch Courts regarding automated profiling of drivers. That was the first time a court found that workers were subject to decision making by AI systems.

Personal Injury & Abuse Law

First failure to remove claim following *CN & GN v Poole*

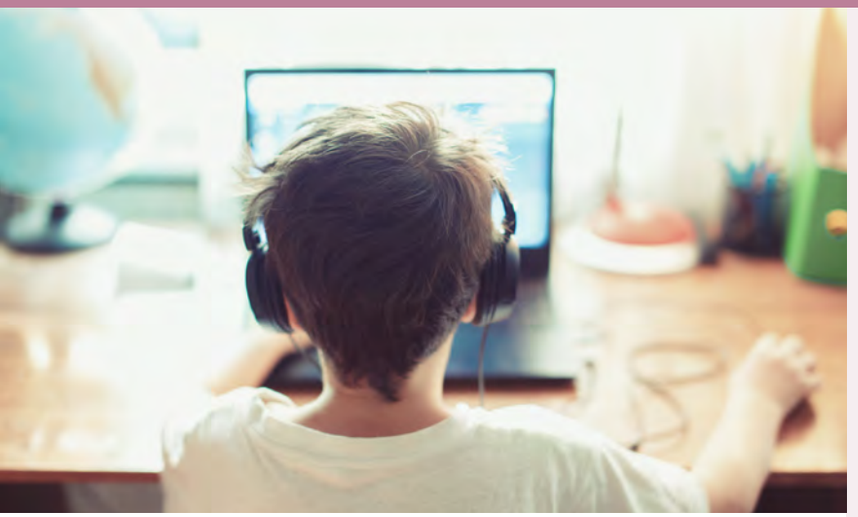
Lizanne Gumbel QC and **Justin Levinson** represented the claimants in the first failure to remove claim brought to trial since the decision of the Supreme Court in *CN & GN v Poole Borough Council*. A claim was brought against a local authority alleging that its social services department was negligent for failing to bring the claimants into care to prevent them suffering sexual abuse from their father. This was a widely watched test case, which also considered the extent to which such claims can be brought out of time under the Human Rights Act 1998 as well as, or instead of, at common law.

IICSA: Responses to allegations against Lord Janner

Matthew Hill appeared as Counsel to the Inquiry in the IICSA hearings into institutional responses to allegations of child sexual abuse made against Lord Janner, the former Labour MP and peer. Janner died in 2015 while facing 34 counts of child sexual abuse relating to 12 complainants. The Inquiry considered previous criminal investigations, which had resulted in no charges being brought, and examined whether Janner received preferential treatment from the police and other institutions due to his position of public prominence. Evidence was heard from police officers, prosecution lawyers, local council officials, members of the Labour Party, former Prime Minister Tony Blair, and a senior Cabinet Office civil servant. The Chair and Panel are currently preparing their report. Matthew was instructed by Martin Smith of Ashleigh Shepherd and Nicola Margiotta of Fieldfisher.

Abuse in the British Entertainment Industry

Iain O'Donnell, instructed by Richard Scorer of Slater & Gordon, is currently engaged to represent a professional in the entertainment industry in a high profile claim for sexual assault against an established Hollywood actor.



CICA compensation for child victims of online grooming?

Charlotte Gilmartin is instructed by Emily McFadden of Bolt Burdon Kemp in an ongoing judicial review claim brought by the Criminal Injuries Compensation Authority (CICA) before the Upper Tribunal. The case concerns whether victims of online grooming are eligible for an award under the Criminal Injuries Compensation Scheme, which provides compensation for victims of "a crime of violence". This term is defined within the scheme to include a sexual assault to which an individual did not consent. The CICA's case is that online grooming or sexual activity, which lacks physical touching, does not fall within the Scheme. Charlotte represents the mother of a child who was a victim of online grooming.

Lambeth Children's Homes Redress Scheme

Richard Mumford continues to sit on the Appeals Panel of the Lambeth Children's Homes Redress Scheme. The Scheme exists to compensate children who suffered non-recent sexual, physical and/or psychological abuse whilst they were a resident at one of the Council's children's homes. Richard's role on the Appeals Panel includes deciding questions of eligibility under the Scheme, classification of injury, quantum of award and costs.

Withdrawing an admission of liability under CPR 14

Justin Levinson successfully prevented a local authority from withdrawing its admission of liability to a victim of child abuse**.** In 2012, a local authority admitted liability in negligence for failing to receive J into its care as a baby, as a result of which failure J suffered sexual abuse and neglect. The local authority caused the claim to be stayed for many years as it was said J was too damaged to undergo a medical examination.

During the period of the stay the law changed, providing the local authority with a probable defence. The circuit judge allowed the local authority to withdraw its admission. On appeal, the High Court Judge reversed the decision and refused permission to withdraw the admission. The Court of Appeal has given permission for a further appeal, which is pending. The case is significant as there is little appellate guidance on the correct principles to be applied when considering whether or not to allow an admission to be withdrawn under CPR 14.

Sports under scrutiny

Iain O'Donnell, instructed by Dino Nocivelli of Bolt Burdon Kemp, has successfully represented a number of football abuse survivors. Iain continues to represent other such survivors, in respect of whom he is currently instructed by Jordans Solicitors, Robsonshaw Solicitors, Enable Law, Slater & Gordon Solicitors and Verisona Law, amongst others. Following on from the #MeToo movement more sports professionals are now coming forward to disclose the sexual and physical abuse inflicted upon them whilst they were children with promising sporting careers.

IICSA Report into the Anglican Church released

The Independent Inquiry into Child Sexual Abuse (IICSA) has published its investigation report on the Anglican Church. It concludes that the safeguarding of church personnel was at times ignored to protect the repuation of the Church and its clergy and noted that senior Church leaders have apologised for its actions, recognising the 'profound and deeply shocking' findings.

A number of the mechanisms to protect survivors of abuse which had been argued for by **Iain O'Donnell** throughout the IICSA Anglican hearings, such as an externally enforced mandatory reporting law, were expressly considered in the Inquiry's investigation report and are now to be the subject of potential recommendations in IICSA's final report. This is due to be published after the conclusion of all of the Inquiry hearings next year. Iain O'Donnell has over the course of the last three years acted as lead counsel for the Slater & Gordon survivor groups, instructed by Richard Scorer, in the investigation conducted by IICSA into the Anglican Church.

Scottish Parliamentary hearing on commercial sexual exploitation

Sarabjit Singh QC addressed the Scottish Parliament's Cross-Party Group on Commercial Sexual Exploitation, on the subject of legislation concerning access to online pornography by children.

He spoke in particular about the UK government's failure to commence Part 3 of the Digital Economy Act 2017, whether the UK government's proposed online harms legislation fulfilled the aims of Part 3, and whether the Scottish Parliament had the legislative competence to introduce legislation to the effect of Part 3 in Scotland. Sarabjit identified that there is currently no legal obligation on

those who make pornography available online in the UK on a commercial basis to ensure that the pornography cannot be accessed by children, and that this represents a significant gap in the law as far as child protection is concerned. He fielded questions from the MSPs and others present, who were keen to do whatever they could to plug this gap in Scotland. Also addressing the Cross-Party Group were Kat Banyard, founder of UK Feminista, and John Carr OBE, Chair of the UK Children's Charities' Coalition on Internet Safety (CHIS).

Human Rights

Palestinian asylum case goes to Strasbourg

The Foreign and Commonwealth Office has instructed **David Manknell** to make the UK's submissions to the European Court of Human Rights in a case involving the return of a Palestinian asylum seeker to the Ein El Hilweh refugee camp in Lebanon. The Ein El Hilweh camp is the largest Palestinian refugee camp in Lebanon and provides accommodation under the auspices of the United Nations Relief and Works Agency for stateless Palestinians. The Applicant (known as H.A.) had his claims for asylum and Humanitarian Protection refused in the UK and was unsuccessful in his appeals, including to the Court of Appeal. H.A.'s application in Strasbourg contends that the UK will be in breach of its obligations under Article 3 of the ECHR by returning him to Lebanon. The ECtHR has set a timetable for submissions and is expected to make its decision on admissibility and merits later this year.

Supreme Court rules Shamima Begum will not be allowed to return to the UK

As widely reported, Shamima Begum left the UK as a schoolgirl aged 15 to join the Islamic State in Syria. There she married a Dutch fighter and gave birth to three children, none of whom survived. She was later found in a Syrian refugee camp by journalists. She challenged the decision to withdraw her British citizenship on various grounds, including that it left her stateless. SIAC found in favour of the Home Secretary on the preliminary issues including that she would not be left stateless, given her residual Bangladeshi nationality. The Court of Appeal found that the lack of access to a fair appeal process from her current location in a camp in northern Syria did not mean that her appeal against the withdrawal of citizenship had to be allowed, but it did require her to be given leave to enter the UK.

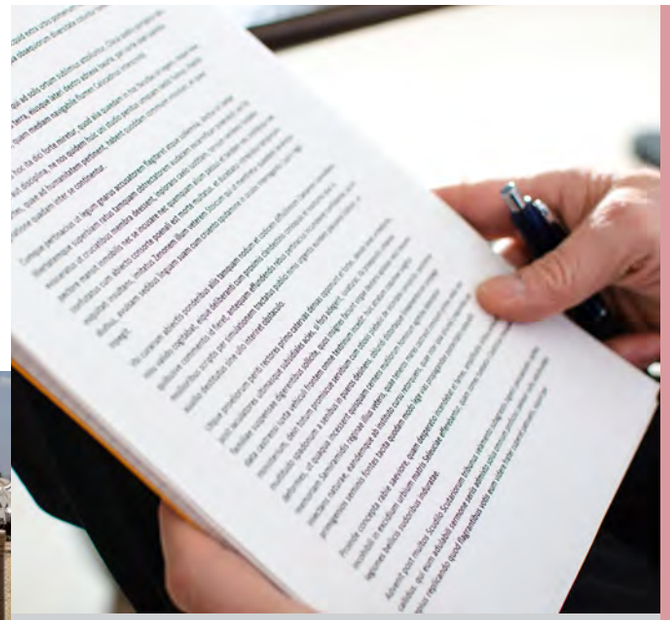
The Supreme Court overturned this decision, holding that the Home Secretary was not required to grant her leave to enter the UK to appeal against the withdrawal of her British citizenship. The substantive challenge to removal of her British Citizenship is ongoing**. Angus McCullough QC** acts as Special Advocate for Shamima Begum.

Success in deportation appeal for HIV positive Ghanaian

Jonathan Metzer successfully appeared (via video link) before the First-tier Tribunal at the appeal of a 62-year-old Ghanaian man who is HIV positive and suffering with resultant end stage kidney disease against the decision to remove him to Ghana.

On the basis of evidence including a report from his treating genitourinary consultant and a report concerning access to healthcare in Ghana, it was contended that there was a real risk that his removal would significantly reduce his life expectancy due to lack of access to the kidney and/or HIV therapy he was receiving in the UK.

The appeal was allowed under Article 3 (and Article 8) ECHR, following the principles set out in *Paposhvili v Belgium* [2017] Imm AR 867 and *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17. Jonathan was instructed by Kaweh Beheshtizadeh of Fadiga and Co.



EHRC investigation into Labour Party antisemitism

The Equality and Human Rights Commission (EHRC) published its much-anticipated report into the handling of antisemitism complaints by the Labour Party in October 2020. The finding that the Labour Party had acted unlawfully received significant attention, and the response of former leader Jeremy Corbyn to the report led to him being suspended from the party pending investigation. **Alasdair Henderson**, who currently serves as a Commissioner with the EHRC, was heavily involved in the EHRC's work and presented its findings to the media.

Environmental Law

Landmark climate change case at ECtHR

A groundbreaking case brought by six children and young people against Portugal and a number of other Council of Europe member states (*Duarte Agostinho and Others v Portugal and Others*) is due to be considered by the European Court of Human Rights. The Applicants claim that the Respondents are responsible for breaches of Articles 2, 8 and 14 of the Convention as a result of their contribution to climate change. **Emma-Louise Fenelon** is instructed by Hausfeld as part of the legal team advising Save the Children in their Third Party Intervention.

Animal Welfare Act Section 20 applications – civil or criminal?

The RSPCA sought policy advice on whether or not applications made in the criminal courts under section 20 of the AWA 2006 are in fact civil applications rather than criminal applications, and the procedure to be adopted across England and Wales in bringing such applications in relation to protected animals. **Iain O'Donnell** provided policy advice for the RSPCA to apply to its prosecutions and animal seizure procedures throughout the legal jurisdiction, which has been used as a guide for the RSPCA's national approach to section 20 applications to date.

Mistreatment of animals

Iain O'Donnell represents a local authority bringing multiple prosecutions against defendants for offences of cruelty and breach of duty of care in relation to the multiple equines found to be in their custody and control.
The case involves multiple expert witnesses and is anticipated to go to trial as soon as permitted.

Saving Askham Bog, a "cathedral of conservation"

The Environmental Law Foundation (ELF) has featured a case study on the recent Askham Bog Planning Inquiry, written by **Emma-Louise Fenelon**, on their website. Planning permission was sought to develop housing near Askham Bog, a site of special scientific interest on the outskirts of York described by Sir David Attenborough as "a cathedral of conservation" and "irreplaceable". **Emma-Louise Fenelon** and **Darragh Coffey** were instructed by ELF to represent the Yorkshire Wildlife Trust on a pro-bono basis. Over the course of a 12-day Inquiry, they successfully advocated for the preservation of this ancient site, home to 2,925 non microbial species, and the appeal was dismissed. Listen to experts discuss the reintroduction of species on episodes 126 and 127 of our podcast, Law Pod UK.

Pupillage

The first six months of our pupillage were in-person and non-practising. Our supervisors trained us in drafting, including pleadings, advices, skeletons, and schedules, and honed our research skills. On all our work, the supervisors provided detailed, constructive feedback, ensuring our continual development. Quarterly appraisals and a halfway interview with the head of pupillage also ensured we were progressing and helped to identify areas for improvement before we moved

on to new supervisors.

We had many opportunities to shadow members of Chambers – whether in court, conferences, or mediations. Early on, we shadowed a week-long clinical negligence trial regarding a hypoxic brain injury caused during the delivery of a baby. In public law, we saw evidence given in the Independent Inquiry into Child Sex Abuse and the judicial review of *Bell v Tavistock* [2020] EWHC 3274 on puberty blockers. We were also introduced to

inquests, such as one touching the death of a lipoedema patient following a niche form of liposuction surgery.

However, just before the practising stage of our pupillage started, Covid-19 struck. Suddenly we were working from home and could not see our supervisors in person. This meant developing new ways of establishing successful working relationships, including through daily calls from our supervisors about work, wellbeing, and more. A weekly Chambers tea was also set up to provide important "face time" with members of all seniorities.

Despite in-person court work largely pausing, our training continued. We were encouraged to work for other members, including on complex legal issues for silks, and we undertook a mock advocacy exercise to develop our oral advocacy.

Meanwhile, along with everyone else in Chambers, we learned new technology and adjusted to paperless working.

Fortunately, we received offers of tenancy. Although still unable to celebrate with friends and colleagues in person, we were warmly greeted with a virtual party and have been on our feet as tenants since September 2020. We look forward to meeting the next pupils.

Get to know more about life at 1COR, what we offer and meet our barristers at the annual Bar Council Pupillage Fair.

Alice Kuzmenko

Henry Tufnell

Law Pod UK & UK Human Rights Blog

UK Human Rights Blog: A (remote) year in review

The last year has seen a huge increase in readership of the UK Human Rights Blog. Fuelled by the variety of legal problems thrown up by the Covid-19 pandemic and the Government's response to it, almost 1.1 million people viewed the Blog's website in 2020. This was the highest number since 2013 and it is only the second time in the Blog's history that the 1 million barrier has been broken.

Out of the 10 most viewed new articles over the last 12 months from today, eight related to Coronavirus. Of these, **Rosalind English** wrote five – a huge achievement. This included the most popular of all, which was *Compulsory vaccination – the next step for Covid-19?* (November 2020).

But the interest in the Blog did not relate only to the pandemic. The seventh most popular new article on the site over the last 12 months was **Michael Paulin's** searing piece *Racism and the Rule of Law* (June 2020), written shortly after the killing of George Floyd in Minneapolis. Just below that was the ever-popular summary of the year (*10 cases that defined 2020* by Jonathan Metzer (24th December 2020). And just outside the top 10 was **Shaheen Rahman QC's** recent article *Sarah Everard vigil cancelled* (March 2021), which rocketed up to 11th place.

It was striking that the 2021 report of the Independent Reviewer of Terrorism Legislation, Jonathan Hall QC, referenced an article published on the UK Human Rights Blog in January 2020 (Criminalising the possession of "terrorist propaganda": by Sapan Maini-Thompson). This shows the reach of the Blog and its role as a respected legal resource.

India & the Rule of Law

2021 saw our first *Blogcast* when we invited our readers to join **Marina Wheeler QC** online as she discussed India & the Rule of Law with expert speakers Dr Mukulika Banerjee (London School of Economics and Political Science, LSE), Dr Shruti Kapila (Corpus Christi College, Cambridge) and Professor Tarunabh Khaitan (Wadham College, Oxford).

Visit our blog to subscribe now!

Law Pod UK races to hit 500,000 listens!

With the help of producer Simon Jarvis at Whistledown Studios, Law Pod UK continues to enjoy terrific listener success. Presenters **Rosalind English** and **Emma-Louise Fenelon** have had interviews with Joshua Rozenberg, Professor Catherine Barnard, ECtHR President Robert Spano, former South African Constitutional Court judge Kate O'Regan, Dame Philippa Whipple and David Anderson QC, collaborated with ALBA, HRLA, ELF and the PLP, been recommended by the Times, by the ICLR and been cited by Lord Hodge among others. Our most popular episodes this year have included **Gideon Barth** on secondary victim claims, **Robert Kellar QC** on AI in healthcare and **Martin Forde QC** on Systemic Racial Inequality. Listen on Spotify, Apple Podcasts, Audioboom, Acast, Podbean or your favourite podcast platform.

Outreach

1COR takes outreach work online

Despite the challenges posed by the pandemic this year, members of 1 Crown Office Row have worked harder than ever to promote social mobility and increase diversity at the Bar.

To illustrate just some of the online work we have done this year with our outreach partner, the Sutton Trust:

- 22 members took part in remote outreach sessions soon after the students' planned Easter work experience placements were cancelled during lockdown.
- A further 21 members supported Sutton Trust's online conference in July, providing a range of pre-recorded and live sessions, including sessions on criminal practice, family law, human rights and clinical negligence. We spoke to the students about self-confidence, took part in an advocacy masterclass and delivered speed networking and virtual mentoring.
- In February, three members provided training in advocacy skills and witness handling, helping students to prepare for a mock trial, then watching and judging the session and giving feedback.
- Four members delivered a live session in April on Impostor Syndrome, discussing their own experience and sharing tactics for developing confidence.

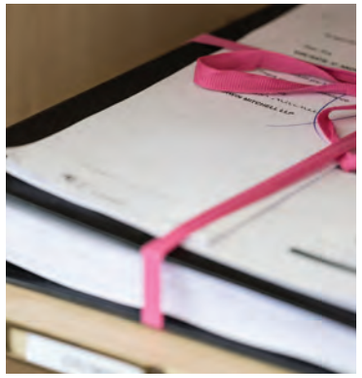
The Pathways to Law programme, arranged by the Sutton Trust, aims to widen access to the legal profession, working with 16-18 year olds from backgrounds poorly represented in the legal profession. We have been delighted to continue running virtual workshops and events with the Sutton Trust this year.

Alongside our work with Sutton Trust, members have taken part in virtual 'Schools Day' sessions at Inner Temple for 16-18 years olds, including Q&A panels, workshops, and advocacy exercises. We are delighted to be developing our newest outreach partnership, with K+ at Kings College, to support the young people within the programme who dream of becoming barristers.

Inclusion Week 2020

Head of Outreach **Jo Moore** discussed 1COR's outreach work in social mobility, E&D and inclusion in a keynote speech to the Diversity Network's "Inclusion 2020" event in December. Jo shared practical ways to widen access to the Bar and, building on 1 Crown Office Row's outreach experiences, gave advice and tips to other legal professionals wishing to promote social mobility and ensure diversity in the profession.

Law Summit: Widening Access to the Bar



We welcome any feedback you would like to give us:

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Meet the Editorial Team

Martin Downs

Thomas Beamont

Darragh Coffey

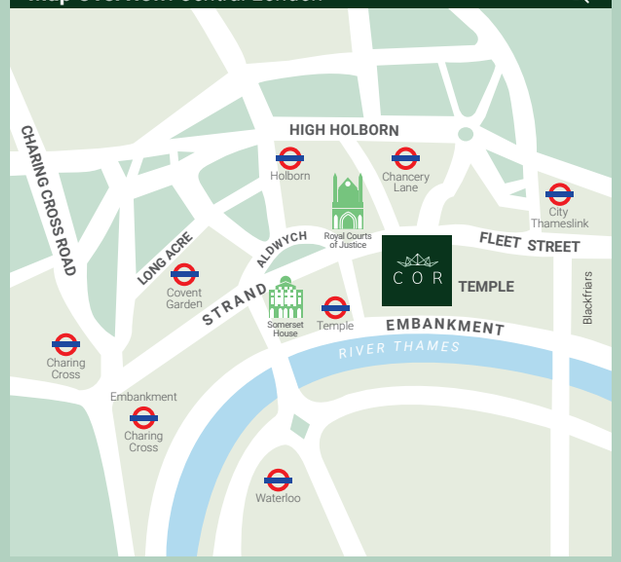
Alice Kuzmenko

Olivia Kaplan

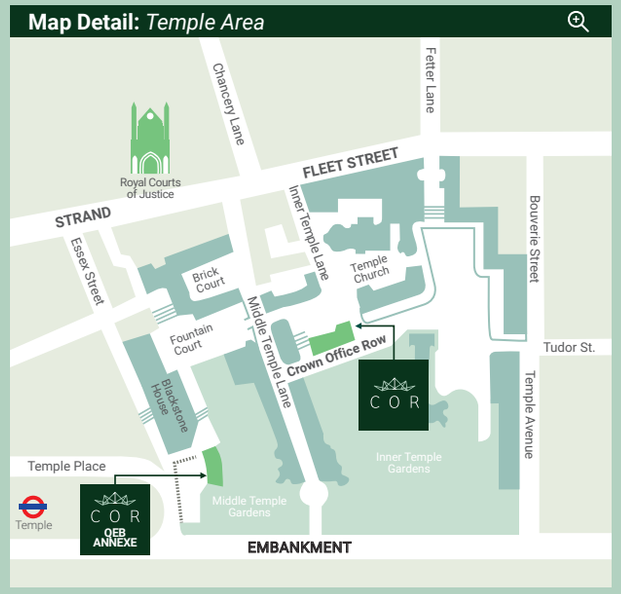
Subscribe to our Quarterly Medical Law Review (QMLR)
by **emailing medlaw@1cor.com** or by visiting **www.1corqmlr.com**

Where we are

Map Overview: *Central London*



Map Detail: *Temple Area*



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