

InBrief

The Journal of the
Northern Circuit of
the Bar

April 2021

Life as a Pandemic Pupil

Random Access Lottery

Earth Day 2021

The European Circuit of the Bar



Leader's Column

Lisa Roberts QC, Leader of the Northern Circuit

Dear Circuit,

When I wrote my column for December's In Brief I expressed a hope that at some point in 2021 we may receive a gift-wrapped vaccine. It was, at that stage, no more than that – a hope. Few could have predicted, and I certainly didn't, the extraordinary collective effort of a nation in vaccinating as many people as we now have done. At this rate, and with a plan which sees us 're-opening for business' on June 21st, it will hopefully be a Midsummer and beyond when, once more, we may break bread together. I for one quite fancy a bit of a do.

January saw us once more plunged into Lockdown, but this time very much with a plan and a system in place. A rapid assimilation of the ability of our courts and practitioners to keep at it safely, coupled with a can-do attitude for which, nationally, we are picking up something of a rep – in a good way – meant that we hardly missed a beat. Well done us. We now have more Nightingales than any other Circuit and the arrival soon of a Supercourt for Crown Square, which will enable multi-handed cases to be heard without 'knocking out' several other courts in the process. Those areas of practice which, at the beginning of 'this', were entirely paper-based and functioned only on an in-person basis, have now reinvented themselves (well, actually, we did the reinventing: go us!) and are electronic and remote. It may not suit everyone, and it may not be a forever alternative, but for now it is working. Which means you are. Which is good. As to the legacy of remote hearings, who can say. In the past fortnight I have been to Aylesbury and 'been' to High Wycombe. The latter was certainly more convenient, but the former was certainly more fun. The hybrid set up of the Inquiry in which I am currently involved seems to be a sensible compromise. Although the jury is out on why some curate their backdrop with Capodimonte and

watercolours of long deceased monarchs. I've curated mine with a blank wall. Enough said. Record numbers of marvellous Circuiteers have given their time and energy this term to participate in Circuit's training of pupils and new practitioners. The feedback from these events says it all: we have many happy and well-informed pupils on Circuit who have benefitted from the expertise and guidance of Circuit's trainers. Some of whom are many years into practice, some not long out of pupillage themselves and some who have done quite well for themselves and, it follows, might have picked up a thing or two over the years – step forward Lord Justice Holroyde. My sincere thanks to you all, in particular to David Temkin QC, Chris Melton QC, Jaime Hamilton QC and Darryl Allen QC who have spearheaded the training this term. All of it remote, but none of it the poorer for it. There is a widely held view that training on Circuit is at an all time high.

The Hardship Fund has now extended its terms and is open to all on Circuit who are suffering genuine and serious financial hardship. This is a fund for life and not just for Covid. Please see the website and the article by Circuit Treasurer, Mark Harper QC to whom I am very grateful.

We continue to elect established practitioners to Circuit – dozens of you! – and are delighted that you have finally realised what Circuit is all about and why you should be part of it. Welcome: about time too! Such Zoom Messes will continue for now. Please contact Susan or Clare should you wish to be elected.

The work of the Race Working Group continues, as does that of our EDSM officer, Lena Amartey. My thanks to Lena, to Winston Hunter QC and the other members of the working group for the extraordinary hard work that has been undertaken these past 9 months and to the hundreds of you on Circuit who responded to the survey. The

Executive is to meet again with the group later this month for an update and to be informed of next steps.

The recent Executive committee meeting occupied much of the evening, but was informative and productive. I am indebted to the enthusiastic volunteers who comprise its membership. As I am to the continued support of the Circuit Task Force. The energetic commitment of these generous-hearted individuals is impressive. So too their ability, quietly, to facilitate the smooth-running of Circuit. These are the unsung grafters, tirelessly working behind the scenes, so as to allow for the headlines that are delivered to you in messages like these. The ball can only hit the back of the net if the team set it up that way. Bit like having Paul Scholes on the pitch. Only with fewer tackles. That you may not notice these heroic volunteers is part of their genius. But that you should appreciate them is a must.

This term we said 'À la prochaine' to HHJ Bernard Lever, stalwart of Minshull Street and author of THE longest farewell email to Circuit. It even contained some law. First time for everything. Bernard is an old friend and I very much look forward to celebrating at Mess his long and legendary career.

But very recently Circuit was rocked by the dreadful news of the sudden death of our friend Jeremy Grout-Smith. Many of Jeremy's old friends from Peel Court were in touch. You summed him up beautifully. A decent, kind, old-fashioned man of great integrity and utterly devoted to his family. He will be greatly missed also by his many friends at CPS Lancashire, where Jeremy had worked for several years. Our sincere condolences to Jeremy's wife and his two daughters.

We also said farewell to, and extend our condolences to the families and friends of, HH Mary Holt, Circuit Judge until 1995 and



David Blythin of Linenhall Chambers.

It's been a tough 12 months. But we are nearly there, folks. Grey and rainy though it is as I write this, lighter, jollier more 'normal' times are just around the corner. When I next file copy (in July) I hope not even to mention the C word.

To mark International Women's Day recently women were asked to write how and what they 'choose to challenge'. I read the inspirational messages from my friends at the Bar and felt enormously proud of the championing of women by this Circuit since the days of my predecessor Rose Heilbron QC.

When I took up this role in January 2020 I did so in the hope that I would be the first of many women this century to lead our Circuit. For that, however, we need more female silks on Circuit. The deadline for applications approaches. Be bold and ambitious.

Onwards,
Lisa

Lisa Roberts QC
Leader

From the Editor



Prudence Beaumont, Deans Court Chambers

And just like that we move seamlessly from taste-testing mince pies (winner: neighbour's homemade) to hot cross buns (current front-runner: M&S) in our household. These culinary delights bring with them the taste of spring and promise of brighter times.

This edition reminds us of the relentless hard-work and support offered by Circuit. The unrelenting stamina of members of Circuit in their commitment to support others is nothing short of extraordinary and we extend our thanks to them. The details of the Hardship Fund and the extension of its terms appears on page 7.

The positivity of pupils throughout the pandemic shines on page 7 and the achievements of our recently appointed silks provide inspiration to us all. The celebrations are stacking up for what I can only assume will be quite the party when we are able to meet again!

The last 12 months have not been without their challenges. Circuit sadly bid farewell to a number of members and their obituaries appear on pages 10 & 11. The importance of well-being is highlighted as ever more pressing and the advice on page 15 is a useful reminder of practical solutions to assist us all. It also provides the perfect excuse to spend some more time enjoying the springtime sunshine as we contemplate the changes that are scheduled to unfold over the next few months as we emerge from the hibernation of lockdown.

It appears that it is not too long until we can say goodbye to meal kits [page 14] (hurrah!), the constraints of remote working with its tormenting issues [page 9] and be reunited in person with one another.

Until then stay safe.

Prudence Beaumont
Editor

In Brief Needs You

Has your Chambers featured in the Legal 500?

Do you have something to share with other members of the Circuit?

Have you taken part in a specialist Bar event?

Have you participated in an interesting or unusual case?

Do you have a new Tenant?

Have you raised funds for a local charity?

Share your news with other members of the Northern Circuit.

All members' contributions to In Brief warmly welcomed.

Please send your article (and photos with captions where appropriate) to the Editor, Prudence Beaumont
beaumont@deanscourt.co.uk

Photographs should be provided in the highest resolution possible to ensure good reproduction

Deadlines for 2021

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"I donate to Advocate because the past year has demonstrated more than ever our capacity as a profession to step in and help those in need. Let each of us harness our knowledge and expertise and continue to make justice accessible for all."

Lisa Roberts QC, Leader of the Northern Circuit

Please support access to justice through Advocate, the Bar's pro bono charity

The last page of the practising certificate renewal form presents an opportunity to donate to Advocate (formerly the Bar Pro Bono Unit). We can never be a substitute for legal aid, but through us barristers provide a lifeline for many vulnerable applicants who desperately need help and would otherwise navigate the court process alone.

We know that 2020 was a very tough year for many at the Bar, but to the extent you can, please support your national pro bono charity. The impact of your donation is vital because it makes up nearly 50% of our funding.

Last year, through our core casework alone, we helped people over 1,400 times. Thanks to donations from this initiative, we could reunite families, compensate victims of unfair dismissal, secure asylum for desperate refugees, reclaim lost benefits and tackle many more injustices.

We were created by the Bar and we are sustained by the Bar. Please help Advocate work with barristers to provide life-changing support to those in greatest need.

Thank you.

New Silks on Circuit

Amongst the new silks on the Northern Circuit who have now received their letters patent are Ed Morgan of 9 St John St, and Sophie Cartwright of Deans Court Chambers. Whilst all the new silks are to be congratulated, it is an even more notable moment for Ed and Sophie, since they are husband and wife. Whilst this circuit has had husband and wife simultaneous appointments before, both in relation to Silk and indeed the High Court Bench, it is still a noteworthy achievement. Sophie has a high profile practice, as evidenced by her appointment as Counsel to the Inquiry in respect of the Manchester Arena Inquiry, which is about as high profile an inquiry as you can get. Ed has a stellar practice principally concerning employment and canon law and associated fields. Both exemplify the Northern Circuit approach, as most recently referred to by Sir Brian Leveson PC at the congratulatory dinner for himself and Mr Justice Freedman, of making sure that they know the case at least as well as anyone else. I am sure all circuit members will join in congratulating Ed and Sophie on this notable achievement.

Michael Booth QC

SFO Panel Appointments

The SFO launched a recruitment round in 2020 for their panel of specialist prosecution counsel. This list is often selected from barristers in London or the South Eastern Circuit and involves working on some of the most complex and large scale fraud cases from the UK, and often with an international focus.

This round, however, the SFO picked 14 barristers from a total of about 194 from circuits out of the SE - 6 from the Northern Circuit

Leeds 3 (QC and A Panel)
Manchester 6
Southampton 1 (A Panel)
Birmingham 2 (B Panel)
Bristol 2 (B Panel)

Northern Circuit

QC Panel

Alistair Webster QC - Lincoln House Chambers

C Panel

Jane Greenhalgh - Exchange Chambers
Marianne Alton - Lincoln House Chambers
Matthew Howarth - Lincoln House Chambers
Lee Hughes - Lincoln House Chambers
Anam Khan - Lincoln House Chambers

Top Planning Silk, Christopher Katkowski QC joins Kings Chambers

Christopher Katkowski QC is joining leading Manchester barristers' set Kings Chambers as a member of the Planning and Environmental Group.

Chris – universally known as "Kit Kat" – is ranked as the top silk for planning in the most recent Planning Magazine Survey for Top Rated Planning Silks, an accolade he has achieved a record 11 times.

Planning Magazine says of Chris that he "combines huge intellect with an unrivalled work ethic and a keen sense of humour" he has "the utmost charm" and "commands the highest respect of judges, inspectors, his peers, clients and even third parties" being "popular, approachable and successful".

Head of Chambers, Paul G Tucker QC said, "This is the best possible news for the planning team at Kings Chambers and the whole of Chambers welcomes Chris joining us."



Christopher Katkowski

Chris commented, "I'm really looking forward to carrying on doing the job that I love so much as a planning QC from my new home at Kings Chambers."

Chris will be clerked by Chief Clerk, Gary Smith and Senior Clerk, Mark Ronson.

Kings Chambers operates out of Chambers in Manchester, Leeds and Birmingham and boasts 124 members including 22 silks.

Expert Employment Law barrister Kashif Ali becomes published author

A PRACTICAL GUIDE TO RELIGION AND BELIEF DISCRIMINATION CLAIMS IN THE WORKPLACE

A barrister from St John's Buildings' chambers has written a book which explores the requirements and challenges of bringing workplace discrimination claims on grounds of religion and belief under the Equality Act 2010.

Kashif Ali is an Employment law specialist and fully trained mediator with over 15 years' experience. He regularly acts for both respondents and claimants, and often represents a number of English and Welsh local authorities. He has extensive experience of difficult unfair dismissal claims, and complex discrimination and whistleblowing claims.

His book "A Practical Guide to Religion and Belief Discrimination Claims in the Workplace" has been published by Law Brief Publishing, a specialist publishing house which provides practical guides for the profession and a range of legal newsletters.

Kashif says "I am regularly involved with

claims of discrimination in the workplace, and these can often have a basis in religion. I wrote the book because I was aware of the need to better understand and accommodate workplace issues to do with religious practices, and people's beliefs.

"I wanted to produce a practical guide designed to help both those bringing such claims and defending such claims. I found myself with some extra time during the first national lockdown and decided to write the book as there was no single, practical guide out there dealing with just religion and belief discrimination claims.

"I aimed the book at lawyers, law students, HR professionals and litigants in person. It has been written in a way which is accessible to a whole spectrum of Employment Tribunal users. The book brings together into one text all the main legislative provisions and decided cases in this area of law."

Priced at £29.99, the book is available at Law Brief Publishing and on Amazon



Kashif Ali



Due to an increasing workload, Kenworthy's Chambers are looking to recruit Practitioners of 5+ years call and above to compliment our established Teams and assist with the expansion of the following areas:

- Crime - Family & Finance (Both Private & Public Children Law and Ancillary Relief) - Civil (Personal Injury)
- Civil (Costs) - Commercial & Chancery - Employment - Immigration, Asylum & Nationality
- Inquests (Particularly Article 2 Experience)

Whilst an established practitioner is preferred, consideration would also be given to those developing a practice in these areas.

Kenworthy's Chambers is a progressive set of Chambers, striving to ensure access to justice for all, with professionalism and excellence as the driving force to everything we do. Kenworthy's are ranked in Chambers & Partners and The Legal 500 with members ranked in most areas we are looking to recruit in.

**Please direct your application to maria@kenworthys.co.uk or for further information.
All enquiries will be treated in the strictest of confidence.**

WWW.KENWORTHYSBARRISTERS.CO.UK

Lateral flow testing at Manchester Civil Justice Centre

Why are we having test sites within our court building?

HMCTS is very keen to support The Department of Health & Social Care's national testing programme to identify individuals within the population who are positive for COVID-19 but do not present symptoms. Identifying asymptomatic positive cases and informing them to self-isolate will reduce the spread of the virus. There are many public sector departments contributing to the national public health imperative to reduce the spread of Covid-19 and we want to explore how effective asymptomatic testing will be in our settings.

Lateral flow testing will supplement our existing suite of Covid secure measures. Testing asymptomatic individuals will help to control the impact of Covid-19 on court hearings and provide additional reassurance to the public that our buildings are safe.

What are we doing?

The test site has been established in accordance with DHSC standard operating procedures and guidance. All staff, judiciary, contractors, professional and public court users will be offered the opportunity to book a voluntary lateral flow test (LFT).

The tests will only be available to those who are attending the building for a scheduled hearing (this will not be a public test centre and we do not anticipate any footfall increase) and those not showing any symptoms. The access rules to the court and the Covid-secure measures will not be relaxed - in particular, anyone symptomatic will not be granted access to the building as is currently the case. Those testing negative will still be required to follow the "hands, space, face" guidance.

Judiciary, staff and contractors (touchpoint cleaners and security) in public facing roles will be offered a test twice per week, this is because these roles have the highest risk of causing significant operational disruption in cases where the individual tests positive for Covid-19. It's not practical for us to do this for everyone, but we expect that all other staff, professional and public court users who have business in the court will be able to access a test in the course of the day, should they wish to do so.

How will it affect you?

You will be offered the opportunity to book a test slot. You must not eat or drink for at least 30 minutes prior to having your test. When you attend the test site, you will be asked to register your details on the NHS portal using your smartphone or a registration device, this includes providing your consent to take the test. The Data Privacy Notice explains how NHS Test and Trace will use your data

(<https://www.gov.uk/government/publications/coronaviruscovid-19-testing-privacy-information>).

The test will be self-administered using a lateral flow device testing kit; they are quick and easy: they are taken using a swab of your throat and/or nose and shouldn't be painful.

Trained personnel specifically recruited to manage the testing site will supervise those taking a test and process the results.

All staff (including cleaners) working within the testing site will be wearing PPE at all times.

After you have taken your test, you will be free to circulate around the court building in accordance with your purpose for being in the building; our existing Covid-secure measures will mitigate against the risk of transmission. This approach is in line with the national testing programme. All our sites are Covid-secure – and are not close contact settings – and following the hands-space-face guidance remains the most important thing that we can all do to prevent the spread of the virus.

Your result will be communicated to you after 30 minutes by NHS Test & Trace via text message and/or an e-mail using the contact details recorded during the registration process. The wording of the result text will reflect the national guidance published by the NHS. Please be aware that due to the anonymous process (results are processed using a barcode) we will not be made aware of your test result.

The result of the test is valid at the point in time that the test is taken. Rapid testing does not confirm that an individual has Covid-19, it will give an indication whether an individual is infectious.

If you test negative, then the viral load is not indicative of being infectious.

If you test positive following an LFT you should notify a senior person on site. You will be required to leave the court building and return home quickly and directly. You must follow the Stay at home: guidance for households with possible or confirmed coronavirus (COVID-19) infection and self-isolate.

How can I book a test?

When you arrive at the court for your hearing, please go to the test site on Floor 1, where you will be advised of the available slots for the day.

Where to get more information

If you would like further information regarding the testing regime, please contact: mcrjctfm@justice.gov.uk



Christin Hume on Unsplash

Life as a Pandemic Pupil

Like most people before they start pupillage, I had a specific idea of what my year was going to look like. Granted, it was wholly fashioned on snippets of life at the Bar given to me by watching *Suits*, seeing Martha Costello in *Silk* and doing week-long mini-pupillages. I had visions of myself in fantastic heels, striding through court behind my pupil supervisor, holding an overly-expensive hot drink in one hand and a suitcase full of papers in the other. Now, it's two years on since that teary phone call during which I was given my pupillage offer (disclaimer: I was the teary one, not the person offering me pupillage), and I've discovered that my expectations weren't entirely wrong. It's just that now we're almost a year on in the wake of COVID-19, I'm swapping the heels for slippers, and instead of striding through court, I'm frantically texting my pupil supervisor to see if she's still in the waiting room on Microsoft Teams. I'm keeping the expensive hot drinks though – now I'm finally on a salary more than minimum wage, everything's shut, so what else do I have to spend it on?

It's easy to make light of a situation that we've all faced as part of our daily lives for close to 12 months, but it wasn't an easy adjustment to make. From speaking to other pupils, social anxiety comes part and parcel of a job which feels a lot like a year-long interview. This isn't helped by having to do everything remotely, not being able to read social cues, and worrying we might miss crucial details because of a

bad internet connection. A remote first six also rids us of the opportunity of the all-important conversations with our supervisors in the car on the way back from a hearing, or listening to the post-match analysis in the advocates' room. It's also been hard to get our faces known and our names out there – our job relies on a degree of selling ourselves and fostering connections, which is difficult to do behind a screen.

It really isn't all doom and gloom, though. Our generation of pupils are in the best possible position to go through a virtual pupillage. I think that I'm able to spend more time with my supervisor than I would have done ordinarily, given how easy it is to hop off a hearing, and then straight onto another link to discuss. Social events like quizzes over Zoom have been a great way to break the ice without feeling the pressure to keep up appearances for an entire evening. The best part for me is that attending a hearing in court now feels like even more of a treat than it used to. A remote pupillage may be tough, but everyone I've spoken to has loved their experience so far. If we're enjoying it this much, I can't wait to see what life at the Bar will be like when things go back to normal.

Olivia Choudhury
Deans Court Chambers

Circuit Hardship Fund: Important Amendment

At a recent Circuit Executive Committee meeting we resolved to alter the rules of the Fund so that it is open to any member of or pupil registered on Circuit who is suffering genuine and serious financial hardship as opposed to those who were suffering genuine, serious and unexpected financial hardship as a result of the restrictions imposed consequential upon the pandemic.

The Circuit will consider each year what sum it ought to contribute to the Fund and it will continue to be open to receive external donations as before.

We believe that this will enable the Circuit to provide valuable support to those of our membership who find themselves in financial need, now and in the future.

The updated Rules and application form can be found on the website and are available from the Circuit Office. All applications are treated in the strictest confidence.

Mark Harper QC
Treasurer

Too Little, Too Late: Masten v London Britannia Hotel Ltd [2020] EWHC B31 [Costs]

Margaret McDonald, Head of Civil & Costs at Kenworthy's Chambers, instructed by Pennington Manches Cooper LLP, successfully represented the Claimant in **Masten v London Britannia Hotel Ltd [2020] EWHC B31 [Costs]** in the Senior Courts Cost Office.

In Masten v London Britannia Hotel Ltd [2020] EWHC B31 [Costs] Master Leonard refused to set aside a default costs certificate. He stated that if a party cannot comply with a time limit the only prudent course of action is to apply, in advance, for an extension. To allow the time limit to pass, and any sanction to be effective, is a dangerous strategy. The setting aside of a default costs certificate is not a routine administrative matter.

The substantive action arises from an accident at the Defendant's Hotel on 16/06/16. The Claimant was staying at the Hotel in the course of her employment as a Presidential Appointee assigned as an Executive Assistant to the Presidential Envoy & US Ambassador to Iraq. The Claimant was working at her desk when she pushed back her chair to stand up when the front legs of the chairs came away from the main frame & she fell and banged her head rendering her unconscious. The case settled at a Joint Settlement Meeting on **25/07/19** for **US\$450,000**.

On **03/01/20** the claimant served a Notice of Commencement of a Bill of Costs in the sum of **£363,549.28**. Points of Dispute were due on 24/01/20. The parties agreed to extend time for service of the Points of Dispute to **14/02/20**. A second extension was agreed with the PODs being due on **28/02/20** but this was not complied with.

Having warned the Defendant that the time limit had expired the Claimant applied for a Default Costs Certificate which was finally granted on **10/06/20**.

An Application to Set Aside the Default Costs Certificate was finally issued on **26/08/20**. The explanation for the delay was excessive workload and unsuccessful delegation.

In a detailed & considered reserved Judgment Master Leonard refused to set aside the Default Costs Certificate.

He found that the three-stage test in **Denton** applied to an Applications to set aside a Default Costs Certificate. In relation to the first stage the Defendant accepted that the default was serious and significant. With regard to the second stage the Defendant conceded that there was no good reason for it.

The third stage was whether it would be just, bearing in mind all the circumstances of the case, to set the DCC aside. Master Leonard dealt with this at Paragraphs [59] – [63] stating:

*59. In exercising any power conferred by the Civil Procedure Rules, including the power to set aside a DCC, **CPR 1.2** requires the court to give effect to the overriding objective at **CPR 1.1**, which requires that cases be dealt with justly and at proportionate cost. That expressly, includes ensuring that cases are dealt with expeditiously and fairly, and enforcing compliance with rules, practice directions and orders.*

*60. It seems to me that this is the primary reason why (although this is not, strictly speaking, an application for relief from sanctions) the **Denton** criteria must have a bearing on this application. **CPR 3.9**, in referring to the need for litigation to be conducted efficiently, and the need to enforce compliance with rules, practice directions and orders,*

repeats key provisions of the overriding objective. Denton offers essential guidance on how those provisions are to be applied.

*61. I also bear in mind that **CPR 47.9(3)** does impose a sanction on a paying party that serves points of dispute late, albeit in time to prevent the issue of a default costs certificate. That party may not be heard further in the detailed assessment proceedings unless the court gives permission.*

*62. As I read it, that rule does not prevent reliance on the points of dispute themselves: otherwise, **CPR 47.9(5)** would not prevent the issue of a default costs certificate in those circumstances. Nor do I believe that **CPR 47.9(3)** is meant to have any application once a DCC has been issued: in such circumstances, points of dispute cannot be served until the DCC has been set aside, and if that happens the court will provide for the points of dispute to be served and for the detailed assessment to proceed in the usual way.*

*63. The rule does, nonetheless, impose an automatic sanction, and where it applies the late-serving party will have to meet the **Denton** criteria in order to be heard. Even given that the penalty imposed by **CPR 47.9(3)** is less than that represented by a DCC, it seems to me that a party who serves points of dispute in time to prevent the issue of a DCC should not, on order to obtain relief, have to meet a stricter test than a party who fails to do so.*

Master Leonard concluded at Paragraphs [73] – [79]

73. In summary, default and the issue of a DCC seems to have been accepted as a fait accompli and the application to set aside treated as a routine administrative matter, rather than being prioritised sufficiently to prevent its going astray, as it did. It was partly the result of subsequent unfortunate circumstances that the default extended as long as it did, but all of that was preventable, and not enough was done to prevent it.

74. Had the Claimant received the Points of Dispute by the end of February, as agreed, she would have been in a position to request a detailed assessment hearing with a view to the assessment being completed within about 6 months. I appreciate that it is possible that this might not have been done promptly: the timing of the DCC suggests that the Claimant's representatives were having their own problems. It is not, however, for me to speculate on that. The Claimant would have had a right to expect that her representatives would request a hearing with reasonable speed, and I have no good reason to suppose that they would not have done so.

*75. By the time Mr Gaskell contacted the Claimant's representatives to invite them to agree to setting aside the DCC, over four months had passed. The Claimant was not only being asked to relinquish the DCC but to accept an avoidable delay of over four months to a process that should have been completed in six. One can hardly be surprised that she refused. **That avoidable delay, and the way in which it was allowed to come about, have led me to the conclusion that I should refuse this application.***

76. It is not an answer to that to say that the Claimant will be compensated by receiving interest on the unpaid part of her costs. She should not be kept out of her money for any longer than is necessary and she is entitled to a hearing as soon as reasonably possible. A delay of over four months is not, in all the circumstances, acceptable given the prejudice to the Defendant and the need for the

expeditious administration of justice.

77. I have given some thought to whether it is fair to count against the Defendant the fact that even had the application been filed on 15 July, it would have been unlikely to come before me for hearing until the six months in which the Claimant might have hoped for a hearing had passed (I leave out of the reckoning both the delay in filing the application after 15 July, which is not the Defendant's fault, and the time it has taken me to prepare this judgment). I tend to treat the period needed to list and hear a set-aside application as neutral, even where, as here, the application has been reasonably resisted. In the circumstances of this case, I think that it is fair to take it into account, because the conduct of the case on the Defendant's behalf made the issue of an application, and the attendant delay, inevitable. Certainly, from the Claimant's point of view it adds to the prejudice.

78. I appreciate that refusal to set aside will almost certainly result in the Claimant recovering more than would have been the case had there been a detailed assessment, but as I have observed that may not be decisive. One must look at all the circumstances. Both the failure to serve points of dispute within the agreed period and the subsequent mismanagement of the file were, by an objective standard, negligent. The loss of the opportunity to challenge the bill is the result of that negligence. DCCs are often entered as a result of negligent omission, and

that in itself need by no means be fatal to an application to set aside, but in my view, there are cases in which the application of the overriding objective and the balance of fairness require that the consequences of negligence must be borne by the negligent party. This is one of them.

79. It seems to me that if I am to place appropriate weight on the importance of dealing with cases expeditiously, of complying with rules, practice directions and orders, and of the inevitable prejudice to the Claimant on setting aside the DCC, this application must be refused.'

Prior to **Masten** there was a widely held belief that it was easy to set aside a Default Costs Certificate. Master Leonard has made it crystal clear that this is not the case. An Application to set aside a Default Costs Certificate must be prioritised, must be made promptly and must comply with the three-stage test in *Denton*.

Let Paying Parties beware!

Find a full transcript of the Judgment [here](#).

Random Access Lottery

One of my earliest memories is going to see the Disney cartoon, *The Sorcerer's Apprentice*. The hapless apprentice, accidentally experimenting with magic, triggers an uncontrollable army of extra brushes and buckets. He has unleashed an ever increasing force over which he realises rapidly he has no control. I find it interesting that many of the significant mathematicians of the early 20th Century were drawn to Disney cartoons. Kurt Gödel for example when not grappling with the Entscheidungsproblem was obsessed with *Snow White and the Seven Dwarfs*. So keen on the same film was Alan Turing that he was occasionally heard muttering to himself the Wicked Queen's line, "Dip the apple in the brew, let the sleeping death seep through". In February 1935 mathematical physicist Paul Dirac spent an entire day at a Mickey Mouse cartoon film convention in Boston which he somehow omitted to mention to fellow academics at his college in Cambridge. Was it the ability of these cartoons to depict effortless multiplication which possibly appealed to these mathematical giants whose efforts played a part in shaping the digital world now so familiar to us? Of course, other theories could be brought forward about the attraction of cartoons to such psyches with their possible, although probably entirely, unproven autistic tendencies. Minds of the early to mid-20th Century dreamed for us the technological world we now inhabit; and our digital powers are capable of producing in real time factors of multiplication which were once a fantasy of animation studios in a hot, dusty state, close to the Pacific Ocean.

What has been the cost? Nearly every week now I receive by multiple emails files of papers totalling between 2,000 and 3,000 pages. Sometimes the email carapaces are coiled one within another. Their documentary contents on occasion seem almost to have been malevolently shuffled, perhaps by a random simian army, but the resulting work of Shakespearean quality, of which such a host is legendarily capable, never appears alongside the endless logs and records.

It is difficult not to be nostalgic about an earlier period. In fact not that long ago one could expect to receive a set of papers upon which a rational being had applied thought, and which had been organised into some semblance of order, increasingly not so now. It seems that the exchange of documents has become akin to the appreciation of Impressionist Art. One is not meant to look at the



detail, but only to enjoy the overall effect. One day of course I and all of us will miss that one document that did in fact have crucial, pivotal significance in a case and we will look foolish. It is tempting to say that that will not be our fault but in fact it may be in law cf eg first instance criticisms of counsel in *Locke v Camberwell DHA* (CA 1991 WL 838455.) Those instructing us must, repeat must, understand that if they continue to adopt this form of documentary distribution it will eventually impoverish us all.

Timothy Trotman
Deans Court Chambers

Her Honour Mary Holt

I had a soft spot for Her Honour Mary Holt. I appeared before her many times in Preston Crown Court and less frequently in Preston and Blackpool County Courts.

Mary had several qualities and quirks not always present in those who have followed her. She sat exactly on time whatever the circumstance and always sat a very full day. Her long hand note was as reliable as any Court stenographer's. Decorum mattered. As David Sumner, then a senior junior, addressed her, hands in pocket, he was firmly, but courteously, told to remove them and woe betide any female advocate who wore decorative jewelry. Beverly Lunt is an authority on the topic.

Mary's summings up involved a verbatim recital of every relevant specimen direction, followed by a verbatim recital of the whole of the evidence and counsel's speeches. Her County Court judgments were no less full. Her red lines in the Crown Court were readily proclaimed and invariably observed. Burglars were imprisoned without exception as were those who breached probation, bail and suspended sentences. Breach of trust mattered. Fraudsters had drawn the wrong Judge. Mary's chancery background and her steely determination to solve any problem invariably proved their undoing.

Many will recollect Mary's lunchtime walks along Blackpool promenade or Lancaster Road in Preston with her accompanying police officer some ten yards in arrears. Younger members of the Circuit may query the availability of an officer to attend upon a Judge during a daily walk. Every courtroom in the land had a constable deployed there. On my very first day sitting I was accompanied from the court on London Road to St Georges Hall at lunchtime by a constable, albeit by my side.

My most amusing recollection of Her Honour is of a burglary trial in which a begloved intruder had been arrested in the ballroom of a stately home in the Ribble Valley. His unusual defence was that he had entered the home in order to practice his breakdancing and his glove was in imitation of his idol Michael Jackson. I rather thought that Judge Holt might ask who Michael Jackson was, but having resisted that temptation, she did ask "what is breakdancing?" The Defendant saw his opportunity and asked if he could demonstrate. He then performed a stylish act across the courtroom floor to the delight and applause of the jury leading to his subsequent acquittal.

Regular attenders at Amounderness House soon came to appreciate her absolute dedication to duty. I sometimes detected a wistful air of intellectual detachment. Nothing in her past had prepared Mary for the thankless task of resolving the daily tribulations of the Grange Park Estate in Blackpool. Girton College Cambridge, the Chancery Bar, 4 years in Parliament representing Preston North, snatched from her grasp by a handful of votes must have created hope, if not expectation, of a life elsewhere, the Home Office perhaps! If there was any disappointment it never showed.

I will always remember Mary's kindness to my father as he practised in his late seventies and up to his eighty second birthday.

Richard Henriques

The Late Her Honour Mary Holt

Mary Holt was unmarried and lived with her mother.

On one occasion I was involved in an Inheritance Act claim before her in Preston County Court. The deceased had played off his wife and mistress against each other during his lifetime and was continuing to do so after his death.

The widow said in evidence that the deceased had virtually no faults.

At which point Mary Holt injected, "No faults! In my experience all men have faults and very grievous faults at that".

One Counsel, of similar age to Mary, said "In your Honour's experience?".

Mary became very coy and said "Professional experience, professional experience only".

The Trial resulted in an order which did not particularly please either party, but did not displease either party. This was typical of the exercise of a discretionary jurisdiction by Judge Holt.

Richard Oughton

Martin Decker

Martin was well known to everyone the Merseyside legal community as senior member of Mersey/Cheshire CPS, credited for example with a leading role in the creation of the very first specialist RASSO team in the country, but I suspect he would have regarded his professional achievements as merely to be expected of him. Better said of the mark of the man was that he was universally well liked by his colleagues and the Bar. He was involved in some of the highest profile cases in the region over the years instructing many of those who are now in silk or on the bench.

Everybody who knew him in that capacity or outside of Court can speak fondly of his character. Whether delivering a rare reproach to a subordinate or expressing a disagreement with counsel, it was always

delivered with a twinkling level of Cary Grant charm that made you feel you were actually receiving a compliment.

After retirement Martin continued to pursue his devoted but fruitless support of Tranmere Rovers FC expanding his trips from Prenton Park to glamorous away days at Stevenage, Grimsby and Mansfield, and remained close to his former colleagues who are needless to say devastated by his loss. It is understood the club will pay official tribute to him.

He is survived by his brothers, Kitt and Jeremy, also recently retired from the CPS, his sisters Judy, Carol and Philly and his beloved force of nature mother.

Jeremy Grout-Smith

It was with great sadness that I received the news of the death of Jeremy Grout-Smith. Jeremy was a member of my old chambers, Peel Court in Manchester, and he frequently appeared before me when I sat as a judge at Preston and elsewhere in Lancashire. He was a charming man, a much valued colleague and a barrister of the old school who was respected and trusted by his colleagues and the judges before whom he appeared.

I have been in contact with my retired colleagues from the Preston bench, and the high esteem in which Jeremy was held and how popular he was shines through their comments to me. We all feel we have lost a good friend and send our condolences to his widow Nicola, daughters and all his friends on the Circuit.

Anthony Russell
His Honour Anthony Russell QC,
former Recorder of Preston

The Collected Ramblings of a Disaffected Northern Circuiteer

Part 19: The one about the Mars bars and the statue

Northern Quarter Chambers began the New Year on a rather sombre note with the passing of old Arthur Abercrombie (non-Covid related, he died of old age having been born in the 1700s).

Arthur was Called to the Bar of the Inner Temple (proper Inn) when it first opened and became something of a doyen of the Warrington Assizes in the inter-War period. He was a founding member of Northern Quarter Chambers and held various offices, principally as Chambers Treasurer, back in the days when we were all gainfully employed and could afford to pay Chambers Expenses.

Many of us remember his stories. Like so many tall tales told at the Bar, they tended to take on legendary status. One in particular was about to go stratospheric, in more ways than one. I have this hazy recollection from my early days in Chambers of lying semi-recumbent on an old leather Chesterfield in the Head of Chambers' room, which was broadly fifteen times the size of everyone else's to reflect his status, knocking back glasses of port (one of the perks of attending Chambers management meetings) while we pondered the vexed question of what we should do with the rather substantial surplus we were running on the Chambers Expenses account (yes, I know). Naturally, most of the talk was about how we should confine the money to the most needy, which was essentially the management committee, until old Arthur came up with the novel proposition of investing in Mars bars. At least that's what I remember. In the best traditions of management meetings, I don't recall we actually decided anything, so that was that.

A couple of weeks after Arthur's passing Chambers put through a call from a rather excited young solicitor at Abercrombie, Denning, Hailsham & Buckland. This was Arthur's brother's firm before he passed away in the 1800s. With those names on the letterhead, I expect they've dodged some passing-off claims in their time, although in the latter case, I'm not sure there'd be any loss or damage. Anyhow, she was sorting out the Probate to Arthur's Estate when she came across what she described as something of "huge significance to Chambers". Matters of huge significance to Chambers do not come around all that often, so, with nothing else to do, I took it seriously and called Miranda, our still-in-office Head of Chambers and a few days later we found ourselves sitting across a large partner's desk, in a huge dimly-lit office with a smell of quality dust of the kind you used to get at the Kennedy Street law library before it relocated and went all modern, eagerly awaiting a will reading in the style of an Agatha Christie novel.

"It appears..." she said, rather gingerly, "that Mr Abercrombie may have, well, er, sort of, misapplied Chambers Expenses". We didn't flinch, but I started wondering how you could 'sort of' misapply Chambers Expenses, since I'd tried it a few times and never quite managed it. Then after a dramatic pause for effect, she turned around some sheets of paper and slid them across the desk towards us. "It looks like he invested in a Mars project". Miranda shot me a glance, in a rather inquisitorial way. "Do you know anything about this, John!" she demanded.

"Er, well...", I began to think back to that port-fuelled moment many years ago. "Not, really..."

"No, this is good news", said the solicitor. "It looks as though Arthur invested in a US Treasury-backed bond issued by NASA to raise funds for the exploration of Mars". She tapped one of the documents. "That's a copy of the bond. The project changed its name to Mars Perseverance, with a guaranteed payout of \$4.2M if the project landed successfully before 2022".

We both sat there, motionless. I began to wonder what \$4.2M would



look like on my kitchen table.

"In today's money", she continued, "that's... \$1.6B".

Certain things in life you remember. Falling in love, getting married, the birth of a child, Sheffield United gaining promotion to the Premier League. Those were now dim and distant memories. We now had bigger fish to fry.

"Naturally, I need to check..." she continued, but by then we had stopped listening. \$1.6B was a lot of money. I was going to need a bigger kitchen table.

Miranda, being a family lawyer, decided to share the love by calling an Extremely Extraordinary General Meeting. By then, the word had got out, and with the whiff of money, everybody attended, including all the clerks, admin staff, the fee collection people, and what looked like all their friends and relatives, plus the couriers, who actually turned up on time and in the right place. In typical family lawyer style, Miranda laid it out in dramatic fashion. There were gasps, tears, hugs and all the kind of stuff you get at family law conventions. It was rather ironic that just at the moment when Chambers looked like it was going to close because we had no work and no money, it now looked like we were definitely going to close because we had no work and loads of money. And so it was. In true barrister fashion everyone started spending money before they'd even got it. One member bought Belgium, one bought AstraZeneca, which sounded like Belgium, another came up with the whacky idea of investing heavily in NASA's Uranus bonds and another fulfilled a lifelong ambition of buying a Ford dealership in Woking. The list went on. As for me, I sent the BSB a note telling them to get stuffed and that I'd never done any CPD ever. I told them not to trouble with a reply because I wouldn't read it. The promise of untold riches is a strangely liberating experience. In a final act of remembrance before we all went on our separate ways, we gathered together in the square outside Chambers to unveil a statue in honour of Arthur Abercrombie, a wise and generous member of Northern Quarter Chambers. It was only £134,000.

A short while ago, Chambers put through a call from a rather deflated young solicitor at Abercrombie, Denning, Hailsham, & Buckland. She'd found a note with Arthur's papers. He'd had an epiphany at the last moment and couldn't bring himself to pull a fast one on Chambers. So, there was no money. She was hugely apologetic. This left me in a slightly tricky position.

We've taken down the statute. People will think it is slavery-related, but the truth is it's far worse than that.

John Knott was a Member of Northern Quarter Chambers.

Earth Day - 22 April 2021

European Circuit of the Bar

Climate Transition in Europe

The UK is hosting COP 26 in Glasgow in November 2021. The race to net zero is now on and time is running out. There are increasing concerns about whether the law is doing enough to achieve carbon neutrality and to protect broader rights of nature, especially with the potential for divergence post-Brexit.

On 22 April 2021 (Earth Day), the European Circuit of the Bar will host a panel discussion about climate litigation in Europe, considering the implications of Brexit, and, critically, what can and should be done now to transition to net neutrality.

Michael Wilkinson (18 St John Street) and Abigail Holt (Garden Court Chambers) are organising this free Zoom/webinar event as executive committee members of the European Circuit of the Bar.

We already have an impressive panel of speakers lined up:

Chairing the event **Ms Justice Niamh Hyland**, Judge of the High Court in Ireland

Advocate General Bobek (Advocate General at the CJEU, Luxembourg) – Climate Litigation in the EU;

Marc Willers QC (Garden Court Chambers) – New Trends in Climate Litigation, Including the Human Rights Dimension;

Celina Colquhoun (39 Essex Chambers) - Brexit's Implications on Environmental Law;

John Robb (Essex Court Chambers) - Taking Account of Environmental Impacts;

Paul Powesland (Garden Court Chambers – Rights of Nature.

For more information visit and to book:
<https://www.europeancircuit.com/events/>

What is the European Circuit of the Bar and what are its objectives?

The European Circuit aims to provide a forum for its members to address issues of concern and problems common to cross border practice. It provides support and assistance to its members and helps them to liaise with judicial and policy making organisms, and not least by organising events such as seminars, workshops, conferences and social events all across Europe. These are sometimes done in conjunction with other organisations, such as the Bar European Group.

In September 2021 we are organising an event with the Madrid Bar. COVID-permitting, it will be live in Madrid.

The Circuit provides a forum for its members to:

- Seek solutions to common problems in relation to cross-border practice, in line with the various Commission initiatives seeking to set up an area of freedom, security and justice, as well as creating a European Judicial Area.
- Exchange knowledge and experience of European practice and a point of liaison with other jurisdictions where barristers may wish to practise.
- Promote more widely the services of barristers to lawyers and other potential clients.

Abigail Holt
Garden Court Chambers
AbigailH@gclaw.co.uk



© (photo) Toni Infante

Restaurants on Circuit by David Birrell

Maray at Home - since we must

My civil practitioner pal likes to say that the secret to happiness is low expectations. The omens were good, then, because my expectations ahead of this were pretty low. Somewhere around mid-shin level, I'd say. All previous '[insert restaurant name here] at home' experiences had been expensive disappointments that had left me pining for the end of Lockdown [insert number here]. But since restaurants were closed and I didn't fancy coming up with 800 words to describe the cod and chips from my local chippie there was nothing else for it. My old favourite Maray got the nod because it is consistently good. It serves up colourful Middle Eastern-style dishes across its three sites in Liverpool – Bold Street, Albert Dock and Allerton. Full disclosure: I know one of the owners but that has no bearing. Quite apart from anything else, I paid in full for the meal kit. My restaurant-related ramblings for the Circuit mag have not yet elevated me to the level of paid 'brand ambassador', sadly.

The online ordering process was painless and quick. Maray offers meal kits for carnivores, veggies and vegans. All boxes come with 8 savoury sides and one dessert as standard. All you have to do is select your main dish. I plumped for the seven spiced pork chops, more about which later. In terms of price, it costs £45 plus £6.99 for nationwide delivery. In my limited experience and from my (admittedly scant) online research, you will struggle to find better value. There is the option to add an extra main for £12 if more than two people are dining but since there weren't, I didn't.

The box was delivered on Friday morning. They're big on sustainability at Maray so all the packaging was as you would expect. The ice packs now reside in our freezer awaiting picnic season. We are yet to come up with a way to re-use the woollen insulation wrapping but, with a crafty and creative two-year-old at home, I am sure that we will. The food was packaged and labelled in a clear and idiot proof manner. An attractively presented booklet contained photographs and cooking instructions written with similar clarity.



There was nothing especially complicated about the cooking, but the sheer number of dishes meant that it took us about an hour to put them all together. You should allow time for that. We didn't. I appointed myself head chef and, with rising hunger levels, put in a sweary and shouty performance that Gordon Ramsay himself would have been proud of. Faye took on the role of sous-chef and, like all good sous-chefs, she calmly took care of everything while I fussed about. The bounty of side dishes meant that we overlooked the Fattoush salad so the pork was given extra resting/ going-cold time as I furiously chopped radicchio and radishes.

The clock struck 9pm when we finally sat down to eat. I started with the pork chops which by that point were nicely chilled. A quick flash in the still-hot oven brought them back to life. The flavour combination was a winner. The aromatic seven spice rub combined pleasingly with the velvety butterbean messabecha (a puree, essentially), nutty-sweet romesco and balsamic dates. I can never get my romesco quite right, but this was bang on. I only wished there was more of it. Faye easily won the cook off with her falafels. Vivid green in colour, they were moist and held their shape well. A fiery harissa sauce made them sing. I would have liked to have seen some sesame seeds in the falafel mix but that's just me.



Of the remaining dishes, the houmous and the goats cheese stood out. Ever present on the Maray menu, they evoked memories of laughter filled evenings with friends in the restaurants. The silky houmous was swirled with a herby chermoula and dolled up with pumpkin seeds and pomegranate jewels. We mopped it up greedily with the excellent flatbreads. The whipped goat's cheese was, is and always will be Faye's favourite. It is very good indeed. Something about the combination of the lightly sweet cheese, sumac and grapes just works.

There was plenty of food still left on the table when we stopped gorging ourselves, resolving to finish off the rest for lunch the following day. We were eager to save room for dessert – sticky walnut cake with ras el hanout butterscotch. Which makes what happened next all the more distressing. I dutifully followed the instructions and microwaved the cake for 60 seconds but, in doing so, totally scorched the thing. To be fair to Maray and whoever drafted the cooking instructions, they didn't know that we have a weapons grade microwave. I really should return that thing to North Korea. The ras el hanout butterscotch was spared a nuclear fate and was a revelation.

I won't pretend that restaurant meal kits are a patch on the real thing. How could they possibly be? But, for as long as restaurants remain closed, needs must, and you could do far worse than a Maray box. If not Maray, then may I respectfully suggest any small independent restaurant local to you. They need all the help that they can get right now.

8/10 (mark added to allow for my culinary sabotage)

home.maray.co.uk

Let the Light in

LawCare offers some advice on beating the winter and lockdown blues

So many of us, in the depths of winter and lockdown, are now getting most of our light artificially from screens and desk-lamps. We are missing all the ways in which we used to be outside without even thinking about it - the commute, the school run, travelling to meetings, and our running errands. We're missing the kicking of dry leaves or the squelching of wet ones, the raising of umbrellas, or the view of sunrise, sunset from train /car windows . The shorter days of light drain us of energy, meaning some of us will suffer from seasonal lethargy, Seasonal Affective Disorder (SAD) and depression.

Over the next few months it's more important than ever to let the light in and get outside as much as possible. Bright morning light can advance our circadian rhythms and suppresses melatonin – having an antidepressant effect. Being outside has a therapeutic effect, sunlight helps the body produce the immune-boosting Vitamin D, and also helps us breathe more deeply, get more oxygen into our lungs and chase away the stress hormones of adrenaline and cortisol. We may wake up a bit grumpy, feeling the winter blues but as the day progresses we can begin to feel happier, especially if we have been outside.

Humans have always known the importance of light to wellbeing. The light we get from the sun, our best known star in the sky is crucial to survival. Celtic people believed they came out of darkness into light and in a sense we all do as we are born into this world. Florence Nightingale instinctively knew that her patients needed light, air and a view - science now confirms that patients get better quicker if these are available to them. In 2013 a bookkeeper Oscar Kittilsen came up with the idea of erecting large, rotatable mirrors on the northern side of the valley in Gaustatoppen, Norway what are called "solspeilet", sun mirrors. Until then the residents spent half the year in the dark. Just like sunflowers he wanted to direct light to the people.

We spend so much time indoors these days, especially now we are all in lockdown, so here are our tips to help you get out as much as you can this winter.

Top tips for letting the light in

Make sure you have appropriate outdoor clothes – if you're warm and waterproof you're ready for any weather!

Take a lunch break and get into the light whatever the weather. It doesn't have to be an hour, or even at lunch time if that doesn't suit your working pattern, but try to get out in daylight hours wherever possible. You will always feel better for going outside.

Open your curtains and window in the morning even



Photo by Chan Hoi on Unsplash

for just a few minutes to let a blast of cold air in.

Try and work near a window if you can, move your desk if necessary or hotdesk round the house.

If you have a garden or balcony go outside a few times a day for a few deep breaths of fresh air.

Take work calls/meetings outside where possible, if there's no reason you can't be walking and talking.

Make a plan to get out every weekend – you can still visit parks, gardens, countryside and beaches even in lockdown. Just don't travel too far from home.


Get a SAD light which replicates daylight and can boost your mood.

Put fairy lights up, light candles, practice the Danish tradition of hygge at home to get through the long winter months. When darkness is illuminated by a few little flickering lights it seems more bearable.

Take a Vitamin D supplement. Experts recommend everyone does in winter and this winter it's even more important.

As the Celts believe, out of darkness and death comes light and life. We will come into the light once again.

If you are finding things difficult LawCare is here to listen. We provide emotional support to all legal professionals, support staff and their families. You can call our confidential helpline on 0800 279 6888, email us at support@lawcare.org.uk or access webchat and other resources at www.lawcare.org.uk

A woman with dark hair tied back, wearing a black blazer, is shown in profile from the chest up. She is holding a white mobile phone to her ear with her right hand. She is looking off to the side with a serious expression. The background is a blurred office environment with wooden shelves and a desk.

How are you, really?

Life in the law can be tough.
Call our confidential helpline.
We're here to listen.

0800 279 6888

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