broadway quarterly

The Newsletter for Broadway House Chambers

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REGULATION & JUDICIAL REVIEW
IMMIGRATION LAW
CIVIL LAW
EMPLOYMENT LAW
FAMILY LAW
CRIMINAL LAW

By **Adam Willoughby** specialising in Employment and Commercial Law

Without Prejudice:
Exceptions to the Exclusionary Rule

As Lord Griffiths stated in Rush & Tompkins v. Greater London Council [1989] AC 1280 at 1299 "parties should be encouraged so far as possible to settle their disputes without resort to litigation and should not be discouraged by the knowledge that anything said in the course of such negotiations may be used to their prejudice in the course of proceedings".

Therefore, litigants are assisted by the without prejudice rule which applies to exclude all negotiations genuinely aimed at settlement whether oral or in writing from being given in evidence. However, exceptions to this exclusionary rule do exist. The problem is, what the extent of those exceptions are is somewhat unclear and often the subject of a challenge in the appellate courts.

Most recently, in the case of Ravenscroft v. Canal & River Trust [2016] EWHC 2282 (Ch), Chief Master Marsh (sitting in the Chancery Division of the High Court) was required to consider whether a general exception to the exclusionary rule exists where without prejudice correspondence is referred to for the purpose of an interlocutory hearing.

The facts of the case are not terribly important and can be summarised briefly:
Mr. Ravenscroft brought a claim against the Canal and River Trust in connection with the removal and detention of his boat from a canal. In the course of proceedings Mr. Ravenscroft made an application to have Mr. Moore act as his McKenzie Friend. Canal and River Trust, represented by counsel, objected to this for a number of reasons. In support of those reasons it sought permission to rely upon "a short extract from without prejudice communications between Mr. Moore and Canal and River Trust". Mr. Ravenscroft only agreed to the court seeing such material if equally it considered all of the without prejudice correspondence. Canal and River Trust did not agree to that course of action and thus the matter was treated by Chief Master Marsh as a contested application.

In making the application to except the material in question from the without prejudice rule, Canal and River Trust argued that it would not infringe public policy requirements (that admissions made in without prejudice communications may not be used for the purposes of a trial) if the court had regard to statements made in without prejudice communications for the purpose of interlocutory hearings. **(continued...)**

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(continued...)

In support of that proposition CRT relied upon the decision of Clark LJ in Somatra Ltd v. Sinclair Roche & Temperley [2000] WLR 2453. In that case the claimant, at an ex-parte application for a freezing injunction, relied upon without prejudice material to show the weaknesses in the defendant's case. At the trial of the case the defendant sought to rely on without prejudice material and was successful in doing so. Chief Master Marsh considered that the considerations which applied on an application such as that made in Somatra which "brings with it a duty to ensure that the court is given all relevant information" were "clearly rather different to there being a free standing right to deploy without prejudice correspondence for the purposes of an interlocutory hearing".

Chief Master Marsh also made reference to the Clark LJ's consideration of the Court of Appeal's decision in Family Housing Association (Manchester) Ltd v. Michael Hyde and Partners [1993] 1 WLR 354 in which it was held that reliance on without prejudice negotiations did not infringe the exclusionary rule given such material was being used in order to resist an application to strike out for want of prosecution. The circumstances were that the party relying on the without prejudice material was doing so in order to explain the passage of time which was a material factor relevant to the application. The circumstances were referred to as a "narrow context" to which the exception to the exclusionary rule would apply.

Accordingly, Canal and River Trust's argument failed. The Court held:

> "there is no general exception to the exclusionary rule where without prejudice communications are referred to only for the purposes of an interlocutory hearing. Such exceptions to the exclusionary rule as there may be should be kept closely confined to prevent an undesirable watering down to the protection provided to without prejudice communications which fulfil an important role in aiding parties to negotiate freely without the fear of concessions being used against them in the course of litigation".

This is an entirely unsurprising decision when one considers, as Chief Master Marsh did, the purpose behind the exclusionary rule in the first place. Any exceptions to the exclusionary rule which apply to interlocutory hearings would arguably be a step in the wrong direction and begin the erosion of the wall behind which parties are at liberty to (at least in theory) put their cards on the table, have frank discussions and negotiate in order to avoid litigation.

> "Any exceptions to the exclusionary rule which apply to interlocutory hearings would arguably be a step in the wrong direction..."

The Editor's Column

Get to know your barrister

An small insight into the life and thoughts of two of our barristers in this edition.
Firstly - Abigail Langford.

1. What was your Funniest moment in court?
When my good friend and colleague Kathryn Walsh fell over a chair in court. Very childish but very amusing! And the more you try not to laugh the more you do.

2. Your alternative career was to be a...
Doctor. But my science brain wasn't up to it. I still watch any medical documentary on TV.

3. Your most prized possession is...
The Tiffany bracelet I got for my 30th. Although the one I currently have is a replacement, as my daughter lost my first one.

4. At your next dinner party who would you like to sit next too?
There are two possible answers to this – either Tom Hiddleston, hes a great actor and, im sure …lovely! Or alternatively a Formula 1 racing driver I am a huge fan of the sport.

5. Which event in history would you like to have witnessed and why?
The first flight in a plane - a brave move, how did they know it would successfully get off the ground and most importantly remain that way.

6. What would you change immediately in the area of law you practice (other than the fee.)?
Anonymity in sex cases, in relation to defendants. This is a very sensitive issue, and one which can, at times, be hugely mismanaged.

7. Have you considered justice has <u>not</u> been achieved in any cases you have been involved in?
Only ones in the magistrates court ! joking aside, I was involved in a case recently where I felt that the case had not been properly investigated and that in fact led to unfairness to both parties.
It was very frustrating.
In the end the jury system is the best system there is, and if there is an acquittal when you want a conviction, that is the way it is, but when you feel the case has not had the best investigation that can tarnish the whole process.

8. Where do you see the legal profession in ten years?
Much as it is now, hopefully still with the great people, but all digital and perhaps faster paced. In some ways I think that the system could eventually go full circle, and things restore back to previous systems ie premilinary hearing, PCMH, trial, etc.

Quick fire questions:

Favorite outdoor activity?
Glass of wine outside a pub or a walk on the beach.

Most enjoyable book?
Anything by Val McDermaid

Favorite comedian?
Michael Mcintyre

Any phobias?
Rats!!!! I cannot even look at a picture of one.

By **Nigel Jamieson** specialising in Criminal Law

Presumption of innocence? **Seriously?**

People's distrust of defence lawyers is the clearest indicator of a fundamental presumption of guilt within society.

It is odd that nearly everyone understands and supports the presumption of innocence but nearly everyone routinely disregards it out of the court room. It's inconvenient when discussing the news to have to acknowledge that someone may be not guilty. Consider the following versions of the same set of facts. Imagine a portly town crier trying to attract the attention of a crowd in the city centre:

Version 1
"Oyez! Oyez! Oyez! The Bradford Strangler has been caught at last!"

Version 2
"Oyez! Oyez! Oyez! a man who is suspected by the police, for reasons which won't be revealed until his trial, as being the Bradford Strangler, has been arrested; although we have no way of knowing whether they've caught the right man or not until the jury have had the opportunity to weigh up the evidence for and against in a calm, measured way in about 6 months from now. So don't get too excited about it because his defence team may reveal genuine facts which undermine the reliability of the evidence against him. In which case, thank goodness, he will be acquitted because we will then know he is innocent and the police might look for someone else."

The latter just isn't very interesting. Catching the strangler is interesting but acknowledging that they might not actually have caught the strangler - a lot less so.

This is nothing new but it has a bearing on something else I want to talk about - people's perception of the lawyer who represents that person who has been "caught".

My heart sinks when someone asks me what I do for a living because so often it is followed by the question "how can you represent a criminal?

That in itself raises 2 questions:

1. Why on earth shouldn't he be represented - whatever he's accused of?
2. What is a "criminal" anyway?

How can you act for criminals?
The general distaste of some members of the public for the concept of representing "criminals" arises because in reality there is a latent presumption of guilt. Why else would the question be asked? Nobody ever asks "how can you represent a person who might be innocent?". It's a disturbing reality that fundamentally people assume:

- there's no smoke without fire;
- the police wouldn't have charged him if he hadn't done it;
- not only must he be guilty but he must be completely guilty of everything that has been alleged;
- the version of events that has been put in the public domain by the media is the correct version of events;
- there is absolutely no excuse or explanation for such behavior. The defendant is beyond redemption.

It seems to me that there is no hiding from the fact that this is the way that most criminal cases are perceived, by most of the people, most of the time. Trial advocates do well to acknowledge this as a starting point.

When challenged as to why I choose to spend my time representing such people I can bat away their distaste with the usual stock answers i.e.

- everyone is entitled to a defence;
- I have no way of actually knowing for sure whether he's guilty.

But I get the feeling that such responses are considered as (a) fatuous and/or (b) unlikely.

More convincing is an argument usually based on the following sort of thing:

- It's monstrous to suggest that the state should invest heavily in prosecuting one of its members without also investing equally in ensuring that his side of the case is presented;
- Far more often than not it's not a case of trying to get him off. It's case of ensuring the court understands the limited extent of what he actually did and the reasons behind it;
- Fundamentally a defence lawyer is there to assist the court in getting the full picture. The court is helped by that. It is in nobody's interests that the picture presented by the prosecution is the only picture available to the court. The prosecution are under no duty to explore aspects of the defendant's personal situation;
- If the evidence is there then the court is best placed to assess it and decide whether he's guilty. If he's acquitted then it is as a result of the court considering the evidence which is reliable and coming to a view on it. The magistrates or the jury are in a far better position to decide guilt or otherwise than someone on the outside who has only half the facts.
- If someone is acquitted because of evidence being excluded then rest assured it was excluded because it was potentially unreliable.
- Whatever my own assessment of the evidence I have to give it 100% in every case because there have been cases when I have had doubts, but then been shown conclusively to be wrong because of evidence served late in the day e.g. cctv footage.

The other party to the conversation usually ends by saying - "well, that's all well and good but I know I couldn't do it". This shows how engrained in the population's psyche is the presumption of guilt and, to an extent, retribution.

In fact there is a fundamental hope that the accused is guilty. It's terribly inconvenient in all sorts of ways if he isn't.

Note the difference in attitude when an observer knows (or thinks he knows) from the outset that the suspect is in fact wholly innocent. This happens with television dramas sometimes. The viewer is shown at the outset a sequence of events that demonstrates conclusively that the suspect is innocent and a miscarriage of justice is only a guilty verdict away - unless of course the defence lawyer does his job properly. In those circumstances the lawyer is easily perceived by every single viewer as a champion of truth in the noble pursuit of justice. What could be wrong about that? This is so even if the offence alleged is the most distasteful imaginable.

It is this that demonstrates that the public's distaste of the defence lawyer's role is borne out of a presumption of guilt and a distaste of the crime itself. And perhaps a difficulty in drawing a distinction between distaste for the crime and distaste for the lawyer who is perceived as being an advocate for the crime not for the alleged criminal.

I don't criticise society for thinking this way. It's clearly natural. However, I do wish the general public would more readily accept that defence lawyers play a key role in a system of justice that does in fact work. There is little that can be done to better achieve the correct balance between convicting the guilty and ensuring the innocent are acquitted. Any limitation on the role played by defence lawyers would be very damaging to the courts' ability to get to the truth.

What is a criminal anyway?

What do they look like?

There's another, irritating phenomenon that arises from the question "how can you represent criminals?". I've never regarded those whom I represent as a sub-category of humanity to be defined solely by their offending.

Defining someone as a "criminal" because he has committed a crime is, I suppose, just about technically accurate at a stretch (although it does follow that every single motorist is one). Usually, however, it's misleading, discourteous, and frankly unhelpful. Even if you decide that it is helpful to define such people as "criminals" let's be clear - Criminals are not savages and they are not somehow less evolved. Some are more responsible for their actions than others but that's another discussion for another day.

Many defendants have committed a single crime against a lifetime of countless other lawful acts. Others have offended on a few occasions. A very few set out to live a life of crime as a lifestyle choice which defines them as people.

I cleaned a window once but I wouldn't describe myself as a window cleaner.

I don't see myself as representing criminals. I see myself as representing people who may or may not have committed a crime. If a crime has been committed then it will almost always have been committed as a result of other factors arising from his background such as poor mental health, addiction, desperation, poverty, bullying etc. Each of those factors arise from his back story which tells us a lot more about his character than the offence which was ultimately committed.

In 21 years as a criminal defence solicitor and barrister I have never met an irredeemable "criminal". I have met "people" who have fallen from grace for one reason or another.

In conclusion I suppose what I'm trying to express is a frustration at the generally dim view that people take of defence lawyers which comes about because of a lack of appreciation of the role that we play and the nature of the people we represent. A more open mind about the defendant as a human being and a more open mind about the purpose of the lawyer's role is needed.

I maintain that defending is a noble pursuit. Defence lawyers assist the court by ensuring the court has the full picture. There can be nothing objectionable about that. In fact it is a privilege to be allowed into the lives of those whom we represent in order to gain an insight into their lives. Sometimes it can be a painful and highly emotional process for them but I am often amazed at their generosity of spirit and frankness when confiding in their lawyer.

And always remember, next time you see someone who is accused of a crime and facing the might of the Crown's resources. It really could be you…

By **Joanne M O'Shea** specialising in Family Law

Female Genital Mutilation Protection Orders in the Family Court

The World Health Organisation (WHO) defines female genital mutilation as comprising all procedures that involve partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.

There are four WHO classifications of Female Genital Mutilation (FGM) and these are the adopted classifications within family law proceedings. It is a practice which carries no identified medical benefits and can cause significant physical and mental health problems.

In the context of the UK, figures recently published by the UK female health charity FORWARD have identified as many as 23,000 girls under 15 could be at risk of FGM and nearly 60,000 women could be living with the consequences of FGM in England and Wales. When The Health and Social Care Information Centre (HSCIC) published its first ever statistics this year, there were 5,700 newly recorded cases of FGM reported in England during 2015-16. The 5-9 age group was the most common age range at which FGM was undertaken. However, females at any age are subjected to FGM. Worldwide, the WHO estimates that more than 125 million girls and women alive today have been mutilated in this way in 29 countries in Africa and the Middle East where FGM is most concentrated. The practice is mostly carried out in non-medical settings.

FGM and the Law

FGM has been a criminal offence since 1985. The Female Genital Mutilation Act 2003 contains a number of FGM related offences which have been extended by the Serious Crime Act 2015. Until July 2015 the Act did not contain any specific civil remedy that would assist in protecting potential or actual victims of FGM. The FGM Act 2003 as amended by section 73 of the Serious Crime Act 2015 inserts a new section 5A and Schedule 2 making provision for the FGM protection order.

FGM protection orders may form stand-alone applications or form one of the issues within public law proceedings. For care practitioners guidance was given in the matter of B and G (Children) (no2) (2015) EWFC3 on a number of issues.
The court adopted the WHO classifications of FGM. The court confirmed that any FGM will establish significant harm in accordance with s31 of the Children Act 1989. Full guidance was given in respect of the FGM expert and expectations of those experts in terms of knowledge and planning of the process of medical examination.

The Legal Framework

1. Paragraph 1 of Schedule 2 of the Female Genital Mutilation Act 2003 provides that:

1(1) The court in England and Wales may make an order (an "FGM protection order") for the purposes of—
(a) protecting a girl against the commission of a genital mutilation offence; or
(b) protecting a girl against whom any such offence has been committed.
(2) In deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the girl to be protected.
(3) An FGM protection order may contain—
(a) such prohibitions, restrictions or requirements; and
(b) such other terms, as the court considers appropriate for the purposes of the order.
(4) The terms of an FGM protection order may, in particular, relate to—
(a) conduct outside England and Wales as well as (or instead of) conduct within England and Wales;
(b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who commit or attempt to commit, or may commit or attempt to commit, a genital mutilation offence against a girl;
(c) other persons who are, or may become, involved in other respects as well as respondents of any kind.
(5) For the purposes of sub-paragraph (4) examples of involvement in other respects are—
(a) aiding, abetting, counselling, procuring, encouraging or assisting another person to commit, or attempt to commit, a genital mutilation offence against a girl;
(b) conspiring to commit, or to attempt to commit, such an offence.
(6) An FGM protection order may be made for a specified period or until varied or discharged (see paragraph 6).

The above legislation was closely modelled on the existing Forced Marriage Prevention Orders and both are governed by part 11 of the Family Procedure Rules 2010. The same broad considerations will apply in respect of both types of orders when considering evidence, disclosure and conduct of a hearing.

Who can apply for an FGM order?

i. The person to be protected, without leave of the court;
ii. A relevant third party, who can make an application on behalf of a victim or potential victim, such as a Local Authority. Again without leave of the court;
iii. Any other person on behalf of the person to be protected with leave of the court. (E.g. teachers, police, health care professionals, family member.)

Whilst the Act refers to a girl there is no age limit for this application.

What orders can be made?

The orders made will be case unique. However, the court's powers are wide and may contain a range of prohibitions, restrictions, requirements to prevent or change the conduct of those who would seek to subject a girl to FGM or have already arranged for or committed FGM on a victim.

Examples of types of orders available to the court are:-

- to prohibit a victim or potential victim of FGM from being taken abroad;
- to order the surrender of passports or any other travel documents, including the passport/travel documentation of the girl to be protected;
- to prohibit any application by the respondents for a new passport for the girl;
- to order the return of a potential victim of FGM from abroad;
- to include terms in the order which relate to the conduct of respondents both inside and outside of England and Wales and;
- to include terms which cover respondents who are, or may become involved in other respects (or instead of the original respondents) and who may commit or attempt to commit FGM against a girl.

Consequences of a Breach of Order

Breach of an FGM protection order is a criminal offence carrying a sentence of up to 5 years. The breach of an FGM protection order may also be dealt with in the family court as a contempt of court and carries a maximum of 2 years imprisonment.

The Law and regulated professionals

Recent legislative changes have placed positive duties on those caring for children and the wider professional community to report such practices. The Female Genital Mutilation Act as amended by Section 74 of the Serious Crime Act 2015 inserts a new section 5B into the 2003 Act which places a legal duty on healthcare professionals, teachers, social workers and other regulated professionals to notify the police if in the course of their work they discover that a girl under 18 has been or appears to have been a victim of FGM. The duty is engaged where the victim is under 18 and discloses this to a professional or where a professional observes physical signs of this. This does not apply when the female has reached 18. The duty to notify does not apply where a professional has reason to be believe that another individual in the profession has notified the police.

Guidance for Family Practitioners

For family practitioners, Resolution recognised that there may only be one opportunity to establish that the client is trying to communicate that they are a victim of or potential victim of FGM. Therefore, awareness of the practice/customs surrounding it and sensitive questioning techniques are key. To that end, Resolution has created a screening toolkit to assist family practitioners in identifying and supporting potential FGM victims.

Indicators of imminent FGM

- When a family elder is visiting from another country where the practice is prevalent;
- Where FGM is heard in conversation by a professional within a school/social environment;
- Where a girl requests help;
- Where parents state they intend to take a child out of the country for a prolonged period;
- A long holiday to a place where the practice is prevalent;
- Where parents seek to prevent children learning of FGM;
- Where a holiday is going to be taken in a country where the practice is prevalent and the mother of the child condones the practice and/or has herself undergone FGM;
- Where a family relative reports their concerns about potential FGM;
- Where a girl indicates there is going to be a celebration for her whilst away in one of the above countries, particularly when she is at a vulnerable age for FGM.

The above examples need to be contextualised but the fact that the practice is often kept secret from the victim or window-dressed as a form of celebration makes the identification of risk a challenge for all those dealing with the safety of girls in the UK. The clues that an FGM is to take place may pass under the radar of those unfamiliar with this practice, the social/cultural context and the euphemisms used to convey FGM in different languages. However, from professional experience of these cases, there is a growing awareness of this practice across agencies and an increase in applications for protection orders. In some cases where an ex-parte order has been made after the family has left for a holiday, the girls of key age have been returned unharmed after several weeks on the African continent. Whilst the order is a protective order, this raises more questions than answers in terms of the quality of the evidence for the making of the ex-parte order and the heavy reliance on the statistics of FGM in the countries where the girls travel to. As in many cases, there are often other factors which persuade a court that the protective order must continue such as mother's ability to protect in the UK and abroad and mother's views on the FGM practice.

Why is there a practice of FGM?

The explanations given for FGM are complex and multifaceted. It is a practice based on social convention. It may take place in both secular and religious communities. The social pressure which leads to the practice includes mainly beliefs around the need to control female sexual behaviour. Multiagency practice guidelines cite other reasons as:-

- It brings status and respect to the girl
- It preserves chastity /virginity
- It is part of being a women
- It is a rite of passage
- It gives a girl social acceptance especially for marriage
- It upholds family honour
- It cleanses and purifies a girl
- It gives a family a senses of belonging in a community
- It is aesthetically desirable
- To make childbirth safe
- It rids the family of bad luck/ evil spirits

The practice of FGM and why it is carried out may seem alien and beyond comprehension or simply wholly misogynistic to many people. It is a difficult but increasingly discussed topic in the media and particularly on radio programmes which serve to inform a wider audience. Whilst it is now a topic of greater discussion, it is important that the general public become as comfortable as they can be reporting this to professionals as they are about other forms of abuse such as domestic violence where there has been historically a mindset that these are private matters which do not warrant professional intervention. The family court provides a protective order but the real challenge must be the awareness and education of FGM universally so that professionals assisted by the general public may be able to detect the real risk of the above before a girl becomes a victim of it.

By **Kiran Dhillon** specialising in Employment, Civil and Family Law

Employment Law:
BREXIT Forecast

This article considers the potential impact of "Brexit" on UK employment law.

Whilst much depends on the exit terms that the UK negotiates with the EU, it is possible to suggest some areas where tweaking, as opposed to drastic changes are likely to occur. This is based, inter alia, on analysis of the origin of UK employment law and some facets of it that are ripe for refinement.

On 23rd June 2016, the British public voted to leave the EU (i.e. Brexit). There was a 71.8% turnout, which resulted in a 52% to a 48% split in the votes in favour of Brexit.

Article 50 of the Lisbon Treaty sets out an exit clause for members who wish to withdraw from the EU. Under that clause, the UK has to notify the European Council of its intention to leave the EU. This takes effect on the date of entry into force of the withdrawal agreement or two years after the notification to leave.

At the time of writing, whilst pressure is being put on Theresa May to trigger article 50, she has indicated this is unlikely to happen until early next year. Given that exit timescale, employers and employees in the UK need not fret in the short term. Indeed, they should have ample warning and time to prepare, if any amendments are to be made.

Commentators have referred to alternative models of European states that are not members of the EU. Such as Norway (not a member of the EU, but a member of the European Economic Area and European Free Trade Association) or Switzerland (not a member of the EU or European Economic Area, but is a member of the European Free Trade Association). It remains to be seen as to which route the UK will take. That being said, the legal picture should become clearer when the UK establishes its

future relationship with the EU (e.g. post-Brexit terms regarding trade agreement and the free movement of workers).

Even in the longer term, UK employment law is unlikely to undergo radical transformation; rather piecemeal reform is likely. This is for a number of reasons. Although much of UK employment law is derived from the EU (e.g. working time and business transfers), some underlying domestic protection pre-dates it (e.g. equal pay, race and sex discrimination).

There are some standalone domestic provisions, such as the National Minimum Wage and unfair dismissal provisions. The law flowing from the EU has become embedded within the UK's workplace culture and it is therefore unlikely that significant alterations would be welcomed (e.g. family leave). Many aspects of UK law are more generous than those contained within EU requirements (e.g. holiday pay, flexible working and shared parental leave).

However, the following areas of UK employment law may be subjected to review because of businesses finding them onerous:

TUPE

Although certain elements are likely to survive post-Brexit such as the UK's introduction of the "service provision" in 2006, other more problematic elements such as the prevention of harmonising terms and conditions after transfer and the difficulty in dismissing employees pre-transfer may be amended in favour of greater flexibility.

Discrimination

There is currently no cap for discrimination compensation, unlike in unfair dismissal cases. Such a cap may be introduced, as arguably, the lack thereof results in unrealistic expectations on the part of claimants, which in turn makes early settlement more difficult.

Holidays and Working Time

The interpretation of these aspects of employment law has caused much consternation to date. Brexit provides an opportunity to roll back some of the more troublesome provisions here. Consideration could be given to the calculation of holiday pay and whether this includes commission. Problems in this context have already been highlighted by the British Gas Trading Ltd v Lock litigation. The 48-hour maximum working week, rest breaks and what counts as working time may also be scrutinised.

Agency Workers

The Agency Workers Regulations 2010 required agency workers to receive the same basic working and employment conditions as permanent staff after 12 weeks. These regulations have proved to be both costly and unattractive to businesses, which makes it another likely candidate for change.

Collective Redundancy Consultation

This is required where there are 20 or more proposed redundancies within a 90 day period. The trigger points for such a procedure could be reviewed, so as to inject a greater level of flexibility. Also, there seems to be little need for works councils in the UK.

Immigration

There is free movement of EU nationals re: employment. It is uncertain as to the kind of deal the UK will secure for its workers in Europe or conversely what system will be implemented for workers in the UK from other European countries. For example, a points-based system has been mooted.

As it stands, the Brexit forecast is a storm in the teacup of UK employment law.

The Editor's Column

Get to know your barrister

An small insight into the life and thoughts of our second barrister - **Emily Ward.**

1. What was your Funniest moment in court?
Not so long ago I represented an intervener at a fact finding hearing in the course of care proceedings. There were eight parties, six of whom didn't speak English and therefore they were assisted by interpreters. During the course of the evidence one of the witnesses, when describing a noise made by one of the children concerned, gave a demonstration and squealed in a loud high-pitched voice. What followed was a chorus of squeals around the entire court room as the other five interpreters copied the high pitched squeal…who knew a squeal required interpretation too! Safe to say the front row of advocates (and the Judge!) could not keep our faces straight… we had to have a five minute break to compose ourselves.

2. Your alternative career was to be a...
A professional holidaymaker, however I couldn't seem to find any job adverts that fitted the bill!

3. Your most prized possession is...
My dog, without a doubt! If an animal doesn't count, then my mum's engagement ring, which I haven't taken off since the day she gave it to me.

4. At your next dinner party who would you like to sit next too?
My brother, who lives in Australia. I haven't seen him in over a year.

5. Which event in history would you like to have witnessed and why?
Nuremburg Trials – to see some level of justice done in relation to the abhorrent crimes of World War II and the Holocaust.

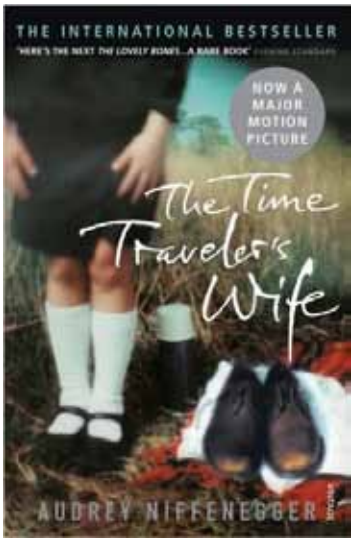
6. What would you change immediately in the area of law you practice (other than the fee)?
Access to legal aid for those who need it most. I could give countless examples of cases where clients have been unable to secure public funding in cases, which really ought to justify legal aid. In many cases Counsel and Solicitors have stepped in to offer assistance on a pro bono basis.

7. Have you considered justice has not been achieved in any cases you have been involved in?
Yes, once. The case is currently set down for a re-hearing following appeal, so I will say no more.

8. Where do you see the legal profession in ten years?
Online and largely taken over by computers.

Quick fire questions:

Favorite outdoor activity?
Walking my 'prized possession'.



Most enjoyable book?
The Time Traveller's Wife by Audrey Niffenegger.

Favorite comedian?
Sarah Millican and Joan Rivers.

Any phobias?
I'm not good with injections…!

Chambers News

New tenants

We welcome our new recruits to the chambers.

Zira Hussain

was called in 1998 and has further strengthened our Family team. She joined chambers last year. She has extensive experience in all areas of family law and is fluent in Urdu and Punjabi. Full and extensive details of her work appear on the chamber's website.

Joanne O'Shea

has joined from Birmingham chambers. She was called in 2000, developed a wide ranging practice but now specialises in family law. The chamber's website contains details of her work in public and private law, ancillary relief and her Immigration work. She has written an article for this issue of the Newsletter which can be read on page 6.

Asma Chaudhury

Asma has also recently joined chambers. Since being called to the Bar in 2003 Asma's practice has predominately been in Immigration, Asylum and Human Rights law. She also has extensive experience in EEA Law. She has a strong backgound in working with vulnerable clients particularly victims of trafficking, minors and domestic violence. Asma speaks Urdu.

Syam Soni

Syam has joined chambers from the Crown Prosecution Service. He was called in 2013 and has been with the CPS since November 2015. He has much trial experience in the Magistrates courts and has conducted a variety of Crown Court hearings. He is fluent in Hindi, Punjabi and Urdu.

Susan Sanders and **Chris Styles** have recently become members of chambers having completed their pupillages in chambers.

Susan Sanders

Presently Susan is developing her expertise in many areas of the law. A full description of her work appears on the Broadway website. Prior to joining the Bar Susan worked as a campaigner at human rights organisations including Amnesty International. She has travelled extensively, carrying out research in Afghanistan, Pakistan and central Africa. Susan speaks French and Farsi.

Christopher Styles

Chris is developing a practice in family and criminal law. Before joining chambers he worked as a freelance County Court advocate. He appeared in housing, enforcement and small claims cases across the country and developed a good general grounding in Civil Law. Further details on Chris's work experience can be found on chamber's website.

Chambers News

New Pupils

Edward Sproston and Christopher Rowe have recently joined chambers. Both are completing a mixed pupillage. Edward (Ned to his friends) is presently with Peter Hampton and was recently assisting in Clover 2, the second Rotherham CSE case tried in Sheffield. Christopher is with Nick Power.

Edward Sproston

Christopher Rowe

New members of Staff

Chambers has recently employed new staff to perform within specific spheres of work. All will be able to assist with any queries within their areas of expertise.

David Richardson
Civil and crime clerk

Conor Allen
Civil fees clerk

Robin Bennett
Criminal fees clerk

...and
Helena Frankland
our new office assistant based in our Leeds Chambers.

Significant world events

This year has seen events, which are likely to have far reaching changes to our country and our world. Whether we eventually leave the EU or not, our newspapers and politicians will be talking about hard and soft Bretix until we are fed up with the words and their meaning will be no clearer. President-elect Trump will continue to say what suits him at any given event and then ignore it and we will be no clearer as to what he intends to do tomorrow. In these times of national and world insecurity the editor is sorry to indicate that, after 10 years, this is his last newsletter.

He would like to thank all in chambers and those guests who have contributed to the Newsletter for their help and patience over the years. He hopes the Newsletter will continue to inform on current legal topics, on events and membership of Chambers. Many thanks to all.

Video Conferencing facilities are available for use in our Bradford chambers. The use of video conferencing can save much time and money. If you would like to book the facility please contact Mrs Verity at: vverity@broadwayhouse.co.uk

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Mark Brookes
Laura McBride
Nigel Jamieson
Jake Ellis
Susan Sanders
Chris Styles
Syam Soni

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