

THE SOCIETY OF CONSTRUCTION LAW

CHAIRMAN'S REPORT

I was elected Chairman in June 2022. I am honoured to work with excellent colleagues on Council. Council has worked hard over the last year and recognises that complacency must never crystallise. In that context, it is important that I please highlight three points:

- Whilst the financial metrics are relatively stable, the number of Members has declined considerably. I say this because the Chairman's Report last year stated "The SCL currently has 3,330 members from 76 different countries. 2,790 UK members, and 540 overseas members", whilst today we have 2,765¹ members from 82 different countries - 2,117 UK members, and 658 overseas members. Put simply, since May 2022 we have lost 540 members (although some may return). Council will now review the critical path² in the membership process and set a clear strategy to mitigate the decline and assess the real scope for potential growth. Put candidly, *something* has gone wrong but Council *will* 'fix' it.
- Council voted in favour of making certain changes to the Constitution. In essence the amendments and updates:
 - Make mandatory provision for two Members of Council who are under the age of 35 and / or who have less than 10 years of experience in their current field.
 - Ensure improved good governance by limiting Members of Council to three consecutive terms.
 - Make provision for anonymous and electronic voting designed to be simple and possible from telephones, hand held tablets and computers (without having to be logged on to the website).
- The frequency and nature of the Lectures / Talks in the Regions have had mixed reviews. Council will now work harder on increasing the direct connectivity between the Regional Representatives and the local

¹ The predominant professions are: solicitors (870), barristers (260), claims consultants (323), other constructions consultants (180), surveyors (280), engineers (150). Please note too that 482 academics and students have free academic access to download papers.

² This will include contacting those ex-members that did not renew in order to get their thoughts and views on why they elected not to continue as Members.

Universities. The aim when curating Lectures must, of course, be to focus on quality rather than quantity to ensure that Members in the Regions receive tangible benefits. I must thank Professor Anthony Lavers, Chris Sunderland and Mathew Taylor who are addressing this specific initiative.

Before I turn to reflect on the activities of the Society over the past 12 months, I want please to stress that Council is keen to get Members' feedback and comments. Council is here to help and serve the Members and I am keen to listen (especially on things that we can do better). Andrew Singer KC and Keith Kirkwood stand-down from Council at the AGM. Council thanks Andrew and Keith – both have been excellent collegiate Members of Council and have worked hard on their various initiatives: For example, Keith's contribution to the Social Events has been immense; Andrew will be missed on the SCL Hudson Prize Team. On a personal level, I am very grateful to Andrew and Keith and I look forward to welcoming both to the various 40th Anniversary Events taking place throughout 2023.

Astra

In October 2022, Astra co-hosted its long awaited international conference in collaboration with Association Française pour le Droit de la Construction et de l'Immobilier (AFCDI) in Paris. The 'sold-out' event was attended by practitioners from the UK and France, as well as visitors from the rest of Europe and North America. Over two days, attendees enjoyed a keynote address from Sir Rupert Jackson PC, talks on topics including the energy transition, advocacy skills, and an 'ask the secretariat anything' session with the ICC, as well as a gala dinner³.

Over the past year, Astra has continued to organised online talks in its popular "Introduction to ..." series, on subjects including underground works and public procurement. The series will continue over the next year, with forthcoming events planned on nuclear law and claims arising from defective works. 2023 will also see the return of the Astra Boat Party on the River Thames for the first time since the pandemic.

Finally, Astra are pleased to confirm support for the proposed constitutional changes at SCL. The changes would mean that at least 2 seats on Council are reserved for Astra members. The proposed change is to promote the engagement and representation of those new to construction law. On a personal level, I am very grateful to Sarah Williams, Rebecca Shorter and Lauren Adams for all their hard work and leadership of Astra.

³ The Astra sub-committee welcomes suggestions for the location of its next international conference planned for 2024

Educational Lectures and Conferences

A mere fleeting review of the website shows that the Society has organised a number of Lectures. It would be inappropriate to list all the Lectures. I highlight three Lectures: "*Martlet v Mulalley: Has the Court told us all we need to know about Cladding Fire Safety Claims post Grenfell?*" by Jonathan Selby KC and Tom Coulson; *The Building Safety Act 2022 – An in-depth look at the legal and practical impacts*, a Joint Lecture with the Institution of Civil Engineers and involving Dame Judith Hackitt, Amy Lacey, Zoe de Courcy Arbiser; Michael Attwell; Professor Stephen Brookhouse; and Robert Evans; and *Design Responsibility Demystified: Recent Judicial Design Development* given by Anneliese Day KC

November 2022 saw Arran Dowling-Hussey host the (hugely successful) SCL Irish Conference *An overview of road, airport, marine & wind-farm construction disputes*. March 2023 saw the 'sold-out' Annual Spring Conference held in Leeds. I Chaired the Conference. The speakers were the Honourable Mr Justice Waksman, Lynne McCafferty KC, Luke Wygas, Omar Eljadi, Jonathan Cope, Paul Bury, Charlie Thompson and Tom Coulson. I am very grateful to Jonathan Hawkswell who curated the Spring Conference.

Equality and Diversity

The SCL is of course committed to further encouraging equality and diversity among our membership and eliminating unlawful discrimination from all of the SCL's activities. We are also monitoring diversity on a voluntary basis (membership and representatives, including speakers). The SCL continued to offer its Mentoring Scheme, which is aimed at supporting the professional development of members at the earlier stages of their career (or career change) by connecting them with more experienced members across various facets of the construction industry. This year, Andrea Stauber developed the Mentoring Scheme to be a more structured programme, running for a 6-month period annually – with the 2023 programme to commence in the coming weeks. Council thanks sincerely those members who have volunteered to mentor, and encourages more of its experienced membership to sign up as mentors for the 2024 programme.

Hudson Prize

The Judging Panel awarded the First Prize to Lars Gladhaug, Pupil Barrister at Keating Chambers for "*Second Act Problems: The Defective Premises Act 1972 in the new building safety regime*"; and a Commendation to Gavin Wilson, Project Engineer at Belfast Harbour Commissioners for "*Cap or no cap: a new Eco World for liquidated damages?*". Council and the Judging Panel offers warm congratulations to both recipients and thanks all those who entered the 2022 competition.

European SCL

The ESCL Annual Congress, postponed from 2020 and 2021, was held in Sofia 16-18 June 2022. It was hosted by the current ESCL President Adriana Spassova of the Bulgarian SCL, a graduate of the King's College M.Sc programme. The theme of the Congress was Public Private Partnerships and there were presentations from Belgium, Bulgaria, Denmark, Finland, France, Italy, Latvia, the Netherlands, the UK and the Ukraine on PPP developments. Professor Anthony Lavers gave the presentation on behalf of UK SCL. The 2023 Congress will be held in Copenhagen in October. The first year of the newly-introduced ESCL Essay Prize competition (based on the UK's SCL Hudson Prize) resulted in Commendations being given to two of the entries, though the Jury (judging panel) did not award either of the major prizes. The closing date for the 2023 competition is 6 July 2023 and details are on the ESCL web-site. ESCL continues to provide webinars on construction law topics; the latest on international construction arbitration was given by representatives of the French and Italian Societies.

International SCL – excluding Europe

In the past twelve months the interest in setting up SCLs in other countries continues to grow. SCLs have been recognised in Uruguay, Indonesia and the Philippines. There is interest for an SCL to cover North Africa and individual nations including Pakistan, Cambodia, and Thailand. SCL Members have spoken at a number of conferences especially those put on by the Korean SCL. SCL-Israel had its inaugural conference in March 2023. A new International SCL website has been launched which will soon note all the SCLs around the globe. The numbers of webinars and seminars involving other SCLs grouping together is increasing and we hope to join other SCLs in 2023 / 2024 to establish a varied number of international topics.

This year sees the 10th International SCL Conference to be held in Istanbul between 18 and 20 October. Currently, potential speakers and panels are being finalised and the event will shortly open for registration. We hope to see many of you there to hear excellent panels and network with other SCL members, lawyers and construction professionals from around the globe. I am very grateful to Paul Battrick, Keith Kirkwood, Karen Gough and Sarah Williams for all their hard work on SCL – International.

IT and Social Media

In the 12 months to 27 April 2023, the website had over 300,000 page views by around 200,000 visitors from 194 countries. Edward Peters, our IT Consultant will continue to seek refinements and improvements (not least to allow Members to book events; search for papers and cases; and to renew membership). We continue to monitor the Society's social media presence and Council will now consider how this can be improved.

Papers

I thank Joanna Howard (our Consultant charged with editing Papers). Since last year's AGM the Society has published 10 papers on a variety of topics:

- Matthew Bell – 'Contract Damages for Defective Construction Work: An Unsolvable Puzzle?'
- Gavin Wilson – 'A Silver Bullet as well as a Silver Jubilee? How Jurisprudence Relating to the UK's HGCRA Can Help Save Irish Construction Adjudication from Judicial Review'
- HHJ Stephen Davies – 'Building a Claim by Extrapolation – the Legal and Evidential Blocks'
- Sian Mirchandani KC and Seohyung Kim – 'Duty of Care in Contractual Chains: Have we Reached a Consensus?'
- Ciaran Fahy – 'The role of the Standing Conciliator'
- John Tackaberry KC – 'The Importance of Transparency in Infrastructure Disputes'
- Rowan Planterose – 'Amending the Arbitration Act: Will the Commission Grasp the Nettles?'
- John Tackaberry KC – 'Amending the Arbitration Act: A Short Additional Wish list for the Optimistic'
- Rob Langley – 'The Brave New World of Mediation: Mandatory Participation and Enforceable Agreements'
- David Sawtell and Samantha Jones – 'Opening the Floodgates? Potential Parties to Claims Under the Building Safety Act 2022'

Social Events

Patently, Lunches and other social events continue to be highly successful. The London Lunch held on February 10th, 2023 attracted our highest-ever attendance with Dr Hannah Critchlow (internationally-acclaimed neuroscientist, broadcaster, author and Fellow at Magdalene College, University of Cambridge) being the Guest Speaker. Lunches in Bristol, Manchester, Edinburgh and Dublin provide further and strong evidence of Members' appetite for our Social Events. We also held our summer networking drinks on August 4th, 2022 at The Fable in Holborn Viaduct.

University Liaison and Grants

12 Prizes were funded at six Universities (University of Ulster, University of Portsmouth, King's College, University of London, University of Cambridge, University of Cardiff, University of Salford). The prizes average £250 in value and are awarded for high performance in an examination or other assessment related to Construction Law. Liaison with Universities is important and in that context the Sub-Committee Chairman, Professor Anthony Lavers, attended the Prize Giving presentation at the University of Portsmouth's Graduation day and met the winner, Kwame Kyere.

BAILII received a grant of £3000 to continue its highly regarded and free service publishing court judgments and other resources. The Frances Paterson Scholarships have continued to support doctoral research in construction law subjects. Awards were made during 2022-23 to Ph.D students at Darwin College, Cambridge, the University of the West of England and Liverpool John Moores University. The total value of these awards was £3750.

Academia is very important to the Society and Council is looking at how best to strengthen collaboration with the Universities and how best to increase the number of Universities working with the Society. These issues are of course tied to the initiative discussed above of increasing direct connectivity between the Regional Representatives and the local Universities.

Hamish Lal
29 April 2023