

Tuesday, 1 December Professional Liability and Construction Law: risk retained and risk transferred
Speaker: John Powell QC, 4 New Square
Chairman: Lord Justice Jackson
Venue: National Liberal Club, Whitehall Place, London SW1 6.15pm

Tuesday, 8 December Fact and Law - Junior SCL Christmas Lecture
Speaker: John Riches
Chairman: Richard Bailey
Venue: Orange Rooms, 1-2 Vernon Walk, Southampton SO15 2EJ
Organiser: kathryn.gore@bllaw.co.uk 6.00 for 6.30pm

London Speaker Programme

Feedback and suggestions for speakers and topics continue to be gratefully received by:
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European Society of Construction Law

The European Society is over twenty five years old and provided the inspiration for formation of the UK Society. The outcome of its recent Conference and AGM is that the UK Society is providing increased support for the benefit of all SCL members across Europe.

The annual conference, held in Copenhagen on 28 August 2009, had as its theme, challenges to contract awards. Papers were presented from leading lawyers from 11 countries; Colin Reese QC presented on behalf of SCL UK. His paper is to be presented again in London in early November, just as a paper given by Anthony Lavers last year was published as a SCL UK Paper. We are grateful to Colin, this year, for his contribution.

SCL UK's other area of significant contribution is with development of a website that might host contact details and papers given by other European Societies, thereby allowing each to benefit from excellent contributions. As part of this initiative Jan-Bertram Hillig (a Research Fellow from the University of Reading, and multi-lingual construction law expert) has been engaged to assist SCL UK in this task.

Costs Review – Report on Jackson LJ's talk

On 23 September 2009 Lord Justice Jackson gave an informative and entertaining talk on "The cost of construction disputes". We were reminded that his year-long review is very wide ranging covering costs, access to justice, a review of civil procedure, working methods and practices across the entire civil justice system. After months of data gathering and consultation the final report is now being drafted. Conclusions presently remain confidential, but Jackson LJ was able to discuss many of the emerging themes.

The consultation period has, by all accounts, raised issues and emotions. Everyone who expresses a view on costs holds firm views and forthright expression of views has been commonplace. Many of those views are diametrically opposed. Whatever conclusions are reached, Jackson LJ knows that it will cause resentment, disappointment, intense frustration or joy for some. With much amusement, he anticipated a lynching, and asked for tender mercy. Among the issues raised were these:

- Cost capping, it appears (judging from the Birmingham Court's pilot study) is not liked by consultees. This should be distinguished from judge-led cost management;

- For cost estimates, an extraordinary difference was noted between, on the one hand, cost estimates provided at CMC and, on the other, the cost estimating, budgeting and cost modelling carried out by many solicitors for their clients. As it was put, ‘can we go on in a world where minutiae and management of costs is known only to the few?’, a clear indication that limiting expertise to cost assessors reflects a bygone era;
- Protocols were very popular with consultees, but views on the construction protocol were mixed. Some recommendations for changes are likely;
- Disclosure has provided a hotbed of discussion. Standard disclosure is no longer viable. The US experience is that full disclosure of e-documents has a crippling cost impact. Construction disputes are document intensive and may favour standard disclosure. The range of options is bewildering: IBA approach? Issue-based disclosure? Judge-led disclosure?
- Do Court bundles have to be so voluminous and paper based. We were reminded that the TCC has commenced use of e-working systems whereby all submissions are scanned. Should other courts follow this example, and can the benefits of software systems be extended to cover compilation of bundles?
- After the event insurance and CFAs, we were reminded, were developed to help parties that might, in the past, have relied upon legal aid. The use of these products has now spread to the point where the limits on recoverability of costs arising requires urgent attention;
- Do witness statements need to be so long? Perhaps the trial judge should provide views on what are considered to be excessive statements so that due account can be taken in decisions on costs;
- Much support has been expressed for ‘hot-tubbing’ of experts (whereby several experts are sworn-in at the same time and questioned interchangeably), following the example in New South Wales. A pilot study was noted as being of potential benefit.

Amongst the questions asked by attendees, a well-known adjudicator asked whether costs were simply the by-product of case management, to which we heard this reply: to the construction practitioner, every piece of litigation is like a building project and can be managed carefully; the litigator would ask how a house might be built when the other side contested the very need for the building in the first place and every feature it contained; and a third view is that after years of litigation, an experienced judge can discern patterns as to how cases are managed. Each party believes his or her answer is right. Each expects Jackson LJ to support their view. A new approach is needed, but what?

The final report is due at the end of the year. It will be shorter than the consultation document, and will refer back to that document. As to what happens next? It remains to be seen to what extent the government of the day might adopt the recommendations.

Our thanks to Lynne McCafferty and the TECBAR committee for organising this event.

Ronan Champion
SCL Chairman

SCL Hudson Prize 2009 – win £2,000!

Entries are invited for the 2009 Competition from all entrants with an interest in construction law and an idea which they wish to share. The judging panel places emphasis on originality of thought and approach. The length of essay is a maximum of 5000 words. (While footnoting or other method of referencing sources does not count towards this total and is encouraged, some recent entrants appear to have tried to avoid the word limit by loading footnotes with matters of substance, sometimes running to several paragraphs, in a disproportionate and inappropriate way. This is almost always counter-productive).

Eligible subjects can be drawn from any part of construction law widely defined, including (but not restricted to) construction and engineering contracts, contract administration, claims, arbitration and dispute resolution, construction litigation, the law of torts, company law, property law, taxation (although this must be related to construction) and any other aspect of law or procedure relevant to the construction industry. **First prize is £2,000.** Entrants can also be highly commended or commended. All who are awarded prizes or commendations receive a year's free membership of the Society.

Past winners have included members of almost all the disciplines relating to construction law including barristers, solicitors (including a trainee) quantity surveyors, engineers, academics, architects, and several hybrids qualified in more than one discipline. Further details of the competition, the closing date for which is Monday, 4 January 2010, can be obtained from the website. Any queries can be referred to me via Jackie Morris in the first instance at admin@scl.org.uk

Good luck to all entrants.

Anthony Lavers - Chair of the Judging Panel

SCL Ring Binders

On joining the Society each full member receives, free of charge, an SCL ring binder to hold the published papers and newsletters. The SCL ring binders are, however, expensive to produce and so if additional ring binders are required they must be purchased.

The binders cost £7 each (including p&p) for despatch to UK addresses, or £10 each (including p&p) for despatch to overseas addresses. Purchase them online via the new SCL website, or send a cheque made payable to SCL to the admin address below.

New Members

Finally, we are pleased to welcome the new members who recently joined the Society:.

Rhys Burton, York

Kenneth Simpkins, Stirling

Tom Brosnan, Tripoli, Libyan Arab Jamahiriya

Helen Au, Hong Kong

Andrew Robertson, Doha, Qatar

Shiraz Oshidar, London