



NEWSLETTER : AUGUST 2018

Programme

Unless marked otherwise, the following meetings are free to members and guests.

Location maps are now available on the website.

To register for an event, please go to the SCL website (www.scl.org.uk) (under the tab “Participate” – “Meeting and events”) and where online booking is not available please contact the organiser directly.

London

Thursday,
9 August “SCL Networking Evening”
Venue: The Oyster Shed, The Observation Deck, Angel Lane,
London EC4R 3AB 5.00pm

Please note: This event has now SOLD OUT.

Tuesday,
4 September “When the walls come tumbling down: Fraud in Adjudication, Arbitration and Mediation”
Speaker: Matt Molloy, MCMS Limited
Chair: Mrs Justice O’Farrell DBE
Venue: National Liberal Club, Whitehall Place, London SW1 6.30pm
Organisers: rchampion@championpearce.com, jonathan.cope@mcms.co.uk,
karen.gough@39essex.com, hlal@akingump.com,
rebecca.shorter@whitecase.com & Sunderland@crownoofficechambers.com
(Please note that bookings must be made online for this event, and SCL will not take bookings by email)

Tuesday,
2 October Venue: National Liberal Club, Whitehall Place, London SW1 6.30pm
Organisers: rchampion@championpearce.com, jonathan.cope@mcms.co.uk,
karen.gough@39essex.com, hlal@akingump.com,
rebecca.shorter@whitecase.com & Sunderland@crownoofficechambers.com
(Please note that bookings must be made online for this event, and SCL will not take bookings by email)

Tuesday,
6 November Venue: National Liberal Club, Whitehall Place, London SW1 6.30pm
Organisers: rchampion@championpearce.com, jonathan.cope@mcms.co.uk,
karen.gough@39essex.com, hlal@akingump.com,
rebecca.shorter@whitecase.com & Sunderland@crownoofficechambers.com
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rebecca.shorter@whitecase.com & Sunderland@crownoofficechambers.com
(Please note that bookings must be made online for this event, and SCL will not take bookings by email)

Friday, 15 February “The SCL Annual Lunch”
Speaker: Cathy Newman, Journalist and presenter of Channel 4 News
Venue: Grosvenor House, A JW Marriott Hotel, Park Lane, London W1K 7TN 12 noon for 1.00pm
This event will go live on 2nd October 2018. Please note that no provisional bookings will be taken before that date.

Birmingham

Wednesday, 19 September “MT Højgaard v E.On one year on: distinguishing ‘design’ and ‘works’ liability”
Speaker: Paul Buckingham, Keating Chambers
Chair: Michael O’Shea
Venue: Gateley LLP, One Eleven Edmund Street, Birmingham B3 2HJ 5.30 pm for 6 pm
Organisers: Ian.Yule@shoosmiths.co.uk

For further enquiries please contact Grace.Sparkes@shoosmiths.co.uk

Wednesday, 7 November Are “independent” experts really doing their job?”
Speakers: Anthony Speaight QC, Fiona Sinclair QC, Thomas Crangle, Robert Scrivener, 4 Pump Court
Chair: Sir Rupert Jackson
Venue: Gowling WLG, Two Snowhill, Snow Hill Queensway, Birmingham, B4 6WR 5.00pm for 5.30pm
Organisers: Ian.Yule@shoosmiths.co.uk

For further enquiries please contact Grace.Sparkes@shoosmiths.co.uk

Wednesday, 5 December “Challenging a payment notice in the absence of a pay less notice”
Speaker: Justin Mort QC, Keating Chambers
Chair: Jonathan Cope, SCL Chair
Venue: Anthony Collins Solicitors LLP, 134 Edmund Street, Birmingham, B3 2ES 5.30 pm for 6 pm
Organisers: Ian.Yule@shoosmiths.co.uk

For further enquiries please contact Grace.Sparkes@shoosmiths.co.uk

East Anglia/Milton Keynes

Thursday, 6 September “NEC 4 - What's new? Evolution or Revolution”
Speaker: Lindy Patterson QC, 39 Essex Chambers
Chair: Alistair Cull
Venue: Network Rail, Quadrant MK, Elder Gate, Milton Keynes MK9 1EN 6.00pm
Organisers: alison.garrett@mills-reeve.com, colinjones@hewitsons.com or alistair.cull@drivertrett.com

Ireland

Thursday, 27 September “Mediation vs Conciliation: which is better and why do they fail?”
Speakers: Rosemary Jackson QC & Orla Fitzgerald, Architect & Conciliator
Chair: Eamonn Conlon, A & L Goodbody
Venue: A & L Goodbody, North Wall Quay N Wall Quay, North Wall, Dublin 1, D01 H104 6.00pm
Organiser: adhussey@lawlibrary.ie

Thursday, 4 October “Joint SCL and Adjudication Society Advocacy Course - Dublin”
Joint SCL/Adjudication Society Event
Venue: William Fry, 2 Grand Canal Square, Grand Canal Dock, Dublin 2, Ireland 10.00am
Organiser: adhussey@lawlibrary.ie

Cost: €199 per person. Bookings can only be made online, and only PayPal can be used to make the payment.

Thursday,
29 November “Construction Arbitration: more transparency and less confidentiality?”
Speaker: John Tackaberry QC, 39 Essex Chambers
Chair: Arran Dowling-Hussey
Venue: McCannFitzgerald, Riverside One, 37 - 42 Sir John Rogerson's Quay, Grand Canal Dock, Dublin 2 6.00pm
Organiser: adhussey@lawlibrary.ie

Friday,
30 November “The SCL Lunch in Dublin”
Speaker: The Honorable Charles N Brower, Arbitrator (20 Essex Street).
Judge ad hoc at the International Court of Justice
Venue: Guinness Storehouse, The Arrol Suite, St James's Gate, Dublin 8 12 noon for 12.30pm
Organiser: adhussey@lawlibrary.ie

Cost €110.00 per person. Block bookings by firms will be limited to 2 tables each. All places will be allocated on a first paid, first served basis.

Leeds

Thursday,
6 September “Introduction to Building Contracts – Understanding Key Clauses”
Speakers: Tom Owen, Keating Chambers and Nicholas Maciolek, Atkin Chambers
Chair: Jonathan Cope, SCL Chair
Venue: Leeds Beckett University, Lecture Theatre B, The Rose Bowl Building, Portland Way off Portland Crescent, Leeds LS1 3HB 6.15pm
Organiser: jhawkswell@hklegal.co.uk

Friday,
7 September “The SCL Lunch in Leeds ”
Speaker: Andrew Parker FRCS Consultant & ENT Surgeon
Venue: Leeds Marriott Hotel, 4 Trevelyan Square, Boar Lane, Leeds LS1 6ET 12.15 for 1.00pm
Organiser: jhawkswell@hklegal.co.uk

Cost £75 per person. Block bookings by firms will be limited to 2 tables each. All places will be allocated on a first paid, first served basis.

Thursday,
11 October “Professional Liability for Construction Professionals”
Speakers: Sarah Hannaford QC and Tom Owen of Keating Chambers
Chair: Martin Green
Venue: Leeds Beckett University, Lecture Theatre B, The Rose Bowl Building, Portland Way off Portland Crescent, Leeds LS1 3HB 6.15pm
Organiser: jhawkswell@hklegal.co.uk

Manchester

Wednesday,
5 September “Professional Liability for Construction Professionals: case law, trends and practical guidance”
Speakers: Sarah Hannaford QC and Tom Owen, Keating Chambers
Chair: Fraser Askham
Venue: CMS Cameron McKenna Nabarro Olswang LLP, 1 The Avenue, Spinningfields, Manchester M3 3AP 5.30 for 6.00pm
Organisers: fraser.askham@cms-cmno.com & LOsborne@ridge.co.uk

Thursday, 29 November “Collaborative Contracting – Aspiration, Myth or Reality?”
Speaker: Paul Darling QC, 39 Essex Chambers
5.30 pm – tea/coffee
6 pm – 7 pm – talk/presentation
7 pm – 9pm – mulled wine and mince pies
Organisers: fraser.askham@cms-cmno.com & LOsborne@ridge.co.uk

Scotland

Friday, 9 November “The SCL Lunch in Scotland”
Venue: The Supper Club, 29 Royal Exchange Square, Glasgow G1 3AJ 12 noon for 12.30pm
Organisers: louise.shiels@brodies.com & lhc@cdr.uk.com

Cost £81 per person. Block bookings by firms will be limited to 2 tables each. All places will be allocated on a first paid, first served basis.

Sheffield/Derby/Nottingham

Tuesday, 11 September “Construction/ADR update”
Speaker: Kim Franklin QC, Crown Office Chambers
Chair: Jonathan Cope, SCL Chair
Venue: Hallmark Hotel, Midland Road, Derby DE1 2SG 6.00pm
Organiser: jocelyn.taylor@btinternet.com

South West

Friday, 19 October “The SCL Lunch in Bristol”
Speaker: Alastair Humphreys, adventurer and author
Venue: Bristol Marriott Royal Hotel, College Green, Bristol BS1 5TA 12 noon for 1.00pm
Organiser: Jonathan.Spencer@simmons-simmons.com

Please note: All places will be allocated on a first paid, first served basis. Cost £75 including VAT.

8th International Society of Construction Law Conference

“Construction Law: Local Issues- Global Perspectives.”
September 26th -28th 2018, Chicago, IL- The Palmer House

The conference programme is finalised and registration is open. Please click below to register for the conference. www.scl-na.org

ESCL Annual Conference 2019

“European Construction Public Procurement Current Issues and Perspectives.”
25-27 October 2018, Faculty of Law, Bucharest University,
34-46 Mihail Kogalniceanu Blvd, Bucharest 050107

The conference programme and registration documents can be found at <http://rscl.ro/en/escl-2018/>
Further events are listed at www.scl.org.uk

We are keen to receive suggestions for speakers and topics both for the London and the Regional programmes. If you have any suggestions please send your ideas to: Keith Kirkwood (keithkirkwood@benningtongreen.co.uk); Ronan Champion (rchampion@championpearce.com); Jonathan Cope (jonathan.cope@mcms.co.uk) or Hamish Lal (hlal@akingump.com)

From the Chair

Dear SCL Members

I start this month's column on a sad note by announcing that our former President (1993 to 1995) and Chair (1995 to 1996), Frances Paterson MBE, passed away peacefully late last week. Those of you who were at the Annual Dinner in May will have seen Frances presented with the President's Medal. Frances was an extremely worthy recipient of the Medal given her outstanding contribution to the Society over many years, and having sat next to Frances that evening I know how much it meant to her. Any members who would like to be notified of details of the funeral and/or arrangements for flowers or donations should contact Jill Ward (jill.ward@scl.org.uk). Frances's obituary will be contained in the September edition of the Newsletter.

On a lighter note, I've had a busy first month as Chair, the highlight of which was attending the SCL Lunch in Manchester. We had around 300 members and guests, and our distinguished speaker, Edwina Currie, was thoroughly entertaining.

Although many of you will now be on your summer holidays, this has not dampened demand for our networking event at the Oyster Shed on 9th August, which is now sold out. I look forward to seeing many of you there, and please do by all means speak to me or any other member of Council at the event if there are any suggestions for future Society events that you would like to see on the programme. My apologies to those of you who have not been able to buy a ticket for the event; we are looking at the possibility of holding it at a larger venue in 2019 in order to accommodate more people.

The Society has a variety of events in September to suit every taste, with talks in London, Manchester, Milton Keynes and Leeds in the first week alone, not to mention the SCL Lunch in Leeds. Although the Leeds lunch is proving as popular as ever, there are still some tickets available. I would urge you to book sooner rather than later to avoid disappointment.

You may recall that in the July newsletter I highlighted the 8th International Society of Construction Law Conference in Chicago from 26th to 28th September 2018. Although the link to the programme and registration is set out above, you will also note that the flyer for the event has also been enclosed with this newsletter. You will see that there is a very strong mix of speakers from throughout the world and topics to suit everyone's interests; I hope that as many of our members as possible will be there representing the UK SCL.

Staying on the international theme, I would also like to bring to your attention the annual European Society of Construction Law conference which is being held in Bucharest between 25th and 27th October 2018 (see enclosed programme). The title of the conference is *European Construction Public Procurement, Current Issues and Perspectives*, and it will no doubt be of interest to any members involved with procurement law, both domestically and in Europe.

I am excited to share two announcements with you:-

- Firstly, I can confirm that the AGM and Annual Dinner will be held on Wednesday 1st May 2018, and in a break from tradition we have decided to hold it at Drapers' Hall in the City. Council decided that it was time to try a different venue, and I have no doubt that the splendid surroundings of Drapers' Hall will prove to be an excellent venue for what is one of the highlights of the Society's calendar;
- Secondly, we have decided to introduce a PhD scholarship scheme for students studying for doctorates in construction law related subjects. Further details will be provided in due course, but we hope to be able to start offering the scholarships from 2019 onwards. I am sure you will agree that this will help to further the Object of the Society, and ultimately be of benefit to all members.

Finally, may I wish you all a restful summer, and I look forward to seeing many of you at the Oyster Shed or at one of our many events in September.

Jonathan Cope – Chair
jonathan.cope@mcms.co.uk

Papers

Online and printed is a paper by **The Rt Hon Lord Dyson** presented to a joint meeting of the SCL and the Society of Construction Arbitrators in London on 3rd July 2018, entitled *Privacy in Arbitration: How Far Should we Lift the Curtain on What Happens?* (211). In this paper Lord Dyson examines two questions linked by the common thread of privacy and confidentiality in arbitration proceedings. The first question is the extent to which arbitration proceedings (including awards) should, in the absence of consent, be private and confidential to the parties. The second is for what purposes (and subject to what conditions) it is legitimate for arbitrators to use secretaries to help them discharge their tasks.

Online is **Dr Peter Heink**'s Commended Hudson prize entry, *Court and Tribunal Appointed Experts in Construction Disputes under Civil Law and Common Law – 'Hired Gun' v 'Inquisition'* (D212). Dr Heink analyses the legal background governing the appointment of experts by courts and tribunals, the role that they play and the ways in which impartiality is retained. Although international arbitration is seeing harmonisation of procedures there are differences in approach in other national court and arbitration proceedings. In particular, the author compares the provisions of the German Code of Civil Procedure with the English statutory law, noting that in Germany, experts are appointed as assistants to the court, whereas in England party-appointed experts are cross-examined in an adversarial process. Are these differences down to civil law versus common law? The paper examines the various arbitration rules concerning the use of experts: individual agreement of the parties, international conventions and rules provided by institutional bodies or the governing law.

SCL Hudson Prize Competition 2018

Entries are now invited for the 2018 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 methods 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, adjudication and dispute resolution, construction litigation, the law of torts, company law, property law, procurement, professional negligence, taxation (although this must be related to construction) and any other aspect of law or procedure relevant to the construction industry. **First prize is £2,500 and Second prize is £1,250.** Entrants can also be Highly Commended or Commended. The award of prizes or commendations, or the decision not to award them, is in the absolute discretion of the Society through its judging panel. All who are awarded prizes or commendations receive a year's free membership of the Society. The Society may decide, at its discretion, to publish the successful papers, in hard copy and/or electronic format.

Past winners have included members of almost all the disciplines relating to construction law including barristers (including pupils), solicitors (including a trainee), quantity surveyors, engineers, academics, architects, and several hybrids qualified in more than one discipline.

Further information and entry details can be found on the website www.scl.org.uk or obtained from Jill Ward admin@scl.org.uk. The closing date for essay submission is Thursday 3rd January 2019. Any queries can be referred to the panel via Jill Ward in the first instance.

Joint SCL and Adjudication Society Advocacy Course - Dublin

Thursday 4th October 2018

William Fry, 2 Grand Canal Square, Grand Canal Dock, Dublin 2, Ireland

The Society is pleased to announce that it will be holding its very popular Advocacy Training Course on 4th October 2018 in the offices of William Fry in Dublin. The event is co-run with the Ireland Region of the Adjudication Society.

The course is open to all members of the Society who have no, or little advocacy experience. This includes in-house counsel, junior counsel and pupil barristers as well as junior solicitors, together with construction

professionals wishing to conduct their own advocacy at mediation or adjudication. Members from outside the Republic of Ireland are welcome albeit any reference to legislation in the course is to Irish legislation

The Course will give each advocate the opportunity to present and oppose applications in a range of construction law scenarios, and the emphasis will be on hearings replicating an adjudication hearing.

The course costs €199 including breakfast and lunch and attendees will receive 6 hours CPD.

We do have a limit on the numbers for this event, so early sign up is essential. Once your place has been secured further papers will be sent for you to prepare for the hearings.

For further details and/or to express an interest in securing a place, contact Jill Ward at admin@scl.org.uk

SCL Advocacy Course – London

Thursday 22nd and Friday 23rd November 2018

Akin Gump, Ten Bishops Square, London, E1 6EG

The Society is pleased to announce that it will be holding its very popular Advocacy Training Course again on the evening of 22nd November and full day on 23rd November 2018.

The course is open to all members of the Society who have no, or little advocacy experience. This includes in-house counsel, junior counsel and pupil barristers as well as junior solicitors, together with construction professionals wishing to conduct their own advocacy at mediation or adjudication.

The Course will give each advocate the opportunity to present and oppose applications in a range of construction law scenarios, and the emphasis will be on hearings replicating an adjudication hearing.

The course is free of charge but **ONLY** open to SCL members.

We do have a limit on the numbers for this event, so early sign up is essential. Once your place has been secured further papers will be sent for you to prepare for the hearings. Please note the Course takes place on the evening of 22nd November between 6.00pm – 9.00pm and between 9:00am – 5:00pm on 23rd November.

For further details and/or to express an interest in securing a place, contact Jill Ward at admin@scl.org.uk and Hamish Lal at hamish.lal@akingump.com. This event carries 6 CPD points.

Introduction to Basics 2018 – Kings College, London

Wednesday 12th September 2018 at 2.00pm, Room K2.31, King's Building, Strand Campus

This annual seminar is for those considering specialising in construction and for junior or recently appointed staff encountering construction issues for the first time. It provides a general introduction to many of the widely encountered principles, as well as identifying some current 'hot topics'

The expected themes and speakers are:

Procurement and Tendering (Julie Teal – Withers LLP)

Claims (Liam Holder – Navigant)

Defects and their legal remedies (Sarah Williams – Keating Chambers)

Dispute resolution (Nicholas Gould – Fenwick Elliott LLP and Kings College London)

Development and Finance (Helen Garthwaite – Wedlake Bell LLP)

Presentations and discussions start at 2pm and end at around 6pm. The presentations will be followed by a drinks reception in Chapters, 1st Floor, King's Building.

For further details please contact Sue Hart on (+44)(0) 20 7848 2643 email susan.hart@kcl.ac.uk or <https://estore.kcl.ac.uk/conferences-and-events/academic-faculties/the-dickson-poon-school-of-law/centre-of-construction-law/introduction-to-the-basics-2018>

RIBA Adjudication Panel

The RIBA is currently looking for both RIBA members (not involved in RIBA governance structures) and lay people to join a panel of independent experts to hear staff or member grievances brought under the RIBA Member Staff Behaviours Protocol. If you would like more information or if you would like to express your interest, please contact Bethan Davies at the RIBA Legal Department (bethan.davies@riba.org or on 020 7307 3707)

SCL Astra (formerly Junior SCL)

Two important qualities are required to succeed in the construction legal market (apart from avoiding hard hat hair):

1. Knowledge / an understanding of the wonderful world of construction law
2. A wide and varied network of contacts to assist in generating business and satisfying client demands

With that in mind, SCL Astra (formerly Junior SCL) was developed to provide tailored opportunities to develop these qualities for existing SCL members who fall within one of the following categories:

- Up to 10 years post-qualification
- Recently moved to a new field within the construction legal industry
- Young at heart

We organise a range of activities for our members, including social events, site visits, seminars and our bi-annual conference (planned for mid-2016). We adopt the mantra that there are no stupid questions and foster an environment of learning and development. We also maintain strong links with RICS Matrics and CIOB Novus which permits the sharing of insights into various aspects of the construction industry. There is no additional cost to be part of SCL Astra – once you are an SCL member and meet one of the above criteria; we welcome you to our ranks!

If you are interested in registering as an Astra member, please sign up on the Astra page of the SCL website (note that you need to opt-in to receive communications regarding Astra events). Otherwise, watch out for upcoming Astra events in the SCL newsletter and on the website.

SCL Astra Twitter handle (@SCLAstra). Finally, if you are interested in being part of the Astra committee in your region, we would love to hear from you. Please email swilliams@keatingchambers.com; Rebecca.shorter@whitecase.com or ladams@atkinchambers.com.

Social Media, E-mail and Keeping You Informed

In addition to keeping up to date via email, the newsletter and the website, the SCL has a presence on Twitter, LinkedIn and Facebook where you can find information, news and events:

LinkedIn group 'Society of Construction Law UK'

Facebook page 'Society of Construction Law UK'

Twitter name '@SCL_UK' SCL Astra Twitter handle (@SCLAstra)

We always welcome feedback and comments, including via tweets and postings on how we can improve the service the SCL provides to its members. Contact details for all Council members can be found on the SCL's website. We would also take this opportunity to remind all members to update their online details and preferences to ensure you only receive the information you want from the SCL.

General Data Protection Regulations (GDPR)

As many of our members will know, the GDPR comes into effect on 25 May 2018 and are aimed at improving data protection for individuals. The SCL takes data protection seriously and we refer you to the SCL Privacy Policy which can be found at <https://www.scl.org.uk/privacy-policy>.

In order to ensure that we can still keep in touch with members and let you have information about the SCL including details of events and published papers, we require members' consent for SCL to process their data. We would therefore be grateful if you would log on to your account and confirm agreement to being contacted. To do this, visit your Profile page (Profile tab on your user account page), tick the 'Data consent' box in the 'Region, mailing & data preferences' section near the bottom of the form, and save the form."

If you prefer to provide confirmation by post, please fill in the details below and post it to SCL. If you fail to do so we may not be able to contact, you.

Data Consent – In confirm that the SCL can manage my data and contact me in accordance with the SCL Privacy Policy

Name (please print): _____ Signature: _____

Address: _____ Date: _____

New Members

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

Bhalindra Bath, London
Elizabeth Clazie, Ely
Lisa Maloney, Ireland
Helena Payne, London
Rebecca Rowell, Dartford
Edward Sung, Glasgow
Elizabeth Wilson, London

Edward Carolan, St Albans
Deirdre Hennessy, Ireland
Ben McMahon, London
Ian Radford, Oman
Julie Scott-Gilroy, Edinburgh
Leonardo Toledo da Silva, Brazil

Cahal Carvill, Belfast
Abigail Dawn Jones, Bristol
Lauren Morrison, London
Juan Hector Rivera Lobos, Chile
Maren Strandevold, London
Lachlan Watson, London