



NEWSLETTER : DECEMBER 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

Tuesday,
4 December “When insolvency trumps rough justice: injunctions and stays of execution of adjudication proceedings”
Joint meeting with TECBAR
Speakers: David Sears QC and Crispin Winser
Chair: Mrs Justice Carr
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@crownofficechambers.com

This talk will be followed by festive drinks and mince pies.

(Please note that bookings must be made online for this event, and SCL will not take bookings by email).

Wednesday,
12 December “Statutory Adjudication and Dispute Boards: do they deliver?”
SCL Astra Breakfast Seminar
Speaker: Lindy Patterson QC, 39 Essex Chambers and Simon Fegen,
Leach Group
Venue: Macfarlanes LLP at 20 Cursitor Street,
London EC4A 1LT 8 for 8.30am
Organiser: ladams@atkinchambers.com, rebecca.shorter@whitecase.com &
swilliams@keatingchambers.com

Please note this event is open to SCL Members only.

Tuesday,
5 February “Prevention or Cure? Delay Claims and the Rise of Concurrency Clauses”
Speaker: Lord Justice Coulson
Chair: Paul Darling OBE QC
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@crownofficechambers.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 London 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

PLEASE NOTE: Cost £99.00 (including VAT). Block bookings by firms will be limited to 3 tables each. All places will be allocated on a first paid, first served basis. Each table will seat 10 people.

Tuesday,
5 March “Whose case is it anyway? Some thoughts on the presentation and assessment of evidence”
Speaker: Her Hon Mrs Justice Jefford DBE
Chair: Fiona Sinclair QC
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@crownofficechambers.com

(Please note that bookings must be made online for this event, and SCL will not take bookings by email)

Birmingham

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 for 6.00pm
Organiser: Ian.Yule@shoosmiths.co.uk

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

Wednesday,
6 February “Prevention Principle – now Cured?”
Speaker: Lindy Patterson QC, 39 Essex Chambers
Chair: Michael O’Shea
Venue: Mills and Reeve LLP, 78-84 Colmore Row,
Birmingham B3 2AB 5.30 for 6.00pm
Organiser: Ian.Yule@shoosmiths.co.uk

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

Cardiff

Wednesday,
5 December “Adjudication, Notices and Payment Provisions: A Dense Thicket or an
Orderly Grove?”
Speaker: David Johnson, Atkin Chambers
Venue: Hugh James, Two Central Square, Central Square,
Cardiff CF10 1FS 5.30 for 6.00pm
Organisers: Rachel.Gwilliam@blakemorgan.co.uk or
sean.gibbs@hanscombintercontinental.co.uk

Wednesday,
30 January “The impact of delay for employer's and contractors...."Don't look back in anger!"”
Speaker: Ian Gunton, CNS Consult
Chairs: Sean Gibbs and Rachel Gwilliam
Venue: Blake Morgan, One Central Square,
Cardiff CF10 1FS 5.30 for 6.00pm
Organisers: rachel.gwilliam@blakemorgan.co.uk or
sean.gibbs@hanscombintercontinental.co.uk

Eastern

Tuesday,
15 January “A reflection of construction dispute resolution over the past 30 years”
Speaker: Paul Darling OBE QC, 39 Essex Chambers
Venue: Birketts LLP, Providence House, 141-145 Princes Street,
Ipswich, IP1 1HZ 5.30 for 6.00pm
Organisers: hanna-mcnab@birketts.co.uk; Alison.garrett@mills-reeve.com;
colinjones@hewitsons.com or alistair.cull@drivertrett.com

Ireland

Friday,
28 February “SCL/SCL Astra Dublin Conference”
Speakers: www.scl.org.uk/participate/events/ireland-conference-2019
Venue: Powerscourt Hotel Powerscourt Co. Wicklow
A98 DR12 Ireland 8.45 for 9.15am
Organiser: adhussey@lawlibrary.ie

Please note: Cost €100 per person. All places will be allocated on a first paid, first served basis.

Kent

Tuesday,
5 February “Adjudication of construction professional negligence claims”
Speaker: Ebony Alleyne, Hardwicke
Venue: Cripps LLP, 22 Mount Ephraim, Tunbridge Wells TN4 8AS 6 for 6.30pm
Organiser: jonathanbowcott@mbmconsult.com
nitej.davda@cripps.co.uk & JaneRyland@brachers.co.uk

Leeds

Friday,
8 March “The Society of Construction Law Annual Spring Conference”
Speakers: Her Hon Mrs Justice Jefford DBE, His Hon Judge Mark Raeside QC,
William Webb, James Howells QC,
David Pliener, Glenn Hyde and Crispin Winser
Venue: The Royal Armouries, Leeds LS10 1LT 8.15 for 9.00am
Organiser: jhawkswell@hklegal.co.uk

Please Note: Cost per person £150.00 (£125.00 plus £25.00 VAT)

Manchester

Thursday,
6 December “SCL Astra Manchester Christmas Quiz”
Venue: DLA Piper UK LLP, 1 St Peter's Square,
Manchester M2 3DE 5.30 for 6.00pm
Organiser: sarah.wilson@addleshawgoddard.com

The event is free to attend and bookings are open to non SCL members on this occasion. Drinks and canapés will be provided. Christmas jumpers are encouraged but not required. Individual bookings are welcome and will be allocated to a quiz team. Alternatively, tables of up to 8 may be reserved for your quiz team/organisation. Please indicate your preference when booking.

Wednesday,
16 January “When insolvency trumps rough justice: injunctions and stays of execution of adjudication proceedings”
Speakers: David Sears QC and Crispin Winser, Crown Office Chambers
Venue: Friends Meeting House, Room F13, 6 Mount Street,
Manchester M2 5NS 5.30 for 6.00pm
Organisers: fraser.askham@cms-cmno.com & LOsborne@ridge.co.uk

Southern

Tuesday,
4 December “Adjudication Update 2018”
Speaker: Catherine Piercy, Hardwicke Chambers
Venue: Blake Morgan Solicitors, New Kings Court, Tollgate, Chandler's
Ford, Eastleigh SO53 3LG 5.30 for 6.00pm
Organiser: Jessica.Tresham@blakemorgan.co.uk

Surrey/Sussex

Tuesday,
8 January “The Jackson reforms and their sequel”
Speaker: Sir Rupert Jackson
Chair: David Savage, Charles Russell Speechlys LLP
Venue: The Glass Room, G Live, London Road,
Guildford GU1 2AA 5.30 for 6.00pm
Organiser: Andrew.Keeley@crsblaw.com

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

November has traditionally been one of the Society's busiest months, and this year has been no exception. I had the pleasure of travelling to Glasgow for the Scottish Lunch on the 9th November, where BBC Scotland's political editor, Brian Taylor, gave an interesting and insightful speech, and I have recently returned from the Irish Lunch at the Guinness Storehouse in Dublin. Dennis Taylor, the former world snooker champion, provided an entertaining end to what has become the Society's unofficial Christmas lunch. Other highlights of the month were the Third Annual SCL West Midlands debate entitled "*Are "independent" experts really doing their job?*", and the SCL Advocacy Course in London.

More generally, 2018 has seen the Society grow and develop once again, by way of example:

- By the end of 2017 the Society had 2,883 members, and at the time of writing this has increased to 2,970
- The Society held 61 lectures in 2018 compared to 57 in 2017
- We are on target to exceed the 16 papers produced in 2017
- There were more networking drinks evenings held throughout the regions
- Astra held their first Ball, in Manchester
- The Society honoured our late former President and Chair, Frances Paterson, by introducing a PhD scholarship in her name
- We introduced our Equality and Diversity policy

All of this is thanks to the hard work of our Administrators, Jill Ward and Frances Whitehead, Astra Committee members around the country, the Regional Representatives and Council, and my thanks go to everyone involved for their hard work throughout 2018. Thanks also to the Society's members for supporting our events.

The 2018 programme has not yet finished. December's events are set out in full at the beginning of this newsletter, but highlights include Justin Mort QC's talk in Birmingham and David Johnson's talk in Cardiff on payment and pay less notices; these are obviously highly topical following the Court of Appeal's recent judgment in *S&T (UK) v. Grove Developments*. We also have the Astra Christmas quiz in Manchester where I hope all the participants will be donning their Christmas jumpers!

In the January newsletter I will look ahead to what we've got in store for you in 2019, but a couple of tasters are Lord Justice Coulson's talk at the National Liberal Club on 5th February 2019 entitled "*Prevention or Cure? Delay Claims and the Rise of Concurrency Clauses*", and the SCL Annual London Lunch at the Grosvenor House Hotel on 15th February 2019. Tickets for the Lunch have been selling at a phenomenal rate, but there are still some available. I would also ask members to note that they can book individual tickets, and it is not necessary to book a whole table.

It just leaves me to wish you all a merry Christmas and a Happy New Year!

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

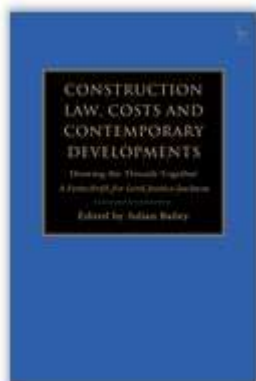
SCL Hudson Prize Competition 2018

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.



Construction Law, Costs and Contemporary Developments: Drawing the Threads Together

A Festschrift for Lord Justice Jackson

Edited by Julian Bailey

Lord Justice Jackson's retirement in March 2018 concluded a career of almost 20 years on the bench. His judicial career has seen a remarkable transformation of construction law, construction law litigation and the litigation landscape more generally. *Drawing the Threads Together* is a Festschrift which considers many of the important developments in these areas during the Jackson era.

The Festschrift discusses most of the leading construction cases decided by Lord Justice Jackson, with subject matter including statutory adjudication, fitness for purpose obligations, consideration, delays and extensions of time, liquidated damages, time bar provisions, the prevention principle, neighbour rights, limitation clauses, negligence, good faith, bonds and guarantees and concurrent duties of care. It also includes a discussion of the background to the Jackson Review of Civil Litigation Costs (2009–2010) and its impact on litigation, as well as considering the development of the Technology and Construction Court during and subsequent to Mr Justice Jackson's tenure as judge in charge of that court.

November 2018 | 9781509919949 | 416pp | Hardback | RSP: £80

The recommended sale price is £80, but SCL members are entitled to a 20% discount
Order online [here](#) – use the code CV7 at the checkout to get 20% off your order and pay only £64

FRANCES PATERSON SCHOLARSHIPS

<https://www.scl.org.uk/resources/news/frances-paterson-scholarships>

SCL awards for Ph.D candidates in Construction Law

As a tribute to her distinguished contribution to construction law, and to the work of SCL, the Society has decided to offer a scholarship bearing Frances Paterson's name. The purpose of the scholarship is to support doctoral research in the field of construction law at a UK university.

1. The Scholarship is intended to assist with the payment of university fees for the duration of a Doctorate and has therefore been set at 50% of the annual course fee, up to a maximum of £2,500 per year (£1,250 for a part-time candidate).
2. Applicants must be registered for a Doctorate, or for a Master's leading to transfer to a Doctorate, at a university in Great Britain or Northern Ireland, undertaking research in construction law, within the broad definition given in the SCL Hudson Prize guidance.
3. The intention is that the award will be renewed annually, based on confirmation of satisfactory progress being provided by the holder's supervisor. Subject to this, it is intended that the award will be for 3 years for a full-time candidate and for 4 years for a part-time candidate.
4. No extension of the duration of the award is envisaged. An application for an extension would only be considered if the candidate's supervisor could demonstrate exceptional circumstances which the University Liaison and Grants Sub-Committee regarded as justifying an extension.
5. Applications for award (and renewal of an existing award) must be made at least eight working weeks before the start of the term of the year of the award.
6. Applications must be on the pro-forma available on the SCL web-site, or from the SCL Administrators, Jill Ward and Frances Whitehead. Applications must be accompanied by a reference from the university supervisor, or prospective supervisor of the candidate as to: a) the academic record and quality of the candidate; b) the value of the research, including prospects for publication; and c) the prospects of completion within 3 years (full-time) and 4 years (part-time).
7. All decisions on awards, and renewal of awards, will be at the absolute discretion of SCL Council, on the recommendation of the University Liaison and Grants Sub-Committee. An independent academic reviewer may be used in the initial award process. The Society cannot enter into communication with applicants regarding the merits of decisions on applications and/or renewals.
8. On successful completion of the Doctorate, the holder of the award may be invited to make a presentation to a meeting of SCL and will be required to provide a written summary of the results within the format of a SCL paper.

To mark the launch of the scholarships in the year of Frances's death, the Society proposes to offer TWO full-time awards (or part-time equivalents) for Doctorates commencing in Autumn 2018 (commencement in January 2019 will also be accepted). In future years, starting in September 2019, ONE further full-time award (or part-time equivalent) per year is intended, subject to suitable applications being received.

ESCL Thesis Prize 2018 Winners

Last week the annual conference of the European Society of Construction Law (ESCL) took place. This year's edition was organised by the Romanian Society of Construction Law and took place in Bucharest. It was a two day conference on Procurement Law and a very interesting and inspiring conference. The ESCL consists of 20 national construction law societies and one of the tasks is to promote knowledge of international construction law. Because of the great appreciation for education and research an annual Master Thesis Prize has been created by the ESCL. This is the sixth year this prize has been awarded.

The jury is chaired by the President of the ESCL who appoints two or more other members of the jury. The President of this year's thesis prize edition was dr. Ovidiu Dumitru (president of the Romanian Society of Construction Law). He appointed Professor dr. Benoît Kohl (Professor, University of Liège and University of Paris II - Counsel, Stibbe Brussels) and Professor dr. Anthony P. Lavers (Counsel, White & Case LLP, London - Visiting Professor of Law, King's College London) and Professor dr. M. Hugues Périnet-Marquet (Professor, University of Paris II) as jury members.

For the 2018 Thesis Prize, the jury has come to a decision on the first and two second prizes, based on a written assessment of the theses and a conference call discussion. The First prize awarded is EUR 2.500,- and the Second prize awarded is EUR 1.000,-. The winners were honoured in an award ceremony last Friday.

This year's winner was Giuseppe Giancarlo Franco from Bocconi University, Milan with his thesis titled: "Dispute boards: A comparative study of international practice". The jury report states that the "The candidate has engaged with a subject of growing importance in the resolution of international construction disputes, drawing together sources from several European jurisdictions. The conclusion offers some stimulating, and very relevant, thoughts on the role of UNCITRAL. The thesis is very well written."

The joint second prize was awarded to Yu Gao from the Technical University of Delft and to Edwina Elena Udrescu from Kings' College London.

Yu Gao wrote a thesis with the title: "Early Warning of NEC3 ECC, A Solution for Dutch Design and Build Construction Problem Solving?". The jury remarks that "The thesis shows an interesting application of a contractual mechanism from one European country (the U.K.) in the context of another one (the Netherlands). The candidate has achieved clarity of exposition within a logical structure. Furthermore, the thesis is well written and well presented"

Edwina Elena Udrescu wrote a thesis titled: "What legal and contractual issues can determine the success or failure of a PPP project?". The jury states that "[...] *the discussion of the crucial legal and contractual issues shows a side of this topic that has been fairly underexposed in the past. The thesis offers a practical and useful analysis of a number of European jurisdictions and therefore shows its value for construction practice.*"

The ESCL encourages students to submit their thesis with a construction and procurement law subject and written in English for the next ESCL Master thesis Prize competition. More information on next years' competition will soon be placed on the ESCL website <https://www.escl.org/>
More on the 2018 competition can be found here: <https://www.escl.org/escl-thesis-prize-2018-entries-invited>

Papers

Recent Developments in Conflict Avoidance Processes in Use in the UK Infrastructure Sector by **Jonathan Cope** (D215), is available online. The paper, which was presented at the European Society of Construction Law's annual conference in Bucharest, Romania on 26th October 2018, examines the ADR techniques currently in use in the UK infrastructure sector. Jonathan Cope assesses the conflict avoidance processes adopted by two of the UK's largest infrastructure employers, Transport for London and Network Rail, examining the rationale behind the processes adopted and giving an insight from his personal experience into how they worked in practice. The paper also looks at the Conflict Avoidance Pledge developed by professional bodies and infrastructure employers to promote a greater understanding of conflict avoidance techniques. The author concludes by looking ahead at the future of conflict avoidance and in particular suggesting how the education of key stakeholders should play a part.

Construction Law Quarterly

The Institution of Civil Engineers' journal, *Management, Procurement and Law*, includes Construction Law Quarterly (CLQ). It contains topical and legally-related articles, typically 800-1200 words long, and focuses on issues of the moment such as recently published judgments of the courts or current industry concerns. CLQ is not peer-reviewed but is subject to the editorial control of the MPL Journal's panel. If you are interested in writing articles for CLQ please contact Rebecca Rivers (rebecca.rivers@icepublishing.com)

ICE Publishing can offer SCL members 20% discount on *Management, Procurement and Law*, on the prices given here:

www.icevirtuallibrary.com/pb-assets/Marketing%20flyers/2019%20ICE%20Price%20List%20%A3%20-%20Screen.pdf

To place an order, or for more information, please contact: ICE Publishing, One Great George Street, London SW1P 3AA Email: sales@icepublishing.com Tel: +44 (0) 207 665 2460

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.

SCL Astra

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 established to provide tailored opportunities to develop these qualities for SCL members who fall within one of the following categories:

- Up to 10 years post-qualification experience
- Recently moved or returned to the construction legal industry
- Young at heart

We organise a range of activities for our members, including seminars, social events, site visits and our bi-annual international conference. Previous conferences have taken place in Paris, Madrid and Dubai; the next is planned for mid-2020. 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, on the website or 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.

Worshipful Company of Arbitrators Travelling Scholarship 2019, Hong Kong

The Worshipful Company of Arbitrators invites applications for two Travelling Scholarships each of £5,000.00 (or more if a suitable case can be made) to enable the recipients to travel to Hong Kong in order to investigate aspects of the Private Dispute Resolution process in that part of the world and to report back to the Worshipful Company of Arbitrators by way of a paper which will be published by WCA once approved.

Applications are invited from private dispute resolution practitioners and academics at any stage of their career. Before visiting Hong Kong and while in the area, participants will be put in contact with local WCA members who will be able to facilitate contact with local practitioners and, where possible, to facilitate visits to hearings and other places of interest.

Initially, applicants should submit a short (one page maximum) outline of the research that they would like to undertake and a CV to Dr Chris McArdle, Chair of the WCA Education and Pupillage Committee by email to cm@innotec-uk.com

The closing date for applications is 31 December 2018. Shortlisted applicants will be invited for interview in London in January 2019 and are expected to complete the scholarship during 2019.

New Members

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

Jasmin Ademovic, Qatar

Lewis Carter, London

Kate Dugdale, London

Jonathan Gaskell, Edinburgh

Rhys Jones, Birmingham

Philip Kingstone, Canada

Tonny Mugabe, Uganda

Simon Pratt, South Africa

Mohamed Samaha, Egypt

Ross Russell, United States

Matthew Carr, Manchester

Richard Childs, Nigeria

Majd El Achkar, Saudi Arabia

Daniel Gilberthorpe, London

Advait Joshi, India

Cathryn Lees, Hertfordshire

Costel Nastac, Romania

Craig Roberts, Liverpool

Chris Vickers, London

Aurangzeab Farid Butt, Finland

Bianca Da Costa, South Africa

Matthew Evans, Manchester

Sean Hollywood, Armage

David Kingsford, London

Simon Manton, London

V Amarnadha Prasad Ponduri, India

Rebecca Weir, Newcastle upon Tyne

Antoinette van der Merwe, South Africa