



THE SOCIETY OF CONSTRUCTION LAW

CHAIRMAN'S REPORT – AGM 2024

I was elected Chairman in June 2022. I have been honoured to work alongside an array of excellent colleagues on Council. Council is now progressive, open, and better resonating with all aspects of our Membership. In June 2023 Louise Forster, Jess Neuberger and Michael Levenstein joined the Team – all three have made significant contributions to the tangible benefit of our Members. Council has worked harder over the last year. We are not complacent and naturally with a more diverse, vibrant, and progressive Council emanate new ideas, sounds and creativity. Let me please give you three examples:

- In the 2023 AGM I said that we were losing too far many Members and “Council will now review the critical path in the membership process and set a clear strategy to mitigate the decline. Put candidly, *something* has gone wrong, but Council *will* ‘fix’ it”. Louise Forster reviewed the overall process and ‘fixed it’ – we now have **2,956 Members** (as compared with 2,760 a year ago). We introduced a system of ‘autopay’ which gives Members the opportunity to renew each year with no fuss – 320 Members took up the auto renewal option. We now have the highest ever number of Members; we have reduced the number of Members ‘dropping off’; and made it easier for Members and their Firms / Chambers to renew. Louise Forster must be thanked and credited for the fundamental improvements.
- In June 2023 Jess Neuberger, Chris Sunderland and Matthew Taylor started work with all the Regions to increase collaboration, bring in new talent and to better appreciate what the Regions desired. The Team listened and recognised there is no ‘one size fits all’. The Regions are now flourishing – there are ‘**new and expanded Teams**’ in Ireland, Northern Ireland, Leeds, Scotland, and Wales. Inaugural Lunches in Belfast, Birmingham, and Cambridge; an array of educational and networking events; collaboration with others such as **Ciarb, CIOB, ICE**, provides compelling evidence of what has been achieved by the Team and of the renewed energy and enthusiasm in in the Regional Teams. I am hugely grateful to Jess, Chris and Matthew.

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- Learning and sharing knowledge are the heartbeat of SCL. In June 2023, Louise Forster and Jess Neuberger started **The Quarterly Construction Law Updates**. These are an immense success with over 750 Members registering for each update. We had Updates delivered by Alexander Nissen KC, Steven Walker KC and Rachel Ansell KC. The initiative is ethical and fair with all the Chambers taking turns to present. In November 2023 Andrea Stauber and Paul Battrick started the **International Knowledge Exchange** looking at key aspects of construction law on a comparative law perspective. We saw two excellent seminars co-hosted with SCL-Australia and SCL-France looking respectively at oral variations and good faith in the context of delay analysis. I thank warmly Andrea, Jess, Louise, and Paul for taking the lead on these new and principal initiatives.

Before I turn to reflect on activities of the Society over the past 12 months, I want please to emphasize that Council, following the **2024 Members' Survey**, will look carefully at all the feedback and comments. Council exists to benefit and serve the Members. It is a great privilege to serve on Council (as evidenced by the highest ever number of Candidates now seeking election to Council at this 2024 AGM). This leads to two irresistible observations:

➤ **Improving Governance**

Over the last two years Council has worked hard to become open, transparent and embrace collective responsibility. We all agree that it is good practice in any organisation to review and improve its governance. This does not imply the need for *radical* change, but Council needs please to continue to exercise modern thinking about governance best practices and about the governance structures and rules adopted by comparable bodies. In this context, I thank Rebecca Shorter, Jess Tresham and Andrea Stauber who have embraced this vital initiative.

➤ **Financial Strategy**

As the Treasurer's Report sets out, SCL is in excellent financial health. In my last year as Chairman, we have not been able to develop a strategy looking at 'monies-in'; 'monies-out'; scope for investment; financial risk management; short-medium-long term forecasts and so on. This is not good. Happily, Council has socialised the idea a finance sub-committee which I apprehend will now embrace the need for a clear and transparent strategy. There is an array of talent in Council, but clearly, we must not be afraid to seek external professional advice/services. This is all too important to ignore or get wrong.

Astra

Over the past year, Astra has continued to organise in-person and 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 the Building Safety Act 2022 and claims arising from defective works. We will also see the return of the Astra Boat Party on the River Thames. Finally, the 2023 constitutional changes mean that 2 seats on Council are reserved for Astra Members. This will promote the engagement and representation of those new(er) to construction law and increase the scope for fresh thinking and new ideas on Council. On a personal level, I am very grateful to Andrea Stauber and Michael Levenstein for all their hard work and leadership of Astra.

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: “*Why Big Projects Fail: Lessons for Construction Professionals*” delivered by James Hooper, Senior Counsel at Bechtel Corporation and Chaired by Mrs Justice Joanna Smith at the National Liberal Club; “Claims Outside the Contract from a Common and a Civil Law Perspective” delivered jointly by Robert Fenwick Elliott and Chris Seppälä and Chaired (once again) by Mrs Justice Joanna Smith; and “*Fraud as a ground for resisting enforcement in International Arbitration and Adjudication*” delivered by Alexander Milner KC - Fountain Court Chambers, Helena White - Gatehouse Chambers, Jamie Harrison - Deputy Director General LCIA & Simon Tolson and Chaired by Krista Lee KC. All three lectures explored areas and themes that are not normally addressed in our lectures and gave our Members the opportunity to see how the Civil Law differs; how the law of fraud in arbitration may have an impact for resisting enforcement of adjudication decisions; and ask philosophical questions about why projects fail – is it the drafting; or the compressed design; or is it just inevitable? I must record my thanks to all the Speakers and Chairs that so freely give up their time to the benefit of our Members.

November 2022 saw Arran Dowling-Hussey and Catherine Needham host the (hugely successful) SCL Irish Conference “*Construction experience: the name we give our mistakes?*” where Mr Justice David Barniville and Jeremy Gauntlett SC KC gave excellent thought-provoking Keynote Speeches to open and close the Conference. The Conference was sold-out and the feedback from attendees was excellent. The Society of Construction Law Annual Spring Conference 2024, known as “the Leeds Conference” was Chaired by Helen Johnson and Sarah Maylor, our new Regional Coordinators in that Region. Again, this was a huge success with high quality talks

and a highly informative opening keynote delivered by HHJ Siobhan Kelly. The Speakers were Tom Owen & Elizabeth Donnelly - Keating Chambers, David Pliener KC & Kort Egan - Gatehouse Chambers, Jessica Stephens KC & Jennie Gillies - 4 Pump Court, Nitesh Patel - Turner Townsend, Andrew Goddard KC & Laura Hussey - Atkin Chambers.

As I touched upon above, other Regions will be hosting Conferences – my sense is that this another excellent way to increase connectivity through the forum of learning and education.

Election 2024

The 2024 election provided a fantastic opportunity to join a diverse, inclusive, and progressive Team. It was an exceptionally valuable time to stand for election because for the first time Council had 8 Vacancies - this is because of the 2023 changes to the Constitution. Put simply, we had 6 Vacancies for Ordinary Members of Council; and 2 Vacancies for Astra Members (meaning Members who are under the age of 35 and / or who have less than 10 years of experience in their current field). There were **21 Candidates** – this is the highest ever number of candidates seeking election to Council. I am personally grateful to all those standing and would urge those who are unsuccessful this year not to give up but return in 2025.

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 continue to monitor 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. Andrea Stauber leads this initiative and in 2023 Andrea developed the Mentoring Scheme to be a more structured programme, running for a 6-month period annually.

Thanks to the incredible support from our members, we were able to connect about 40 mentees with experienced mentors across all facets of the construction industry – solicitors, barristers, consultants, adjudicators, commercial managers, and experts of various disciplines. It was heartening to receive overwhelmingly positive feedback from both mentor and mentee participants in the 2023 programme. Many mentees found it useful to gain objective advice and insights from seasoned

professionals about how to develop particular skills, or break into a new area of the industry, or grow their profile and network. For many mentors, it was an enjoyable and rewarding experience – and we are grateful to those who have already volunteered to mentor again in the future.

We look forward to the 2024 round of our Mentoring Scheme, which will launch in the coming weeks. I am personally very grateful to Andrea who done an amazing job with the Mentoring Scheme.

Hudson Prize

The Judging Panel of the SCL Hudson Prize announced the following results for the 2023 competition:

First Prize: “The lesser of two evils? A comparative analysis of how common law jurisdictions approach accrual of causes of action in negligence post-Pirelli” by William Haslam, a pupil barrister at Atkin.

Second Prize: “Enforcing Mediation and ADR Agreements in International Construction Contracts: Transnational Principles and Comparative Perspectives” by Shou Yu Chong of King’s College London.

Highly Commended: “What if construction can change?” by Mariya Rankin of Eversheds-Sutherland.

Council and the Judging Panel offers warm congratulations to all recipients and thanks all those who entered the 2023 competition. I am grateful to Lauren Adames who was the Chair of the Judging Panel.

International Matters

The European Society of Construction Law (ESCL) Annual Conference was held at the University of Copenhagen on October 3-5, 2023. The theme of the Conference was Liability Standards in Construction; An International Perspective. A presentation on the Contractor's Duty to Warn comparing English Law with French and Italian Law was given on behalf of UK SCL by Professor Anthony Lavers and Rebecca Shorter. SCL-UK was represented at the ESCL General Assembly by its Chairman. The current ESCL President is Luc Imbrechts and the 2024 Annual Conference will be held in Antwerp in October on Responsibilities and Liabilities for Design.

I attended the International Society of Construction Law conference held in Istanbul. I was joined by International Liaison officer Paul Battrick and International Sub-Committee members Andrea Stauber and Sean Gibbs plus Chris Sunderland from our UK Social Sub-Committee. The Conference was very well attended and were significant opportunities to learn more about international construction law issues and meet members of the global community of SCLs. In Istanbul it was also announced that the next International Conference will be hosted by the Korean SCL and will be held in Seoul in October 2025.

As touched upon above, the International Sub-Committee established the “International Knowledge Exchange” (IKE), to provide a forum for the exchange of views in respect of international law topics. It intended to hold a virtual/live event with the Australian SCL, with Comparative Law as the topic, in December 2023. However, a technical issue postponed the event until 22 February 2024. The IKE will be a feature of our international co-operation with other SCLs going forward; so far this year there has been an on-line event held with the French SCL (topic: Revision of Liquidated Damages and impact(s) of good faith on delay analysis) and further events are being scheduled with the Singapore and North American SCLs. Speakers at these events have been and will be renowned experts in their field and will be able to enhance the audience’s knowledge in respect of the topic of the day. I am very grateful to Paul Battrick, Rebecca Shorter, Anthony Lavers and Andrea Stauber for all their hard work on these international initiatives.

IT and Social Media

This past year, the IT Sub-Committee (comprising Chris Sunderland, Matthew Taylor, and Andrea Stauber) and I have undertaken a number of initiatives to improve the Society’s communications with the Membership. I was pleased to receive very positive feedback about the new format of the monthly newsletter, which now allows members to conveniently view the newsletter directly in their inbox. We also conducted a Members’ Survey, which has provided Council with invaluable insights into the membership’s priorities, preferences and suggestions – all of which will help next year’s Council shape its future initiatives for the Society. Council has also implemented a new secure document retention system for the storage of Council’s documents, to ensure that important records and information are retained and easily accessible even as the composition of Council changes over the years. We continue to monitor the Society’s social media presence and Council will 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 6 papers on a variety of topics:

- Robert Fenwick Elliott – “Claims Outside the Contract from a Common Law Perspective”
- Adam Robb KC and Jess Connors – “Current Issues in Claims Against Construction Professionals”
- Christopher R Seppälä – “Extra-Contractual Claims against State Entities under Civil Law”
- Kort Egan – “‘Smash and Grab Adjudications’ – What are we Still Arguing About?”
- Gavin Wilson – “Cap or No Cap: A New Eco World for Liquidated Damages?”
- Lars Gladhaug – “Second Act Problems: The Defective Premises Act 1972 in the New Building Safety Regime”

Social Events

Patently, Lunches and other social events continue to be highly successful. The London Lunch held on February 9th, 2024 attracted another amazing attendance with David Fishwick (Internet personality and star of Channel 4's 2012 hit show 'Bank of Dave') being the Guest Speaker. Lunches in Bristol, Manchester, Edinburgh and Dublin provide strong evidence of Members' appetite for our Social Events:

- Friday, April 19, 2024 - The Inaugural SCL Lunch in Birmingham
- Friday, January 19, 2024 - The SCL Lunch in Scotland 2024
- Friday, November 10, 2023 - The SCL Lunch in Dublin
- Friday, October 13, 2023 - The SCL Lunch in Bristol
- Friday, September 8, 2023 - The SCL Lunch in Leeds
- Friday, June 16, 2023 - The SCL Lunch in Manchester
- Thursday, August 3, 2023 - SCL Networking Evening at the

We also held our summer networking drinks on August 3rd, 2024 at Factory House, 37 Leadenhall Place, London. The Social Events Team of Chris Sunderland, David Falkenstern, Jess Neuberger and Andrea Stauber have done an excellent job on many levels – the number and scale of events is now increasing. I am very grateful to Chris, Andrea, Jess and David for all their time, hard work and attention to details.

The Members' Survey

In January 2024, for the first time, we conducted a Members' Survey. A total of 524 responses were received from Members who attend events in a broad range of locations and so are representative of the wider Membership. Council spent time analysing the survey results and some key conclusions emerged:

- Access to free educational events and SCL papers are the main benefits of Membership, but networking events are also seen as valuable;
- There is strong support for educational events to be available online, whether live or *via* a recording;
- Members would like to see more panel discussions and events that cover issues of wider industry interest;
- Broadly, Members are happy with the timing of events, and the venues where they are held, but are open to attending events at different times; and
- Overwhelmingly Members are of the view that the SCL Protocol remains fit for purpose.

As discussed above there has been a renewed focus on delivering events across all Regions and the survey feedback will be factored into the delivery of future events. Council and the Regional teams will look at how events can be delivered on hybrid basis and / or with follow up recordings. We will also be looking at the format of events to accommodate feedback in terms of panel discussions and issues of industry interest, and potentially conferences given their success in Leeds, Ireland and Bristol. Feedback in terms of the website and access to, and distribution of, SCL papers will be considered further by the relevant Sub-Committees. I am very grateful to Matthew Taylor and Andrea Stauber who worked with me on this Survey.

University Liaison and Grants

A successful meeting of University Academics teaching on construction and construction law courses was hosted in London in May 2023. In the past year, 12 grants were made to 7 UK universities for prizes for outstanding performance in a construction law-related subject. A notable feature was the wide geographical distribution of the support given, with grants made to universities in all 4 of the 'home nations': Cambridge, King's London, Portsmouth and Salford in England, Cardiff University in Wales, Robert Gordon University in Scotland and the University of Ulster in Northern Ireland.

In the Frances Paterson Scholarship Programme, there were awards of doctorates to students at Darwin College, Cambridge and King's College, London respectively, the first successful completions supported by SCL under the scheme. Shou Yu

Chong's Ph.D research at King's College, London investigated co-existing and conflicting jurisdiction and arbitration clauses, under the supervision of Professor Renato Nazzini. Shou Yu Chong, who is a Research Fellow at the Singapore International Dispute Resolution Academy, also won Second Prize in the 2023 SCL Hudson Prize Competition. David Sawtell has been awarded his Ph.D by the University of Cambridge for research at Darwin College on the effect of construction operations on interests in land, under the supervision of Professor Martin Dixon. Council offers its congratulations to Dr Shou Yu Chong and Dr David Sawtell. A further completion is anticipated later this year and the Society intends to award a further scholarship for 2024-25

Academia is very important to the Society and Council is still 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 and collaboration between the Regional Representatives and the local Universities.

With my very best wishes to the 2024 / 2025 Council of The Society of Construction Law.

Hamish Lal

1 May 2024