

THE SOLICITOR ADVOCATE

Newsletter of the Solicitors Association of Higher Court Advocates

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THE CHAIRMAN'S COLUMN



As I am coming to the end of my second year as Chairman of SAHCA I am pleased to report that the expanded training programme I introduced at the start of my tenure has been consolidated this year and

goes forward into 2010. The dates are already fixed for the two one day advocacy training courses in London and the residential course in Cambridge in 2010. This year the residential course was held at Sidney Sussex College in Cambridge and even with expanded maximum numbers the course was over-subscribed. With 100% attendance we received fantastic feedback from the delegates. Many will recommend the course to others and commented that it was the best course they had ever attended. I believe that SAHCA is able to offer a unique advocacy training programme in which we also aim to provide opportunities for members to learn from each other and forge support networks with colleagues from all over the country. I hope that through membership of SAHCA solicitor advocates will stand together, learn from each other and be proud of the quality service provided to clients through this growing arm of the profession. In this respect I welcome the comments made by Paul Mendelle QC the new Chairman of the Criminal Bar Association reported elsewhere in this issue. I am looking forward to the Annual Dinner and Conference in Leeds on 13 and 14 November 2009. I do hope that our members in the regions will support this event. There are many speakers who are leading members of the legal community which I hope will provoke lively and stimulating debate. I look forward to seeing you there.

SCOTTISH SOLICITOR ADVOCACY UNDER SCRUTINY

Solicitor advocacy in the Court of Session and High Court in Scotland has been the subject of much examination and discussion in Scotland this year since the critical judgment handed down in February in the appeal case of Woodside v HMA. In Scotland both advocates and solicitor advocates have rights of audience in the Court of Session and High Court. Advocates are regulated by the Faculty of Advocates, and solicitor advocates by the Law Society. There are similar codes of professional conduct for both Advocates and Solicitor Advocates as are reflected in the Rules of Conduct for Solicitor Advocates and the Guide to Professional Conduct of Advocates in Scotland.

The case of Woodside v HMA was an appeal against a conviction of murder, some ten years ago, on grounds of appeal that included the ground of incompetence of the trial advocates, two solicitor advocates. The court rejected this ground of appeal, known in Scotland as the 'Anderson Principle' commenting that 'an Anderson appeal is not a performance appraisal in which the court decides whether this question or that should or should not have been put; or whether this line of evidence or that should or should not have been pursued. The appellant must demonstrate that there was a complete failure to present his defence either because his counsel or solicitor advocate disregarded his instructions or because he conducted the defence as no competent practitioner could reasonably have conducted it'. However the judgment went on to consider issues concerning the choice and advice given on representation in court and concluded "It is difficult to see how a solicitor who has rights of audience, or whose partner or employee has such rights, can give his client disinterested advice on the ques-

(Continued on page 2)

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tion of representation. There may be an incentive for him not to advise the client of the option of instructing counsel, or a solicitor advocate from outside his firm, in circumstances where either of those options might be in the client's best interests..." Lord Gill went on to comment, "This appeal has highlighted problems of rights of audience that seem not to be unique to this case. I think it would be opportune if there were to be a review of the working of the system overall."

In September 2009 the Scottish Justice Secretary announced a short independent review of the workings of the system of rights of audience in the supreme courts to be carried out by Ben Thomson, reporting in 2010. Ben Thomson is the Chairman of Edinburgh-based investment bank Noble Group and has been a member of the Financial Services Advisory Board (FISAB) since 2005. Announcing the review, Justice Secretary Kenny MacAskill said: "I am determined to see a justice system in Scotland that is fit for the 21st century. The Lord Justice Clerk and his fellow judges in the Woodside case raised significant concerns about the regulation of solicitor advocates. That, and the debate which has followed, have persuaded me that it is time for an independent review of the system of rights of audience which has been in place since 1990." Ben Thomson said "There seem to be some general views in the legal sector that the different systems of training, qualification and regulation for solicitor advocates and advocates in representing cases to the courts may not deliver the best service for customers nor provide a level playing field. The aim of this review is to find out whether there is real substance to these views and, if so, to recommend ways in which the system might be improved."

The Review is to cover all those with rights of Audience, i.e. both the Scottish Bar (the Faculty of Advocates) and Solicitor Advocates. This was a position supported by the Society of Solicitor Advocates and the Law Society of Scotland but which the Faculty had strongly resisted, arguing that only Solicitor Advocates should be subjected to scrutiny.

On a more positive note, Douglas Thomson a solicitor advocate based in Dumbarton, wrote to the Law Society of Scotland "Journal" highlighting the very complimentary remarks made in a judgment of the High Court in the case of Craig McCreight v HMA. His letter explains ...'This was a lengthy and complex appeal, involving a huge amount of preparation and the hearing of expert evi-

dence from several eminent scientists, which followed a long and fraught trial, both conducted by the same solicitor advocate, and which ultimately resulted in the court holding that there had been a miscarriage of justice. In Paragraph [89] of the opinion, the court stated "In considering this issue we have been greatly assisted by the fact that the solicitor advocate for the appellant also appeared for him at the trial, so that his argument was informed throughout by his own direct experience of the course of the trial. This should be standard practice, especially in complex cases, unless there is good reason to the contrary".

In other developments Solicitor Advocates in Scotland have benefited from the recommendations published in September in the Gill Review ("Scotland's Woolf") which is the biggest shake up of Scottish civil litigation in well over a century. The Review recognised that in the lower courts it ought to be possible to have the judge sanction a case as suitable for the employment of a solicitor advocate whereas at present only external counsel can be sanctioned thereby only fees of counsel can be recovered.

CRIMINAL BAR ASSOCIATION

In his first report as Chairman of the Criminal Bar Association Paul Mendelle QC expressed his views on the increasing competition posed in the Crown Court by solicitor advocates.

' We are still concerned about the encroachment of HCAs into the Crown Court and I continue to receive reports of solicitors taking more and more advocacy in house. However, the debate must move on from the rather acrimonious terms of the last 18 months where on occasion each side has been perhaps rather too swift to criticise the other. This is, in the end, about standards of advocacy and the Bar has no reason to fear on that count. Whatever the economic considerations that have caused the increase in HCAs, the overriding concern must be that they attain the same high standards of advocacy and integrity as the self-employed Bar, because ultimately it is victims, defendants and the criminal justice system that suffer through inadequate or incompetent representation. The Bar has never feared competition so long as it is fair and the same standards are applied to all.'

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Committee Meetings 2009

The SAHCA Committee meets every month. Please contact the Secretary, Yvonne Spencer of Veale Wasbrough Lawyers, or the Administrator, Hilary Riddle if there is any issue you would like to be brought to the Committee's attention.

Committee meetings will be held as follows in 2009 :

Strategic Planning Day

Saturday 17 October 2009

Wednesday 4 November 2009

Tuesday 1 December 2009

Dates for your diary 2009–2010

Friday 13 November 2009

ANNUAL GENERAL MEETING
&
ANNUAL DINNER

Saturday 14 November 2009

ANNUAL CONFERENCE

The Met Hotel, King Street,
Leeds

27 February 2010

ADVOCACY TRAINING
Gibraltar House, London

24 April 2010

ADVOCACY TRAINING
Gibraltar House, London

June 2010

SUMMER SEMINARS & PARTY
London

September 2010

RESIDENTIAL ADVOCACY
COURSE
Sidney Sussex College, Cambridge



Invitation
to the

ANNUAL DINNER

Immediately following the
drinks reception and AGM
on

Friday 13 November 2009

at

The Met Hotel, King Street
Leeds LS1 2HQ

**GUEST AFTER
DINNER SPEAKER**

**His Honour
Judge Kerry Macgill**

Members' spouses,
partners and colleagues are
welcome to attend the dinner
as guests

Three courses with
wine & coffee

Dinner and Conference
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edition of the
'Solicitor Advocate'

**THE SOLICITORS'
ASSOCIATION OF
HIGHER COURT
ADVOCATES**

**NOTICE
Of**

**Annual General
Meeting**

The Met Hotel, King Street
Leeds, LS1 2HQ

**Friday 13 November 2009
at 6.45pm**

In accordance with the Constitution,
the committee nominates officers
and new committee members for
election at the AGM.

Should you wish to suggest to the
committee any names for considera-
tion, either for officers or member-
ship of the committee please provide
these to the Administrator, Hilary
Riddle, PO Box 63251, London, N2
9UW or
DX 52506 East Finchley or
hilary@hradmin.co.uk
by Monday 9 November 2009.

The AGM is free to all members and
is followed by drinks and dinner
which must be booked.

AGENDA

1. Approval of the minutes of the
AGM November 2008
2. Chairman's Report
3. Treasurer's Report
4. Committee Elections
5. Any Other Business



ANNUAL CONFERENCE

The Met Hotel, King Street
Leeds LS1 2HQ

Saturday 14 November 2009

Keynote Speaker

The Hon Mr Justice Hickinbottom

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Number of Vacancies: 193

Locations: Various locations in England and Wales

Salary: £468 per day

Reference: 00435

Closing date for applications: 22 October 2009

Welsh language is essential for four positions. A Welsh version of this advert, the application form and all supporting documents will be available on our website. The independent Judicial Appointments Commission selects candidates for judicial office. It does so on merit, through open and fair competition, from the widest range of eligible candidates.

The Judicial Appointments Commission is inviting applications for the office of Recorder in the Civil jurisdiction. There are 40 vacancies.

These are fee paid posts and there is no minimum sitting requirement. You will be required to prepare cases for trial and preside over hearings in county courts. Candidates who are successful may be considered for authorisation to sit as Deputy High Court Judges in the Chancery and Queen's Bench Divisions of the High Court and sit in the Royal Courts of Justice or county courts (specialist civil jurisdiction).

Number of Vacancies: 40

Locations: Various locations in England and Wales

Fee: £583 per day

Reference: 00453

Closing date for applications: 29 October 2009

You can obtain an application form and information pack, including full eligibility criteria for both of these positions on the JAC website

www.judicialappointments.gov.uk

EXPERIENCE THE JAC SELECTION PROCESS

As part of the quality assurance process the JAC pilots tests before using them in a live exercise to determine their suitability. The JAC has commissioned a new written test to be used in the forthcoming selection exercises for Salaried and Fee Paid Employment Judges and we are now seeking suitable people to sit the pilot test.

If you are a solicitor, barrister or ILEX Fellows of appropriate (minimum 5 years' post-qualification) experience, we would welcome your assistance.

We are piloting the test from 10-12 November (Salaried Employment Judge) and 15-18 December (Fee Paid Employment Judge).

The sessions will all take place at [Steel House](#), 11 Tothill Street, London SW1.

Each session will consist of one written test; the length of this test is estimated at being between 60 and 90 minutes; there will be no opportunity for feedback but if requested, we will be able to provide you with a general indication of your result.

It is absolutely essential that the test contents remain confidential and everyone taking part in the pilot will therefore be required to sign a confidentiality agreement in advance. In addition, a participant in a pilot will be excluded from applying to the exercise for which that test is being prepared; in this case [Salaried Employment Judge of the Employment Tribunal 2009](#) and [Fee Paid Employment Judge of the Employment Tribunal 2010](#).

A fee of £80 will be paid, together with any reasonable travelling expenses. If you are interested in taking part in this test please contact the following people at your earliest opportunity:

Christos Nicoli
christos.nicoli@jac.gsi.gov.uk
Tel 020 3334 0306

Letters to the Editor

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They should not exceed 300 words and are liable to be edited ruthlessly.

SOLICITOR ADVOCATES IN THE NEWS

Law Society Excellence Awards

Exceptional solicitors, individuals and teams across the entire legal sector have been shortlisted for the Law Society's Excellence Awards which will be presented on 22 October 2009. This year the re-named category of 'Advocate of the Year' was open to anyone undertaking advocacy. There are two shortlisted candidates in this category, Peter Bowen of Doughty Street Chambers and Peter Rees QC of Debevoise & Plimpton LLP. Peter Rees QC qualified as a Solicitor Advocate in 2001 and conducts the majority of advocacy in his arbitration cases. He was awarded silk earlier this year.

SAHCA member moves firms

Francesca Massarella, who has been a member of SAHCA for many years, has joined the Family Team of national law firm, Clarke Willmott LLP. Francesca Massarella has substantial experience in child law covering cases involving complex, novel or international elements such as obtaining permission to remove a child from the jurisdiction or applications to return a child from a country overseas.

THE SOLICITOR ADVOCATE

*Angela Horne, Media Officer
Leslie Cuthbert, Criminal Editor
Yvonne Spencer, Civil Editor*

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