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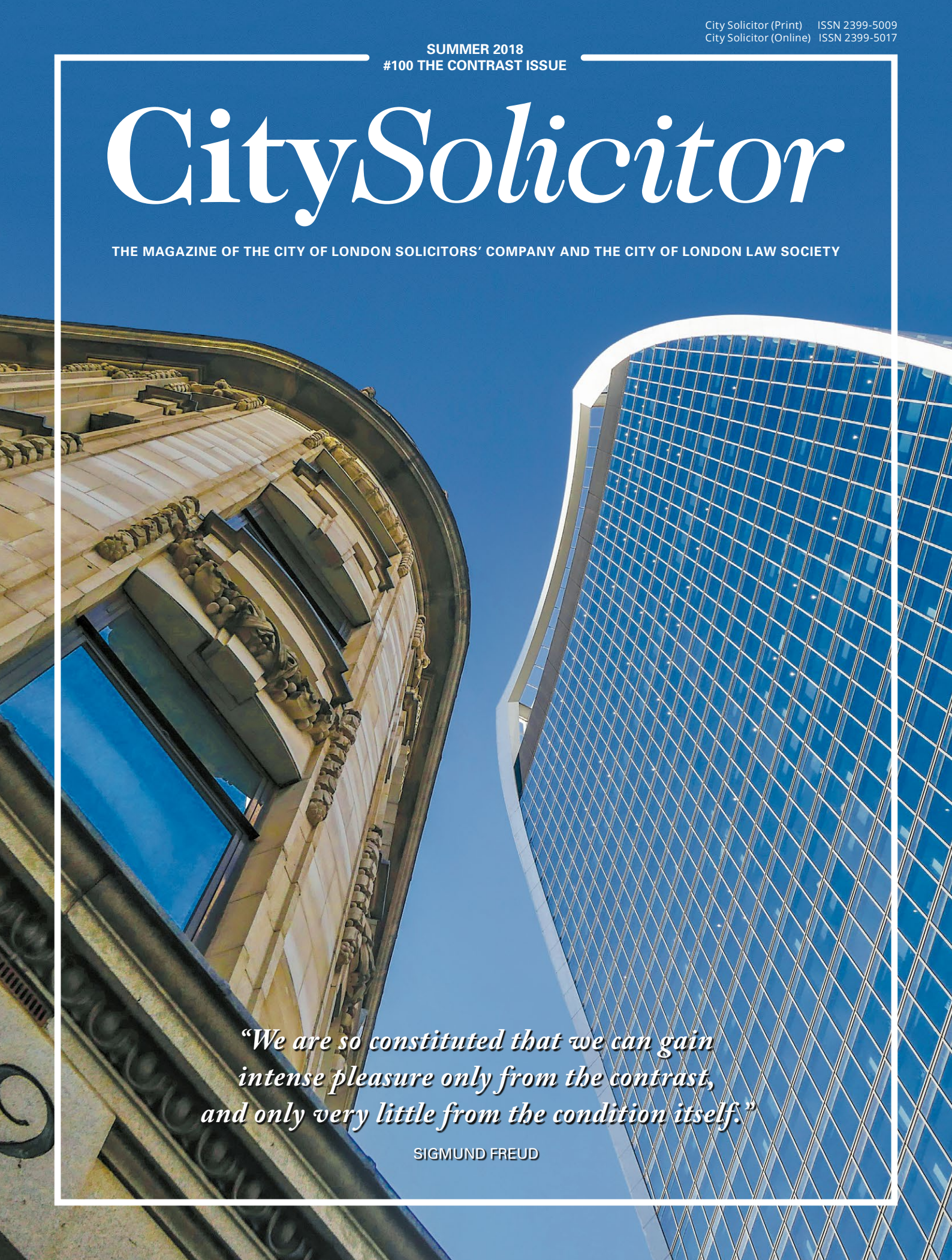
THE MAGAZINE OF THE CITY OF LONDON SOLICITORS' COMPANY AND THE CITY OF LONDON LAW SOCIETY



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what's happening in the legal world

what's happening out of the office

what's happening in the city

what happens in the other side of a solicitor's mind

editor's letter

WELCOME TO THE SUMMER EDITION OF CITY SOLICITOR MAGAZINE – YOU MAY OR MAY NOT HAVE NOTICED BUT THIS IS RATHER A SPECIAL ONE – IT IS OUR CENTENARY ISSUE.

Well, at least, that's what it says on the cover. But after digging around in the archives, it transpires that this might not actually be the case.

Not straightforward. But then again, what is in the world of the law?

A printed newsletter was first issued in October 1945 alongside the Annual Report. This carried on to issue No 18 in April 1954. It was not until November 1966 when the newsletter was resurrected with three or four pages typed onto the Clerk's notepaper and referred to as "Occasional Newsletters". There were four of these; after November 1966 the next ones were dated February and November 1967 and the last one, which appeared in March 1968 was numbered 5.

Why, when it should have been either 19 or 4? Who knows?

It wasn't until 1970 that the newly formed Professional Business Committee felt there should be a regular newsletter. John Young became the Editor of this first printed version of the newsletter, a position he kept for 16 years (a tough act for me to follow!). The editions were sporadic as the problems of getting good copy meant some very long delays!

In June 1986, following the adoption of a new name; *The City Of London Law Society*, a new version of the newsletter was born. This time the quality of the printing was much improved and there was even the odd photo from time to time. The Editor, Toby Greenbury, was awarded the Distinguished Service Medal in 1988. He was succeeded by David Wyld in 1994.

Contrast these publications with what we have today. Whilst we cannot be sure this is the 100th edition, nonetheless I hope you will agree with me that our magazine today is definitely worth celebrating.

Enjoy this summer edition where our theme is *Contrast* and, as ever, please do let us have your feedback so, together, we can work towards making the next 100 issues even better.

P. Henson

Philip Henson
Editor
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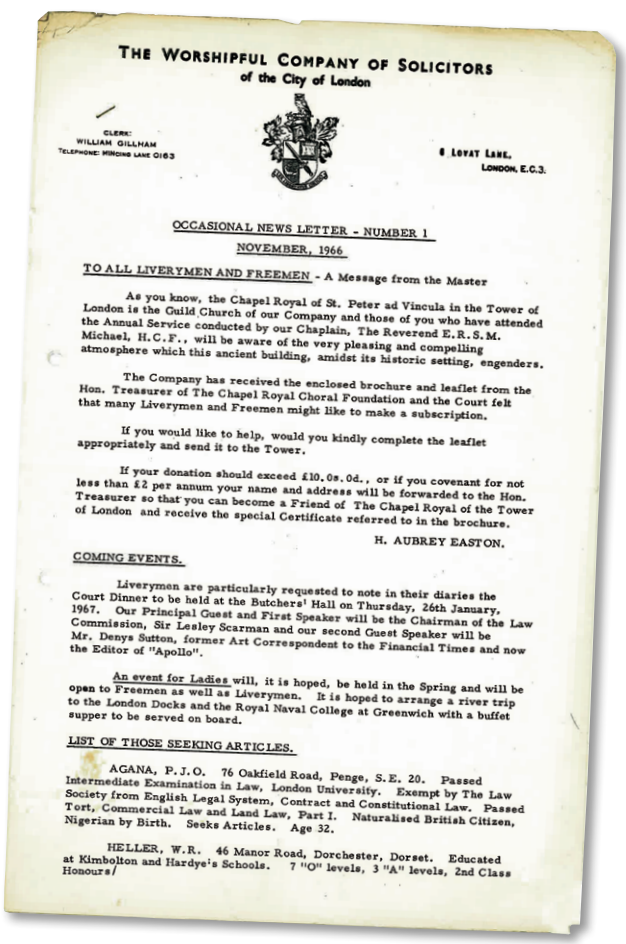

THE WORSHIPFUL COMPANY OF SOLICITORS
of the City of London

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LONDON, E.C.3.

OCCASIONAL NEWS LETTER - NUMBER 1
NOVEMBER, 1966

TO ALL LIVERYMEN AND FREEMEN - A Message from the Master

As you know, the Chapel Royal of St. Peter ad Vincula in the Tower of London is the Guild Church of our Company and those of you who have attended the Annual Service conducted by our Chaplain, The Reverend E.R.S.M. Michael, H.C.F., will be aware of the very pleasing and compelling atmosphere which this ancient building, amidst its historic setting, engenders.

The Company has received the enclosed brochure and leaflet from the Hon. Treasurer of The Chapel Royal Choral Foundation and the Court felt that many Liverymen and Freemen might like to make a subscription.

If you would like to help, would you kindly complete the leaflet appropriately and send it to the Tower.

If your donation should exceed £10.0s.0d., or if you covenant for not less than £2 per annum your name and address will be forwarded to the Hon. Treasurer so that you can become a Friend of The Chapel Royal of the Tower of London and receive the special Certificate referred to in the brochure.

H. AUBREY EASTON.

COMING EVENTS.

Liverymen are particularly requested to note in their diaries the Court Dinner to be held at the Butchers' Hall on Thursday, 26th January, 1967. Our Principal Guest and First Speaker will be the Chairman of the Law Commission, Sir Lesley Scarman and our second Guest Speaker will be Mr. Denys Sutton, former Art Correspondent to the Financial Times and now the Editor of "Apollo".

An event for Ladies will, it is hoped, be held in the Spring and will be open to Freemen as well as Liverymen. It is hoped to arrange a river trip to the London Docks and the Royal Naval College at Greenwich with a buffet supper to be served on board.

LIST OF THOSE SEEKING ARTICLES.

AGANA, P.J.O. 76 Oakfield Road, Penge, S.E. 20. Passed Intermediate Examination in Law, London University. Exempt by The Law Society from English Legal System, Contract and Constitutional Law. Passed Tort, Commercial Law and Land Law, Part I. Naturalised British Citizen, Nigerian by Birth. Seeks Articles. Age 32.

HELLER, W.R. 46 Manor Road, Dorchester, Dorset. Educated at Kimbolton and Hardye's Schools. 7 "O" levels, 3 "A" levels, 2nd Class Honours/

Publicly funded law *vs* City law.

Two sides of the same coin.

UK Law is held in the highest esteem all over the world. But, invariably, when we think of UK Law it is the City law firms that spring to mind. Our City law firms are not only well regarded globally but also contribute vast amounts to our country's revenue and, therefore, also to our taxes. They allow us maintain our global supremacy despite financial collapses, Brexit and other knocks.

But the Law is not just City law firms. The flipside to that shiny, golden coin is a much more tarnished version. Publicly funded Law has been severely bleeding from all the cuts it has faced. Of course, the biggest losers in this are those deprived of their access to justice but the downside may not stop there. The decline of publicly funded Law is at risk of damaging one of the biggest and most successful brands ever, because that is precisely what UK Law is and, despite perceptions, it comes as a whole package.

So, what can be done to level out this vast imbalance? How can we ensure that everyone who is in need of legal support has access to it irrespective of their financial circumstances? And how can we safeguard brand "UK Law" which, if damaged, could result in an adverse outcome for all of us?

Whilst City Law and publicly funded Law are two distinct entities, they are, nonetheless, part of one profession and if one suffers, the other does by default. So can the two sides work together to divert this impending disaster?

Edward Sparrow has recently retired as a senior commercial litigator at Ashurst LLP. He has been a City lawyer for 40 years and a partner in a City law firm for 35. He is also Chairman of the City of London Law Society. He, therefore, knows better than most the reality of the great contribution City law firms make to the British economy.

"The public image of City lawyers, especially when contrasted with publicly funded lawyers, is that we are fat cats. But the legal sector contributes hugely to the UK's economy. It turns over £26 billion yearly and forms more than 1.5% of our GDP. However, City law firms are major, complex businesses (some with turnovers of more than £1 bn per annum). They are funded by their partners and, directly or indirectly, provide employment to tens of thousands of people.

Contrast this with the publicly funded lawyers and, very sadly, they are in the same boat as any sector who has to rely on the Government for funding. This is a far less reliable source than paying, commercial clients. All these sectors face challenges; not just legal but health and education notably.

Can City law firms help the publicly funded side of our profession? There is a misapprehension that we don't. In fact, City firms work hard to help those in need of publicly funded justice. All the City law firms have pro bono programmes. Here, at Ashurst, our people work on all sorts of projects; acting on appeals against capital convictions from the Caribbean, helping those affected by the Grenfell Tower fire, providing lawyers for Toynbee Hall in the East End of London and much, much more.

Access to justice is an essential part of the Rule of Law which is central to this country's constitution and a vital protection for the rights of all UK citizens. Like democracy, a health service and much else, it should be funded by the Government out of general taxation. We can't expect the private sector of the Law to fulfil the role of the Government any more than you can expect politicians to fund our democratic institutions or private doctors to fund the NHS. We see a major part of what we can contribute is talking to and lobbying the Government about the importance of access to justice and by working with the Government and the judiciary to make the Court system more efficient and accessible. With the cuts to legal aid, the Government estimates that over 750,000 people have lost access to justice. The solution is not soaking the City firms. (City firms, through their partners, already pay tax and national insurance at rates far in excess of most big businesses.) The Government need to be clear in how they plan to provide access to justice for those that need it, then once we see the structure, we can see where and how we can help. The Government has said it will publish its strategy. Unfortunately, as with many things, Brexit has meant that policy statement has now been pushed back.

There is also the fact that the skills we have as City solicitors are not necessarily the ones that are needed for publicly funded work where the main issues are debt, immigration, benefits, housing and family breakups. With a lot of these issues, surely it would be better to go to the root cause of the problem, rather than allow it to ever become a legal issue? Are Government and Local Government sure that their procedures and documents are as easy to understand as they can be and their people as helpful? If they could improve these, they could reduce the numbers of those needing to access justice. The recent statistics about the rate of successful appeals to Immigration Tribunals (above 50%) makes the point well."

Colin Passmore is the senior partner at Simmons and Simmons LLP and also still maintains his litigation practice. Like Sparrow, he believes that City law firms are doing huge amounts to help the publicly funded side of the profession.

"Every City law firm has a significant pro bono programme doing what they can to help. It's not just young lawyers who want to get involved, but also the older, experienced partners – because

it is clearly the right thing to do. It's difficult to get the stats to precisely quantify the value of the work City law firms carry out on a pro bono basis each year but it must be hundreds of thousands of pounds if not in the millions.

We specifically have focussed on sending solicitors every Monday night to work at South West London Law Centre in Battersea. We have been doing this for over 25 years now so as you can imagine the numbers of people we have helped has been extraordinarily high. It is challenging work as we are out of our comfort zone, working in areas we are not expert in. But most of the clients we meet just need some good common-sense advice and if they need more, we always can find experts to refer to.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) saw many areas of social welfare law removed from scope. This left many of the most vulnerable and marginalised in society without redress and without an avenue to access their rights. In response to this, in 2015, the firm trained many of its lawyers in welfare benefits and engaged a social welfare lawyer, Diane Sechi, (initially on 3 days per week increased to 4 days due to demand for the service) to oversee a Programme offering end to end case work focusing on disability benefit appeals. The Programme therefore deals with challenging administrative decisions at the first tier tribunal.

The main disability benefits we deal with are Employment and Support Allowance and Personal Independence Payments. Both centred on a point based system and subject to a medical assessment with a Healthcare Professional.

The Programme was designed to take cases once appeal rights have arisen so as to make the best use of the volunteers skills. Relationships have been established with front line agencies so that there is an effective referral system. An initial interview is set up with the client to identify the issues in the case, lodge the appeal and to build trust; an important consideration for vulnerable individuals. Once the Response from the Secretary of State arrives, the volunteer will carefully consider the bundle, obtain any further medical evidence if necessary and draft submissions. There will then be a meeting with the client to go through the submissions before these are forwarded to the tribunal. The volunteer will then attend the hearing with the client.

Since the start of the Programme, 144 cases have been opened with 120 having concluded. The total of backdated benefits is £306,000. If the advance awards are also included, the total achieved under the Programme is over £900,000. The success rate is 92%.

The Programme not only benefits the individual clients, but the volunteer lawyers are able to apply their skills, gain confidence, satisfaction and a sense of achievement.

Could we do more? Yes, of course, and like all City firms, we are always seeking to improve on what we do. It's particularly gratifying that our clients too are keen to get involved.

I believe we should be working together in lobbying the Government as the whole profession will be weakened if public law continues to be underfunded and in decline."

But how do those working on the publicly funded side see the contrast between them and their City counterparts? Do they agree that they are getting help from the more cash rich and successful part of their profession?

Adam Makepeace joined Tuckers Solicitors, the country's largest criminal legal aid provider, in 2011 as Practice Director. Before that he was Practice Director of Duncan Lewis Solicitors, the country's largest civil legal aid provider.

A solicitor himself originally, Makepeace has had a diverse career in private practice spanning working as a residential conveyancer, dealing with heavyweight spread betting litigation and international arbitration for Russian oligarchs.

After completing his MBA in 2005 he left private practice and he now devotes all his time to the better management of law firms. As a former legal aid solicitor, he is sensitive to the passion that legal aid lawyers have to provide the best quality legal services to the most vulnerable in our society. However, it is his mission to provide a framework for the delivery of legal aid that is commercially sustainable in the face of repeated cuts to the fees paid for legal aid services.

Makepeace believes that there has been a total breakdown in criminal and civil justice over the past few years and whilst this is an issue for the Government to sort out, City law firms need to take more responsibility.

"There are huge discrepancies in all aspects of 21st Century life, but the divergence between rich and poor, including between the best and worst paid lawyers, is getting wider – and beyond

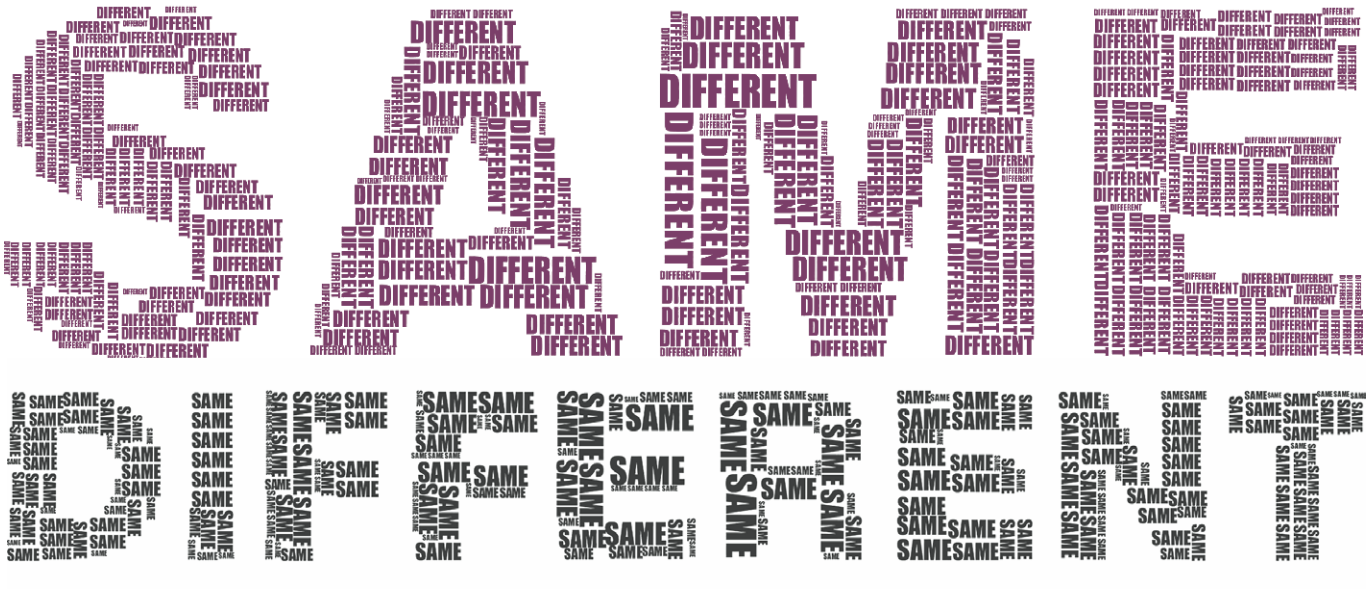
silly. To ignore what is happening in publicly funded law is short termism. The City trades off the brand of UK justice. We have the best legal system in the world; delegates come from everywhere to see how we do things. But that brand is increasingly becoming a mirage and masking a total breakdown in the justice system. We are reading it in the media daily and this is all contributing to eroding the brand. City firms need to do more. Obviously they cannot be expected to fund criminal justice and legal aid but we need to reframe the approach to the vast differences between City and publicly funded work; we need sensible discussions about social mobility and the recruitment and retention crisis we face. An advocate on a rape or GBH case in the Crown or High Courts is paid the same as a trainee in a City firm. Is there something we can do to construct career paths for those who are interested in publicly funded law but don't want to be destitute? In London, lots of young people are interested in publicly funded work and there are huge costs incurred in training them. However, after about three years, they know that they have reached the ceiling of their earning potential – as fixed fees for criminal defence work mean that there is no premium (by increasing hourly rates) on experience. They know they will never earn more money than they have been as they are on fixed fees. So, when they need to find the money for a deposit on a home or they have to support a family, they have no choice but to leave. We have had no pay rises since 1998 and with inflation that means we are 40% worse off than we were then. And, in fact there have been cuts on top of this, which is really not sustainable either for individuals or the sector.

The City need to take some responsibility for lobbying the Government, alongside publicly funded lawyers, as this affects them as well. There have been further cuts to Crown Court litigator fees and advocates fees even this year – but I don't recall hearing a single City voice in the media or on social media supporting the calls for an end to cuts made by the legal aid sector. We are all lawyers and that's what unites us. We need to work collaboratively to explain why our brand is important and how we need a different funding settlement so we don't tarnish the brand any further."

Lawrence Davies runs an employment practice, Equal Justice Ltd, specialising in discrimination claims. Since the withdrawal of legal aid in this area plus the increase in tribunal fees he has noticed a drop in people willing to try and take action to protect their rights.

Davies qualified at a top City law firm but left in order to do human rights work. He wanted to provide legal services equal to those offered by the top City firms, but without the price tag that resulted in many being 'costed out' of justice.

"City law vs publicly funded law? They are different sides of one profession – with very different prospects. I enjoyed my time in the City. I benefitted from the skills and the training but I wasn't sad to say goodbye to the marble and statues and wealth. People find their own paths. I needed to wake up in the morning knowing I was going to do a job I wanted to do. Having acted in the City for employer respondents, I understand City law firm tactics and can dismantle them more easily. The work is harder on this side, you need to be more imaginative and you work much longer hours. When I was in the City I worked on a maximum of five cases, now I work on 40. I work a 70 hour week and work through the night a number of times a year. Allowing people affordable representation means eating into the profit margin. I took on a race discrimination case against HSBC. I agreed a fee of £4k a year and put £83k on the clock. It was a 10 day trial – but we won. It's the first time HSBC had ever lost such a case and we beat a big City law firm who represented the bank. That makes it worthwhile more than money would. If I still worked in the City I would be paid 5–10 times what I make now and I would work shorter hours but I always come back to the old test of doing what is right for me. It was never going to be easy and life after Brexit has made our society less flexible and less tolerant and racism is more overt than ever. More people need legal representation to defend their rights – and fewer can afford it. Even senior executives can't afford employment lawyers if they have lost their jobs. I am proud that we have won over £29 million in compensation for our clients. I have huge respect for City lawyers. Organisations like LawWorks depend on the invaluable support they get from them. But the brutal truth is much much more money needs to go into the public sector. Yes, there are huge numbers of ex City lawyers in law centres but unless more funding is made available by the Government, the public sector cannot survive."



In April this year Joshua Rozenberg QC chaired an event at the RSA on "Why Criminal Justice Matters". The panel comprised Penelope Gibbs, Founder of Transform Justice, Angela Rafferty QC, Chair of the Criminal Bar Association, Jonathan Black, Partner at BSB Solicitors, Nazir Afzal, Former Chief Crown Prosecutor for Northwest England at the Crown Prosecution Service and, very interestingly, someone called the Secret Barrister (aka SB) who has some very clear views on the breakdown of our criminal justice system and consequently Brand UK Law. Listen to the event online and read SB's book *Stories Of The Law And How It's Broken*.

It is truly tragic what is happening to our legal system and apparent that this is not only damaging to those deprived now of their access to justice but potentially to the entire profession and to the whole country. However much wonderful work is being done by both the public and private sectors of the profession to try and address this, it is clearly not enough and we need to find a way to stop the rot before it is too late.

Short Form Report On Title;
New Fourth Edition

Recently, the Land Law Committee of the City of London Law Society (CLLS) launched the fourth edition of its Short Form Report on Title. This document is intended to be more simple and straightforward to complete than the Committee's longer Certificate of Title and can be used in situations where a more basic report is required, for example, for lower value property transactions. The new edition reflects changes in the law relevant to the Report on Title.

Jackie Newstead, Partner at Hogan Lovells International LLP, is Chair of the CLLS Land Law Committee; "We are constantly looking at which standards need updating. This particular one had not been looked at since 2007 and was looking aged. It needed pulling up into modern times."

The sub-committee responsible for the update was led by Warren Gordon, Senior Professional Support Lawyer at CMS, who worked with 5 others on the team.

"Although the 2007 document was old, it was helpful to practitioners because it was short and easy to use. But it needed to reflect current laws and be more consistent with the boilerplate of the Certificate of Title. The new edition makes a clearer distinction between where a company already owns the property and where a company is purchasing the property, in addition to new drafting options for where the property is a lease. For clarity, the notes to the Report highlight examples of the circumstances when it would be used instead of the Certificate of Title."

Newstead says they generally don't get much feedback on updates as they are very cautious before launching and do their research thoroughly.

"But feedback is important for our work going forward. If someone finds something does or does not work, we can store those comments up as points to be considered for the next round of revisions. Also, if there are other specific documents any of our members feel we should be updating, I hope they will let us know as we want to be as helpful to the profession as we can possibly be."

"The new edition makes a clearer distinction between where a company already owns the property and where a company is purchasing the property."

LIFE AFTER BREXIT.

WILL WE FLY OR WILL WE FALL?

Generally, when we make a decision, if it turns out to be a bad one, a mistake, we can simply chalk it up as experience, learn from the lesson and move on wiser and better equipped to cope with life. Unfortunately, Brexit is not one such a decision. How we negotiate our departure from the European Union, if we stay in the Single Market, the Customs Union, both, neither... are all decisions which, once made, will not only affect the rest of our lives, but also our children's and our grandchildren's lives too as these actions are, more likely than not, irrevocable. When we read research concerning the Referendum, it seems that a reasonably high percentage of people who voted on either side were not fully equipped with the necessary facts to actually be able to make an informed decision. And now, confusion reigns as to what the best deal – or no deal – is for us. Nobody doubts we are on a cliff edge about to take a leap into the unknown – but will we fly, soar, be released and free – or will we fall into catastrophe and oblivion?

Robert Bell is Competition & Regulatory Partner at Bryan Cave Leighton Paisner LLP. We asked Bell to summarise the options open to the UK post Brexit.

"There has been considerable discussion about the shape of the UK's future trade relationship with the other EU countries. The UK Government states it is committed to a new form of trading model that is different from those agreed by others in the past. But the EU has made clear that, no matter what the UK's stance, it is very unlikely to unhitch free movement of people from wide ranging free market access for both goods and services and will expect the UK to contribute financially to the EU.

Existing trade models illustrate some of the complex choices that need to be made.

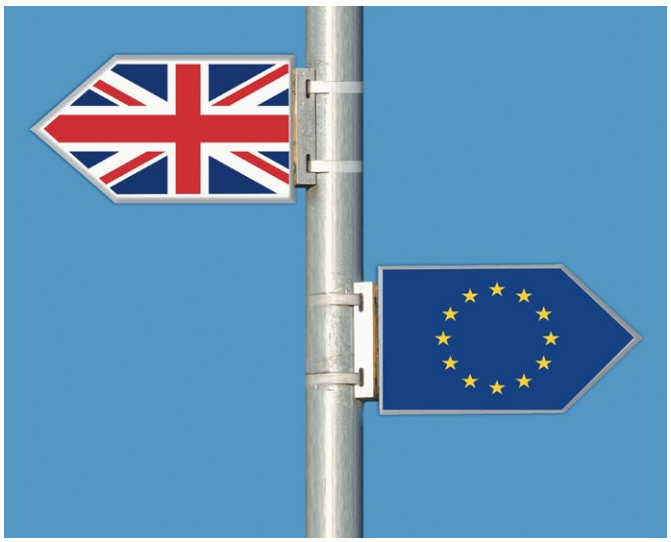
1. Membership of the Single Market (EEA plus EFTA membership). This covers countries like Norway.
This model provides near complete access to the EU Single Market in return for a commitment to free movement of goods, services, people and capital. Countries are required to implement EU legislation without any ability to influence the terms of that legislation and are bound by judgments of the European Court. Effectively they are rule takers rather than rule makers. They must also contribute financially to the EU budget. However they are able to strike separate trade deals with third countries.

2. Swiss Model (bilateral agreements plus EFTA countries).
This model is based on a number of bilateral agreements which grant partial access for goods and services to the EU Single Market. However this is not particularly attractive to the UK as there are notable exceptions for certain key sectors such as financial services. It does allow countries to agree separate trade deals with other EFTA countries and third countries but, as with the Single Market model, countries have to sign up to the principles of free movement of persons, as well as free movement of most goods and services, as well as a financial contribution to the EU budget.

3. Customs Union with the EU (eg Turkey).
Under this model, participating countries agree not to impose tariffs on each other's goods and to adopt common customs procedures. This approach gives access to the Single Market for goods alone. Since countries are required to apply EU common external customs tariffs, it therefore leaves little room to agree trade deals with third countries. EU competition and state aid rules, as enforced by the European Court, must also be followed.

4. Free Trade Agreement (eg Canada).
Under the Free Trade Agreement (FTA) model countries trade freely with each other but set their own external tariffs with the rest of the world. The extent of access to the EU Single Market will depend upon the terms negotiated. Under the Canada/EU FTA Agreement 98% of goods imported into the EU are tariff free. This option is essentially a goods agreement but has some limited liberalisation for trade in services. To date the EU has not entered into any FTA Agreement which comprehensively covers both goods and services.

5. World Trade Organization (WTO).
Access to EU Single Market will be on the same terms as all other third countries that do not have preferential access agreement with the EU. The WTO route does limit the type of restrictions and barriers the EU can place on UK services but these safeguards are far removed from free market access desired by the UK. This option would be applied if no agreement between the EU and the UK was forthcoming. It would have fairly painful financial implications for businesses exporting to the EU and for those importing into the UK. Consumers would end up paying significantly higher prices.



So, with the options clearly set out, which is the best option for us?

Ross Denton is a partner in Baker McKenzie LLP's European Community, Competition & Trade Department in London and member of the Baker McKenzie Japanese Practice Group.

What does he believe is our best way forward?

"If we leave the EU, we will leave the Single Market. This is as inevitable as night following day. To stay in the Single Market, we have to stay in the EU and that is not realistic or politically acceptable given the result of the Referendum vote. The Single Market gives the ability to have a free flow of goods, services and investments within agreed rules. If we leave, the rules will change. We will be an external third country.

Look at this chart which we call the Ladder of Doom (below).

There is a series of steps with the Single Market (SM) at the top left and World Trade Organisation (WTO) at the bottom right. For us to drop from the SM to WTO will be a massive shock to the system. We need to try and park on one of the intermediate steps for the impact not to be so bad for us. The next rung is the European Economic Area (EEA), not even the Norwegians want us to be a part of that. Next is the Customs Union (CU) who set a common external tariff. This is both a possible option and, indeed, an advantageous one as it means we won't have to put customs barriers back up. The downside from our perspective is we lose our ability to negotiate trade agreements on goods with third countries which in essence puts Liam Fox out of a job so we won't be able to cut deals in a different way from the way the EU do it. Even though simply being in the CU is not as beneficial to us as being in the EU, where we stand now it would be utter madness not to do it. If we don't, the cost to us will be very significant then there will be the issue of trucks lining up whilst the French examine our goods. Yes, we may have complied yesterday, but tomorrow? I honestly believe the much talked about fantastic deals with third world countries will take a very long time to happen and they certainly will not be achieved before we leave the EU. We simply don't have the bandwidth, the trade specialists to achieve them. We are going to be losing the benefit of fifty plus deals agreements, so just to stand still we have to renegotiate those and we will be doing that with lesser clout, so thinking about China, Japan or India is simply not practical at this point."

From Ross Denton's perspective, it seems we are already losing our game of snakes and ladders by having effectively eliminated the top rung. We need to cling onto one of the middle two before we find ourselves in the untenable bottom place.

Dorothy Livingston is a leader of Herbert Smith Freehills' BREXIT focus group. She is responsible for delivering solutions for clients to resolve adverse consequences from the UK's possible exit from the EU.

"Even if our best option is staying in the EU, it is safe to say we are clearly not going to do that. So, what are our other options? The Single Market and the Customs Union, the Customs Union alone or neither. And despite the issue of Ireland, it is looking like we are heading for neither. And whilst the neither option does afford the UK the flexibility to do what it wants in trade agreements with the rest of the world, flexibility comes at the cost of putting up more barriers to trade between the UK and the EU, particularly in the important services sector. To achieve a useful deal with the UK on future trade there are going to have to be a lot of compromises. Particularly where Ireland is concerned, it would suit us and the EU to maintain common standards in agricultural products, for example, whereby no customs duty is payable and standards remain aligned. That would remove a lot of barriers and get rid of a lot of frictions too. To facilitate trade in services with the EU, however, the UK actually needs something like the access to the Single Market that the EEA Agreement

The Ladder of Doom

Single Market
- Goods in free circulation move freely within single market

Customs Union
- Goods in free circulation are not subject to customs duties when moving within customs union, but
- Customs declarations required (?) and import VAT payable
- Possible simplifications?
- UK imports benefit from EU FTAs but UK exports do not

FTA
- Preferential duty rates* only available for goods which meet origin rules
- Customs declarations required and import VAT payable
- Possible simplifications?
- UK trade does not benefit from EU FTAs

Fallback (WTO)
- Non preferential treatment*
- Customs declarations required and import VAT payable
- UK trade does not benefit from EU FTAs

(Note: This diagram does not have an EEA option displayed but it is mentioned in the text.)

*only of concern for dutiable products

services provisions give Norway, but the UK finds the conditions of a complete regulatory package difficult to swallow, particularly full acceptance of the four freedoms (which would compromise immigration control) and becoming a "rule taker". Obtaining a satisfactory deal on the basis of partial alignment will be a tall order for negotiators. Who knows what is possible? It's impossible to second guess at the moment as we are in totally uncharted territory. The UK has always focussed on the pros and cons of being in or out but have not as yet really focussed on the compromises and tradeoffs of being half in or on what is realistically practicable.

Turning to trade in goods, the Customs Union carries few advantages over a free trade agreement which covers all products, unless there is also an acceptance of common product standards and a mechanism for enforcement. Merely being in a Customs Union with the EU would compromise the UK's ability to do free deals with third countries while not including the UK in the EU's free trade deals. It is unsatisfactory. The UK is looking for a very close relationship with the EU that does not match any existing model. Whether it can achieve that who can say, especially when the UK's desire for control over its own laws is at odds with the delivery of the regulatory alignment needed for that close relationship to operate smoothly."

Mary Honeyball is a Member of the European Parliament for the Labour Party representing London. She believes we should remain in both the Single Market and the Customs Union but accepts that is quite a difficult path.

"The Customs Union sets tariffs across the EU. The trade deals are agreed by the EU as a whole and not by individual states. If we leave we will have to negotiate our own agreements, so we will be moving into the unknown and will have a lot less clout to negotiate with.

The Single Market allows for a level playing field. It aims to sell goods and services in a common way, the legislation is the same across all member states, so no one country has an unfair advantage. The risk is that if we do succeed in negotiating that we stay in one or both there will be a huge row with hard Brexiteers who will not be happy with such a deal. If we choose to leave one or both then again there could be a lot of opposition. This could all lead to a defeat of any deal. Then what?"

Neil Warwick is a leading EU and competition lawyer and Square One Law's business development partner. He specialises in all aspects of competition law, in particular, State aid and EU structural funding.

"Staying in the Single Market, however attractive that may seem, won't achieve what the exit voters wanted so, democratically, it doesn't appear to be an option. The Customs Union doesn't tick boxes for Brexiteers either so that won't work. So, in short, we are going to be damned if we do and damned if we don't. However, there is an interesting loophole that seems to have been overlooked. I'm not necessarily sure we have triggered all the right notices required to leave everything so, by default, we could remain in the EEA post March 2019. The European Economic Area Agreement 1994 Treaty of the Members of the EU specifically provides that Article 127 needs to be served at least twelve months before leaving the EEA. We seem to be under the assumption that by triggering Article 50 we have covered everything but we haven't!

It is unfortunate that the debate around the Referendum was binary and simplistic. If people had more explained to them, they would have happily listened and understood. The outcome now is fascinating in terms of many areas of law and presents us with huge academic challenges. What is the best outcome for us? I try to remain objective and not engage emotionally. Our challenge will be to make whatever deal is eventually reached work".

Christophe Bondy is a senior counsel at Cooley LLP and advised Canada on the CETA negotiations so is well versed on the negotiations that lie ahead for the UK post Brexit.

Bondy sees that there are three options open to us; 1) Single Market + Customs Union; 2) just stay in the Customs Union; or 3) fall out of both and rely on WTO trading terms with the rest of the EU.

"Most countries who, like Canada, have free trade agreements benefit from no barriers but these agreements do not provide deep regulatory integration or sharing of responsibility of legal issues or joint determination of common regulatory standards with disputes on conformity ultimately going to a unified court (the ECJ).

There are calls within the UK to stay in either or both (Single Market and Customs Union) and, indeed, if the UK wants to maintain its current fluidity of access to the rest of the EU, it has to stay in both. It is the only way to square the circle with regards to Northern Ireland and potential border checks. The UK's decision about what to do with the EU going forward is going to be driven by the political necessity of keeping this border open. Beyond that, it's about how much pain the UK is willing to accept in order for the presumed virtue of autonomy and going it alone. I see this virtue as a fallacy because there is virtually no evidence that the ability to negotiate separate free trade deals with third party States would give the UK as high a benefit as its current economic relationship with the EU. Brexiteers say that negotiating free trade deals with third party countries will give British consumers access to cheaper goods which we have not been able to import tariff free before because we are in the EU. But what are these goods? Bananas? And will they comply with standards that consumers themselves now expect and demand? Also, if the pound is devalued to the extent experts are suggesting post Brexit, everything will be more expensive so saving 5% on the import tax on bananas is going to be pretty meaningless. There seems to be a romance and an illusion about the UK's ability to enter into new trade deals post Brexit. What third party States are willing to put on the table will depend on who they are negotiating with. As a part of the EU we are talking about 27% of the world's GDP. On its own the UK amounts to two or three per cent. That necessarily will impact on the quality of deals the UK may hope to secure outside of EU. I just don't believe the narrative that the EU has been holding the UK back. If it was possible to do a great deal with India, the EU would have done it. There are reasons why deals aren't done. The other issue is that by leaving the EU we are also leaving behind sixty odd trade deals and several hundreds of other signed agreements covering everything from air space facilitation to taxation issues. The day after the UK leave, all of these need to be addressed and it's unlikely that they will be replicated exactly. No third party is going to start negotiations until it knows precisely what is happening with the UK's deal with the EU so all this is going to take huge amounts of time. The CETA deal started being scoped in 2007 and only provisionally came in force in 2017. It took a decade to get that far on just one deal. And Canada was on the ball. We had the resources required and the knowledge to know what we were talking about. In the UK there is a huge capacity issue. Yes, the UK are in a hurry but they only have so many officials. They need bodies. The UK has traditionally exercised huge influence in EU decisions. Countries would hold back on their vote until they saw what the UK was doing. It is mythology to say Brussels imposed a foreign regulatory scheme on the UK. Now the conundrum is if the UK want to continue to do business with the EU, they will need to conform with EU regulations on goods and on services but now without having any say or influence on the content of that regulatory regime going forward. In colloquial terms, the UK are virtually saying we are not going to play by your rules, but we still want access. Of course the EU is going to say no. For the EU its a simple proposition; either be like Norway, ie play by our rules and get access or make up your own rules and get a border.

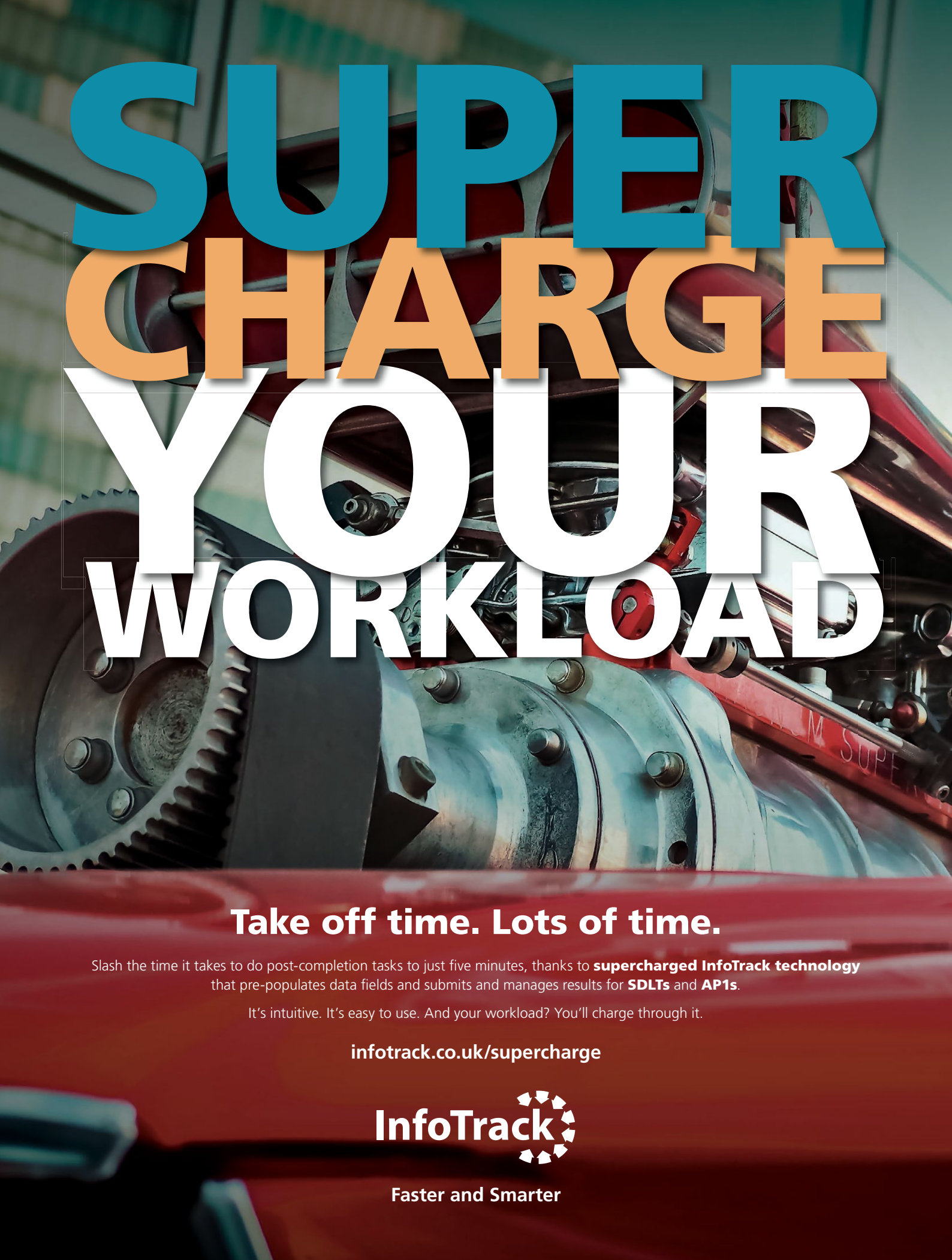
Brexit is the greatest form of economic self harm that I have ever witnessed. How the UK is going to get itself out of this corner is hard to figure out."

Our experts, although each is expressing their own views and do not speak with a single voice, do not paint a pretty picture for us going forward. Their predominant feeling seems to be our options are not as simple as they seem and going with most of them will not satisfy hard Brexiteers so will be rejected. The more limited option of a free trade agreement may satisfy those Brexiteers but will not necessarily be good for the UK economy and will definitely not be voted for by a lot of MPs irrespective of their party politics. So we appear to face difficulties irrespective of how the deal unfolds.

Then there are the price tags that come with each option. A study for the thinktank Global Future by Jonathan Portes, a professor of economics and public policy at King's College, London, found that a bespoke deal, the Government's preferred option currently, would have a net negative fiscal impact of about £40bn a year. Under the so called Norway option, the would be £262m a week, under the Canada model it would be £877m, while under a no deal it would be £1.25bn.

So, what will happen? Some politicians, Keir Starmer for one, have mooted a cross party approach to find a solution that will be acceptable. But does such a solution exist? Or have we already flown too close to the sun?

"Brexit is the greatest form of self harm I have ever witnessed."



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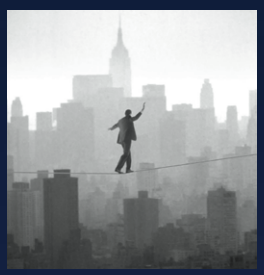
WHAT'S HOT IN THE CITY THIS SUMMER

Whatever the season, London always has sizzling must sees and this summer is no exception. Here are some of the hottest tickets in town…

THE LEHMAN TRILOGY

LYTTELTON THEATRE
National Theatre, Upper Ground, Lambeth SE1 9PX
Previews from 4th July 2018



No story could showcase contrast better than that of the Lehman family. Three brothers left their native Bavaria and went to America in hope of a better life. They made their fortunes and established a firm that was renowned and respected globally – until its shocking collapse into bankruptcy which was the catalyst of the biggest financial crisis in history.

This epic play which spans the lives of three generations over 163 years is directed by Sam Mendes (of Skyfall fame) and stars Simon Russell Beale, Adam Godley and Ben Miles. The play was written by Stefano Massimo and translated by Ben Power. Already a huge hit all over Europe, this is guaranteed to be a huge sell out.

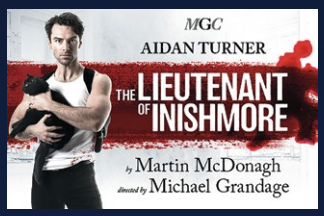
ALL TOO HUMAN
BACON, FREUD AND A CENTURY OF PAINTING LIFE

TATE BRITAIN
Millbank SW1P 4RG
Until 27th August 2018

This stunning exhibit features the work of artists from all over the world who chose to live and work in London and who painted human figures, their relationships and their environment. As well as the headlining Lucian Freud and Francis Bacon, there are some rarely seen works from their contemporaries, Frank Auerbach and Paula Rego and it also shows how this style of painting was developed by the previous generation's artists from Walter Sickert to David Bomberg.

THE LIEUTENANT OF INISHMORE

NOËL COWARD THEATRE
St Martin's Lane WC2N 4AU
23rd June 2018 – 8th September 2018



Writer, Martin McDonagh is hot property at the moment. His ***Three Billboards Outside Ebbing, Missouri*** scooped all the awards this year and now his critically acclaimed and brilliant satire on terrorism, ***The Lieutenant of Inishmore***, has been revived and directed by Michael Grandage.

The play is about Mad Padraic who, in this production, is played by Aidan Turner of ***Poldark*** fame. Padraic is a terrorist so violent, the IRA won't allow him to be a member. He returns to the island of Inishmore after a chip shop bombing trip to Northern Island to find his beloved cat has been knocked over. The play acutely observes violence in contemporary society and, in true McDonagh style, manages to at times to be hysterically funny even whilst dealing with such a serious subject.

STORIES FROM THE CITY:
THE BANK OF ENGLAND IN LITERATURE

BANK OF ENGLAND MUSEUM
Threadneedle St (entrance in Bartholomew Lane) EC2R 8AH
Until 19th July 2018

When the new Jane Austen £10 note was launched last year, the Bank of England Museum simultaneously began to run an exhibit which links banks and fiction – quite an unlikely contrast! It's absolutely fascinating and ends on 19th July so do catch it.

It charts banks connections to literature over the last three centuries including Charles Dickens, TS Eliot and Robert Browning and even has a special £1000 note signed by George Eliot.

LIVERY NEWS

A look at what has been happening – and what is coming up.

THE ANNUAL BANQUET AT MANSION HOUSE

The highlight of the Company's calendar, the Annual Banquet, took place on 22nd March 2018 in the spectacular surroundings of the Mansion House. We were hosted by our own Past Master, Alderman Dame Fiona Woolf, DBE who represented the Lord Mayor for the evening, and Alderman David Graves, Master of the Company. Our Guest Speaker was Lord Neuberger of Abbotsbury. He spoke about his career and role as a judge and former President of the Supreme Court as well as his "Access 2 Lawyers" initiative aimed at encouraging every lawyer in the country to visit a state school or sixth form college to talk about careers in the law.

Images: © Gerald Sharp Photography

The Master & Wardens


The magnificent Egyptian Hall


Alderman Dame Fiona Woolf meets the Company's Cadets from the 71st Detachment of the London Irish Rifles

Master's Weekend

27–29 April 2018

Bordeaux was the destination for the 2018 Master's Weekend for three days of tastings and fascinating visits to a number of wine producers in the region.

What's coming up:

27th September
SOLACCSUR Golf Day at Walton Heath

1st October
Election of the Lord Mayor at Guildhall followed by lunch

5th November
Livery Dinner at Carpenters' Hall

Keep up to date by following us on social media:

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We're on the road to… somewhere

LIFTING THE BONNET ON GOVERNMENT PLANS TO TACKLE AIR POLLUTION

By Joel Leigh

Perhaps, like me, you own a Haynes Owners Workshop Manual, bought with the objective of dipping into the contents so you wouldn't sound like an idiot if anyone asked you about your new car. If, also like me, the reality was scratching your head in confoundment by the time you'd reached 'power steering fluid levels' and settling for a beer instead, a bottle opener may well be your preference over the latest iteration of Government plans to eliminate non-electric cars from our roads.

It was widely reported last July that the Government had outlined plans to ban the sale of conventional cars by 2040, under the so called 'Road to Zero' strategy, to eliminate harmful emissions. But there has been subsequent confusion as to the definition of 'conventional'. Everyone took it to include both diesel and petrol vehicles, but where did that leave hybrids?

Hybrid vehicle (HV) car sales accounted for just over 72,500 new car registrations in 2017, whilst fully electric vehicles (EVs) and plug-in hybrid vehicles (PHVs) amounted to around 47,000, combined. The problem with HVs is that they are far more polluting than EVs or PHVs due to their limited battery range and overwhelming reliance on the burning of oil, so are viewed as little more than a bridging technology by many in the industry. An outright ban on HVs would be the death knell for cars previously considered 'green' however, such as the Toyota Prius, with a move to EVs/PHVs with larger batteries, longer ranges and no requirement for petrol or diesel.

It's perhaps unsurprising that with Theresa May's cabinet batting over which form of customs arrangement the UK wants with the EU after Brexit, the question of what does or doesn't amount to an environmentally friendly vehicle is equally vexed.

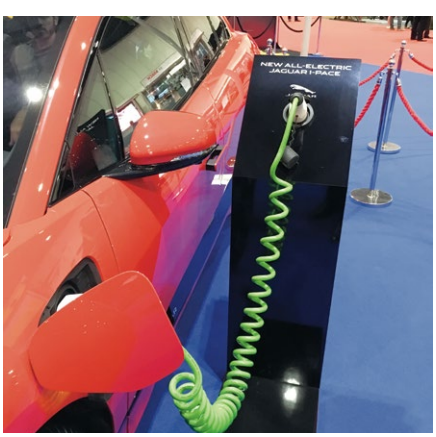
Only a matter of weeks ago, a Department for Transport spokesman, thought to be speaking on behalf of the Secretary of State for Transport and arch Brexiteer, Chris Grayling, stated that any plan to ban the sale of HVs was 'categorically untrue'. Yet later the same day, a Government insider thought to represent leading Bremainer and Business Secretary Greg Clarke, suggested that the position was still being 'heatedly discussed' within Parliament.

What's clear, is that if approved, this plan would see the removal of up to 98% of vehicles currently on British roads by 2040, so carmakers are pressing hard for clarification. Mike Hawes, Chief Executive of the Society of Motor Manufacturers and Traders, has made clear his disappointment at seeing Government policy being communicated by way of leaks, pointing out that 'unrealistic targets and misleading messaging on bans can only undermine efforts to realise this future, confusing consumers and wreaking havoc on the new car market and the thousands of jobs it supports'.

Car sales in Britain have fallen 8.8 percent so far this year alone, leading to hundreds of job losses at Jaguar Land Rover and Nissan, by some margin the UK's two largest motor manufacturers, and resulting in a significant knock on effect across the wider dealership network.

The issue was clearly a hot topic for manufacturers, exhibitors and visitors alike at the London Motor Show in May, which relocated from Battersea Evolution to bigger premises at ExCeL. Whilst the usual selection of exotica, spanning rocket cars to supercars were present and correct, there was a notable shift toward EV technology.

Highlights included the first UK viewing of the Jaguar I-Pace, a pure battery electric vehicle with a 298-mile range. The new model is the first all-electric vehicle from Jaguar but also the first EV



Sport Utility Vehicle from any premium European manufacturer, with deliveries commencing in July.

National motor retailer Lookers used the show to launch the 'Electric Charge', a carbon neutral charity challenge which will see an array of EVs travel 2000 miles including stops at all 155 of its dealerships, fundraising in support of the motor industry's benevolent fund.

At the other end of the spectrum, the iconic 1960s Moke has been reimagined as the electrically powered E-Moke, whilst Switzerland's Kyburz exhibited their roofless and torque-laden electric kit car, the eRod 'Fun'.

Like all new technology, EVs will become more affordable as demand grows and the supporting network and underlying technologies improve. Equally, as Gareth Redmond King, head of Climate and Energy at the World Wildlife Fund has pointed out, a ban on HVs by 2040 is 'almost like stating what's going to happen anyway' in terms of HV sales.

If the automotive industry has its sights set firmly on an all-electric future, surely the only question now is how quickly the goal of zero emission transport can be reached, leaving politicians as little more than talking heads regarding any actual timetable for implementation.

Joel Leigh is the motoring correspondent of City Solicitor and a Partner at Howard Kennedy LLP

ONE LAST WORD

DID YOU KNOW?

Napoleon had been the Emperor of the French, King of Italy, Protector of the Confederation of the Rhine and Mediator of the Helvetic Confederation. But, by the summer of 1815, he was a prisoner aboard HMS Bellerophon. The contrast between his imperial highs and pitiful lows could hardly have been more marked.

The ship's captain noted that, on 23 July 1815, English land came into view. The high peaks of Dartmoor were visible on the horizon, and Napoleon was informed that the coast of England was now in view. According to the captain's memoirs, Napoleon: "put his great coat on over his dressing gown and came on deck, spending a considerable time looking at this 'enemy land'".

The Bellerophon first sailed to Brixham, on the south coast of Devon. The Admiralty had given strict instructions that no one should be allowed onto the ship without proper credentials. Napoleon had slipped away once before, and no chances would be taken this time. News still reached the shore, and boats soon swarmed the Royal Navy frigate with sightseers hoping to catch a glimpse of the emperor. Some were rewarded with a glance, as Napoleon walked the decks watching the commotion on the sea below.

The Bellerophon was then ordered to Plymouth and spent most of its time in Plymouth Sound. Once again, it became popular to see the ship that held the great enemy and the titan that had bestrode Europe for years. Once again, Napoleon obliged the visitors, usually taking the deck at around 6pm to take a walk and be viewed by the sightseers surrounding the ship.

The scene became famous beyond the port city, as it was depicted in paintings by Charles Lock Eastlake and JMW Turner and engravings which were featured in the popular press. The national press covered the arrival of Napoleon in great detail, fuelling visits to Plymouth and also feeding Napoleon's worries that his ultimate destination would be a remote outcrop rather than the quiet corner of England he had hoped for.

He was right to be worried. In the coming days, first Devon and then all of Europe would slide out of view. Napoleon's new home would be the island of Saint Helena, more than a 1,000 miles away from the west coast of Africa. The damp, windswept and unhealthy outcrop was a final unwelcome contrast for the Corsican conqueror.

"Napoleon obliged the visitors, usually taking the deck at around 6pm to take a walk and be viewed by the sightseers surrounding the ship."

This article was provided courtesy of Ian Chapman-Curry, Principal Associate at Gowling WLG and host of the Almost History podcast

www.almosthistorypodcast.com

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