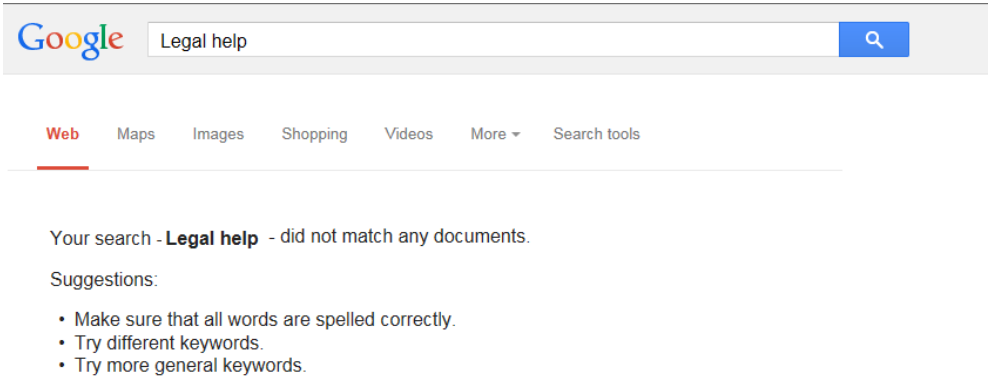
OXOFRD LAW SOCIETY

TRINITY TERM 2015



CAN LAWYERS SURVIVE IN THE 21ST CENTURY

?

VERDICT

Contents:

Law Society Trinity Term 2015

The photos used in this issues show just a small fraction of what has been going on with Law Society this term.

From President's Drinks to the Ball at Warwick Castle, with Pizza and Prosecco and Tapas and Sangria along the way, the committee hopes this term has been another exciting one for our members

A special thanks to this terms event sponsors Herbert Smith Freehills, Travers Smith and Burgess Salmon and our Sponsor for this terms essay competition, Hogan Lovells

A Note from the Editor

When deciding on the theme of this terms Verdict was not as straightforward as I had first thought it would be. I hope what we settled on, while giving pause for thought for all those looking to a career in law, ultimately sets an optimistic tone.

Discussing an aspect of the future which is relevant to so many is of upmost importance, even if it can be a worry for members who are law students and non-lawyers alike (including myself!).

Creating this edition of Verdict has not been an task taken lightly, given the bar was set so high by my predecessor, Will. I must pass on my thanks to him for offering advice on this edition.

I would also like to thank my Deputy Editor Beth for all her help and assistance, and putting up with my sudden last minute requests! Thanks also to the outgoing President Connie and our incoming President Vidit for their contributions.

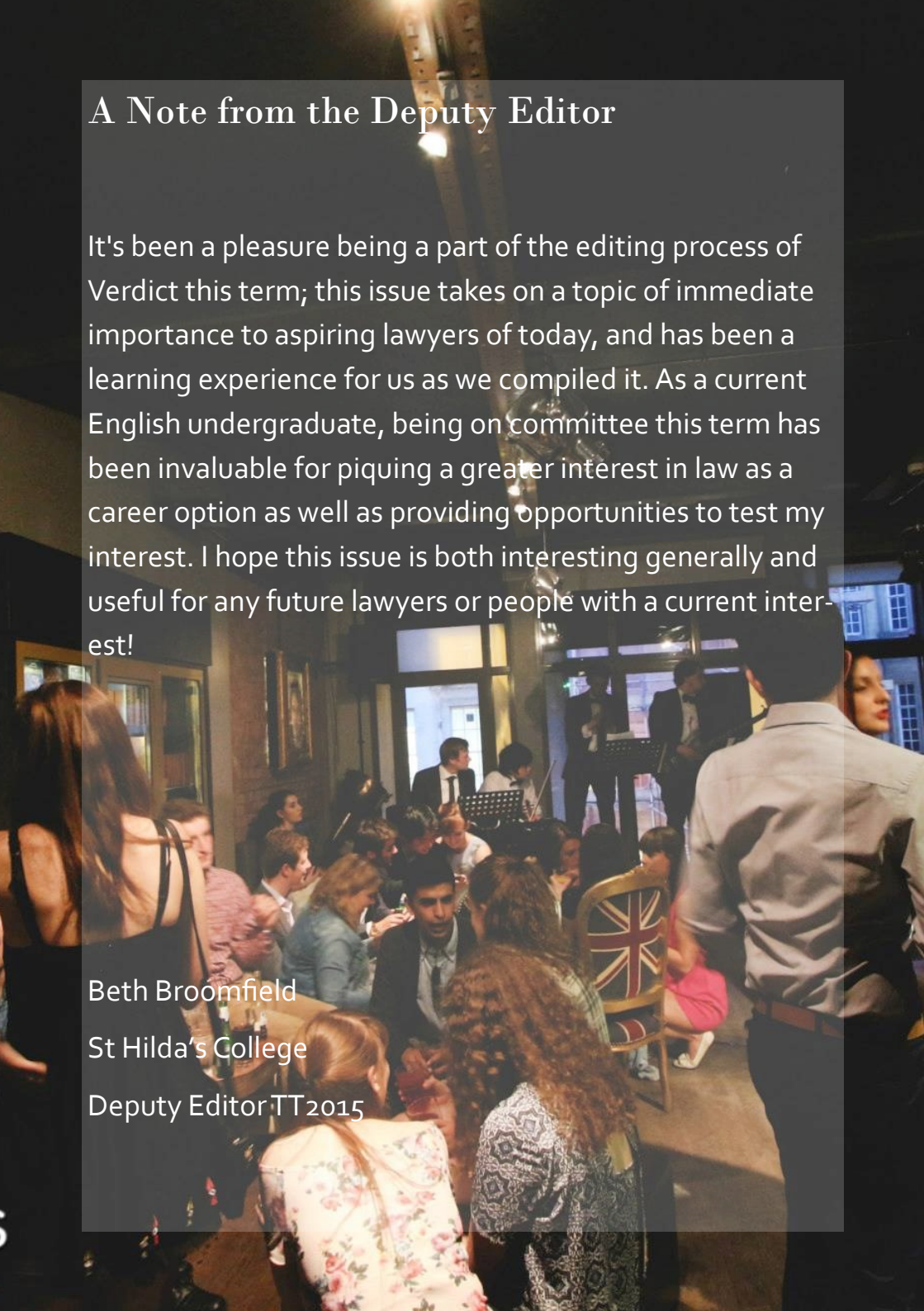
Matthew Hoyle

St John's College

Editor, TT 2015

A Note from the Deputy Editor

It's been a pleasure being a part of the editing process of Verdict this term; this issue takes on a topic of immediate importance to aspiring lawyers of today, and has been a learning experience for us as we compiled it. As a current English undergraduate, being on committee this term has been invaluable for piquing a greater interest in law as a career option as well as providing opportunities to test my interest. I hope this issue is both interesting generally and useful for any future lawyers or people with a current interest!



Beth Broomfield

St Hilda's College

Deputy Editor TT2015

The Rise of the Machines—Automation in Law firms

In 2000, Tom Peters, an American business and management writer, predicted that 90% of white-collar jobs would disappear by 2010 due to the pace of technological change. This was probably a product of the exuberance and hubris at the end of the Dotcom bubble rather than an accurate prediction of the labour market, as we can observe by the fact most professionals are still in employment. But it picked up on an important the natural progression of a long running historical trend.

The term "technological unemployment" was first coined in the 1930s by John Maynard Keynes to describe the way in which productivity-enhancing innovation displaces workers and creates periods of higher unemployment. Since then it has remained one of the most challenging economic problems in the developed world.

Automation has been changing the nature of employment for all of human history, though it has particularly picked up pace over the last 250 years, to the point now where the vast majority of jobs in the 1700s no longer exist – farming has gone from being the dominant sector of the economy to employing less than 1% of the population. Newspaper printing used to require hundreds of well-paid printers. Now it requires a dozen employees to watch over a vast, computer controlled machine. Even the jobs that no one wants are under threat. Go to any supermarket in Oxford, and indeed the UK, and instead of a friendly face at the checkout, increasingly you will see row after row of 'self checkouts', with their incessant demands for you to 'place the item in the bagging area'. But while agricultural, industrial and more recently service jobs have slowly diminished, white-collar jobs have flourished. Until now, that is.

The Rise of the Machines—Automation in Law firms

Advanced computer programs are already able to do tasks in offices that could not be dreamed of two decades ago. Machines are now writing newspaper articles, managing stock portfolios and may even be diagnosing patients in the near future. Programs can now teach themselves how to do something, rather than need to be programmed to do it. The pace of change is staggering, and its limits are unclear.

But chances are if you ask someone on the street what jobs cannot be replaced by a machine, they will say 'lawyers' pretty quickly. And they may have a point, based on an average understanding of the legal profession. Machines and computer programs cannot advocate in court, negotiate a contract or sit with a client in a police interview. However, while this may be what the external perception of a legal work, a large amount of what goes on in law firms is much less exciting. It is paperwork, filing, searching and looking through evidence. And a lot of this work is the same as work in industries that have already seen large-scale technological unemployment.

The legal profession benefits from two key factors that have helped to keep technological unemployment to a minimum. The first is an exceptionally high degree of regulation by both government and professional bodies, which makes entry into the market very difficult and so prevents competition that would force law firms to cut costs in the same way firms in more competitive markets have done – by reducing labour costs. Secondly, most firms are built on a partnership model rather than a corporation model. In the latter, shareholders will often push for maximum profits from the managers of the firm, whatever the cost to employees, which most shareholders are not. However in a partnership, the partners are directly involved in the running, management and day to day work of the firm, and may therefore be more resistant to changes which will eliminate human elements. And the nature of a partnership structure

means it does not take a great many of them to prevent changes occurring.

However since the 1990s, and especially since the 2007 Legal Services Act, both the regulation and governance of law firms has undergone a huge shift. While there are still huge barriers to entering the legal services industry, it is now far easier to do so than it has traditionally been to open shop and provide all manner of legally services. More importantly, the 2007 Act allowed other firms, built on a corporate model, to enter the industry. While many have not been widely successful (See Eddie Stobart's train-wreck of an foray into the corporate Bar particularly) if in time these models become more common and successful we could see the effects of competition and shareholder maximisation on employment in the legal industry. Similarly, if equity partners start seeing adopting new technology as a way of providing the same service for less cost, one must question how long they will protect old practices over increased profits.

It is true that a major part of legal work is still the application of judgement and skill to a factual scenario, which is said to be more of an art than a science. But this is not universally the case. Trawling through mountains of evidence and paperwork is a core element of law work, and in many firms is now done by automated programs rather than solicitors. Machines don't get tired or bored and they don't miss the one tiny out of place transaction or incorrect statement, and they can do it much, much quicker. And even then, machines may soon reach the point where they can be told a complex set of parameters for analysing transactions and the potential litigation that could arise and come up with advice for a client in mere seconds rather than weeks. At this point a law firm could operate with far less employees, most of whom would be working directly

with clients or involved in litigation rather than in paperwork. More interesting work for those in such roles perhaps, but small comfort to those who can't find work in the industry.

But it is not all doom and gloom. Though one may speculate about what technology will do in the future, it is easy to get carried away. Those who watched Tomorrow's World in the 1960s are still waiting for house cleaning robots 50 years. In regards to the present and immediate future, legal practice currently requires a great deal of personal contact and problem solving that machines cannot yet do. In the case of the former they will probably never be able to do it.

In addition the numbers simply do not show such a trend taking hold. Since the beginning of the digital revolution in the 90s, the number of solicitors has nearly tripled, and there is no indication that there will not be more long-term growth in employment in the industry. It is true that because of the effects of the 2008 recession, a level of unemployment may have been disguised as temporary job losses that never returned, but it seems there is still plenty of appetite for expansion among the top firms, and soaring pay to go with it. Computers haven't yet replaced men and women in law offices –instead merely enabled work to be done more efficiently and therefore quicker, reducing costs and increasing profits, allowing workers to focus on the tasks that still take the human touch.

Essay Competition

Each issue, Verdict runs an essay competition to give members a chance to

This terms question was:

"**Have changes to Legal Aid and Judicial Review made the Government unaccountable?** "

The Competition is kindly sponsored by Hogan Lovells, who will be giving a prize of £100 to the winner and £50 to the runner up, along with goodie bags for both!

Winning Entry

"Have changes to Legal Aid and Judicial Review made the Government unaccountable?"

"There is no principle more basic to our system of law than the maintenance of rule of law itself and the constitutional protection afforded by judicial review." Lord Dyson, now Master of the Rolls, in R (Cart) v Upper Tribunal [2011] UKSC 2 at [122]

Judicial review is a cornerstone of any modern democratic society. It is the process by which a citizen can challenge the government for acting unlawfully. As Lord Dyson's quote above suggests, one might be forgiven for thinking that judicial review would be treated with great respect and sensitivity by the government given its enormous constitutional importance, however one would be wrong to do so: the government's reforms, which were recently implanted into law through the Criminal Justice and Courts Act 2015, showed a wholesale lack of understanding and appreciation for the procedure. While it would perhaps be an exaggeration to say that the reforms have completely undermined the government's accountability, they were certainly ill thought through, damaging to our legal system and, perhaps most worryingly of all, laid down a chilling precedent for the government's attitude towards this sacrosanct doctrine.

First, it is critical that we place judicial review into its constitutional context. It has been so criticised and maligned by both, some might think ironically, the Lord Chancellor and certain parts of the media that it is important we do not forget its raison d'etre. At base, it is the mechanism through which we enforce the simple yet devastatingly important notion that the government only does what Parliament tells it to. The government relies on the support of Parliament for its mandate to govern and if, as is the case with a vote of no confidence, it loses this support then it can no longer rule. This underlies the basic constitutional principle that power ultimately lies in the hands of the people. There must be some mecha-

-nism then, which allows for recourse against the government when it acts beyond its mandate as provided by Parliament or doesn't use it in the way intended.

Some might respond that the proper place, indeed the only place, for this is Parliament itself. If parliamentarians bequeath power to the government why should they not be in charge of moderating its use? Given the size of government and population of the UK such a suggestion would in practice lead to injustice: countless infringements by government departments would go un-redressed simply because of the quantity of complaints. Furthermore, a wronged citizen can only realistically complain to their MP who cannot on his own force the government to change. If the complaint garners enough support then perhaps the government would take notice but such a practice would be inconsistent and uncertain. After all, from a rule of law perspective a citizen has a right to know and plan around how he will be governed, and so respect for his legitimate expectations should not be left to chance. The courts developed judicial review as a mechanism through which they could ensure that Parliament's wishes, and thus the people's wishes, were respected. The important of the doctrine is clear then: a claim in judicial review is a claim against the government. From planning permission to claims for asylum judicial review is often the only process through which a citizen can seek to correct governmental overreach.

We can proceed then on the basis that having an effective process for judicial review is of critical importance and that the government should be very hesitant to undermine its efficacy. When considered in relation to this proposition, the Coalition's reforms seem not only ill thought out but positively and, seemingly, wilfully reckless. First we can consider the argument for reform. The Lord Chancellor focused on what he viewed as the illegitimate hijacking of judicial review as either a 'campaigning tool, or simply to delay legitimate proposals'. In principle, such concerns could be perfectly legitimate. Just because judicial review is important does not mean that there is not a balance to be struck; the government must retain what LJ Sharpe called the 'capacity to govern'. A system whereby

the government could never get anything down because of a complaint system weighted too heavily in favour of the claimant would also undermine Parliament, as the government would not be able to effectively implement its laws.

Yet a conclusion that the current system is broken must surely be evidenced in fact. Singular illustrative cases are not persuasive as they are common to both sides. The government's response to a consultation paper included the example that the 65 week delay of Southend Airport's expansion because of an attempted judicial review claim that was refused at every stage but nonetheless cost the local economy over £100 million, while supporters of the status quo can point to the successful challenge by five disabled people of the government's decision to abolish the Living Fund, which would have impacted nearly 19,000 severely disabled people across the UK. Emotive cases must ultimately give way to hard facts and the facts simply do not support the government's narrative of judicial review being widely exploited and miss-used. The number of claims for judicial review has certainly increased, with the number of applications having increased threefold in the period from 2000 to 2012. However, a large proportion of this increase can be attributed to the increase in immigration and asylum applications, which more than doubled between 2007 and 2012. In the words of Parliament's Joint Committee on human rights this was 'the predictable result of the restriction of appeal rights in this context'. For non-immigration cases there has been an increase of just 366 cases over those 12 years, a figure that can hardly be labelled as alarming. The government further emphasised that of the 11,359 claims made in 2011 only 144 were successful in the courts. Yet such a statistic completely ignores the number of cases that were settled. It is estimated that 34% of all applications ended in a settlement positive to the claimant. Finally, despite the Lord Chancellor's allusions to a system manipulated by charities and other organisations to further their own political causes, interest groups brought only 0.4% of claims.

The statistics do not reveal anywhere near the chaos envisaged by the Lord Chancellor. Indeed, it is little surprise that this is so: judicial review was already tightly restrained through the short limitation period, the 'sufficient interest test' and the fact that it could only be used as a tool of last resort once all other avenues had been exhausted. Despite this, the government felt convinced that reforms were required. S84(1) to s84(3) of the CJCA introduces the requirement that the court must refuse to grant relief if it appears to the court highly likely that the outcome for the claimant would not have been substantially different if the conduct complained of had not happened. So even if a department did exercise its powers incorrectly, if the ultimate decision would have been similar to that which it would have reached had it followed procedure correctly, then the court cannot allow the claim to proceed. This is subject to the caveat that if the case is of 'exceptional public interest' then it may nonetheless proceed. This has significantly lowered the bar from the previous 'inevitably have been the same' direction and so forces judges to give leave in fewer cases. There are practical and principled objections to this change: first, it will have the unfortunate consequence that claimants will be forced to turn the permission stage into what has been described as a 'full dress rehearsal' of the full claim. This would damage the purpose of the preliminary hearing as costs and delay would approach similar levels to that incurred in a full hearing. The Joint Committee noted that the the government displayed a startling lack of deference to the views of the senior judiciary when considering this point. Secondly, and more fundamentally, the change is wrong in principle: the court would effectively be condoning the unlawful behaviour. Ex hypothesi the government acted unlawfully and it should be open to citizens to show this. It might well be by chance that there were no adverse consequences in this particular

case and so allowing the unlawful behaviour to continue sets a worrying precedent.

This change is made all the more irrational when considered in conjunction with the change made to legal aid funding for judicial review in the Civil Legal Aid Regulations 2015. This made payment conditional on the court either giving permission to claim or the court neither granting nor rejecting permission and the Lord Chancellor feeling that it is appropriate to pay remuneration. The High Court ruled in *Ben Hoare Bell Solicitors v The Lord Chancellor* the regulations incompatible with the statutory purpose. The court was damning of their incoherence: there were a number of scenarios in which, regardless of the claimant's acts, the case would not reach the permission stage. This could occur because the defendant conceded or modified the challenged decision. The regulations were amended to include such possibilities but it speaks volumes about the thought behind the reforms as a whole. Moreover the main problem with the changes to legal aid remains: it will dramatically restrict and reduce the number of cases which firms feel confident to invest their resources in. Again the motive behind the regulation is to be supported: legal aid should be given to the cases in which it is needed the most. Yet the result here is that firms will only accept cases where they are sure that the claim will be able to proceed and so the development of the law will be significantly prohibited. As discussed above, the evidence provided by the Lord Chancellor failed to make a compelling case that firms were supporting un-meritorious cases and so the development seems to have arisen out of a instinct that law firms should have to believe in their case before they commit to it. However this fails to recognise that judicial review is changing and dynamic because the way in which governments take decisions is changing. A law firm cannot easily be certain that a case will succeed. The

Secondary Legislation Scrutiny Committee expressed concerns that the regulations would have a 'chilling effect' on providers of legal aid.

Another change made is that any organisation which intervenes as a 3rd party is liable to pay the costs of the other party if certain conditions are met. These conditions include the intervention having been of no significant assistance to the court or having behaved unreasonably. The provision marks a victory for campaigners in that it has been significantly watered down since its first draft but it is nonetheless potentially damaging. Senior members of the judiciary testified that interveners were often of great help to a court by providing evidence and expertise. The act further introduced a presumption that interveners had to bear their own costs in absence of 'exceptional circumstances'. These changes risk deterring organisations from intervening since they could be left with a large costs bill and have almost no chance to recover their own costs. Given that charities often provide helpful interventions and that the statistics do not show them to be causing a surge in claims, it is difficult to see the merit of these changes.

Have these changes left the government completely unaccountable? No. Is it nonetheless less accountable? Probably. Do the changes reveal a wholesale lack of respect and understanding about the importance and functioning of judicial review? Certainly. The case for reform as carried out by the government was lacking at best and non-existent at worst. The reforms themselves are themselves problematic and, while it is too soon to tell, look like they will have a damaging impact on judicial review.

Samuel Dayan

St John's College

Lawyers on the Picket Line

In previous decades, the picket line was usually the domain of blue-collar workers. When people think of strikes they think of lines of miners, factory workers or dock-workers stood holding signs, warming their hands around braziers. It would be a surprise to those who lived through some of the worst industrial action of the last century in the 1970s and 80s, to see white-collar workers protesting against a Conservative dominated government. Both groups are often seen as the opponents of union movements.

But this is precisely what has happened twice in the last two years. Barristers, in wigs and gowns, not only protested against the Ministry of Justice but enacted what effectively amounted to a strike, by refusing to take any 'returns' – cases which other barristers were unable to complete – which virtually brought the justice system to a grinding halt for a month in 2014.

The cause of these protests, unthinkable to the Rumpole types many would associate with the legal profession, is fundamental changes to the workings of the justice system. Cuts to legal aid and restructuring of the way the Aid is administered have left many Barristers and many smaller law firms working in family and criminal law virtually impoverished. This is not, as some have represented it, simply certain solicitors and barristers complaining about not earning hundreds of thousands of pounds, but a case of well qualified and hard working legal professionals not making enough money to live on.

There is also a concern amongst members of the profession that vulnerable members of society are not getting the advice and assistance they need. The number of Litigants in Person (those 'representing themselves' in civil court) and those defending themselves against criminal charges has risen vastly in the last five years, so much so that the regulatory bodies responsible for lawyers were forced to issue extensive guidance on the matter in an attempt to ensure the lawyers that are involved in the case give guidance to laypersons to prevent delays and injustice. According to research by the House of Common library, there are now 33% more cases where neither party has representation than in 2010, including, tragically, a 22% increase in cases involving contact and custody with children is involved. It emerged that a large number of cases taken to court would have been 'filtered out' and resolved outside court if the parties had access to proper legal advice.

Lawyers on the Picket Line

How did we get here?

Legal Aid has been a declining element of the British justice system, especially the civil justice system, since the late 90s. At the time, the cost of legal aid was reaching unsustainable levels. Reforms led to the introduction of no-win no-fee claims in many areas like personal injury and removed legal aid from even more of the civil law, which meant the treasury no longer covered the more expensive areas of the justice system. However, even by 2009 Legal Aid remained an expansive program, available to almost a third of adults in the UK and with a budget of around £2 Billion a year. Even then, there were signs that elements of the legal profession were beginning so suffer from the rapidly changing structure of the justice system. However, it was about to get significantly worse.

Under the 2010-15 Coalition Government Legal Aid had its head placed firmly on the chopping block. Saving of over £200 million had to be found in short order. Ken Clarke, the Lord Chancellor and Secretary of State for Justice, ushered in the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The cuts to civil legal aid contained in Act were so expansive that many practitioners have labelled it "the end of Legal Aid in civil cases".

Criminal legal aid did not escape the axe either. New legal aid contracts drawn up by the Ministry of Justice under Ken Clarke's successor Chris Grayling will likely lead to the creation of a few 'mega-firms', who take criminal legal aid cases from start to finish, using their own solicitor-advocates or in house counsel. The unlucky criminal solicitors and barristers not part of these firms may find their prospects become increasingly bleak over the next few years.

A split profession

Usually when lawyers talk of a split profession, they mean that the separation between barristers and solicitors, each of whom performing separate tasks within the justice system. However, there is a danger that the profession has become, and is becoming even more so, split again in terms of earnings and employment. Top tax and corporate barristers are earning seven figures every year, while some criminal barristers are struggling to make the equivalent of minimum wage when

Lawyers on the Picket Line

earnings are divided by hours worked. Newly qualified solicitors in the City are now walking away with £70,000, while small criminal solicitors are facing having to shut down completely, their Legal Aid work having completely dried up.

This is not merely a matter of pay. The number of positions available for those seeking to work as solicitors and especially barristers in these fields has fallen rapidly. This year it was announced that the number of pupillage places had fallen below 400 for the first time in over a decade, down from around 500 just five years before. While cuts to Legal Aid are not the only cause, they have certainly been a major factor in the decline of the criminal and family bar.

Concern must not just focus on the lack of prospects for those looking to alternatives to corporate law work, but the cost to society of skilled young people being unable to work in socially important areas of the law like family, employment and human rights.

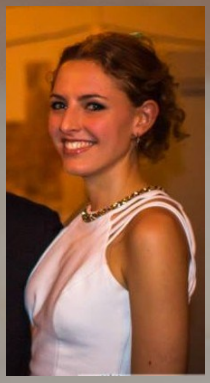
While the pay once qualified may be liveable, the costs of getting there are beyond those who do not have access to substantial income from elsewhere. The problem is most pronounced at the Bar. The Bar Professional Training Course costs over £15000 to sit in London, and when combined with substantial living costs and no concrete prospect of pupillage or tenancy at the end of it this must be a daunting prospect for any graduate to take on, even with the substantial help provided by the Inns of Court. Even for those who can find a pupillage, there is no money in criminal or human rights chambers to pay for those who can't pay their own way. Much better for them to go to a major corporate law firm, who will at least pay for their training and provide a guaranteed job at the end of it. And so another talented individual is prevented from perusing not only their passion, but from helping people who are often in dire need.

Matthew Hoyle

Law Society Committee Trinity 2015

Outgoing Executive Committee

Connie Van Stroud



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Highlights from this term


HERBERT
SMITH
FREEHILLS
OXFORD LAW SOCIETY


TRAVERS SMITH

Messages from the Outgoing Executive

Vice President

I have very much enjoyed my entire time on the Law Society committee, but of the various roles I have had the chance to take on, the role of Vice-President has been the most fun, challenging and rewarding. I have loved working with the rest of the executive and general committee to ensure another great term for the society and to be involved in organising some of our signature events such as President's Drinks, Pizza & Prosecco and Tapas & Sangria. Most of all, it has been great putting together the ball at Warwick Castle, which we are hoping is going to be an extremely enjoyable and memorable end to the year. I consider myself very lucky to have had the chance to work with such a great group of people, particularly the rest of the exec committee; Connie, George and Will. A big thank you to them and everyone else for all their hard work in making the term a success. I am very sorry to be leaving the committee at the end of this term but I look forward to still being involved in the society in the future and wish the best of luck to next term's committee.

Issy Van Niekerk

Worcester College

Messages from the Outgoing Executive

Treasurer

It is with a heavy heart that I abandon my spreadsheets and file away Society bank statements for good. I will sorely miss chasing committee members for receipts and paying invoices for sums of money that I won't see again until I put a deposit on a house. In all seriousness it has been a lot of fun and the other execs as well as the rest of the committee have been a pleasure to work with. I wish Vidit, Ellie, Shun and Georgie the best of luck next term and hope to see them at some of the many fantastic events that Michaelmas is sure to bring!

George Speak

New College

Messages from the Outgoing Executive

President

From joining LawSoc committee in Michaelmas 2014, it has been a whirlwind year to the end of my term as President in Trinity 2015! I have had an incredible three terms on the committee, though unsurprisingly the last 8 weeks have been the highlight: my role as President has given me an invaluable insight into the world of law by working with firms to offer members useful information and opportunities, and exciting events - the climax of which was our Warwick Castle Ball! My unforgettable experience as President is largely due to the people involved, and accordingly I would like to thank a number of those who made my time as President so enjoyable.

Without the support, perseverance and dedication of my executive team, this term would have been considerably more difficult for myself. So it is to George, Issy and Will that I extend a particularly personal thanks, for their invaluable role in organising and running our termcard and for putting up with my stress in the process! This gratitude is extended to the entire committee, all of whom have contributed so much to the success of this term and have made events and meetings an absolute pleasure.

Messages from the outgoing Executive

A very special thanks to all of our sponsors, without whom this term would not have been nearly as exciting and busy. It has been a pleasure working with firms as prestigious as Herbert Smith Freehills, Travers Smith and Burges Salmon to put on fun and informative events for our members, we hope you have enjoyed them as much as we have! Indeed along with our sponsors, the enthusiasm of our members is the driving force behind LawSoc and it is thanks to them that the Society gets bigger and better with each new term.

All that remains is for me to give my best wishes to next term's executive team, Vidit, Ellie, Shun and Georgina, who I know will do a fantastic job in Michaelmas 2015. Months away yet, their termcard is already full of exciting events with an incredible ball venue confirmed. Keep an eye out for LawSoc this October, it is set to be an unmissable 8 weeks!

Connie Van Stroud


PROGENIES