Welcome to the first edition of Canterbury Tales for this auspicious year – the year we celebrate 150 years of a Law Society in Canterbury.

Back on 16 October 1868, in the Chambers of Dr Foster, the foundation meeting of the Canterbury District Law Society took place. Concern had been noted for some time leading up to this inaugural meeting that “a number of unqualified persons were purporting to practice as conveyancers”. This may have been the issue that motivated the profession to set up this and similar situations as a united front.

A united front supporting Canterbury is certainly what the Canterbury District Law Society became over the next 140 years and then when the District Societies merged to become New Zealand Law Society in 2008 we became a united, national body. This milestone is to be celebrated as the 125-year celebration was back in 1993.

There will be many of you that remember (some more clearly than others) the celebrations back in 1993. They included, amongst other things, a Bar Dinner at the Park Royal and the Celestial Ball at the Town Hall. These events were a great success and have set the bar for the 150-year celebration.

To ensure that the sesquicentennial celebration surpasses the 125-year events, the organising committee is well under way with the plans for this prestigious event.

The events that are to take place in spring this year are:

- **Thursday, 25 October at 1pm** – All practitioners in the Canterbury-Westland area who hold a practising certificate will be invited to be part of a “profession photo”. The venue for this is not confirmed as yet but we are hoping for a greater turnout than 1993, and that was exceptional (see photo on pg 7, there were 630 registered lawyers in 1993 there are now 1,240 in Canterbury-Westland Area), therefore a large wet/dry venue will be required – any ideas?

- **Thursday, 25 October** – A formal Bar Dinner for 300 to be held at Rydges Hotel with invited guest speakers (yet to be confirmed). This will be an opportunity to acknowledge 150 years in a formal and distinguished manner/environment and then Saturday night is time to celebrate with a “party”.

- **Saturday, 27 October** will be the Cirque du Soleil-themed formal ball for 700 guests. This is to be held at the Airforce Museum and there will be “surprises galore” as well as two fantastic dance bands. A real opportunity to celebrate our milestone.

Please place these dates in your diary and look out for future articles in Canterbury Tales as well as the weekly notices. If you have any questions or suggestions please contact one of the committee members – Lana Paul, Susie Tait, Sarah Holder, Alexandra Beaumont, James Pullar, Sophie Goodwin and Zylpha Kovacs.
VINIO FINO
Photo Caption

Each month we have a photo caption competition where we invite you to submit a caption. The winner will receive two bottles of wine sponsored by Vino Fino (www.vinifino.co.nz, 188 Durham Street). Send your entry to the Canterbury Westland Branch New Zealand Law Society, P.O. Box 565, Christchurch. Or email to canterbury-westland@lawsociety.org.nz. All entries must be received by February 12, 2018. The winner will be announced in the next edition of Canterbury Tales.

Last month’s winner

Philip Strang with: “Criminals expected to employ increasingly sophisticated techniques to attempt to evade AML-CFT regime”

President’s Column

By Craig Ruane

Christmas Carols

The Leo Legal Recruitment Christmas Carols and Cocktail party at Christ’s College was held on 8 December 2017. The Law Choir, led by Helen Charlton and Matt Everingham, performed three sets of Christmas-themed songs. The hard work of the choir over the year with their weekly rehearsals, and a pretty impressive level of talent, was again to the fore. The final item of the evening was a rousing sing-a-long of many of the standard Christmas Carols, performed by the choir and assisted by the audience. As one whose last significant public singing activity was in the Treble Choir at Christchurch Boys’ High, I can say it was a very enjoyable evening.

There was some intermittent competition from drum and bass act Shapeshifter doing soundchecks next door in Hagley Park, but the choir and audience managed to overcome this.

Special thanks go to the organising committee, Lana Paul, Sarah Holder, Susie Tait, Alexandra Beaumont, Sophie Goodwin, James Pullar and Zylpha Kovacs.

Admission Ceremony

Earlier in the afternoon I had moved the admission of a young relative. This was the first admission ceremony in the new Court Building and 20 young lawyers were admitted as barristers and solicitors of the High Court.

It was a very pleasant occasion to see these young lawyers, supported by friends and family, joining the profession.

150th Anniversary

The Organising Committee will be beavering away for the rest of the year focusing on the 150th Anniversary celebrations of the establishment of a Law Society in Canterbury. A dinner is scheduled for 25 October at Rydges, proceeded by a group photograph. A ball is scheduled for 27 October at Wigram Airforce Museum. Some groups are also organising reunions of more or less formality to celebrate (in my case 40 years since leaving university). Those who recall the 125th Anniversary (and perhaps some few who remember the Centennial), can attest to the good times had at previous events.

Mark your diaries now. More details to follow.

Philip Strang with: “Criminals expected to employ increasingly sophisticated techniques to attempt to evade AML-CFT regime”

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Guidance to lawyers considering acting under a limited retainer

— Part One

INTRODUCTION

This practice briefing is intended as a guide to good practice for lawyers undertaking limited retainers (also known as “unbundled” legal services). A limited retainer is where a lawyer, by agreement with a client, performs one or more discrete tasks, while the client handles other matters that, in a traditional full service retainer, would form part of the services the lawyer would provide.

What has been described as a “justice gap” is growing between those who can afford to pay for traditional legal services and those who cannot. One suggested means by which lawyers can address this growing justice gap is through the provision of limited or “unbundled” legal services, in particular to clients who at least partly represent themselves in court.

“DIY” LAW?

More litigants in person (LiPs) are appearing before the courts, and more individuals are demonstrating a preference toward taking greater control over their own legal affairs. This “do it yourself” law culture is encouraged by the growth of self-help legal websites, community services, and information/form databases (such as JustAnswer.com). The use of Artificial Intelligence in the legal industry is also on the horizon.

The Ministry of Justice website provides information about self-representation in the different courts (see www.justice.govt.nz/courts/going-to-court/without-a-lawyer/).

Elements of self-help and the limited retainer service model are not new. Executors frequently request a lawyer to apply for probate, but then carry out the rest of the legal work themselves. Limited service retainers are increasing in the field of family law, where recent changes make limited representation in the Family Court the norm. Encouraging “do-it-yourself” solutions for clients who are willing and capable of taking greater control over their legal affairs can help to alleviate not only the financial strain on families and individuals in need of legal services, but also administrative strain felt by the wider legal system.

CASE LAW—THE DUTY OF CARE

There is not yet any New Zealand case law on limited retainers. However, a recent decision of the United Kingdom Court of Appeal held that lawyers do not have a broader duty of care when offering unbundled services. The Court in Minkin v Lesley Landsberg [2015] EWCA Civ 1152 dismissed a professional negligence claim brought by a client against a family lawyer, with Lord Justice Jackson saying that solicitors acting under a “defined and limited retainer” do not owe a broader duty of care to clients that goes beyond the terms of the retainer. Jackson LJ stressed that, where unbundled services are offered and limits of liability are clearly defined, a lawyer will not be held responsible for issues arising in relation to the client’s legal proceeding but outside of the lawyer’s scope of responsibility.

While lawyers do not, according to Minkin, have a broader duty of care when offering unbundled services, care needs to be taken by a lawyer to ascertain the exact scope of the retainer consistent with their professional and ethical obligations. The scope will inform the breadth of the duty of care in a particular situation.

This was highlighted ...Continued on page 5
Stress is inevitable –  
But don’t let it beat you

By Andrew Nuttall

In December last year I met with three lawyers and they all mentioned that they were feeling tired and stressed. We all know the feeling but I’m sure we all agree that stress can be a wasted emotion and something that we would rather not experience. So what are we doing about it?

I began thinking a little bit more about this topic when I read an article in the Sunday Star-Times by Dr Tom Mulholland and on my return to the office I searched “stress” on the NZ Law Society website and found 473 different entries.

A November 2016 article in LawTalk by Emily Morrow stated that “stress is a chronic and ubiquitous risk for lawyers and non-lawyers in New Zealand law offices. Lawyers have high rates of depression, substance abuse, job dissatisfaction and general unhappiness. In fact, in many surveys lawyers rank among the least happy people professionally and often personally as well.”

A July 2013 article, A Well Known Stress-Buster, stated that “deadlines, billing pressures, client demands, long hours, changing laws and other demands all combined to make the practice of law one of the most stressful jobs on the planet.”

This sounds like serious stuff to me and, for those of you who are employers, there are now greater responsibilities under the Health & Safety at Work Act 2015 to identify and minimise workplace risks.

Emily Morrow’s article provides some ideas for law firms to consider but there are also things that we can all do personally. The July 2013 article references a study that states “…among the many strategies to alleviate stress and to stress proof yourself the three that stand out are:

1. Exercise (do something every day),
2. A healthy diet, and
3. Sufficient sleep.”

Dr Mulholland in his newspaper article states that stress can be a product of our thoughts, expectations and beliefs but also notes that certain words such as “should” and “must” are demanding and stressful. He suggests we focus on the words we use and our way of thinking to help control stress. “I must get everything done for everyone” can be replaced with “I would rather get everything done but in fact I need some time for myself and my family”.

Most stress is not worth it unless it changes behaviour. If financial stress motivates you to earn more or spend less, then that can be a healthier motivator. But all too often worry and stress is like a merry-go-round. It will keep you entertained but it will not get you anywhere.

It is widely acknowledged that stress is present in law firms but there are things we can do personally and as a team to control our stress levels and emotions. Something as simple as changing the way we describe the things we have to get done can make a real difference.

I wish you all a “less stressed” 2018, and if that doesn’t happen that there is something helpful for you in the above.

Andrew Nuttall is an Authorised Financial Adviser and founder of Cambridge Partners Ltd, an independent fee only Wealth Management firm in Christchurch. Andrew and has worked with members of the legal community for over 26 years. His disclosure statement is available on demand and free of charge. www.cambridgepartners.co.nz Telephone (03) 3649119. andrew.nuttall@cambridgepartners.co.nz
in a 2013 Queensland Supreme Court case, *Robert Bax and Associates v Cavenham Pty Ltd* [2013] 1 Qd R 476 [490]. In that case, the solicitor argued that he was only engaged to prepare and stamp mortgage documents. The court held that a letter written by the client’s bank manager to the solicitor was evidence of a more extensive retainer, and that the scope of the retainer extended to providing advice as to the most effective method to protect the client’s interest in the financing transaction. The court also found that the solicitor could not undertake the retainer “without ascertaining the extent of the risk the client wished to assume in the transactions, evaluating the extent of the risks involved in the transactions and advising in that regard”. Further, the court found that the duty to advise “does not depend on advice or information being specifically sought by the client”.

Considerations that are relevant to the duty of care lawyers owe their clients in limited retainers were detailed by Chief Justice McClelland in *Trust Co of Australia v Perpetual Trustees WA Ltd and Others* [1997] 42 NSWLR 237 [247]. “The duty of care owed by a solicitor to his client is to exercise reasonable skill and care,” Chief Justice McClelland said.

“What is required for the performance of this duty in a particular case depends on:
» the scope of the solicitor’s retainer,
» the scope of any additional responsibility assumed by the solicitor and relied on by the client,
» the nature of the task entrusted to or undertaken by the solicitor, and
» the circumstances of the case.”

**HOW CONDUCT AND CLIENT CARE OBLIGATIONS APPLY**

These cases, particularly *Robert Bax*, highlight the importance of lawyers turning their minds to the Lawyers and Conveyancers Act (Conduct and Client Care) Rules 2008 (RCCC), and how they apply to limited retainers.

The preface to the RCCC summarises the building blocks on which a lawyer’s obligations to his or her clients are built: “Whatever legal services your lawyer is providing, he or she must –
» act competently, in a timely way, and in accordance with instructions received and arrangements made:
» protect and promote your interests and act for you free from compromising influences or loyalties:
» discuss with you your objectives and how they should best be achieved:
» provide you with information about the work to be done, who will do it and the way the services will be provided:
» charge you a fee that is fair and reasonable and let you know how and when you will be billed:
» give you clear information and advice:
» protect your privacy and ensure appropriate confidentiality:
» treat you fairly, respectfully, and without discrimination:
» keep you informed about the work being done and advise you when it is completed:
» let you know how to make a complaint and deal with any complaint promptly and fairly.”

These obligations apply equally to all legal services provided to a client— even when these are limited. The wording of one of British Columbia’s rules of conduct for lawyers provides useful advice. It states: “When a lawyer considers whether to provide legal services under a limited scope retainer the lawyer must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement for such services does not exempt a lawyer from the duty to provide competent representation. The lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services.”
Update from the New Zealand Institute of Legal Executives, Canterbury Westland Branch

By Pam Harliwich

Christmas function

Christchurch members celebrated the end of another busy year at Visions on Campus restaurant at Ara Polytechnic on 23 November 2017 with 47 attendees. There was lots of laughter and chatter as we gave out spot prizes and enjoyed a lovely three-course meal prepared and served by the students.

Seminar news

The branch is looking forward to another busy year and plans to hold five seminars in Christchurch.

Our first seminar is on Wellness/Smart Body/Fit Mind to be held on 21 February at Burnside Bowling Club. The presenters are Paul Todd, Health and Performance Coach, and David Bennett, Executive Coach. Attendees will learn about health and performance, motivation, and energy and mindset.

It should be an interesting session. Members should have received the flyer.

The seminar is free for NZILE members and $50 for non-members.

Social

A social event is being held on the third Thursday of every month being either a catch up for a wine, or an activity. Some of the activities we are planning for this year are paint n sip, a movie night and a quiz night. And, of course, we will also have the mid-year and end of year dinners.

The Legal Executive Graduation will be held in May.

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Sponsorship Proposal

The Canterbury Westland Branch of the New Zealand Law Society turns 150 years in October 2018

There are opportunities for you or one of your clients to sponsor the 150 year celebrations. Please see the information below and contact us for any further information.

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**Contact:** Malcolm Ellis, NZLS Canterbury Westland Branch Manager  03 366 9184  canterburywestland@lawsociety.org.nz
Leo Legal Recruitment – Christmas Carols and Cocktails Party

On Friday, 8 December the 2017 Leo Legal Recruitment Christmas Carols and Cocktail Party was held in the dining room at Christ’s College, which is an exceptional room for both ambience and acoustics. The Lawyers’ Choir performed a number of songs, Helen Charlton and Matt Everingham (choir conductor and pianist) performed *O Holy Night* and then there was a sing-a-long of all the favourite Christmas Carols.

Thank you to Helen, Matt and all the choir members. The result of all your long hours of practice paid off with a very professional performance.

The evening was sponsored by Leo Legal Recruitment. Thank you to Leonie and Brendan for this very generous support and we encourage the profession to contact Leonie with any recruitment queries on 021 205 7342.

As the photos show it was enjoyed by all who attended.

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Eulogy: K G L Nolan

Associate Judge Rob Osborne delivered the eulogy below at the memorial service held for Kerry Nolan.

How will I remember Kerry Nolan?

I will remember him as a gentleman, a gentle man, a dignified and stylish man and one who, notwithstanding his flair and intellect (or perhaps on the back of it), thrived on quietly, modestly and effectively getting things done.

I first knew Kerry in the late 1970s as one of the partners at Duncan Cotterill who employed me and later, for 21 very happy years, as a partner.

We shared a history very unusual at the time at DC in that we both had substantially North Island upbringings and education. Notwithstanding that peculiarity, we each somehow got caught by DC’s selection net. Kerry’s law degree from Auckland University had been accompanied by some awards and prizes which makes his selection the more understandable.

It may be that the existing partners also recognised in his student work CV the makings of a man who would get things done. Amongst the student jobs which he listed for Don Hamilton, when Don came to write the history of the firm, were “household removals, builder’s navy, and rigger”. In coming across that list in the last few days I found something very Kerry Nolan-ish about it. First, it reminded me of his enjoyment of things practical which was later very clearly seen in Kerry and Nicky’s lovely home at Anamoe by with Kerry’s laboriously self-made clay bricks and homegrown macrocarpa. Secondly, I am reminded of the enjoyment which Kerry derived from language and concepts – he was conscious, I am sure, that words such as “navy” and “rigger” were not a subject of everyday discussion at the Duncan Cotterill board table.

Kerry Nolan, the young or youngish partner of the 1970s and 1980s, comes into focus as a man of style. Photos from the time catch him in his striped three-piece suit with, on his left hand what is, I am pretty sure, his signet ring.

Kerry was to become an integral part of a team of five younger partners – Stokes, McElrea, Nolan, Joseph and Forbes – who effectively transitioned a rather old-fashioned partnership for the needs of a different age. In the years which followed, and in which Claire and I came to know Kerry and Nicky well, four things stand out for me about Kerry’s approach to the practice of law and to partnership. I have time to mention them only briefly.

First, this man had become a highly-accomplished lawyer and business leader. He did not wear his intelligence on his sleeve, but rather wove it seamlessly and quietly into everything he did. He loved the fact that his legal career straddled his governance career in the commercial and charitable communities both here and abroad. His skills of analysis and planning, so central to his legal work, made him a highly respected and indeed central figure amongst the numerous entities he served, whether as director, chairman or president. His work on and understanding of company constitutions and his mastery of meeting practice stood out. His skills were transportable and were transported.

His work served to cement and then deepen some long-established legal relationships between the firm and clients such as those with J Ballantyne & Co and SIMU (or AMI as it later became). As his partners, we saw only glimpses of his corporate and charitable work as that involvement was the business of those organisations and generally not within the compass of the firm’s legal work. However, we knew enough to know that his work with the charities, especially in his domestic and his international work with Red Cross, always focused on introducing business principles which he regarded as essential to any charity.

Peter Cox has, on a previous occasion, shared the story of just how transportable Kerry’s skills were. It goes back to the days when Peter and his team were the auditors of Sovereign Gold Mines. The company was required to attend a hearing before the Securities Commission. Kerry appeared for the company, seemingly unconcerned by the inquisitorial and adversarial setting. Peter attended as one of the audit team. As Peter relates it, Kerry embraced the role of litigator. His cross-examination of opposing witnesses was necessarily lengthy but also precise and effective. The client company was cleared of any wrongdoing. For any litigator, a significant outcome. For Kerry Nolan, the entire exercise was simply another illustration of the breadth of his remarkable skillset.

Secondly, a substantial part of Kerry Nolan’s effectiveness and success as a lawyer and partner lay in the fact that his interests were not tightly focused on the law. He was something of a reluctant lawyer. He had followed the proud tradition of his father and his Osbourne upbringings into the law. His qualifications took him naturally into legal practice and then partnership, which was very fortunate for Duncan Cotterill. But, as he very recently reminded me, if he had his time again, he probably would not have focused on a traditional legal career. His complete disengagement from legal practice when he retired as a partner reflected the fact that, while he was extremely good at the law, he was not enthralled by it.

Thirdly, Kerry was a voracious reader, a distiller of thoughts and an enthusiastic and effective communicator of ideas. He read widely on all manner of subjects. At the firm, he gently pursued best practice, whether drawing for the time being on concepts of total quality management or of the benefits of quality circles. He liked the challenge of winning people over. He was not gutted if his ideas were occasionally not adopted. All his partners through the years would regard him as an excellent chairman who chaired graciously and inclusively. In all he did he retained his good humour – I cannot recall a single occasion on which Kerry said a cross word to me. I was sharing that thought this morning with Austin Powell who is now with Crown Law but in a former life was one of our partners – he mentioned that, on the single occasion he was invited by Kerry to

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a client lunch, Austin managed to spill the contents of a glass of red wine over Kerry. Austin was somewhat relieved and surprised that Kerry simply mopped it up and never said a word to him, either that day or subsequently, about the misfortune.

Fourthly, I loved and admired about Kerry the fact that, amongst all his legal and corporate achievements, he was grounded in, and got enjoyment from, the practical things and day-to-day matters which interested him. In his home environment, in the Anameadle days, I think again of the clay bricks and also of Kerry and Nicky’s farming endeavours. In the office I think of the simple enjoyment he got from impressing his substantial, antique notarising seal onto a document. I think also of his daily writing with his rather magnificent, heavy, gold-plated fountain pen. He had acquired it, he assured me, for a very modest price at a sale. And I call to mind particularly today what I think of as the Nolan privilege. It arose in those busy years of practice in the Clarendon Tower, when Rosa, David, Abigail and Ineke were teenagers at school in Christchurch and Kerry’s professional life must have often extended not just to the end of the legal working day but also on into board meetings, book-ended by the trips in and out from Cust. It was very Kerry-ish, pragmatic and sensible, to bring the children’s work-life into the work life at DC, before driving back to Cust in the evening. I still think of it as the "Nolan privilege", although the way I exercise the Nolan privilege in my work place is by taking my dog, and not my children, to work.

To you, Nicky, and to you, Rosa, David, Abigail and Ineke, I conclude with a simple thankyou – you had a husband and father amongst the loveliest and most capable of men. It has been a privilege to have your friendship as a couple and a family, and it was to the enrichment of our working lives to have careers which were repeatedly touched and influenced by Kerry.

Malcolm Wallace
BARRISTER AMINZ Fellow (Arbitration)

Malcolm is available to accept appointments as an Arbitrator or Mediator. To discuss terms of appointment and availability contact Malcolm on:

malcolmwallace@canterburychambers.co.nz

09 379 976 027 260 3431

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The Eternal Burden of Costs

By John Burn

A report in the Christchurch Press in November describes a pending High Court action in which the plaintiff, as a company liquidator, was suing the directors and auditors of a failed company. The details are irrelevant but the report records comments by the Chief Justice in which she criticises the liquidator’s case as being supported by a litigation funder, and describes the claim thus to be seen as an investment to be maintained to the extent to which it provides a commercial return to the funder. (I note that the funder has objected to these remarks, because Her Honour is the wife of Hugh Fletcher, chairman of what is described as the largest professional indemnity insurer in the country. However, I am not directing my comment to that aspect and have no doubt that the interim judgment was made with proper detachment.)

Nonetheless, the Chief Justice’s criticism cannot be accepted without it being noted that the courts in general have brought this situation upon themselves. The costs of litigation in this country operate at such a stratospheric level of money that 90% of our citizens could not contemplate embarking on litigation in the High Court. And those who can scrape together the money are facing a lottery upon which their future economic lives are at risk. It, of course, also follows that only larger companies can face the costs involved with equanimity. The huge fees demanded by litigation firms and barristers arise in my opinion from three factors:

First, the requirement some years ago by the judges that submissions be lodged and served before the hearing. This was ordered originally so that the judge could catch up on the parameters of the case and refresh his memory of the relevant law. (Now some of them tell me that they are often appalled at the length of what is supplied.) For both barristers and solicitors carry out all the preliminary tasks in preparing the brief. (I acknowledge that there is no criticism of them, for they did not invent the present system and they all do their best for their clients. But there is no doubt that, as a result, they are obliged to spend the huge bulk of their time out of court – partly, I know, because here they have to interview parties and witnesses as well as drawing pleadings, witness statements and the submissions I have described above.

I have to again instance the Sydney Bar, where I spent 25 years, and where instructing solicitors carry out all the preliminary tasks in preparation of the brief. (I acknowledge that there counsel’s advice may be sometimes sought on specific points of evidence or pleadings, but these require specific briefs and do not guarantee a later brief for the proceedings.) When a barrister is not in court he or she is basically not earning – we, at the Sydney Bar, were not permitted to see clients without the attendant solicitor or go to law firms, but I must admit my belief that the solicitors in the large Sydney firms are (in their speciality) on balance better, pure lawyers than members of the Bar. Thus each practitioner does what he does best, and one consequence is definitely that client fees are lower there at the end than here.

Another difference in Australia is that the costs awarded to the successful party are the complete payment of all his fees expended, right down to the last photocopy charge – any dispute is settled by a taxing counsel or registrar. In some ways this might increase the lottery nature of the hearing, but at least the successful party leaves the court having been put in the economic position that he deserves.

I add a complaint about the increasing use of AVL appearances in petty criminal cases – proudly spoken of in December by the Secretary for Justice, and which he promises to increase – but which shatters the age-old guarantee that a defendant may face his accuser. One could almost foresee a court system where parties in any court are not allowed to give their own evidence, in some Kafka-like future. But even now, our High Courts – I dare not consider those above them – are part of our system but mostly unavailable to the taxpayers. Thus their work is mainly criminal, and the parties in civil matters have turned to judicial conferences, where you can get all parties together (or to private mediations) to break the deadlock by settlement, and too often they are frightened into a grudging agreement. Thus what we have is a court system which does not work, because it is too expensive. And that is why we increasingly have litigation funders, because losing an agreed share of the judgment recovered is too often the only way of getting anything. It does indeed seem a little hard for any judge to criticise them.