

← The Bridge →

IMPORTANT NOTICE

Are you a law student who is disabled, planning to become a solicitor? Or do you know anyone in that situation? If so, you are recommended to read the article on the Herbert Smith open day. More important, you should note that Herbert Smith plan to hold another open day, probably on Tuesday 27th June, 2006.

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**Making your mark?
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How does David Merkel get on as a visually impaired person going to the theatre?
Read about it on the back page...

- Anne Stanesby asks if LSC contracts with the not for profit sector have implications for lawyers and advice workers with disabilities.
- Duncan Finlyson looks at LSC concessions on British Sign Language interpreters and highlights problems that might still arise.
- Sir John Wall reports on an important opportunity for disabled law students.



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How should a client who is disabled sign a document?

The Group was asked to comment on a government consultation on how a client who is disabled by a physical impairment should sign a document. By definition, he/she has mental capacity, and accordingly the rules relating to the execution of documents to which an individual who is a "patient" is a party do not apply.

A client may have some physical impairment which makes it impossible for him/her to sign, or affix a mark. In such a case, someone must sign for him/her.

It is understood that, if the document is an application for public funding, the government would be prepared for the solicitor acting for the applicant to sign the document, adding:-

" I confirm that due to my client's disabilities he/she is physically unable to sign."

The Group approved this suggestion, but added the following:-

1. Using a mark to sign. At common law, anyone who cannot sign their name is allowed to use a

mark. Common law requires that, noted by the mark, should be the words: "the mark of A.B".

2. Many, if not most, visually impaired clients can sign their name. If the signature needs to be witnessed, the witness adds to the testimonium clause "I having first distinctly and audibly read over to him/her (being blind) the contents of this document when he/she confirmed that he/she fully understood its nature and terms."

The note just quoted might be rather too long for insertion into government application forms for public funding.

It is, of course, crucially important that a visually impaired person should know what he/she is signing. Accordingly, where a signature on a document does not need to be witnessed, it should be standard practice that, before a visually impaired client affixes his/her mark or signature, it should be read to him/her, and confirmation that it is understood should be obtained.

John Wall

Student mentoring

How did I come to mentoring? It was quite simple. I answered an email advert from the student office of a northern university and as they say 'the rest is history.'

So what is involved? Mentoring or 'buddying' necessitates building a relationship with your mentee; not just a relationship as friends, but one of trust and frankness. It is essential that mentees are given time to clarify their particular needs and focus on how the relationship is to best serve them. It takes time to develop a mentoring partnership. The mentor must wait and sometimes wait a considerable time before the mentee really feels comfortable and is ready to open up.

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The mentors aim, and this applies whether or not the student is disabled or able bodied, is to facilitate and enable the student to achieve his or her goals and potential. Providing network contacts and sometimes easing open certain doors is all part of the role. Making time to listen and learning to contribute tactfully is essential.

I have now been involved in mentoring at various colleges and universities for over three years. I have found it rewarding and immensely satisfying and have benefited much from the experience of being a mentor. To enable students to attain their goals is to secure the future.



David Merkel

AN IMPORTANT INITIATIVE

THE "HERBERT SMITH" OPEN DAY

On Thursday, 16th June 2005, an open day for disabled law students was held at the offices of the leading city firm: Herbert Smith. The Group for Solicitors with Disabilities was pleased to assist Herbert Smith's graduate recruitment team to identify nine students who included, amongst others, a student with hearing loss and another with dyslexia.

Attendees were welcomed by the firm's head of graduate recruitment and Kate Hasluck, Graduate Recruitment officer, and received an introduction to the firm by Chris Parsons, Graduate Recruitment partner.

Chris Parsons, Graduate Recruitment partner, Herbert Smith.



One of the firm's associates, Nikunj Kiri, gave a presentation on litigation and arbitration, core activities of many solicitors' firms which law students do not always learn much about in their academic

training. This was followed by a tour of the firm's premises, accompanied by trainees, and a buffet lunch.

The afternoon programme began with "Life as a trainee at Herbert Smith," by Rob Cant, a "2nd seat trainee," supported by Kate Stares, one of the firm's associates after which Bernadette O'Dwyer and Phil Beer, also associates, gave an extended presentation on "Finance and real estate".

Ben Ward, one of the Herbert Smith partners, then chaired a corporate workshop, followed by Kate Hasluck and her colleague Kate Harker from the graduate recruitment team with a session on "interview tips and techniques". The day ended with evaluation by and feedback from the nine students.

The day gave the students an opportunity to understand how a large city firm functions. They came away with clear ideas of what is involved in taking up a training contract, and progressing in the profession.

It was not the intention to give attendees priority in being considered for a training contract with Herbert Smith. Anyone who wanted to apply to the firm would go through the normal process: Obtain the online application form, and complete and submit it!

One of the attendees commented "The day was well-organised and extremely informative. The most interesting aspect was when we, the

disabled students, were given an opportunity to ask questions."

Chris Parsons said "It was good to be involved in the GSD open day as it provided an great opportunity for students to experience the firm's culture, and meet with representatives from the firm. The event was enjoyable, informative and successful for everyone who took part (including Herbert Smith staff) and we look forward to working with the GSD on similar initiatives in the future."

The Group warmly welcomes Herbert Smith's initiative. We hope it can be repeated in the future, and replicated not only by other large city firms, but also by firms in the larger conurbations outside London.

John Wall

**An important
opportunity for disabled
law students planning
to become solicitors!**

Herbert Smith plan to hold another open day, probably on Tuesday, 27 June, 2006.

Places are limited. If you are interested in attending, please contact either:-

Judith McDermott, The Law Society, 113 Chancery Lane, London, WC2A 1PL
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Community Legal Service: Contracts in the Not for Profit Sector

Many agencies in the not for profit sector (e.g. law centres, Citizens Advice Bureaux) are now providing a case work service to clients via contracts with the Legal Services Commission. How do these work and are there any implications for lawyers and advice workers with disabilities?

The Legal Services Commission (LSC for short) is at pains to point out that the contract they make is with the agency and not with any individual employed by that agency. The LSC contracts with the agency for the latter to deliver a number of hours of advice/case work to clients who pass the Community Legal Service (CLS) means test. The money paid includes allowances for management, supervision and administration but the case worker needs to be able to demonstrate that they personally have clocked up per working day 5 hours of "billable" work e.g. face to face advice, composition of letters etc. Work done has to be recorded in six minute units. Allowance is made for a total period of 8 weeks per year when the case worker is not expected to be at their desk working. This does not give much time for paid holidays, bank holidays, training days, sickness and other disasters such as office burglaries, computers crashing, clients not arriving, public transport problems etc.

Do these contracts have implications for lawyers and advice workers with disabilities?

The CLS Support Project of the Advice Services Alliance (an umbrella organisation for advice agencies) has recently started to email to their members bulletins which give details of the remedial action the LSC "might take against your organisation if it is underperforming against contract." For instance in the event of an underperformance (e.g. the case worker not clocking up enough hours) the LSC can reduce the quarterly payments they make to the agency. It is

clear that the LSC is most anxious to only pay the agencies in respect of actual work done.

There is a complicated set of allowances which the agency can apply for in writing in certain circumstances and one of the criteria to obtain the benefit of same can be to show "good reason" (an undefined term) for the underperformance. The LSC do give staffing issues, including sickness, as one of the examples of what might amount to "good reason" for the underperformance. However despite the existence of the allowances, it would appear that not for profit agencies are suffering adverse effects because of the above system. Anne Lewis, Policy Director at the Advice Services Alliance, says that the feedback from advice agencies indicates that there are three main reasons for not for profit agencies not meeting their targets. These are difficulty in staff recruitment to work under CLS contracts, maternity leave and sickness absence.

What could be the result of the above situation? It is common for not for profit agencies to provide in contracts of employment for up to six month paid sick leave if the employee becomes sick. Although some of this expense can be recouped via statutory sick pay, the agency will still usually be left short and probably would not be able to employ a locum to perform the hours in the absence of the case worker. If the absent caseworker is being funded via an LSC contract then the agency could end up having to pay money back to the LSC because the case work targets have not been met. Could this lead to a redundancy situation? Alternatively does this amount to a disincentive for not for profit agencies to employ anyone who might ever be sick? If so, are LSC contracts of this sort complying with the spirit of the Disability Discrimination Act even if they cannot be said to amount to an actual breach of its provisions?

Central government appears to want advice services to be delivered to badly off members of the public. However by putting a fence between themselves and the case worker, in the form of the not for profit agencies, it is arguable that they are escaping responsibility for case workers who become ill. Anne Stanesby

REASONABLE ADJUSTMENT and the Legally Aided Client

Duncan Finlyson, a Law Society policy executive in Professional Ethics, looks at the LSC concession on British Sign Language interpreters and highlights areas where problems might still arise.

In October 2005, the Legal Services Commission (LSC) announced that it would meet the reasonable costs of a British Sign Language interpreter in legally aided cases. Whilst this is clearly good news for legal aid practitioners finding it difficult to meet the cost of their responsibilities under the Disability Discrimination Act 1995, it still leaves unaddressed many similar situations. Duncan Finlyson, a Law Society policy executive in Professional Ethics, looks at the LSC concession and highlights some of the areas where problems might still arise.

Under the provisions of the DDA, all service providers are required to make those reasonable adjustments necessary to enable a disabled client to access their services. Often these will be a once only adjustment to the structure of the premises from which the services are provided – for example, ramps in place of steps. However, in other cases adjustments may be less tangible – for example changes to the way in which clients are interviewed - and may be a recurring cost every time the firm meets the disabled client. Such will be the case, for example, where a client with a hearing impairment requires the services of a British/English Sign Language (BSL) interpreter.

Prior to the LSC's October announcement, the position as to charging for a BSL interpreter had been uncertain. Initially the LSC had covered the cost as a disbursement. However, in cases where the statutory charge arose, this could have led to that cost being payable by the client where money or property was preserved or recovered. This was the situation which arose in *Brooks v LSC*, where the Cambridge County Court decided that the reasonable cost of a BSL interpreter was an adjustment which the solicitor providing the service should have absorbed, and should not have been charged to the LSC as a disbursement. Further details of this decision can be found in issue 47 of the LSC's magazine, *Focus*. Whilst this did not

apply to what could be regarded as unreasonable costs of a BSL interpreter, which could still be claimed as a disbursement, no guidance was given as to when the cost became unreasonable, thus resulting in continuing uncertainty.

The change which occurred in October 2005 was that the LSC agreed, in the interests of promoting access to justice by "vulnerable members of society", that it would bear both the reasonable and unreasonable costs of a BSL interpreter, or any other language support such as lip speakers, where it was necessary to the matter. In order to ensure costs were not passed on to the assisted person by way of the statutory charge, which would have breached the DDA, firms were asked to keep a separate breakdown of the costs involved, together with any increased attendance times incurred and, pending further decisions, to inform the LSC of them in a covering letter or annotation to the claim form.

Whilst this has proved a valuable benefit to firms struggling with the cost of BSL interpreters in legally aided matters, and without wishing in any way to detract from what is an extremely positive step by the LSC, it has not covered all of the problems which arise, for example where:

- the client has a learning disability resulting in appointments taking longer – although note paragraph 2D-118 of Volume 2 of the LSC Manual which states, in relation to mental health, that "Where additional time has to be spent having regard to the characteristics and/or circumstances of the client, then you may be able to justify extending the financial limit in the circumstances of a particular case"
- the client has mobility problems requiring the solicitor to make a home visit
- the client has a sight impairment necessitating the solicitor having letters and documents translated into Braille.

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In each of these an extra cost could be incurred which the solicitor will need to consider absorbing where reasonable. Thus, even where LSC guidance suggests that a solicitor might apply for an extension to a financial limit (as is the case in the above reference to paragraph 2D-118), if there is the possibility that such an extension might affect the statutory charge, then the terms on which the work is provided could be held to be less favourable and the principle in the Brook case apply.

Two further issues arise where firms are going to have to be wary of how they deal with costs incurred:

- fixed fee work and
- those cases where they believe the required adjustment not to be reasonable.

In the former the solicitor should perhaps clarify with the LSC whether he or she is to account for the additional cost occasioned by adjusting to the client's disability or only for that which relates to the work which would have been done had the client not had the disability. The solicitor will receive the same amount regardless, but it could affect the amount which the LSC claims under the statutory charge and from the client's point of view result in an increased liability resulting from the reasonable adjustment.

In the latter case, whether the adjustment is one which is reasonable will be a question of fact and the solicitor should first check with the LSC to ascertain that it is not viewed as one which is reasonable which the solicitor would have to absorb. If it is felt to be unreasonable then the client will need to be advised as to whether the amount is likely to be absorbed by the LSC or passed on to the client should the statutory charge arise.

Undoubtedly there will be other issues which arise as a result of the interaction of the DDA with the LSC regulations – exacerbated by the continuing financial pressure on solicitors who undertake legal aid cases. In all circumstances, it would be worthwhile for solicitors to think carefully before passing on the cost of those adjustments.

A Very Different Venue

On Thursday 9th February 2006, I attended a play reading by The Tricycle Theatre Company of their production "Guantanamo: Honor Bound to Defend Freedom". The event was hosted by Reprieve, a national charity that represents prisoners overseas and took place in the House of Commons.

"Guantanamo" was being performed by the company as a play reading since the speaker of the House of Commons, Michael Martin, would not allow a full performance in the Palace. We sat in the august setting of committee room 14 whilst the cast performed centre stage.

The content was harrowing. The mistreatment of the numerous detainees beggared belief. We listened to testimonies from actors portraying inmates Moazzam Begg, Wahab al-Rawi and Jamal al-Harith as to their inhumane treatment and the conditions they endured for so many years. We also heard explanations and excuses for inaction by prominent US officials, seconded by leading members of our own government. The various strands of the narrative were drawn together by Clive Stafford Smith, prominent human rights barrister, playing himself. He left us with the message that if respective western governments did not take appropriate action to resolve the Guantanamo nightmare, since nothing had been done at the time to provide detainees with any form of legal representation, that it could still yet erupt with devastating consequences. It had been an abandonment of western values and human rights.

After the play reading, we stayed on for a discussion with the actors as to how they felt portraying the pain of their characters. This was brought home when Moazzam Begg came up from the audience and joined the debate, echoing at first hand what we had just been told through the medium of a gripping play reading. However, the real injustice at Guantanamo continues.

David Merkel

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David's theatre round up

One of my continuing passions is going to the theatre and London is certainly blessed with a great variety of venues. As a visually impaired person, going to the theatre is made easy and straightforward with all the special facilities for disabled patrons. Most London theatres have wheelchair space provision, loop systems and special performances which are either signed or audio described. Ask the various box offices for details and don't forget to enquire about concessionary prices. You can usually save up to 50% on 2 good seats. Every little helps!

I receive a regular mailing from Vocaleyes, an organisation which makes arrangements with arts providers to enable disabled people to go to shows at reasonable prices. The package usually includes a touch tour of the stage and set beforehand, a companion if necessary and recorded

programme notes plus directions to the theatre. From theatres tucked away in North London, such as Sadlers Wells, there is also a bus link to various main line terminals at a very reasonable fares after the show.

Recently I have been to performances at Drury Lane (The Producers), The National (The UN Inspector), Donmar (Mary Stuart) and operas at Covent Garden and the Coliseum. These theatres have special pricing structures, talking notes and headset facilities as well as wheelchair access.

For film buffs, movie audio description is now available in many cinemas throughout the UK. The RNIB produces weekly email listings, which give full details of what's on.

Concessions are available at concert halls and galleries in London and the rest of the country and many football clubs also have concessionary pricing for disabled people. So don't just stay at home, enjoy yourselves!

David Merkel

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Next Issue:

Articles on subjects of topical concern and member's interests for the next issue of The Bridge should reach John Wall no later than 31st July, 2006. Please send to: Sir John Wall, CBE, 36 Broadmead Avenue, Worcester Park, Surrey KT4 7SW
Tel +44 (0) 208 330 2309 email: John@wall.co.uk

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Future Meetings

The National Committee will meet on Wednesday 12th April, 2006 at 3 pm. This meeting is open to all members of the Group.

The Annual General meeting will be at 3pm on Thursday 18th May, 2006.

Both meetings will be held at The Law Society (address above). It is planned to have some future meetings outside London.

The newsletter may be photocopied solely for the distribution to members of the public who may have an interest in the work of the Group for Solicitors with Disabilities.

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