New Court News

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New Court News: Issue 6

Welcome to the sixth edition of the New Court Newsletter.

This edition includes updates on new members joining Chambers - Anna Hefford, who returns to Chambers, and Kathryn Blair and Katherine Couper who both take up offers of tenancy after successful completion of their pupillages.

We are also very pleased to congratulate Giles Bain and Christopher Poole (above) who are appointed Joint Heads of Chambers. Giles and Chris pay tribute to Chambers' outgoing Head, Dr Giuseppe Calà in this edition (pg 3).

This edition also features articles from Kathryn Blair and Sally Jackson assessing recent decisions in public law children and matrimonial finances respectively.

We very much hope you enjoy this month's newsletter.

Newsletter Team

Edited by: Rob Wilkinson
Contributors: Giles Bain, Christopher Poole, Sally Jackson, Kathryn Blair

@NewCourtFamily

bit.do/newcourt

New Court Chambers,
Temple, London, EC4Y 9BE
DX: 0018 LDE
020 7583 5123

New Court News

by Robert Wilkinson

For the second consecutive year Chambers has been recognised as a Leading Set by Chambers & Partners in its 2016 edition. We are delighted that the hard work and commitment of members, as well as the clerks' room and support staff, has been acknowledged again. We also congratulate Christopher Poole who retained his Band 2 ranking within the directory, Giles Bain who moves from Band 3 to Band 2 and Sally Jackson who appears for the first time in Chambers & Partners.

Anna Hefford has rejoined chambers from 2 New Street Chambers in Leicester. Anna was previously a tenant from 2009, becoming a valued member of the family team, specialising in chambers' core practice areas of public and private law children. Anna is very well known to our private and Local Authority solicitors from her previous time here and chambers is very pleased to welcome her back to the team.

After successfully completing their 12-month pupillages in chambers, Kathryn Blair and Katherine Couper have both accepted offers of tenancy. Kathryn and Katherine have developed strong practices in a very short period of time, focusing on public and private law children work as well as matrimonial finances. All of chambers wishes to congratulate them on obtaining tenancy, and we wish them the very best for their careers ahead.

Congratulations to Wing Chan who completed the Berlin Marathon in October, smashing her personal best and getting in under her target of 5 hours. It remains to be seen whether Wing will run another one! ■

Chambers & Partners 2016

Giles Bain

"…hard working, incredibly likeable and fair. Not only is he a good advocate, but he just gives confidence that what he's saying is fair, measured and balanced."

Sally Jackson

"Market sources are quick to praise her work ethic, approachability and responsiveness. She can grasp detail really quickly and she's really personable."

Christopher Poole

"He is extremely capable and has a lovely manner with clients and solicitors. A pleasure to work with, he has the client's interests at heart and acts really well on their behalf."

Dr. Giuseppe Calà

After 11 years of dedicated service to chambers, Dr Calà is handing over the position of Head of Chambers. For the first time in Chambers' history we now have joint heads in Giles Bain and Christopher Poole.

Dr Calà is the longest standing member of New Court, having been with Chambers for over 30 years. During this time Dr Calà has been the link between the barristers here in London and the advocates over in Italy.

Dr Calà remains a valued member of chambers and is in the process of developing and heading the NCC international annex here in London.

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Paying tribute to 'GC', as he is affectionately known, Christopher Poole said "he is a hard act to follow and his continued guidance and support will be invaluable". Giles Bain expressed his gratitude for the leadership provided by GC and his considerable contribution to New Court.

The new joint heads are both former pupils of New Court. Giles, called in 1993, has a few years' experience on Christopher, called in 1996.

Above: Joint Heads of Chambers Giles Bain and Christopher Poole

Giles and Christopher said;

"We see a very positive future for NCC. We have a vibrant team of barristers, complimented recently by our new tenants, Anna Hefford, Kathryn Blair and Katherine Cooper. We have the loyalty of many long-standing professional clients and we have the support of a dedicated clerks room. It is an honour and privilege to take on the Headship of NCC and we look forward to the challenges and opportunities to come".

How Interpreter Failings Can Translate Into Costs Orders

by Kathryn Blair

I recently attended court in public law proceedings where both parents were profoundly deaf. Unlike cases involving interpreters for parties with language needs, one interpreter is not sufficient.

Deaf clients need three interpreters in court and an interpreter each outside of court. The reason for this is because interpreting into sign language is very tiring. One interpreter interprets, the other interpreter checks the interpretation, the third interpreter rests, and they rotate. At the very least two interpreters are needed and then the court must take regular breaks to allow them to rest.

"...the oral evidence had to be given without the parents present, as they were too distressed to sit in court and not be able to understand what was going on.

The hearing was to consider whether an Interim Care Order was necessary in respect of the children and to hear evidence from a previous social worker who was moving to the other side of the world in a week's time. Therefore the hearing could not be rearranged and it was vital that the parents understood what was happening so they could respond to any criticisms raised and give instructions on what questions needed to be asked.

All of the parties and the court were expecting two interpreters to assist the parties outside court (one for each parent) and three for inside court. Only the interpreter arranged by the mother's solicitor had arrived by 9am. By midday, and after hours of chasing, Capita responded with a message that they might be able to send one other British Sign Language Interpreter who would get to court for 1pm - the interpreter never materialised. ☛

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This failure by Capita led to the oral evidence having to be given without the parents present, as they were too distressed to sit in court and not be able to understand what was going on. It meant that the parents' advocates had to arrange to meet with the parents at a later date in order to go through a note of the evidence and then decide on further questions to be put to the social worker. In Care Proceedings where the consequences can be so extreme for parents this is unacceptable. Written questions are not used for cross examination for a reason and they are not a valid substitute.

My case, unfortunately, is not the only case to have been so adversely affected by Capita's failures. On 2 February 2015 *In the matter of Capita Translation and Interpreting Limited* [2015] EWFC 5 a Judgment was handed down by Sir James Munby, President of the Family Division, in which he said that *"it is just for Capita to be ordered to pay the costs incurred by the local authority in relation to the hearing on 7 May 2014".*

The application itself arose following public law proceedings in respect of two children and was for Capita to pay the costs of the local authority, Kent County Council, . To take part in the proceedings, the parents required the assistance of Slovak interpreters. By the time the application for costs was made, Capita had failed to provide interpreters (either at all, or on time, or able to interpret the Slovak language) on six previous occasions. On the seventh occasion, by which time the case had been transferred to the High Court, no interpreters attended, despite clear directions having previously been given.

Accordingly, the President adjourned the hearing and directed Capita to provide a statement explaining the circumstances of the default.

Capita's explanation was that their interpreters were self-employed and that Capita could not compel them to attend hearings.

The local authority's argument was as follows: Capita's failure to provide interpreters was a breach of the agreement with the Secretary of State; these circumstances came within the realm of the court's powers to order costs against a non-party under the principles applied in the recent case of *B v B (Costs: Order against non-party)* [2013] EWHC 1956 (Fam) and, that taking into account the relevant principles the current circumstances allowed for an order for costs to be made.

The local authority, in relation to its first argument, relied upon *Re Applied Language Solutions Ltd* [2013] EWCA Crim 326 ("ALS"), which analysed the agreement between Capita and the Secretary of State. The President held that Capita had failed to discharge its obligations under its agreement with the Secretary of State and that these failures were capable of amounting to "serious misconduct".

In *B v B*, Cobb J held that the circumstances where an order of costs against a non-party might be applicable, included those where the failures were "extensive" and had a *"profound effect on the conduct of the proceedings"*.

On the basis of the judgment by the President in *In the matter of Capita Translation and Interpreting Limited* [2015] EWFC 5, the preamble to the order of my case clearly set out the failings of Capita and the impact of that failing. It was further ordered that if Capita did not provide interpreters for the next hearing then the Director of the United Kingdom Office of Capita was ordered to attend court to explain why this has not been complied with. ■

Sharland and Gohil: Opening the Floodgates?

by Sally Jackson

The recent Supreme Court decisions in *Sharland v Sharland* [2015] UKSC 60 and *Gohil v Gohil* [2015] UKSC 61 concerned two wives who wished to challenge the legitimacy of consent orders arrived at in the course of financial proceedings following the break down of their marriages. In both cases, the women claimed that their husbands had hidden the true extent of their wealth and that the consent orders should be set aside as they were based on fraudulent representations.

"This decision should act as a powerful deterrent to those husbands (or wives) who are tempted to defraud their spouses"

The principal legal consideration for the Supreme Court in both cases was whether an order made in the absence of full and frank disclosure should only be set aside in cases where the court would have made a substantially different order if proper disclosure had in fact taken place.

Alison Sharland accepted £10m in her divorce in 2010, believing this sum to represent half of her husband Charles' wealth. Under the settlement, Mrs Sharland was also due to receive 30% of the proceeds of shares held by her husband in his company, when the shares were sold.

It later transpired that Mr Sharland, a software entrepreneur, had lied about his company's value. The financial press estimated the company to be worth about £600m, although the valuation used in the divorce proceedings was £47million. It also transpired that there were plans to float the company on the stock market. Mr Sharland had failed to disclose that he had actively ☛

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prepared an Initial Public Offering of his shareholding in his software business AppSense.

In the Court of Appeal, all three judges had agreed that Charles Sharland's non-disclosure had been deliberate but two of the three believed that they should not overturn the original settlement because, although Mr Sharland's evidence was 'seriously misleading' it would not have led to a significantly different outcome.

The Supreme Court unanimously allowed Mrs Sharland's appeal to stop the court from sealing the consent order drawn up in the course of her divorce proceedings.

In giving the lead judgment, Lady Hale stated that the consent of the parties, in reaching a consent order, must be valid. If there is a reason which vitiates a party's consent, there may also be good reason for the court to set aside a consent order. Lady Hale reasoned that the case was one of fraud. It would be extraordinary if the victim of a fraudulent misrepresentation in a matrimonial case was in a worse position than the victim of a fraudulent misrepresentation in an ordinary contract case. She concluded that, on the facts of this case, it was clear that the judge would not have approved the consent order in the absence of Mr Sharland's fraud and the consent order should therefore have been set aside. The matter should therefore return to the High Court for further directions.

In Ms Gohil's settlement, she accepted the family Peugeot and £270,000 in capital when she divorced her husband in 2002. In 2010, Mr Gohil was convicted of fraud and money laundering to the tune of £25m and sentenced to 10 years' imprisonment. At his criminal trial, evidence revealed that he had failed to disclose the true extent of his wealth during divorce proceedings. Mr Gohil, the High Court had found, was a rogue involved in financial criminality on an eye-watering scale'

However, the Court of Appeal ruled in Mr Gohil's favour, saying that because the family court was not allowed to use evidence from the husband's criminal trial, held in open court but not released by the Crown Prosecution Service, they could not prove that Mr Sharland was being dishonest in the original proceedings.

The Supreme Court unanimously allowed Mrs Gohil's appeal to set aside the final settlement order in her divorce proceedings with her husband on the basis that he had fraudulently failed to disclose his assets.

Both cases are set to return to the High Court for re-hearings and it will be very interesting to see whether Mrs Sharland and Mrs Gohil do better second time round, when they are in possession of the full facts.

Although there are concerns that the decision may open the floodgates to thousands of people to try to renegotiate historic divorce settlements, the decision has been broadly welcomed by practitioners as one which will encourage full and frank disclosure by both parties at the earliest possible stage. Previously, the system had been seen by many as one which encouraged 'a cheat's charter' as the penalties for lying to the family courts were so low that some considered hiding the true worth of their assets to be worth the gamble. This decision should act as a powerful deterrent to those husbands (or wives) who are tempted to defraud their spouses. ■