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MARION SIMMONS QC ESSAY PRIZE 2015

ARDL is delighted to publish in this edition of the Bulletin the winning entry in the most recent Marion Simmons QC essay prize. ARDL's congratulations go to the winner, Rebecca Zaman.

TO THE ENDS OF THE EARTH: PUBLIC TRUST AND PRIVATE LIVES

Rebecca Zaman

INTRODUCTION

This paper explores the appropriate limits of regulatory scrutiny of a professional's private life. It is argued that private conduct should only be the basis for disciplinary action where this conduct is both (a) illegal and (b) of a nature that calls into doubt that person's suitability to continue serving the public in the profession. Where private conduct is lawful, or is not reasonably connected to the performance of professional duties, it is not appropriate (and arguably is inconsistent with Article 8 of the ECHR) for that conduct to be the basis for suspension or striking off.

This position may in some instances run against the approach laid down in *Bolton v Law Society*¹

¹ [1994] WLR 512 (*Bolton*).

and extended in subsequent cases.² In *Bolton*, Lord Bingham described the proper purpose of disciplinary measures. It is not retribution, as it is in criminal law. Rather, an order to suspend or strike off is for either the purpose of deterrence (impressing upon the offender the significance of his breach so that the lesson is learned and it is not repeated, or, if striking off, to prevent the offender from being again in a position where she can reoffend),³ or it is to reassure the public that the profession takes the misconduct seriously. *Bolton* provides that it will sometimes be appropriate to suspend or strike off a professional even where there is no real risk of professional misconduct, but because an example must be made for the public, in order

*to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth.*⁴

This is "more important than the fortunes of any individual member"⁵. In other words, to protect the collective reputation, a member may occasionally be disciplined with a severity beyond what is necessary to deter their misconduct.

This paper does not lock horns with *Bolton* on whether maintaining public trust is a proper consideration when determining the severity of the regulatory response to professional misconduct. The point of departure from *Bolton* is where maintaining public trust is used as a freestanding ground for investigating and disciplining members for their private conduct, where such conduct would not otherwise come within the domain of the regulator, and without clear guidance as to when such regulatory encroachment into private life is legally and ethically sound.

² See, e.g., *Ajala v Nursing and Midwifery Council* [2012] EWHC 2976 (*'Ajala'*).

³ *Bolton* at 518.

⁴ *Ibid.*

⁵ *Ibid.*

This paper deals first with private lawful conduct, and argues that private lawful conduct should always be outside the scope of regulatory intervention. It then examines when and how criminal offences should come within the proper scope of the regulator.

HYPOTHETICAL

Imagine a doctor, a good doctor, who maintains a personal Twitter account with a following in the low dozens - friends, family and a few colleagues. She uses it to tweet about day-to-day life and interesting research publications, to share articles on health topics and offer the occasional (anonymised) anecdote from the NHS trenches.

She spends a difficult session with a traumatised teenage girl, raped by her date at a party while heavily intoxicated. Later that day, the doctor sees an article on sexual assault involving incapacitation through alcohol, and retweets it, adding, fatefully: *"I had one of these today. Awful. We need to teach our girls to drink responsibly."*

A follower takes this as an outrageous misallocation of responsibility and angrily retweets it, with *#doctor #victimblaming #rape*. It is retweeted again, tagged *#wtfdoctor #victimblaming #teachboysdontrape*, and retweeted, and retweeted.

#wtfdoctor goes viral. The doctor is flooded with abuse (and unwanted 'support' from those that think drinking to the state of unconsciousness constitutes blanket consent).

The doctor is horrified, and tweets clarifications. Of course the young woman is not responsible for what happened to her, of course the perpetrator is the one who deserves blame. Of course the young woman received proper and considerate care from her. Her comment was that of a doctor, it was about preventing harm from excessive alcohol consumption – both directly, since binge drinking is harmful of itself- and indirectly, because of how vulnerable it makes people to others' abuse. Of course she did not make that comment to her vulnerable and potentially self-blaming victim; it was a message for a different audience.

It is, of course, too late. Mainstream media picks up the *#wtfdoctor* trend, and reports her original tweet alongside the unwanted

'endorsers'. People ask why a victim-blaming doctor is allowed to treat victims of rape? Or treat any patients at all?

Calls are made for her suspension. What kind of message does it send to the public if this doctor is allowed to keep practising? How would a rape survivor feel about going to the NHS, knowing that there are doctors allowed to practise who openly blame them for drinking and 'letting' it happen? Will this affect rates of reporting and seeking of treatment? An example must be made.

Faced with such public outrage, the General Medical Council feels it must act. It stands down the doctor and begins an investigation into whether she should be suspended or struck off in order to protect the reputation of the profession and maintain public confidence.

"PUBLIC CONFIDENCE" AND DISPROPORTIONATE REPRISALS

A. *The Status Quo and the Law Commission Consultation*

This deeply unfair scenario is not outside the realm of plausibility.⁶ One hopes that the General

Medical Council would exercise its functions in accordance with its main objective ("to protect, promote and maintain the health and safety of the public"⁷ and not sacrifice a good doctor to mischaracterisation and public pressure. Yet its stated view is that professionals *should* be disciplined for non-criminal activities, if failure to do so might undermine public confidence in the profession as a whole.⁸

It expressed this view during the course of a public inquiry into the regulation of health care professionals, which was conducted by the Law Commission, Scottish Law Commission and

⁶ See, e.g., Slate, *The Year of Outrage*, 17 December 2014, which sets out a lot of 2014's examples (accessed at http://www.slate.com/articles/life/culturebox/2014/12/the_year_of_outrage_2014_everything_you_were_an_gry_about_on_social_media.html on 29 January 2015).

⁷ Medical Act 1983, section 1A.

⁸ See Law Commission, Scottish Law Commission, Northern Ireland Law Commission, *Regulation of Health Care Professionals; Regulation of Social Care Professionals in England* (2014), *Analysis of Responses*, Part 3: Main Duty and General Functions of the Regulators, ('Part 3 Responses') [3.3]-[3.5].

Northern Ireland Law Commission (collectively "the Commission").⁹ The Commission had invited submissions on the extent to which private life should be the proper subject of professional regulation in order to maintain public confidence.

Other health care bodies took the opposite view to the General Medical Council. For example, the Commission quoted a submission from the Royal College of Nursing, regarding two cases where nurses had been struck off for conduct that was both private and lawful, seemingly in order to maintain public confidence in the profession. One was a nurse "with an impeccable background", who had "inadvertently allowed footage of herself having sexual relations at a party to appear on the internet". The second was a nurse who had privately engaged in prostitution.¹⁰

The details on these cases are scant, and so this assessment is necessarily based only on the bare facts as described. (It is assumed that the nurses were struck off solely for the sexual activity.) It is difficult to understand how nurses' off-duty sex acts are relevant to their professional competency, or how it could render their continued practice inconsistent with public health and wellbeing. A finding that the nurses' sexual activity casts doubt on their character or integrity would be anachronistic in 2015, to say the least. It is assumed, therefore, that the regulator struck off these nurses in order to protect some notion of professional reputation and public confidence.

B. Regulatory Interference, Lawful Private Conduct, and the Right to Privacy

There are numerous problems with the two nurses' cases, but room to raise only three. First, any notion that "the public" shares a broadly uniform and ascertainable opinion on the nurses' sexual conduct is unsustainable. All kinds of factors, including age, gender, cultural background, religious practices and sexual mores would influence different people's views on whether the nurses' conduct warranted condemnation. The regulatory committee that struck them off cannot properly claim to have been representing the views of "the public".

⁹ The Commission's Final Report was published in 2014, along with a draft *Regulation of Health Care Professions Bill* (the recommendations were accepted by the Government on 29 January 2015).

¹⁰ Part 3 Responses, [3.20].

Second, the broad scope of "maintaining confidence" gives regulators an over-broad discretion that permits arbitrary and capricious investigations and results. The nurses' cases support the concern that "unusual or highly publicised" cases are more likely to receive severe sanctions.¹¹ As another contributor to the Commission's inquiry noted, there is a danger that "the most recent tabloid headline" may become "the yardstick of a public confidence standard".¹²

Third, this regulatory scrutiny of sex, that most personal of activities, is so intrusive as to prompt concern about the role of Article 8 of the ECHR in these kinds of circumstances. Should not regulatory bodies have to respect the personal lives of professionals? Interference with private life can of course be justified, but only where the interference is:

- (1) in accordance with law;
- (2) rationally connected to a legitimate aim (such as furthering public health); and
- (3) necessary in a democratic society (i.e., the level of interference must be proportionate to the need,¹³ and non-discriminatory).

Applying an Article 8 analysis to the cases of the two nurses, it is difficult to see how the regulator could have justified its interference with their private lives. The regulation in question might be part of the law, but it allows over-broad discretion and is open to capricious use. The expressed aim might be the furtherance of public health, but there is no rational connection between nurses engaging in filmed or paid sex acts and a reduction in their professional competency. Further, if the legitimate aim is the maintenance of public confidence in nurses, it would need to be shown that "the public" would indeed lose confidence in the nursing profession if it knew of these nurses' conduct. Yet as noted above, the views of "the public" are difficult to identify and establish in morality cases.

Finally, the level of interference and its consequence for the individual in question is severe - the stripping of one's profession and

¹¹ Ibid [3.22], as noted by the British Association for Music Therapy.

¹² Ibid [3.25].

¹³ *Dudgeon v UK* [1981] ECHR 5.

chosen livelihood. Consequently, without a rational connection to a legitimate aim, this scrutiny of private and lawful conduct and its use to found an order of striking off seems incompatible with Article 8.

This analysis of Article 8 extends also to harder cases. It is possible to imagine scenarios where the mainstream public shares in disgust or condemnation of private, lawful conduct. Yet even in the case of (for example) a solicitor conducting numerous affairs involving vast and intricate deceit, or a doctor engaging in sadistic but consensual sexual relations, a line must still be drawn as a matter of policy. If the private conduct is not criminal, and does not form part of the performance of professional duties, it is part of that person's private life, and it is not the proper subject of investigation and discipline.

A professional must be entrusted and permitted to move between professional and personal roles, and act appropriately within each. The alternative is too open to arbitrary and discriminatory use by regulators projecting their personal morality and sense of propriety onto an imagined public.

Further, it should not matter if, as a matter of fact, the public picks up on private failings or poor conduct by a particular professional. It seems entirely improper that public pressure whipped up by the press and social media, and divorced from an assessment of the professional's conduct, character and capability, might be the sole criterion by which a competent practitioner loses their livelihood. If social media flares with outrage for a day, but the professional has not acted in a way that warrants disciplinary action, the professional should not be sacrificed for the collective reputation. Regulatory intervention must be earthed in actual misconduct.

C. *An Approach to Criminal Misconduct*

The significance given to a professional's right to private life should be reduced when the professional's off-duty conduct is criminal, as the offender knows (or should know) that the misconduct will attract punishment and intervention by the State. The regulator's role in the professional's private life is less intrusive: it no longer plays the investigator itself but instead is called on to consider the professional consequence of the police investigation. Further

and importantly, the fact that an activity is criminalised is the best available proxy for determining whether "the public" condemns practitioners who engage in it.

This does not mean, however, that all crimes should be treated as grounds for disciplinary action on the basis of maintaining public confidence. We no longer require our doctors to be "paragons of virtue" but recognise them as human and liable to err; it would seem strange if we insisted that, e.g. a doctor be disciplined for a motoring offence with no connection to his professional competency.¹⁴

The starting point for the regulator is to consider whether the criminal offence has any direct connection to the practitioner's fitness to perform his or her role (and thus coming within the primary function of regulatory intervention – maintaining standards and protecting the public – without need to consider the secondary objective of maintaining public confidence). For example, a financier who engaged in train ticket fraud over a lengthy period of time demonstrates that he lacks the integrity and honesty that forms part of his fitness to practise in that industry.¹⁵ Similarly, a solicitor who commits a dishonesty offence is demonstrably unfit to engage in her core professional duties, as numerous of her professional functions require that her clients, other professionals and the Courts can trust her integrity and honesty absolutely. A doctor who commits a violent assault, or sexual abuse, or uses child pornography is in turn acting in a way that runs counter to the fundamental tenet of medicine: respect human life and do no harm. These kinds of criminal offences, while committed "off-duty", go to the heart of whether that person is a fit and proper person to practice in the profession, and can be "trusted to the ends of the earth" in performing those professional duties. They are, therefore, properly within the scope of regulatory enforcement.

¹⁴ As pointed out by Paula Case, *"The good, the bad and the dishonest doctor: the General Medical Council and the 'redemption model' of fitness to practise"* (2011), 31(4) *Legal Studies* 591, 609.

¹⁵ FCA Final Notice 2014: Jonathan Paul Burrows, 15/12/2014 (accessed at <http://www.fca.org.uk/your-fca/documents/final-notice/2014/jonathan-paul-burrows> on 29 January 2015)

If the criminal offence is not at all connected to the performance of professional duties, the regulator should then consider the question asked by the Privy Council in *Samuel*¹⁶ whether

*"behaviour remote from the carrying on of a professional practice may be sufficiently disgraceful to constitute serious professional misconduct".*¹⁷

Dr Samuel was a veterinary surgeon who was convicted of assault and theft of a phone during a dispute with his neighbour. It "was not a case in which the welfare of animals had been put at risk", but the regulator found all the same that Dr Samuel's removal from the register was necessary to maintain the reputation of the profession.¹⁸

The Privy Council in *Samuel* accepted that maintaining reputation was a legitimate goal for the regulator, but rejected the method it used to determine when the public's confidence was undermined. The regulator had relied on what "the instinctive response of ordinary members of the public" would be if they were told that a man with Dr Samuel's criminal convictions was allowed to practise.¹⁹ The Privy Council constructed a far more informed and forgiving public, noting that:

*"Criminologists ... have often shown that the views expressed by the public in answer to very broad questions about different types of offending and the appropriate sentences may be very different from the views of the same people when given detailed factual information about particular offences and offenders ... [If the public had all the detailed information here] ... they might well think that this had little bearing on his fitness to practise as a veterinary surgeon".*²⁰

The Privy Council thus treated "the public" as a legal construct and not as a factual entity whose views might be discerned from polls or media. It imagined "the public" as the best version of

¹⁶ *Royal College of Veterinary Surgeons v Samuel* [2014] UKPC 13.

¹⁷ *Ibid*, [9].

¹⁸ *Ibid*, [23].

¹⁹ *Ibid*, [30].

²⁰ *Ibid*, [31].

itself: well-informed, open-minded and well-acquainted with the detailed facts of the case. This standard – would a reasonable, well-informed member of the public lose confidence and trust in the profession if this person continues to practise? – is to be endorsed. It offers a fairer guide for when regulators may properly sanction professionals for offences committed in their private lives.

CONCLUSION

This paper has sought to set out principles for when the regulator may properly intrude into the personal life of professionals. It has been argued as a matter of policy that private lawful conduct that has no bearing on professional duties should always be outside the scope of regulatory intervention. In the case of criminal offences, it is argued that the regulator should only take disciplinary action in these cases where (1) the offence is directly connected to the practitioner's character or fitness to perform professional duties; or (2) where a reasonable and well-informed public would consider the offence to be so disgraceful as to constitute professional misconduct, and lose confidence in the regulator if disciplinary measures were not taken.

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LEGAL UPDATE

Norton v. Bar Standards Board [2014] EWHC 2681 (Admin)

Failure to apply *R v. Jones* test. N was charged with disciplinary offences of failure to declare on his call to the Bar two criminal convictions of unlawful possession of a CS gas spray and an offence of wilfully obstructing the police (charge 1); and wrongly declaring that he had degrees from Stafford University and Harvard University (charge 2). In allowing N's appeal, quashing the order of disbarment, and remitting the case for a rehearing before a fresh disciplinary tribunal, the Divisional Court said that the attention of the tribunal was not drawn to *R v. (Anthony) Jones* [2013] 1 AC 1, that the submissions made to the tribunal tended to suggest that the discretion to proceed in the absence of the person charged was general and unfettered, and that prejudice was not a relevant issue.

- (1) Although the tribunal decided that N had been served with the documents substantially

in advance of the hearing, it made no findings as to whether he had deliberately avoided attending the hearing, thereby waiving his right to appear, or had voluntarily chosen to be absent. Accordingly, the tribunal failed to address whether the reasons advanced by N justified his absence, regardless of when he had received the documentation.

- (2) The tribunal failed to consider whether an adjournment might result in N attending at the next hearing.
- (3) Although the tribunal expressed the conclusion that delaying the hearing was unlikely to achieve anything, this was based solely on N's failure to set out his defence in the application to adjourn as opposed to a more general review of the issues and evidence in the case.
- (4) Although the tribunal correctly expressed the view that it is in the public interest for proceedings of this kind to be concluded timeously, there was no consideration of the lack of any victims or witnesses who would be prejudiced by a delay, and this was not a case in which the memories of witnesses would be adversely affected.

***Nursing and Midwifery Council v. Daniels* [2015] EWCA Civ 225**

Neither the Nursing and Midwifery Order 2001 nor the 2004 Rules make any provision for extending the time limit for appeals. They therefore differ from the Employment Appeal Tribunal Rules and the Civil Procedure Rules in a critical respect. The principles which the court must apply in relation to late appeals are those stated by the Court of Appeal in *Adesina and Baines v. Nursing and Midwifery Council* [2013] 1 WLR 3156. If the 2001 Order and the 2004 Rules had conferred upon the court a general discretion to extend time, the Court could not fault the judge's exercise of that discretion, the appeal being lodged three days late and the appellant was unable to raise money to pay the court fee. However, there was no general discretion to extend time. The court only has power to extend time in exceptional cases of the kind described in *Adesina*.

***Rasool v General Pharmaceutical Council* [2015] EWHC 217 (Admin)**

The disciplinary proceedings against R arose out of an undercover investigation by the British Broadcasting Corporation (BBC) into the allegedly unlawful supply of prescription-only medicines by a number of pharmacies in central London. One such

pharmacy was Al Farabi Pharmacy at 39 Edgware Road, London, W2, where R was the superintendent pharmacist. The allegations were broadcast on television on 17 December 2012. On appeal against an order removing R's name from the register, R alleged apparent bias on the part of the chairman on the grounds that he ought to have recused himself, having heard matters relating to R in the course of an interim orders hearing against another pharmacist and employee at the pharmacy, S. In dismissing R's appeal, Carr J said:

24. An appeal will be allowed where the decision of the court or tribunal was wrong or unjust because of a serious procedural or other irregularity in the proceedings below (see CPR 52.11(3)).

25. The test for bias can be stated uncontroversially as follows: would a fair-minded observer, having considered the relevant facts, conclude that there was a real possibility that the tribunal was (consciously or subconsciously) biased: see *Porter v Magill* [2002] 2 AC 357 and *Lawal v Northern Spirit Limited* [2003] ICR 856 (HL) (at paragraph 21). The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased (see *In Re Medicaments and Related Classes of Goods (no 2)* [2001] 1 WLR 700 (at paragraph 85)). The appearance of independence and impartiality is just as important as the question of whether these qualities exist in fact. Justice must not only be done, it must be seen to be done (see for example Lord Hope's statement in *Millar v Dickson* [2002] 1 WLR 1615 at paragraph 63, as endorsed by the Privy Council in *Yiacoub and another v. The Queen* [2014] 1 WLR 2996).

26. Both parties have referred me to *Castillo Algar v Spain* [1988] 30 EHRR 827 (at paragraphs 45 and 46). The proposition was there stated that any judge in respect of whom there was a legitimate reason to fear a lack of impartiality must withdraw. In assessing whether there was such a legitimate reason, the standpoint of the accused was important but not decisive. The decisive test was an objective one. The mere fact that a judge had already taken decisions before the trial could not in itself be regarded as justifying anxieties as to his impartiality. The issue of bias was highly fact-sensitive.

After reviewing *Datta v. General Medical Council* (Privy Council Appeal No. 34 of 1985), *Helow v. Secretary of State for the Home Department* [2008] 1 WLR 2416 (HL) (Sc), and *El Faragy v. El Faragy and ors* [2007] EWCA Civ 1149, quoting the observations of the Constitutional Court of South Africa in *President of the Republic of South Africa v. South African Rugby Football Union* [1999] 4 SA 147, 177, her Ladyship concluded at [30] that ‘[u]ltimately, each case will turn on its own facts’.

***Radeke v. General Dental Council* [2015] EWHC 778 (Admin)**

R, a consultant in oral surgery, removed five of patient X’s teeth under sedation and local anaesthetic and the patient died in the aftermath of treatment. R was heavily criticised for clinical failings in his treatment of patient X but, in addition he faced a serious allegation of dishonesty. In essence the GDC alleged that he had lied about his assessment of patient X either to Dr P, an employee of the hospital who investigated the case, or to the coroner in the course of his evidence on oath given during the inquest into the death of patient X. The Committee concluded that R had given a deliberately misleading and dishonest account to the coroner. In quashing the finding of dishonesty and remitting the issue of sanction to a differently constituted panel, the court noted the absence of a clear motive by R to lie. Either he had lied to Dr P and told the truth to the coroner or vice versa. Had the perceived advantages of lying to the coroner been so clear cut then there would have been no need for the GDC to invite the Committee to consider the alternative. Whilst what R told the coroner about his assessment was not consistent with what he told Dr P, the inquest took place about ten months after the death of patient X and about eight months after R had given his account to Dr P. Experience reveals that even the most honest witnesses can be mistaken and give inconsistent accounts over time. It was inherently unlikely that the inconsistency in this case was dishonest. Furthermore, if the panel were correct in its conclusion of dishonesty then R was not only a liar but a perjurer as well. This factor makes it even more unlikely that he was being deliberately untruthful at the inquest.

***Held v. General Dental Council* [2015] EWHC 669 (Admin)**

H, a dentist, did not hold professional indemnity insurance between 31st May and 11th July 2013,

during which period he treated 26 patients. H did not attend the hearing before the PCC and his name was erased from the register of dentists. On appeal H sought to adduce witness statements from 9 of the 26 patients which the PCC found had been treated by him within the relevant period. In refusing permission and dismissing H’s appeal the court said the immediate and fundamental difficulty facing H was that he could not show that the evidence from the patients could not have been obtained with reasonable diligence for use at the PCC hearing. Further it would not be just to allow H selectively to deploy the statements without at the same time H taking steps to obtain or disclose the patient records relating to these patients over the period in question. Further, the impact of admitting the statements might mean cross-examination of the patients, or calling other evidence, and the only way of dealing with the matter would be to remit the case to the PCC to hold a fresh hearing. There was strong authority against admitting fresh evidence on appeal where the inevitable result would be to have to remit for a fresh hearing unless it is imperative to do so in the interests of justice: see *Transview Properties v. City Cite Properties* [2009] EWCA Civ 1255.

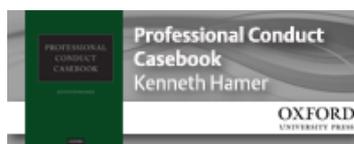
***R (Baker Tilly UK Audit LLP) v. Financial Reporting Council* [2015] EWHC 1398 (Admin)**

Contrary to the ordinary course of events whereby a complaint would proceed after investigation by the Executive Counsel, for consideration by the Disciplinary Tribunal, the claimants sought to submit that the court should intervene by way of judicial review. The matter could not be described as a “non-trivial failure”. In the ordinary course of events such cases would be determined by the Disciplinary Tribunal. Secondly, the public interest required a hearing to take place before the Disciplinary Committee. It was alleged that in relation to the engagement of the claimants as auditors they had failed to obtain sufficient appropriate audit evidence of the existence and valuation of inventories, thereby failing to comply with International Standards on Auditing and/or the Fundamental Principles of Profession Competence and Due Care of the Code of Ethics of ICAS, ICAEW and ACCA. Thirdly, the tribunal would have the opportunity to consider the evidence in full, including live evidence as appropriate and to reach a view on the merits of the allegations before it. Those are things which the court was not well equipped to do in judicial review proceedings. Fourthly, the tribunal does in principle have the jurisdiction to stay proceedings on grounds of abuse of its own process. Finally, the tribunal has power to order costs.

***Virdee v. General Pharmaceutical Council* [2015] EWHC 169 (Admin)**

The charges against V all related to complaints by Ms A of various incidents of sexual harassment and/or sexual assault at the pharmacy where they both worked. Ms A gave her evidence behind screens and her witness statement was taken as her evidence in chief when she became distressed at reading it to the panel. In its determination the panel averted to the difficulties it encountered in judging Ms A's credibility. In dismissing V's appeal, Andrews J said that we had moved on from the days when witnesses complaining of sexual assault (in the workplace or anywhere else) were forced to re-live the experience in full sight of the alleged perpetrator. One does not need medical evidence to conclude that such a person is vulnerable. There was no basis for suggesting that Article 6 was infringed. The tribunal was best placed to decide on the appropriate course to take, and was able to see and hear the witness and judge whether her distress was genuine. So too were both counsel. There was no unfairness to the appellant caused by the fact that Ms A gave her evidence from behind a screen. On the contrary, it is more likely that the procedure would have been regarded as unfair if she had not done so. As to the suggestion that there was procedural unfairness because the panel dispensed with making Ms A read out her witness statement, the point is unarguable. The panel made an evaluation that it was the only way in which it was going to obtain her evidence of what allegedly occurred; it was far better placed than the court to make that judgment call. The fact that the appellant was able to give oral evidence in chief might even be regarded as an advantage; the panel plainly felt that it was disadvantaged in judging the complainant's credibility by the fact she did not do so.

**Kenneth Hamer
 Henderson Chambers**



BOOK REVIEW

**PROFESSIONAL CONDUCT CASEBOOK
 SECOND EDITION BY KENNETH HAMER**

The second edition of Kenneth Hamer's thorough and very helpful "Professional Conduct Casebook" was published earlier this summer. There are over 1,000 cases reported in the text (many of which were first summarised by Kenneth in his regular column in the ARDL Bulletin). Some 250 new cases have been added since the first edition was published. The book covers a wide range of professions, from healthcare professionals and lawyers to surveyors, accountants, financial service providers, teachers, the police, the prison service and those involved in sports.

The structure of the second edition remains the same as that of the first. There are seventy-one chapters, including two new ones, namely on Deficient Professional Performance and No Case to Answer, the latter replacing the previous chapter on Galbraith Submissions. The chapters are arranged alphabetically, covering a wide range of topics such as abuse of process, costs, dishonesty, evidence, experts, human rights, joinder, reasons and sanction. Each chapter identifies the relevant regulatory and disciplinary case-law on the subject, outlining the facts and the decision reached by the court; and often citing key passages from the judgments or summarising the reasons given. The summary may also refer the reader to other relevant chapters and cases that may be of assistance. A helpful new feature in this edition is that key words and phrases are included in the margin beside each summary, enabling the reader to see at a glance the significant point of the case under consideration.

Kenneth's book remains an invaluable aid to practitioners in the field of regulatory and disciplinary work and, as noted in the forward to the new edition by the Rt Hon. Lord Justice Lloyd Jones, Chairman of the Law Commission, "*Kenneth deserves the warm thanks and congratulations of a grateful profession*".

**Nicole Curtis
 Penningtons Manches LLP**

NEW ARDL CHAIR AND COMMITTEE MEMBERS ELECTED

Catriona Watt has been elected to replace Timothy Dutton QC as the new Chair of the Association of Regulatory and Disciplinary Lawyers. Catriona is a partner in Scottish law firm Anderson Strathern. She has been a member of ARDL since 2005 and a member of the Committee since 2012. She most recently served on ARDL's Education Subcommittee. During her time as Chair, Catriona intends to oversee a consultation with the membership, a review of ARDL's constitution, an expansion of the seminar programme and a review of the annual dinner to find ways to allow a greater number of the members to attend. There are also plans for a Junior ARDL (<10 years qualified) to be developed. An electronic survey of the membership will be sent out and the results used to plan the activities of ARDL over the next year.

More news on all of these items will follow in regular updates to the membership by email and via the website. Catriona said: "I am looking forward to our engagement with the membership and to taking ARDL onto its next stage of development, building on Tim Dutton's legacy of inclusion, diversity and education."

There are several new Committee members as the result of election and co-option. The details of all of the Committee members can be found on the ARDL website committee page here [*insert link to that page*]. New Committee members are Chris Morris, partner at Hempsons, Alison Foster QC and Paul Ozin QC. The Committee said farewell to Salim Hafijee of the Nursing and Midwifery Council and Kate Gallafent QC and thanked them for their valuable contributions during their time as Committee members.

Timothy Dutton QC stood down as Chair and a Committee member. Tribute to his work was paid by Lord Justice Moses at the ARDL annual dinner at the Savoy and also by the Committee at a retiral dinner held in Tim's honour.

THE ARDL COMMITTEE MARKS THE RETIRAL OF FORMER CHAIR TIM DUTTON QC WITH A FAREWELL DINNER



Left to Right: Catriona Watt, newly elected Chair of ARDL; Timothy Dutton QC, retiring Chair of ARDL with his wife, Sappho Dias; and Kenneth Hamer, ex officio Committee member and Editor of the ARDL Quarterly Bulletin

ARDL committee members past and present turned out in their best bib and tucker recently to say a fond farewell to retiring ARDL Chair Timothy Dutton QC, at a dinner held in his honour at the Carlton Club, London. The dinner was arranged by another long-standing ARDL Committee member, Kenneth Hamer, and Kenneth led the tributes to Tiim with a wonderfully witty and entertaining speech which noted the major achievements of Tim's tenure.

Tim led ARDL from 2009 and had been among its founding members. At Fountain Court Chambers his work encompasses the most complex commercial cases and includes, among much else, a substantial professional regulation practice which crosses the disciplines of financial, legal and health care. Tim has also served as Head of his chambers where he championed some key developments and he has also been Chair of the Bar Council. As one of the most sought after QCs in his area and with all of this management experience, Tim brought a huge breadth and depth to the role of Chair of ARDL.

Tim's leadership saw ARDL make detailed submissions to the Law Commission on Healthcare Regulation, to the Department of Business, Innovation and Skills on ADR for consumers and to the AADB on its Indicative Sanctions Guidance. He was also instrumental in the submissions made to the Queen's Counsel Appointments on the inclusion of

advocacy experience of barristers in the non-court settings of disciplinary tribunals in their applications for appointment to QC in England and Wales.

As well as this, Tim took the role of the fostering of education among the ARDL membership in this specialist field of the law very seriously and oversaw an expansion of the seminar programme, which now builds year on year. As was only natural for someone committed to equality and diversity in the legal profession, Tim ensured that the seminar programme went beyond the metropolis of London and reached Manchester, Birmingham and Scotland. Tim contributed personally to the seminar programme, delivering a masterful exposition of the law on confidentiality, one of our most popular seminars and one which was reproduced in the ARDL Quarterly Bulletin, so that it could be shared with a wider audience.

The present Committee and the ARDL membership will miss Tim's leadership and wish him and his family well for the future. As Kenneth said at the end of his speech: "We, your Committee, are honoured that you, Sappho and your daughter Pia have joined us tonight for this retiral dinner. We thank you for your chairmanship, your leadership and the inspiration you have given to this Association. We salute you and thank you."

REQUEST FOR COMMENTS AND CONTRIBUTORS

We would welcome any comments on the Quarterly Bulletin and would also appreciate any contributions for inclusion in future editions. Please contact any of the members of the editorial committee with your suggestions. The editorial committee is:

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