

Changing the guard

Richard Barr, council member for Norfolk, reports on last week's Law Society AGM at Chancery Lane.

This is the time of the year when those at the head of the Law Society change places. Those who are scathing about the society should attend these events because over the past few years it has become a very effective advocate for the profession. The society is now a far cry from the entrenched and elitist reputation that some of us in the past (rightly or wrongly) felt that it had.

That does not mean that there is no room for differences of opinion. The meeting was addressed by Clive Sutton, past president of the Sole Practitioners Group. He appealed to the society to think again about its acceptance of the principle of alternative business structures. He was concerned about the impact on solicitors when organisations such as News International could own and control them.

The only way to prevent this is to oppose the commercial ownership of law firms in the same way that the Law Society is now opposing referral fees.

So far as the main business was concerned there was a clear consensus that retiring president Linda Lee had had a very successful year and her quiet but persistent way of fighting for the profession was praised by many.

At her last council meeting as president, she was presented with her very own wooden gavel – probably in recognition of the forceful way in which she kept order during the proceedings.

In his inaugural speech as the new president, John Wotton, consultant at Allen & Overy, said the profession stood on the cusp of change, particularly with the ABS regime and cuts to legal aid.

He described himself as a "rational optimist" when it comes to considering our future. The success of our profession will depend on our ability to adapt to and serve the changing needs of our clients (who like solicitors will have to adapt to change).

Supreme Court backs special procedure

'Closed material' can be used in tribunals

A SPECIAL PROCEDURE which excludes claimants and their lawyers can be used at employment tribunals to protect national security, the Supreme Court has ruled.

The case involved an immigration officer whose security clearance was withdrawn after his cousin, Tanvir Hussain, was convicted of conspiracy to murder and sentenced to life imprisonment for terrorism offences.

Giving the leading judgment in *Tariq v Home Office* [2011] UKSC 35, Lord Mance said Kashif Tariq claimed he was the victim of race or religious discrimination.

Tariq challenged an order made at his employment tribunal for a 'closed material procedure' to protect national security.

Lord Mance said Tariq alleged, among other things, that "the Home Office had relied upon stereotypical assumptions about him and/or Muslims and/or individuals of Pakistani origin such as susceptibility to undue influence, coercion or 'brainwashing' and had indirectly discriminatory security policies, procedures and methods of investigation.

"The Home Office in its grounds of resistance denied this and maintains, as stated, that it acted throughout to protect national security."

Lord Mance said that "in the penal context" an individual was presumed innocent until proved guilty and the state should "forego prosecution" rather than take the risk of an innocent person being found guilty.

"These imperatives do not operate in quite the same way in a civil context like the present, where the state may not be directly involved as a party at all," he said.

Lord Mance allowed the appeal by the Home Office against the Court of Appeal's ruling that the claimant must at least be told the "gist" of the allegations made during the 'closed material' procedure. He rejected a cross-appeal by Tariq.

Lord Hope agreed. He said no one doubted Tariq's rights not to be discriminated against, but it was his own choice to seek employment in a post for which security clearance was required.

"He was a volunteer, not a conscript," Lord Hope said.

Lords Brown and Dyson also agreed, for



their own reasons. Lords Phillips and Clarke and Lady Hale concurred. Lord Rodger, who sadly died before this judgment was delivered, had indicated that he agreed with the majority. Lord Kerr dissented.

In a separate but related ruling, *Al Rawi and others v The Security Service* [2011] UKSC 34, the Supreme Court ruled, by a majority of five to three, that the courts had no power to order closed material procedures when dealing with civil claims for damages.

Lord Rodger had indicated, before his death, that he would have supported the majority.

The claimants had already won compensation for their detention and alleged mistreatment by foreign authorities, including at Guantanamo Bay, but the case continued to clarify the point of law.

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"Think of the legal profession as a dusty, lumpy old cushion. ABSs are going to give that cushion a damn good beating – well, we aim to put the stuffing back in and give lawyers the tools to fight back"

Mike Scutt gets down to the nitty-gritty of ShedLaw when he meets its founders
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