

March 2023

AS news

Dear Friends...

2022 was, hopefully, the last year of the Covid pandemic. It was also a difficult year. As the world staggered back to something approximating to normality, uncertainty was the big theme. To what extent, could - or should - people go back to living and working in the way they did before 2020?

Strangely, my background in handling rules and working from home anyway made me fairly comfortable with the various restrictions that Governments imposed. They gave me a framework that helped me to do the things I enjoy, such as seeing my friends around the world.

From the moment that Governments lifted the rules, people had to make their own decisions about personal and family safety. An instruction to UK Universities to restore all face-to-face contact created problems in early 2022 with group learning. How close can you allow or require people to be physically? I kept a box of Covid tests in the office opposite my University of Westminster classroom and twice had to supply them to students who felt unwell during class.

Some employers were reluctant to close their offices at the start of the pandemic and slow off the mark to supply equipment to employees working from home. Now, the return to office work has exposed similar issues.

Some managers want visual or physical control over their teams for good and bad reasons. Research is already well on the way to showing that certain activities, such as customer service and complaint handling, are more effectively delivered in

an office environment. Enough people do not work as well in isolated environments to have significant effects on productivity. My computer-programming nephew tells me that although software development remained broadly similar in volume during the pandemic, the quality dipped significantly.

Students sign on for courses partly to interact with their peers. The fact that in 2020-2021, they were only able to meet each other outdoors reduced the quality of their experience. While remote learning can deliver more in certain areas than face-to-face, it does not allow people to meet up during lunch or tea-breaks.

To many, including me, 2022 brought back foreign travel for the first time in a couple of years. In May, I enjoyed an Alpine weekend in Sion with Myriam Valette, followed by a few days, catching up with friends and former colleagues in Lausanne, at the home of Andreea and Jean-Nicolas Brandlin. I worked for the Swiss Institute of Comparative Law, in Lausanne, in the late 1980s which is how I know both Myriam and Andreea. A cold drink with Inger Ericksson, an Institute library cataloguer from the same era, during the same trip, led to a delightful day out in London later in the summer, walking the streets of Hampstead with her and her daughter Sarah.

My lunch in May with Michael and Shadia Schneider in Geneva kept a restaurant open long after the kitchen had closed. I have known Michael not very well for years. However, during the online lockdown meetings of the Swiss Arbitration Association's Geneva branch, I decided that



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it was about time that we met socially – by having tea a couple of times on Zoom. Since May, we have also had a splendid day out seeing some of the sights of London.

In late September, I returned to Lausanne for the delayed 40th anniversary conference of the Swiss Institute of Comparative Law. It was strange to be welcomed back by the successors of people of whom I had fond memories. Christophe Genoud, the Logistics Manager, was the first person to greet me. His equivalent in 1985, Georges Corminboeuf, combined warmth, a desire and ability to fix everything and considerable bookbinding talent. He refused to accept payment for sorting out a number of volumes that still adorn my shelves.

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Marie Papeil and Barbara Herentrey are the modern versions of Martine Do-Spitteler and Ulrich Vetsch from the 1980s. As the Director's secretary, Martine ran the Institute with style, efficiency and endless giggling.

Actually, on the Friday night of the conference, Christiane Serkis who was the deputy head of the Library when I left in 1989 invited Martine and her husband, Tan, and a select group of friends and former colleagues to her place for some typically warm Armenian hospitality. Catching up with Claire Spirou and the extraordinary Harro von Senger ("Adam, I am sure that you are right as a matter of English but we cannot change that because it is a key Sino-Marxist ideological term!") was a high point of the trip. Later that weekend, seeing Beatrice Metraux and Anne-Sophie Rieben, with whom I worked 35 years ago, completed the nostalgic glow.

Lunch with Nicolas Ulmer and Doug Reichert has been a splendid feature of most of my Geneva trips since the late 80s. It was good to be able to meet again in person.

Throughout the pandemic, the Devon branch of the Samuel family and Plymouth-based Penelope Wellbourne have provided me with a vital escape route from London. Going back to my roots in the South-West of England near where they all live adds something to the mix. Rachel and Janet Samuel's homes have been crucial dispensers of overnight hospitality, cake and wisdom.

Finally, in the first week of January 2023, I returned to Switzerland one more time to ski. At the end of that trip, I spent a day in Zurich which ended with dinner with Felix and Gabriella Dasser. I know Felix from the late 1980s when we were trying to finish our first books on arbitration. Felix and I also found ourselves in Boston doing Masters in 1989-1990. At the same time, Gabriella was worrying about her (still unfinished) doctorate on Shakespeare and animals while supplying me and my American friends with Suchard Express Hot Chocolate. Somehow, 32 years slipped away.

The opening-up of travel has also brought people to visit me. It was an honour to welcome Lori Perine, a woman of rare elegance, notwithstanding her banjo-ukelele habit. (I grew up watching and singing along to George Formby; so we can do stuff together.) We first met in Lausanne in about 1985 and I have

stayed with and visited her in the Washington area since. It was lovely to show her not only some of London but also Oxford where I passed some of my insufficiently misspent youth.

Since childhood, I have been taking people on tours around London. The University of Westminster has now added my Fitzrovia walk to the induction programme for its post-graduate law courses. In that way, students can learn where they are before they discover anything else. You can enjoy the walk without leaving your sitting rooms through a video I did that links up some photographs I have taken of the area: <https://www.youtube.com/watch?v=NDtUKuB6HSE>.

During the pandemic, I needed to keep body and soul together somehow. In the early days, the Michael Burgess' remote pilates classes for people of various levels of physical incompetence were crucial to both the physical and mental health of its participants. As Covid has faded, the group of participants has rather disintegrated. To put it another way, I have failed rather miserably to overcome my never strong enthusiasm for 8.30am exercise. However, the University of Westminster gym classes resumed in 2022 and I have become a devotee of Charles Duah's Pump classes, as well as Michael's live Pilates sessions.

I remain determined to cling onto the benefits of lockdown in all their forms. Throughout the pandemic, I have relied heavily on two people at either ends of my neighbourhood. Malachy McClelland worked with me in the early 1990s at the Insurance Ombudsman Bureau. While walking through South Hampstead and St John's Wood and consuming Czech croissants and coffee at Hart and Lova in Belsize Road, we have "resolved" most of the world's problems (at least in theory). We also combine to provide high-level analysis of soccer, rugby and Gaelic football. At the northern end of the area, Karyl Nairn and I have explored a whole range of legal and cultural issues while walking - typically late at night through the old Fortune Green Road Cemetery and around my old school playing fields that adjoin them.

The occupant of my old flat in Fitzrovia, Shahin Toosi, started the pandemic by inspiring me to enter the complex world of food charity as a way of celebrating Ramadan. Since then, we have been meeting regularly in the three Great Titchfield Street cafés. Kaffeine,



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the Scandinavian Kitchen and HT Harris are increasingly returning to pre-lockdown. Typically, though, we sit outside in our coats to remember the strange calm of 2020. Bruce Clark who has kept an eye on me since the late 1990s prefers an indoor seat at the Scandi.

On a grander scale, Karen Goepfert and I recently restarted our programme of reviewing Fitzrovia restaurants with a trip to the Salt Yard which, in my view, remains easily the best in the area.

My first response to the pandemic was to acquire a Zoom account and think of the people I wanted to catch up with around the world. Some of these have developed into regular conversations with people I have known for over four decades.

A more accidental development was Ben Nathan's online bridge game. My younger sister Hope, who has known Ben for years, passed on the details to me in 2020. This random group of friends of friends of friends has been playing with our cameras on since then, without meeting each other in person. I knew four of the original players from bridge clubs. These did not include Ben

and the other participants in California, Chicago, Tel Aviv, not to mention Cheadle (South-East Manchester). This year, I finally met Ben in person on his excellent tour of Highgate Cemetery. He showed us so much more than Karl Marx's two graves there. My cardplaying would probably improve if I returned to playing in bridge clubs but occasional visits to my local have reminded me just how delightful Ben's "friends" are.

In one sense, my work during these last three years has remained largely the same. Training, teaching advising, judging and writing have made up most of what I have been doing for the last twenty years. At the start of the pandemic, I slipped into remote teaching and training with very little disruption and in some ways relished the opportunity of teaching practical skills in a multi-media environment. I enjoy being able to demonstrate real things by a click or the movement of a mouse.

Polls, electronic breakout rooms, document sharing and half-day sessions still seem as effective (if not more so) than trekking to venues for one-day courses where fatigue takes over at around 3PM and the coffee is not nearly as

good as at home. Yet, towards the end of 2022, one saw the unmistakable signs of people being fed up with learning on-line. Partly, the abysmal state of UK Wi-Fi is to blame. More likely, though, people just wanted inter-personal contact during breaks and lunch with each other – and not with the trainer. It is very hard to make friends and contacts with other participants in a controlled online learning environment.

Towards the end of 2022, people I spoke to were suggesting that a return to face-to-face training was imminent. However, it has not happened. My first two onsite training sessions involved significant numbers of people joining remotely which gave us probably the worst of both worlds. One suspects that 2023 will see a return to face-to-face public training. So far, though, my diary suggests that in-house training will continue to operate online. We will, though, all have to watch out for symptoms of online or pandemic exhaustion.

As in past years, this newsletter has its own breakout rooms which cover my two main work areas, financial services compliance and dispute resolution. Please feel free to dip into both.

FINANCIAL SERVICES

Throughout the pandemic, public and in-house training on customer-facing compliance has accounted for most of what I have done in the financial services sector.

In the UK, CTP, run by Andrew Hilton and Suzanne Ash, two old friends who have known me since the 1990s, dived straight into remote training in 2020. With their colleagues, Beth Lawrence and Hilda Bennis, we swiftly became a well-oiled machine. I run events for them on complaints, financial promotions and product governance in both the UK and the European Union (EU). Andrew has now taken a bit of a back seat. Suzanne, Beth and Hilda have carried things on seamlessly.

Between 2020 and 2022, I built up a similar, if smaller-scale, relationship with UK Finance, particularly when Nick West was running its training function with Daniella Weber. We started doing sessions on financial promotions for all areas that the trade body covered. This is not as easy as it looks. Investments, insurance, mortgages, consumer credit and bank deposits all have their own Financial

Conduct Authority (FCA) rulebooks in this area. They have certain strong themes in common but quite a few differences. Even within one subject-area, there are distinct rules for advertising particular products or services. I can only work out exactly which rules will be relevant for particular audience when everyone turns up.

On top of all this, the Advertising Standards Authority has its own Broadcast and Non-Broadcast Codes. It publishes its rulings which reached into or at least near to the FCA-regulated business on about

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12 occasions last year. (I recently wrote a piece on this for the Compliance Monitor.)

The gradual emergence of the FCA's Consumer Duty proposals in the last few years (which come into force on 31 July 2023) and rules on general insurance about value for money that emerged at the end of the Brexit transitional period has left everyone updating their product-governance skills.

The UK may have invented the subject in 2007. In 2018, the EU, though, superseded the FCA's guidance with its Markets in Financial Instruments Directive II for investments and the Insurance Distribution Directive (IDD) for insurance. The Consumer Duty will essentially finish the job by extending these sets of rules and the insurance value measure provisions across the entire retail part of the FCA's remit. That is generating demand for training.

Although I started my career in financial services by handling investment and life assurance complaints, I have always enjoyed being versatile. Some of the best courses I ran in 2022 concerned car finance and debt advice services. I always seem to work well



with building societies, something for which my elderly Mortgage Advisers Qualification and experience as a customer strangely equips me.

Through all this, I have been running courses on similar subjects (promotions, complaints and product governance) for my friends in Cyprus: Marios Sciathas and his team at EIMF. I still have not quite adapted to running a course from 7AM to 9:45AM. Sadly, Brexit has delayed the return to face-to-face training where I would probably most like it. I miss having a glass of Ouzo in the old city of Limassol after the end of training at times of the year

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that the English would regard as winter.

There has always been a grey area for me between in-house training and consulting. For the former, I ask firms to send me procedures and examples of promotions, complaints files and the like. In working through the company's examples, we are seeking to identify good things that the company is doing while indicating areas for possible improvement. In that way, I am effectively delivering a consulting session with rather more people's input than usual.

Most of the pure consulting I do is with financial advisers. The end of the pandemic has led to an increase in file-review work. In addition, I always end up doing a certain amount of "Houston, we have a problem" stuff, either through the discovery of something going wrong or a particularly nasty complaint.

This year, I finished nursing a firm through about 20 wholly unjustified cases all dismissed by the Financial Ombudsman Service, brought by well-known solicitors. The absence of any real disciplinary sanction against firms for threatening outrageous lawsuits leaves small businesses horribly exposed to years of anxiety when they have not done anything wrong. It is not really sufficient for people like me to point out the amount of time

and money that the lawyers are wasting (particularly in a no-win-no-fee environment).

Every year, this newsletter recounts another anniversary of my Compliance Monitor column. Since I first wrote for that publication, there have only been two editors: Timon Molloy and (for the last 13 years), Esther Martin. Some of my topics you would expect: the search for the model compliance officer, the future of regulation under the short-lived Liz Truss proposal to reunite the FCA and PRA, the ASA's role in regulating financial-services promotions. Last year, though, I also wrote about ESG (Environmental, Social and Governance) investing, financial services insolvency and the strange UK/EU "two-step" in the development of product governance in Europe.

I write the chapters in Butterworths Financial Regulation Service's looseleaf on many of the subjects dealt with in this part of the newsletter: complaints, individual responsibility under the COCON Code of Conduct, product governance, investment promotions and a range of investment conduct of business topics. Sarah Hanson and I have been happily exchanging updates and proofs and adding chapters for about 15 years although we have only met once during that time.



DISPUTE RESOLUTION



For the last 13 years, I have taught comparative commercial arbitration at the University which is located in Fitzrovia where I lived for 8 years

of student life. For me, this subject is personal. I am one of the few people ever to switch Oxford colleges during the course of an undergraduate degree because of the behaviour of a teacher. Happily, dispute resolution at British Universities has improved greatly since 1979-1980 when my only recourse was to appeal to the Archbishop of York who was dying at the time.

My Swiss Institute of Comparative Law conference paper in September was an examination of Claude Reymond's argument in the preface to my 1989 Institute book that there was a growing common law of international arbitration. It should appear this year in the Swiss Yearbook of International Law, of which the publisher is actually the Institute.

Finally, courtesy of the World Intellectual Property Organization in Geneva, I actually resolve disputes - often not very difficult ones. I have issued 178 decisions for it since 2005 along with a smaller number for the Hong Kong International Arbitration Centre.

Most of my activity in this area concerns my teaching at the University of Westminster, deciding cases for the World Intellectual Property Organization and my regular column in Alternatives.

For the last 13 years, I have taught comparative commercial arbitration at the University which is located in Fitzrovia where I lived for 8 years. It benefits me very little financially. However, I have the pleasure of sharing an office with my boss, Richard Earle, one of the least-known great law teachers. He keeps me just on the right side of some of the sillier University regulations. 2022's return to face-to-face teaching came despite the obvious ongoing pandemic. With everyone fully face-masked at least while in-doors, It was extraordinarily difficult to generate

any form of interactivity or group work.

I have had more fun writing my column every two months column for Russ Bleemer's Alternatives, published by the CPR (International Institute for Conflict Prevention and Resolution) in New York. Russ allows me to range liberally across the dispute resolution scene.

In recent times, I have written for him about hard-law issues such as two awful English court decisions about the separability of arbitration clauses and a historic look at the Geneva Protocol on Arbitration Clauses which celebrates its centenary this year.

Russ also encourages me to write about dispute resolution generally. This year, that has included a two-part piece (and they really should be read together) about Universities where disputes arise in almost every aspect



KARL MARX'S 'SECOND GRAVE' AT HIGHGATE CEMETERY

AND FINALLY...

The production of these newsletters involves a cast of characters. Chris Hamblin and a member of my family (who refuses to be named) do the first cut, followed by a variety of other friends who spot the grammatical howlers. All the photographs are by me, except the one of me which my father took. Richard Herman has been doing the design for over a decade now. It remains only to wish you a much better year than the past three.