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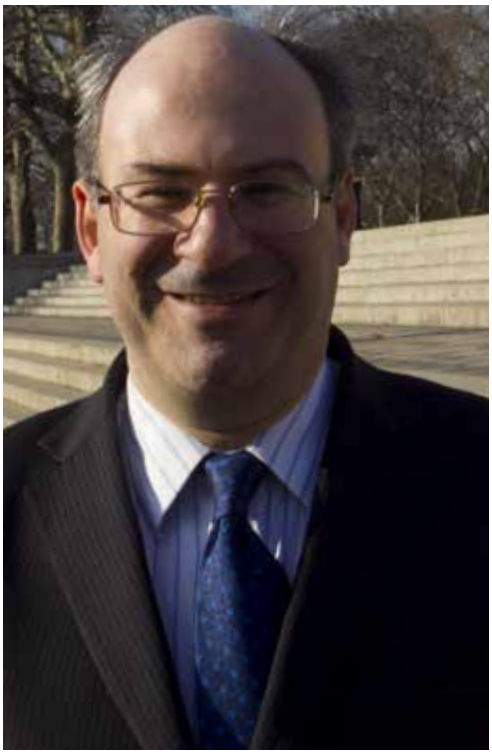
March 2015

as news

Dear Friends...

In September, I will be "celebrating" twenty years since I was last in full-time employment and next January, the same length of time since the start of my business. To survive this long on my own has ironically required the support of a huge cast of characters: customers, friends, helpers (some paid in money and others in a variety of refreshments and other favours), people I have worked with and those toiling away in the various organizations that supply me with vital assistance. Most of these people have ended up playing more than one role although not necessarily at the same time. This newsletter is a type of annual report to you, accounting for what I have been doing and where I have been eating and drinking coffee.



2014 was the first good year for the UK economy since 2007 and unsurprisingly perhaps my business made more money than it has ever done before. I also launched my compliance factory website to enable people who want to focus on my compliance activities to zero in on that.

2014 was also the year when my first two expert witness cases went to court. I had written reports for cases in the past but never had to show up for a trial. The first in London was a bit of an anti-climax. The defendant did not turn up and sent the judge what the latter described rather disdainfully as a "sicky". The judge did partly rely on my report in awarding part of the £2.1 million in damages awarded but I never had to go into the witness box.

In the second case, the Gibraltar High Court believed my co-expert, Roger Grenville-Jones

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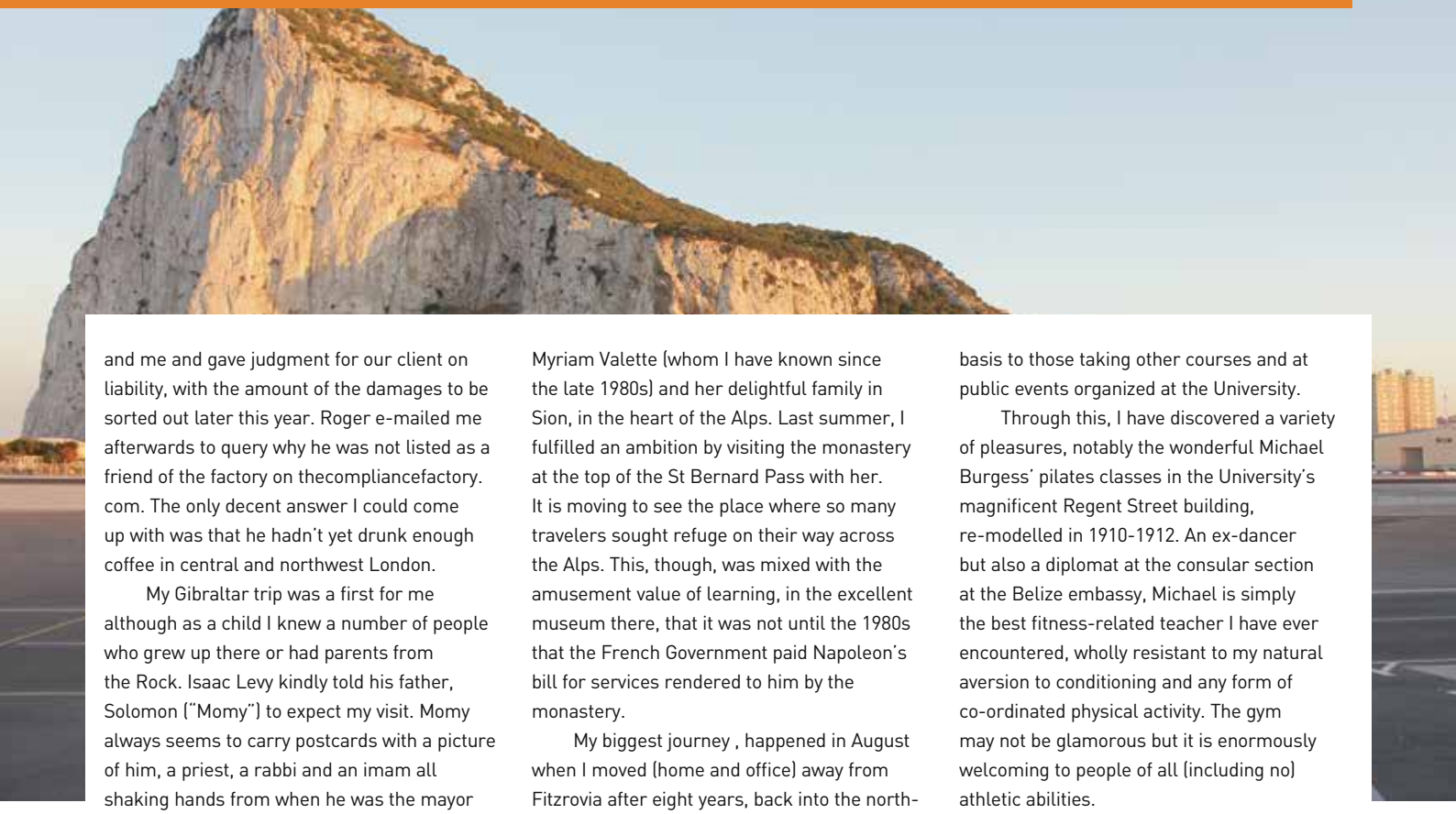
ON THE ROAD IN 2014



and me and gave judgment for our client on liability, with the amount of the damages to be sorted out later this year. Roger e-mailed me afterwards to query why he was not listed as a friend of the factory on thecompliancefactory.com. The only decent answer I could come up with was that he hadn't yet drunk enough coffee in central and northwest London.

My Gibraltar trip was a first for me although as a child I knew a number of people who grew up there or had parents from the Rock. Isaac Levy kindly told his father, Solomon ("Momy") to expect my visit. Momy always seems to carry postcards with a picture of him, a priest, a rabbi and an imam all shaking hands from when he was the mayor and hands it as a souvenir to passing tourists. With his help, I visited the stunning but oddly named Bomb House Road Synagogue and had a delightful lunch half way through giving my evidence.

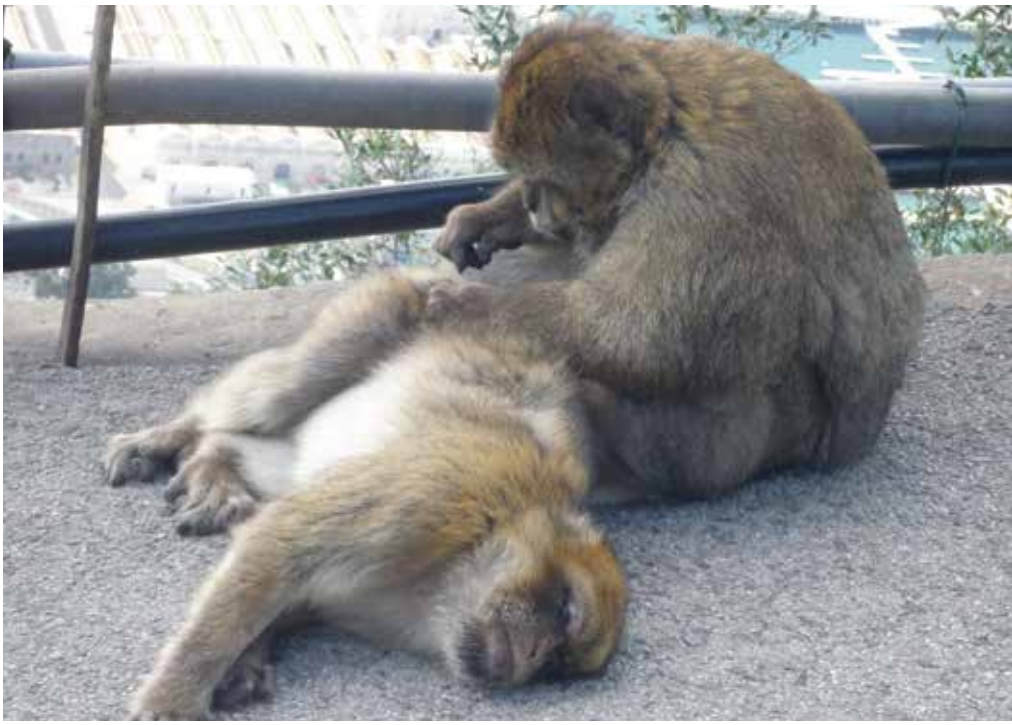
My other journeys last year took me around the usual range of UK venues, notably Manchester, Liverpool and Bristol. As ever, I made it to the World Intellectual Property Organization's Annual Panellist meeting in Geneva staying with the family of my former monopoly partner, Andreea Brandlin. These trips always involve seeing old friends such as Ines Feldman, Nicolas Ulmer and Doug Reichert. I spent a delightful morning in December at the Swiss Institute of Comparative Law (ISDC) in Lausanne, my employer form 1985 to 1989, sharing news and tales of the past with Martine Do-Spitteler. Martine was the institute's original director's assistant and his eyes and ears in the ISDC's first decade. I used to run with her on Thursday lunchtimes when I first arrived. I will probably never know whether that helped me obtain a full-time job at the Institute in 1985! What I do know is that Angehrn in Lausanne's rue Pichard still sells the best chocolate truffles in Switzerland, a quarter of a century after my late mother discovered it while "doing research".

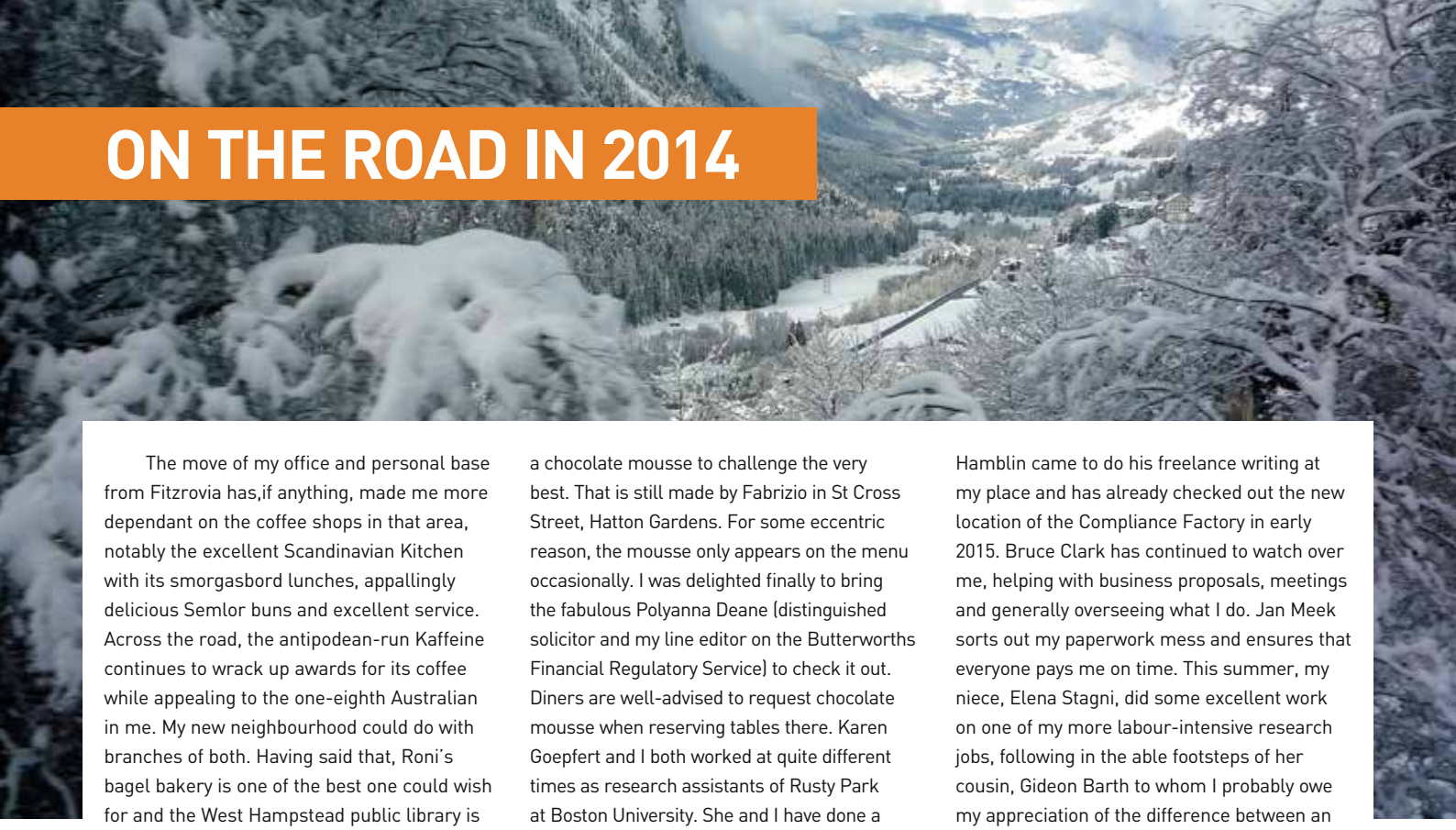
At times, when I just need a breather from work, I enjoy the lovely hospitality of Myriam Valette (whom I have known since the late 1980s) and her delightful family in Sion, in the heart of the Alps. Last summer, I fulfilled an ambition by visiting the monastery at the top of the St Bernard Pass with her. It is moving to see the place where so many travelers sought refuge on their way across the Alps. This, though, was mixed with the amusement value of learning, in the excellent museum there, that it was not until the 1980s that the French Government paid Napoleon's bill for services rendered to him by the monastery.

My biggest journey , happened in August when I moved (home and office) away from Fitzrovia after eight years, back into the north-west London redoubt of West Hampstead. Instead of losing a much loved neighbourhood, I see it as adding one more to my collection. I remain closely connected with my old haunts through my relationship with the University of Westminster. Simon Newman and Richard Earle continue to let me teach a course on comparative international arbitration there for the LLM programme and lecture on a one-off basis to those taking other courses and at public events organized at the University.

Through this, I have discovered a variety of pleasures, notably the wonderful Michael Burgess' pilates classes in the University's magnificent Regent Street building, re-modelled in 1910-1912. An ex-dancer but also a diplomat at the consular section at the Belize embassy, Michael is simply the best fitness-related teacher I have ever encountered, wholly resistant to my natural aversion to conditioning and any form of co-ordinated physical activity. The gym may not be glamorous but it is enormously welcoming to people of all (including no) athletic abilities.

I have always been concerned about the University students' lack of knowledge about the fabulous neighbourhood in which they study. So, I have continued to run walking tours of both Fitzrovia and Soho for them. This summer, a group of people living in Fitzrovia or with connections to the area took both walks with me, adding to my collection of stories along the way.





ON THE ROAD IN 2014

The move of my office and personal base from Fitzrovia has,if anything, made me more dependant on the coffee shops in that area, notably the excellent Scandinavian Kitchen with its smorgasbord lunches, appallingly delicious Semlor buns and excellent service. Across the road, the antipodean-run Kaffeine continues to wrack up awards for its coffee while appealing to the one-eighth Australian in me. My new neighbourhood could do with branches of both. Having said that, Roni's bagel bakery is one of the best one could wish for and the West Hampstead public library is a gem. All these businesses show that good customer service is very much alive and makes a mockery of some of our grimmer financial institutions.

Further afield, my old Fitzrovia neighbours, Meghan and Rob Vozila introduced me to a surprising gem: Patisserie Brionne in Eastcote. This serious French patisserie serves a chocolate mousse to challenge the very best. That is still made by Fabrizio in St Cross Street, Hatton Gardens. For some eccentric reason, the mousse only appears on the menu occasionally. I was delighted finally to bring the fabulous Polyanna Deane (distinguished solicitor and my line editor on the Butterworths Financial Regulatory Service) to check it out. Diners are well-advised to request chocolate mousse when reserving tables there. Karen Goepfert and I both worked at quite different times as research assistants of Rusty Park at Boston University. She and I have done a serious study of restaurants in Fitzrovia and do not quite understand why Sardo lost its Good Food Guide rating while others have kept theirs. Our researches have extended into her current neighbourhood of Greenwich and her previous one of Notting Hill. Sadly, all West Hampstead has to offer is an acceptable Italian place.

In the early part of last year, Chris Hamblin came to do his freelance writing at my place and has already checked out the new location of the Compliance Factory in early 2015. Bruce Clark has continued to watch over me, helping with business proposals, meetings and generally overseeing what I do. Jan Meek sorts out my paperwork mess and ensures that everyone pays me on time. This summer, my niece, Elena Stagni, did some excellent work on one of my more labour-intensive research jobs, following in the able footsteps of her cousin, Gideon Barth to whom I probably owe my appreciation of the difference between an IPod and an IPad. I have moved into Malachy McClelland's neighbourhood and we meet for coffee around here regularly as we used to in the West End and when we worked together at the Insurance Ombudsman Bureau in the early 1990s (although the stresses of IOB work meant that alcohol rather than caffeine was the "weapon of choice").

FINANCIAL SERVICES WORK

To start with the purest form of financial services compliance, prevention, I have continued drafting procedures for giving investment and pensions advice and (this is a new departure) helping employers meet their pension and other related commitments to their employees. The process requires me to know how my clients deal with their customers. A beneficial effect of this is that the people I work directly with have to understand the services they offer their clients. This tends to improve the way in which they price what they offer their customers. It is much easier to charge sensibly for different elements of service once you can describe clearly what the person or business paying for them will receive in return. As part of this work, I draft personalised agreements that reflect the way in which my clients work and the different approaches they take to delivering what they promise. This helps their customers understand what they are paying for and what to expect in return - something that should reduce the likelihood of disputes.

Businesses moving into Financial Conduct Authority (FCA) regulation typically find themselves on a steep learning curve. In 2014, this was particularly true of consumer-credit firms who moved from Office of Fair Trading to FCA supervision in April. Since then, a disturbing turnover of compliance officers in this sector has already occurred The regulator is going to have a field day looking at these businesses. Consumer credit firms must have proper processes for ensuring that their promotions are "clear, fair and not misleading", assessing whether those they lend to can repay the money, handling arrears of customers who fail to keep up with the payments and dealing with complaints. This is, even before the company's management tackles the necessary task of developing the type of systems and controls, required to manage the business safely. The signs are that the regulator will end up blowing a few firms apart in the early years of consumer credit regulation "pour encourager les autres".

> **Consumer credit firms must have proper processes for ensuring that their promotions are "clear, fair and not misleading**

At the other end of the regulatory scale, barely a month went by in 2014 without a whiff of a major scandal coming out of our larger institutions, whether it was fixing LIBOR, laundering money or manipulating the foreign exchange markets. The banks' heavy use of the bigger management consultancies is well-known. However, even with this help, it remains worrying how few banks actually know and understand the full range of their operations. This is apparent from the shocked tones of senior managers every time that another problem emerges. While describing

FINANCIAL SERVICES WORK

the full range of what a business does is not itself an official risk management tool, it is probably a pre-condition for any of standard techniques to work. The regulators and boards of major banks should be asking themselves in 2015 whether they can tolerate a situation in which managers cannot describe accurately and coherently the full range of businesses being operated in a major institution's name.

2015 sees the arrival of the senior persons regime in all UK banks. The new regime is designed to deal with the "accountability firewall" found by the Parliamentary Commission on Banking Standards that shields senior managers from regulatory action. Directors delegate tasks to people not covered by the existing approved persons regime and unless the decision to delegate looks unreasonable, the regulator cannot take action.

It is highly unlikely that the regulator will have the courage to use the new regime against those who most deserve it. Executive board members have escaped unscathed from both LIBOR and Forex manipulation, not to mention the misselling of payment protection insurance. The regulator has only ever lost one big case against a major bank executive. It seems to be more scared of the expense and complexity of handling a massively "lawyered" case than actually losing one.

This year, financial firms have continued to mix using my services directly with acquiring them through other organizations. I continue to run workshops for Infoline, a conference company with whom my relationship goes back to 1997. Firms send participants to these sessions where they meet people from other companies and compare notes as well as (hopefully) learning about the subject concerned. Through Infoline, I also do sessions for individual companies, notably this year on financial promotions, complaint-handling, root cause analysis and product development. As usual, though, board members were notable for their absence.

Richard Horsler, Cosimo Montagu and Louise Huggins at Infoline have helped me expand the range of subjects on which I provide training. They have added sessions on root cause analysis and the compliance requirements for developing investment products to my original background in financial advice standards, complaint handling and financial promotions. Since people are scared of parts of the regulator's rulebook, I have developed with Infoline "who's afraid of" days on the SYSC (systems and controls) rules and the FCA/PRA Principles. SYSC in particular is an intimidating rulebook to which the FCA refers every time it discovers something undesirable at a firm. When training people on how to use these difficult parts of the FCA handbook, I am improving my knowledge and clarity of thought about this very imprecise subject.

Last year, the Financial Conduct Authority published a thematic review report on enhanced transfer value (ETV) advice. This happens when employers seek to "persuade" their employees to transfer out of final salary schemes (and thus reduce the business' future need to pay pensions), typically by offering various inducements. Often, these "extras" do not make up for the loss of the benefits given up by leaving the existing scheme. The regulator echoed advice I gave a financial adviser almost a decade before "stay away from this". It is almost impossible for an independent financial adviser to process the transfer in a compliant way when he knows that it is not in the customer's best interests.

This year, I ran into a variation on this theme where the employer asked an adviser to do presentations on a new cheaper (and probably worse) money purchase arrangement that employees could move to from the existing final salary scheme. The adviser's firm (with my help), though, put its foot down about one-on-one interviews between the adviser and each employee. Having analysed the two schemes, the conflict of interest between employer, adviser and employee and the confusion of roles was too strong to make the process safe. It needed a different firm to advise the employees, in the most if not all cases, not to leave the existing pension arrangement.

I know that it is important to protect data and ensure that money is paid to the right person However, the death of the branch office in banking and the financial services industry in general has made it absurdly difficult for customers to claim their entitlements. Last year, a bank (for whose group I have done a huge amount of work over the years) decided that the formula used by a solicitor friend to confirm that a passport photograph was actually of me, failed its customer identification procedures. It returned the paperwork with a pre-paid envelope with an inadequate amount of postage on it for the documents to be safely delivered back to the bank. The documents were lost in the post until eventually returned to the solicitor concerned. This happened on the week when I had lunch with Caroline Wells at the Financial Ombudsman Service (FOS). I felt tempted to allow the Ombudsman (or some of my friends at the nearby FCA for that matter) to certify that "I am... who I am"! There is a danger that banks and insurers like these will use phoney arguments about the identification of their customers to hang onto their clients' money in a way vaguely reminiscent of the Swiss banks and their dormant Holocaust accounts.

I was seeing Caroline because of the work I am doing on the second edition of my complaints book. She was enormously helpful with the first edition, supplying answers

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to some of the more arcane and awkward questions I had about FOS jurisdiction. The range of FOS' technical papers on various subjects is increasingly impressive. Caroline has responded in similar fashion to my incessant spotting of documents that have fallen out of date or simply fallen off the relevant links. Since 2005, when I wrote the first edition, the volume of materials has inevitably mushroomed along with the new and ever-more complicated ways in which financial services businesses can mess up the lives of their customers.

To top all this off, just before the end of the year, the Financial Conduct Authority issued a consultation paper, CP 14/30, in which it proposes to tamper yet again with the complaint rules (DISP). This will put publishing schedules back into the autumn at the earliest. Again, the regulator is fiddling about on the fringes of the subject without doing a proper structural clean-up of the rulebook.

Currently, a firm can avoid sending a final response to a complaint and reporting it among its case statistics if it has resolved the matter by the end of the business day following the complaint's receipt. This provision has been much abused over the years by the banks which have either claimed that cases have been resolved when the customer has not accepted the proposed solution or sought to pressurize customers into accepting over the telephone. The regulator now proposes to give firms three business days to resolve complaints before they have to write a proper response to them. The trade-off, though, is that firms closing cases in this way will have to write to their customers after the complaint has been resolved - something I have been recommending for years as a form of "thank you" letter. CP 14/30's suggested changes will also remove the exemption from reporting these types of cases.

Frankly the regulator might as well abolish the "end of the next or next three business day(s)" rule altogether. The banking lobby is likely to campaign strongly against the changes except for the extension of the one-day period to three.

At complaint-handling events, I am frequently singled out as the only person who uses the FOS database. It is not an easy thing to master but does give a clear indication of the Ombudsman's standard approaches to certain types of problem, notably insistent customer and execution-only cases. Since one can filter cases by outcome, the database gives the reader a much clearer view of what types of complaints can succeed in these controversial areas and sometimes even standard paragraphs that the Ombudsman Service uses in particular situations.

The FOS rarely loses a judicial review case, at least publicly. (There have been a couple of quiet agreements not to resist a judicial review application, the details of which are never published.)This year, though, in the *Bluefin* case, the Administrative Court ruled that an individual could not complain about the handling of his claim under a directors and officers policy on the basis that he was not a consumer. On the surface, that makes sense and yet it does not in reality. Micro-enterprises can bring cases to the Ombudsman. So, why should an individual be deprived of the same rights just because the claim relates to what he does for a living? The judge accepted that he should decide whether the complainant was a consumer as at the date when the complaint was made. At that point, the complainant was an ex-company director. The question of who should be an eligible complainant needs a re-think.

> **2014, though, goes down as the year when the FCA found itself accused of market abuse – not a good start for a market regulator**

One area where the Alternative Dispute Resolution Directive seems certain to change matters concerns the exclusion of professional clients and eligible counterparties as long as they meet the other requirements of the scheme in question. This removes almost all the point for advisers of making any customer an elective professional. They will need to use fact-finds and suitability reports to defend their advice regardless of whether these requirements formally apply to these clients.

2014, though, goes down as the year when the FCA found itself accused of market abuse - not a good start for a market regulator. A decision to pre-brief chunks of the business plan to various selected journalists in March backfired spectacularly when it resulted in pension-provider shares plummeting. The resulting report by Simon Davis of Clifford Chance is the subject of an article I wrote for Compliance Monitor. The idea of a regulator using tame journalists to peddle its messages (journalist capture) is inherently unethical for both the public body and the newspaper. By taking this approach, as the Davis report pointed out, the FCA lost control of its own message - an obvious risk of planting a story with a journalist - and found itself reacting to rather than controlling the publication of its own document.

All organizations have bad days. However, the regulator's reaction to plummeting life insurance company share prices exposed it as an institution whose leaders lacked confidence in their and their colleagues' ability to make an effective decision. One could not escape the feeling that subordinates in both the Supervision and Markets Divisions who disagreed with their bosses about how to handle various elements of the process would have been better suited to running the departments concerned than their bosses. On top of that, few people seem to have noticed the peculiar way in which discussions between executive assistants as life assurers' shares went into freefall seemed to prevent Martin Wheatley, the CEO, from grasping what was going on.

For me, this last point is personal. When Wheatley came back to England to set up the FCA, my Hong Kong friend, now Professor SF Wong told me to contact him on the basis that he might benefit from the experience! I received a curt none-too-polite "get your tanks off our lawn" response from an executive assistant that dismayed both SF and me.

BEING AN EXPERT

The fact that I was the unnamed expert witness in a case better known for the defendant's "sicky" is probably not going to enhance my reputation. In *Mohun-Smith* v. *TBO Investments*, on the day when the trial was due to start, the IFA defendant's ex-solicitors forwarded to the court a "sicky" claiming that he could not attend court due to stress. The judge struck out the defence and in a second ruling adopted a suggestion in my expert report on the size of the compensation. This, though, was contained in a judgment which has never been reported. The only published decision in the case was the refusal of the judge to re-consider his earlier striking out of the defence.

Mohun-Smith v TBO concerned advice to consumers to invest in three different types of products: (i) unregulated collective investment schemes of a new unknown product provider, purporting to invest in funds of funds, (ii) reasonably reputable South American and Russian UK-regulated funds; and (iii) the EEA Life Settlements fund. The fact-finding was desperately weak. The financial adviser concluded that the customer had a "medium" attitude to risk except for the EEA fund when it dropped to "cautious". It was not difficult to conclude that all three recommendations were unsuitable.

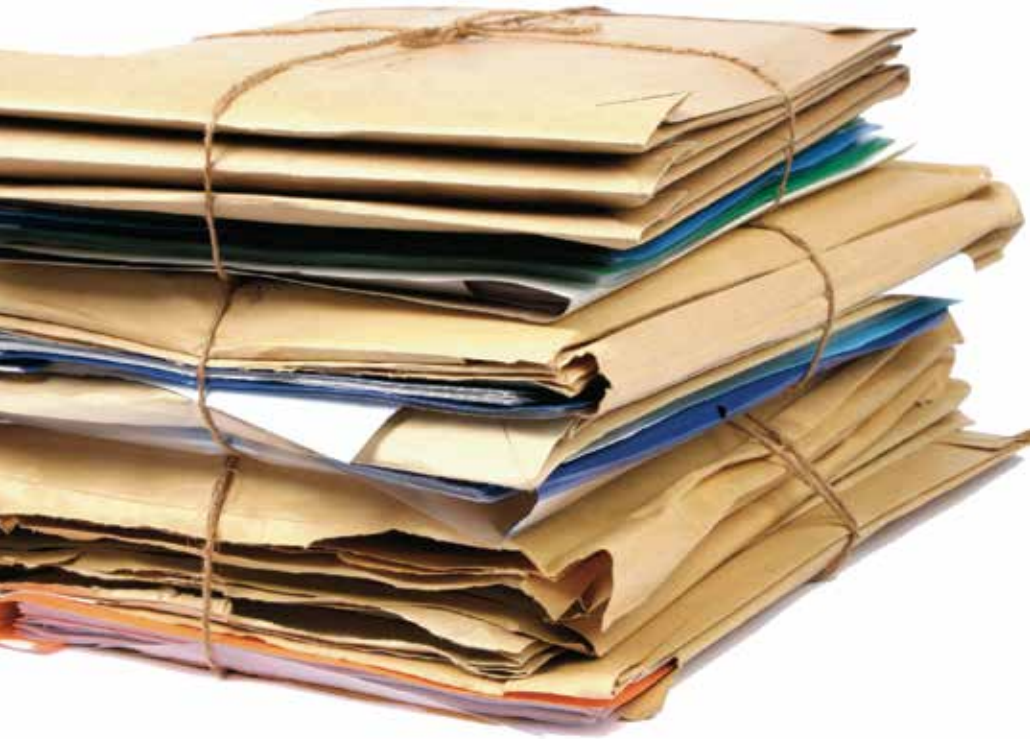
> **The task of the expert witness, though, is not just to express an opinion as to best practice at the time.**

The task of the expert witness, though, is not just to express an opinion as to best practice at the time. It also entails locating the material from the period that supports the view expressed. Before 2007, there was little or no published material on either unregulated collective investment schemes or life settlement funds in the UK for the obvious reason that stories about advisers recommending them (inappropriately or otherwise) had never come to the surface. The regulator is criticized in this area when it reacts too quickly by banning a type of fund or limiting its marketing to retail customers because in doing so it will probably destroy the affected funds' liquidity. So, there is a strange holding period while the authorities look into areas of activity of concern without saying anything publicly.

Most UK life settlement funds buy whole of life insurance policies from elderly Americans. The USA regularly publishes detailed statistics about its citizens' life expectancies at different ages. Between 2000 and 2007, US life expectancy among the over-65s improved by about 300%, a phenomenon likely to make a mess of any actuarial model used to price second hand life assurance.

The position on unregulated collective investment schemes generally is much more difficult. Currently, the regulator's position is that such products are automatically high risk by virtue of the decision made by the product provider not to obtain either authorization in the UK or UCITS status by obtaining the necessary authorization in the European Economic Area (EEA). It published that conclusion in 2009 when it had become apparent that investors had lost large sums of money investing in unregulated collective investment schemes generally.

The statement that a failure to seek approval from the UK or in a particular form from other countries' authorities determines the risk profile of the underlying fund does not stand up to much logical scrutiny. However, it has the support of English legislation going back to 1958 which restricts the promotion of unregulated collective investment schemes to retail customers. It also matches experience. UK-regulated funds have rarely failed in the past while the same cannot be said for those registered in the Channel Islands and other offshore centres. One reason for this is that mainstream product providers will pick up the bill discreetly if one of their funds fall apart (for example Deutsche Morgan Grenfell and the Peter Young affair).The decision by fund managers not to seek UK or (even better) UCITS status (so that a fund can be sold throughout the EEA) may also suggest a certain unwillingness to submit to the detailed rules involved.



BEING AN EXPERT

In my Gibraltar case, van Geens v. Jyske Bank, we had a five-day trial in November and the following month, Judge Jack produced a detailed judgment on whether the bank was liable to Mr van Geens. The amount of damages is due to be dealt with at a separate hearing this year. I have put the judgment on my website in the absence of any obvious online reporting of the decision. The decision benefits hugely from our legal team's decision to pair me up with Roger Grenville-Jones and then let us say exactly what we think about risk. A consequence of this may have been that the Judge rightly avoided the dangerous temptation to fit investors' attitude to risk into the neat boxes of cautious, medium and high in favour of a more nuanced approach to matching products to the customers' needs, understanding and wishes. He agreed with Roger and me that "the fact that an investor has a high risk approach in one area of his life or in one part of his investment portfolio does not mean that he wants a high risk product when making other investments". Anyway, having apparently told the bank adviser that he had a "moderate" attitude to risk, Mr van Geens put the woman concerned under the obligation only to recommend to him products that met that description.

Mr van Geens originally had a blue-chip share portfolio. The bank persuaded him to borrow a substantial sum of money to buy individual "speculative" corporate bonds. At the same time, though, it insisted on van Geens pledging both the new bonds and his share portfolio as security for the loan. Although one of the bond issuers went bust, the bigger problem was that as the markets crashed and confidence in lower grade bonds diminished, the loan was not adequately covered and the bank sold the shares and bonds that it held as security at "panic" prices.

The defendant bank abandoned its argument that it did not recommend the transaction just as I was about to go into the witness box. (HSBC had lost a similar point in the English courts in the *Rubenstein* case.). In his decision, the Judge tore into the bank's fact-finding as being a "box-ticking exercise", adapted at times to whichever product the bank was selling the customer. He also noted that the key fact-find done in 2007 contained obvious inconsistencies. More importantly, he concluded that the bank was wrong to deduce from the customer's holding of an inappropriately risky share portfolio a willingness and ability to tolerate high levels of risk. This, he thought, was, inconsistent with the customer's circumstances, levels of sophistication and noted attitude.

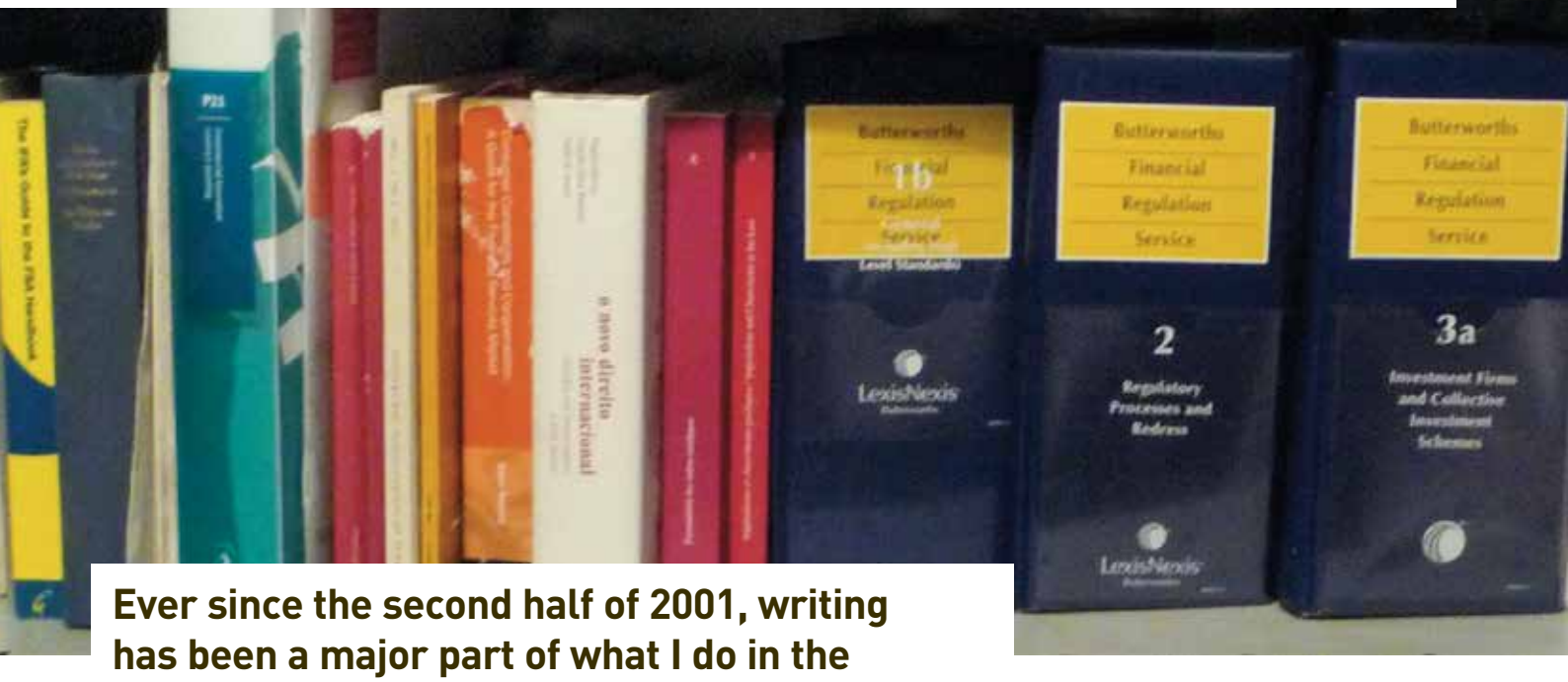
It may have helped everyone to have seen the bank's customer, Mr van Geens, being cross-examined for almost a day and a half. The judge formed quite a sophisticated picture of his approach and level of understanding of what was going on. He also noted that the way in which the transaction was concluded at a single meeting revealed the fact that the adviser could not possibly have explained the risks involved in both the loan and the various bonds. He also criticized the firm for not obtaining the signature of Mr van Geens on the fact-find and, more seriously, for not sending him a suitability letter explaining its advice.

The judgement contains a list of 11 different risks to which the bank's recommendation exposed the customer. The judge accepted Roger's sensible view that all these features needed regular monitoring in order to make them manageable. It is a relief to see a judgement say that ""high", "medium" and "low" risks are not mathematical concepts" and that "deciding into which category an investment product falls is more art than science" and that not all "high risk" investments contain equal levels of danger.

I would like to publicise this judgment more widely than has so far been possible only in part because of the obvious self-publicity it provides. The way that Charles Salter and Andrew Cardona of Phillips in Gibraltar 'lawyered' the case led to an intelligent discussion of investment risk. They also reminded me what really good witness management looks like. I enjoyed my note-writing exchanges with Roger at the back of the court through the first three days of the trial. Although the facts were rather grotesque, as the judge concluded, they provided the framework for a serious discussion about the nature of interest-rate, currency, default and gearing risks and the danger of recommending an excessively complicated product to a member of the public. It was an unusual pleasure to work with generally and Charles Salter and Andrew Cardona in particular.

On a lighter note, I took the psychedelic photograph of St Michael's cave that appears here, on the day before the trial, only to discover that Mr van Geens had met one of the bank's advisers for the first time in that very location.

WRITING ABOUT FINANCIAL SERVICES



Ever since the second half of 2001, writing has been a major part of what I do in the financial services area. In 2014, I set off on the challenging task of writing a second edition of my complaints book. After a reasonable start, I became bogged down in exactly the same place as in the first edition, dealing with when to uphold individual types of complaints.

The big difference is that since 2005 when the first effort came out, there has been a huge expansion in the amount of compliance literature available, not to mention the Financial Ombudsman Service's database. In the early 2000s, general insurance complaints were mainly confined to insurance with some uncomplicated maladministration. Since then, the payment protection insurance misselling explosion and the emergence of a tendency of firms to sell insurance as a secondary or add-on product with just about anything has given complaints a totally different look. We are also coming out of a recession that featured ridiculously high levels of credit, often offered on unprofitable terms for the lenders, and on unaffordable ones for the customers involved. The FCA's takeover of the regulation of the consumer credit industry from the Office of Fair Trading on 1 April 2014 has changed the landscape further. Only extraordinarily low interest rates in the UK have prevented irresponsible lending from causing a far worse crisis..

The emergence of CP 14/30 and its proposals for the reform of FCA complaint rules, just before the end of the year, is likely to delay publication further. It is not going to be an easy book to finish and is likely to try the patience of my long-suffering editor and chivier-along- in-chief, Nick Bliss.

In one sense, I am actually writing the equivalent of three books at the same time. Every six months, I update my commentary on large chunks of the Financial Services and Markets Act for Lexis-Nexis. This covers complaints, the Upper Tribunal and enforcement action as one might expect. Less obvious, though, is the work I do on Part 6 which covers company listings, prospectuses and market disclosures. In recent years, I have added parts of the Act covering insolvency, the supervision of auditors and actuaries and investigations to my repertoire.

The same publisher also puts out the Butterworths Financial Regulatory Service. I am responsible for its sections on complaints and approved persons as well as the more fiddly chapters of the conduct of business rules (COBS). The torrent of cases to do with approved persons keeps me regularly employed as I try to make sense of the regulator's continuing failure to hold the senior managers of the major banks accountable while picking off a whole range of executives at other companies.

I have continued to write ten articles a year for Esther Martin's Compliance Monitor. This past year, they included general pieces on the state of compliance in areas like mortgages, general insurance and investments. Mary Stevens at the Compliance Resource Network regularly buys my "compliance report" pieces and, in doing so, forces me to take apart Upper Tribunal decisions on financial services problems and delve into some of the darkest parts of compliance and complaint handling. I also write the occasional piece for Complinet. For a while, my compliance tips for financial advisers migrated to Money Marketing but a change of editor seems to have killed that for the time being. Instead, Melanie Tringham and Hal Austin at Financial Adviser have commissioned the occasional feature on some of the major headaches in this area while variously discussing cricket, the Caribbean and knitting over a variety of refreshments.

ARBITRATION

In 2014, my arbitration activities centered around the University of Westminster and cybersquatting. I am currently teaching comparative commercial arbitration for the fifth year at what until recently was my local University. Last year, I also delivered two public arbitration lectures there. At the same time, I continue to decide World Intellectual Property Organization (WIPO) and Hong Kong International Arbitration Centre (HKIAC) cases on whether domain names have been registered and used in breach of the rules on this subject (the ICANN policy).

Sadly, the Chartered Institute of Arbitrators recently entered its centenary year with the practice guidelines on arbitration for international, UNCITRAL Model Law countries and English users still largely located on my hard disk rather than on the institute's website. Since I left the Practice and Standards Committee in 2012, it seems to have produced nothing, at least on arbitration. I still teach the occasional Associate level course for the Institute but my involvement there is no longer what it once was.

By contrast, my involvement with the University of Westminster continues to produce surprises and pleasure. Richard Earle watches over me. At the same time, he attracts plaudits for his teaching from past and present students, which are more appropriate for a boy-band member than a grey-haired dispute resolution teacher. Richard is the first person in UK academia to give me a serious opportunity to teach on a consistent basis and tolerates my bumptiousness on our regular joint trips to the Scandinavian Kitchen. Simon Newman is now officially head of the LLM programmes, a job for which he was sent to this earth with his boundless enthusiasm and curious lack of ego - characteristics he shares with Richard. Both have been enormously supportive of my efforts to bring a wider audience to the university's arbitration efforts. Those interested in the last official Institute guidelines for UK, international and Model Law country users should download them quickly from ciarb.org before they are replaced by proposed "law-free" general guidelines for arbitrators everywhere.

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In February, I did my "this train still runs" lecture on SEEE v. Yugoslavia in Switzerland, Holland, France and even Uruguay. We followed this up in front of a substantial audience, fortified by participants from a number of law firms and City University, with a session on re-drafting the New York Convention of 1958. My draft, as tweaked after an interesting exchange with my old boss, Rusty Park, appears on my website. It is time that the conversation on this subject began in earnest. My effort is perhaps surprisingly a bit more conservative and respectful of the original than Albert Jan van den Berg's effort some years ago. I had some fun comparing notes with him afterwards.

I have switched to in-class assessments and decided to write an answer to the questions that I had set while the students are doing theirs. This gives me a clearer idea of what the students have to go through and makes it easier to generate a speedy specimen answer to help Richard and our external examiner review the assessments.

I have continued providing neighbourhood walking tours for the students. It is a joy to explore what may be one of the best areas to study law in around Britain. I have an opportunity in this way to meet students who may take my course in the future and also some who will sadly never do so. Simon Newman also appreciates the need to lay on social events and has managed to ensure the availability of olives at just about every activity in which I am involved. It is starting to become a leitmotiv of Westminster arbitration events.

I continue to do occasional sessions for Simon's and Richard's courses on e-commerce, arbitration and alternative dispute resolution generally, covering cybersquatting, my predictions for the future of international arbitration and how Ombudsmen work.

My cybersquatting work is a relatively straightforward affair with the decisions published on the WIPO and HKIAC websites. I always enjoy attending the WIPO annual panelist meeting in Geneva. There is perhaps a greater emphasis on talking about the techniques of judging than in the past which is a good thing. I was particularly delighted to welcome Dennis Cai of the HKIAC when he visited London for the ICANN conference. We have known each other since 2008 and Dennis has kept me out of typhoons and fed me more than his share of hot chocolates during that time.

I made one slightly unusual academic excursion in 2014 to Brunel University for a meeting on consumer arbitration and dispute resolution. I wisely recruited Caroline Mitchell, an Ombudsman at FOS and a participant in most of the modern history of Ombudsmanning generally, to present a paper alongside my own. They should be published sometime in 2015. Although there appeared to be a general consensus against the use of arbitration in consumer disputes, Caroline and I felt a little isolated flying the flag for the Ombudsman solution with its institutional memory of how firms behave and ability to publicise results. During all this, Caroline managed to introduce me to some sensational cartoons commissioned by the Financial Ombudsman Service on the subject, on the lines of "What did the Vikings do for us". My only contribution in exchange has been to point out that Widnes, the place from which more people rang the Financial Ombudsman Service than any other (London is broken down by postal codes for this purpose) in 2013/2014 was also where Paul Simon wrote "Homeward Bound" lamenting the fact that he was stuck on the station rather than in the arms of his then girlfriend in London.

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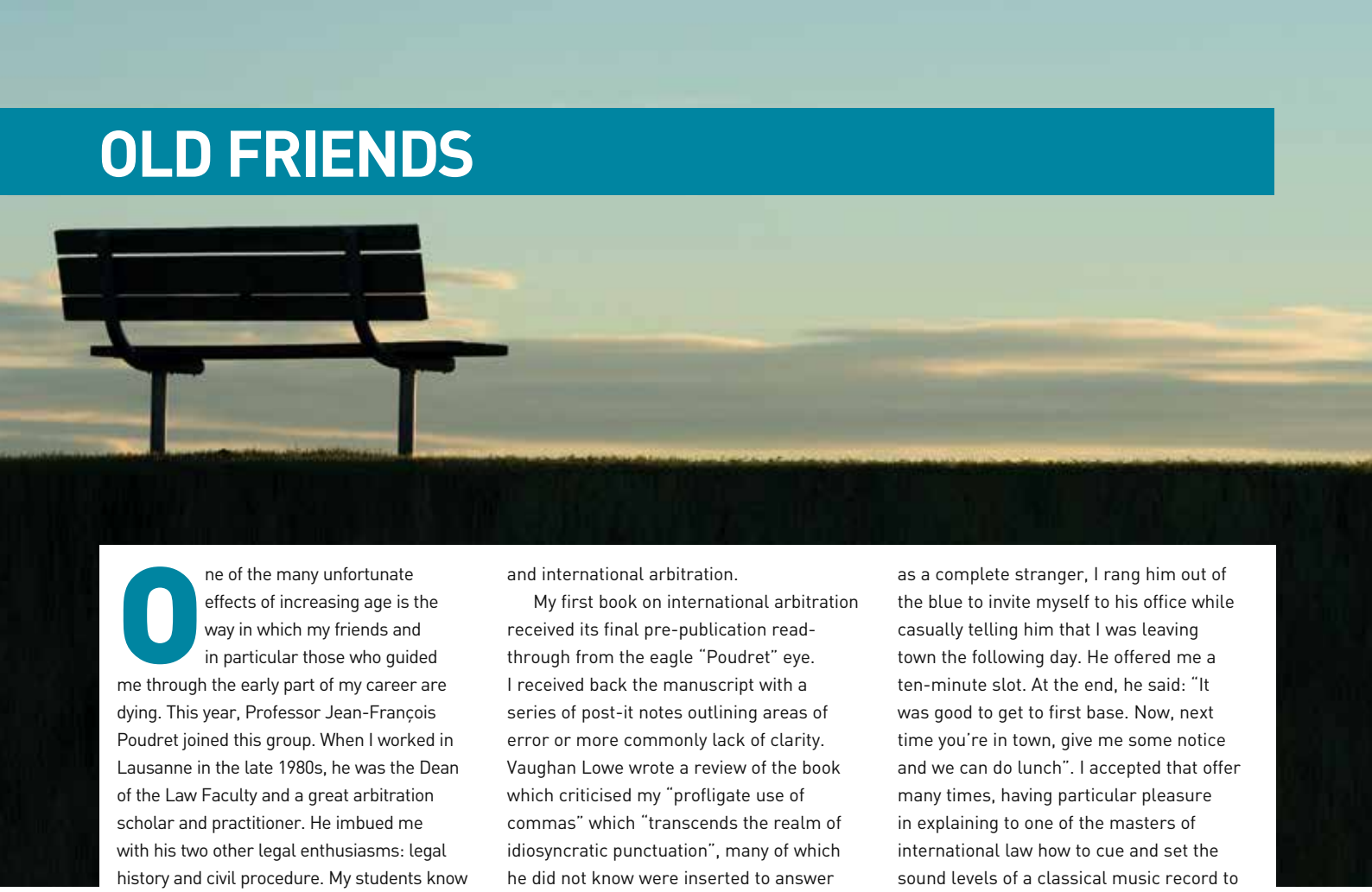
OLD FRIENDS



One of the many unfortunate effects of increasing age is the way in which my friends and in particular those who guided me through the early part of my career are dying. This year, Professor Jean-François Poudret joined this group. When I worked in Lausanne in the late 1980s, he was the Dean of the Law Faculty and a great arbitration scholar and practitioner. He imbued me with his two other legal enthusiasms: legal history and civil procedure. My students know that I do not believe that arbitration can be understood without an appreciation of either subject. Jean-François and his dear, also departed, friend, Claude Reymond dominated the Lausanne arbitration scene in the 1980s with their double act, typically performed at the Abbaye de l'Arc, with one of them chairing the session and the other speaking. Their enormous acts of kindness towards me taught me the importance of having time for those aspiring to special things in whatever field of endeavour. Professor Poudret was a great seeker of information and precision and we shared enormous amounts of material and insight on Swiss and international arbitration.

My first book on international arbitration received its final pre-publication read-through from the eagle "Poudret" eye. I received back the manuscript with a series of post-it notes outlining areas of error or more commonly lack of clarity. Vaughan Lowe wrote a review of the book which criticised my "profligate use of commas" which "transcends the realm of idiosyncratic punctuation", many of which he did not know were inserted to answer Jean-François Poudret's queries about the meaning of sentences.

I suggested to Sebastian Besson, with whom Jean-François Poudret wrote a superb international arbitration treatise, that we put together an evening in memory of our shared friend. He told me that, in typical unassuming fashion, Jean-Francois had put it in his will that he did not wish to have any form of public memorial. Sebastian has also probably correctly vetoed my idea of a "not a memorial event".

Professor Andreas Lowenfeld also died this last year. His main legacy to me is probably the ten-minute meeting. In 1987, as a complete stranger, I rang him out of the blue to invite myself to his office while casually telling him that I was leaving town the following day. He offered me a ten-minute slot. At the end, he said: "It was good to get to first base. Now, next time you're in town, give me some notice and we can do lunch". I accepted that offer many times, having particular pleasure in explaining to one of the masters of international law how to cue and set the sound levels of a classical music record to play it on radio.

Closer to home, Fergus O'Rourke, a dear friend and former Insurance Ombudsman Bureau colleague, died last year in Cork. He and his widow, Mary, have provided hospitality to me and a generation of former Ombudsman staff. His frequent visits to London, wise counsel, warmth and flair for arguing the improbably provide a memory of what is good. News of his death passed quickly around a group of friends who worked together on the top floor of the IOB with Fergus in the early 1990s such as Elisabeth Bingham, Catie Keynes, Neil Munro and Malachy McClelland.

And finally... A FEW THANKS

It remains only to wish you a happy, prosperous and safe 2015. This newsletter has benefited as ever from the rigorous editing of Chris Hamblin and the design work of Richard Herman at Arta Creative. My websites are kept beautifully by Rhian Wheeler of Rubydesign. Dave of the Watermill recently updated my cards and wanted very much to reflect my address in "the Attic" on the one. There are many others to thank, particularly Bruce Clark and Jan Meek. I simply cannot accomplish what I do without a cast of supportive characters and copious amounts of coffee.