Dear Diary,

As my spectacular birth month drew to a close, my work commute featured well-decorated buildings with cascading Christmas lights signalling the beginning of the festive season. It's beginning to feel a lot like Christmas!

Grab a cup of hot chocolate, your favourite cookies, and a cosy blanket. All aboard the Christmas pupillage sleigh! We will make stops at different courts, conferences, events, and a training session. The sleigh is now ready to depart...the next two stops will be Week 11 and 12.

<u>First calling point: Week 11</u>

On Monday I seized the opportunity to shadow Christopher (Chris) Richards in an application for wasted costs against the Claimant's solicitors. Chris represented the Claimant's solicitors and successfully opposed the application. Section 51 of the Senior Courts Act 1981 is the legislative basis to make a costs order against a person who is not a party to the proceedings. I learnt that when the court determines whether to make a wasted costs order, the three-stage test in *Ridehalgh v Horsefield* [1994] Ch. 205 must be considered:

a) *Had the legal representative of whom the complaint was made acted improperly, unreasonably or negligently?*
b) *If so, did such conduct cause the applicant to incur unnecessary costs?*
c) *If so, was it, in all the circumstances, just to order the legal representative to compensate the applicant for the whole or part of the relevant costs?*

In accordance with CPR 46.8.3, I learnt that the court in its exercise of the wasted costs jurisdiction is also mindful to control the threat of a new and costly form of satellite litigation.

Periods of time during Monday and Tuesday was spent reading the papers for an oral hearing before the Upper Tribunal in a Disclosure and Barring Service (DBS)case. The appellant was appealing the DBS' decision to include him in the Children's Barred List. My supervisor, Ashley Serr tasked me with preparing the cross-examination.

On Tuesday I also received feedback from my supervisor. The feedback regarded an opinion that I wrote on whether an appeal should be lodged in the Court of Appeal following the Upper Tribunal remitting the case to the DBS for a fresh decision. My supervisor commended the quality of my work considering it being a difficult advice. I found it helpful that he discussed the commendable aspects of my advice as well as the areas of improvement.

On Tuesday, while I was working in Chambers a mini-pupil requested to speak to me. She heard me speak at the Bar panel event at the University of Law Leeds Careers/Pupillage Fair and was keen to discuss applying for pupillage and life as a pupil at Exchange Chambers. I eagerly assisted.

The day concluded by attending Gray's Inn's Well-being and Pro Bono online session. This was a very insightful and helpful session which taught us about some of the signs of burnout and stress and the ways to combat them. We were also informed about Advocate's pro bono

and pupil pledge, the benefits of pro bono work and pro bono work during pupillage and beyond.

On Wednesday I travelled to London to attend an oral hearing before the Upper Tribunal in a DBS case. While shadowing my supervisor, I noted that he discussed the strengths and weaknesses of the case with the instructing solicitor. He explained the potential impact of the lack of evidence on the appeal. Ashley also highlighted that a key legal provision needed to be brought to the attention of the Tribunal and the opponent. He explained that if it is not brought forward, he will be judicially criticised especially if the matter is appealed. The instructing solicitor approved. During the hearing, Ashley's closing submissions were extremely persuasive. They were precise and simplified a complex case into three cogent points. It is evident that lengthy submissions do not necessarily equate to effective advocacy. At the end of the hearing Ashley informed me that my cross-examination submission was well-done. It was pleasing to note that he incorporated elements of it in his cross-examination.

While travelling back to Leeds I prepared and submitted a document highlighting the strengths, weaknesses, and themes for cross-examination for a personal injury trial with Chris Richards which occurred on Thursday. In that matter, the Claimant was injured while attending a firearms officer training scenario. The Claimant claimed damages for personal injuries and consequential losses arising out of an accident at work due to the alleged negligence of the employer.

Thursday involved shadowing Chris' conferences and attending the personal injury trial. Chris conducted a conference with the Claimant and his two supporting witnesses. Chris managed their expectations by discussing the merits and the demerits of the case. One of the witnesses produced a photograph in the conference which was helpful evidence. A lesson to note is that there are timelines to produce evidence and permission would have to be sought from the opposing side and the court. Nevertheless, the photograph was not prejudicial to the opposition as they saw the contents of the photograph before. Chris also conferenced with the opposing counsel. This involved narrowing the issues, agreeing to the use of the photograph, and discussing the timetable for the day (approximations for the length of time for evidence and submissions). The last point is particularly useful for time management purposes to ensure that the trial concludes in its listed time (a day).

I learnt a few lessons from attending the trial. Firstly, upon arrival at court, Counsel should speak to the usher or the court clerk to ascertain whether a court bundle was filed and lodged with the court and its availability for witness use. Not having a physical bundle available at court can delay an already time-pressured hearing. Upon realising that there is no bundle at court, Counsel should contact their instructing solicitor to inquire whether the bundle was filed and lodged at court. If there is no hardcopy bundle for the witnesses to use, think about ways that a bundle can be provided. In this case, the Judge permitted the witnesses to use a laptop to access the bundle.

Secondly, indicate to the witness that he or she will be unable to speak to anyone (including Counsel) about the case if he or she has been sworn in to give evidence and there is a break in the evidence. Thirdly, after the Judge has given judgment and the reasons for the decision, Counsel may ask the Judge to address or clarify an element in the judgment that

Counsel thinks was not addressed or would benefit from clearer reasoning. After the trial, conduct a post-hearing conference with the client explaining the outcome of the case and any possible next steps.

Thursday concluded with Chris providing helpful feedback on the document I submitted. He indicated that it was well-done, highlighting the positive aspects. One key takeaway is to be cautious about asking witnesses questions to which you do not know the answer. They may provide an answer which undermines your case!

Week 11 concluded with revision for the upcoming BSB Professional Ethics examination as well as briefly reading into an upcoming employment direct discrimination hearing.

<u>Second calling point: Week 12</u>
On Monday I attended the Bar Tribunal and Adjudication Services (BTAS) video hearing with Ashley who was sitting as a barrister member on the tribunal panel. This was the sanctions element of the hearing which I shadowed during week 1 of pupillage (see Diary Entry 1). The tribunal unanimously found that serious misconduct occurred. Judgment was delivered and handed down more than a month before this hearing.

The tribunal was guided by the BTAS Sanctions Guidance Version 6 1 January 2022. The Sanctions Guidance is structured in a similar way to the sentencing guidelines in criminal matters. The tribunal determined sanction by following the six steps: description of group (in this matter it was misleading the court and others), seriousness, indicative sanction range, apply aggravating and mitigating factors, totality, and reasons (for the sanction imposed). They also considered the purposes of applying sanctions for professional misconduct which include:

a. Protecting the public and consumers of legal services.
b. Maintaining public confidence and trust in the profession and the enforcement system.
c. Maintaining and promote high standards of behaviour and performance at the Bar, and
d. Acting as a deterrent to the individual barrister or regulated entity, as well as the wider profession, from engaging in the misconduct subject to sanction.

The remainder of Monday and Tuesday involved reading the papers for an upcoming employment direct discrimination case. I also read papers for an application to vary an order on Tuesday evening and Wednesday morning. In this matter, the Claimant agreed with the Defendant's proposed consent order for the Defendant to be granted relief from sanction and for the Costs and Case Management Conference (CCMC) to be vacated. The agreement was subject to it including that the Defendant pays the Claimant's costs of the Defendant's Application and the Claimant's costs which were thrown away in preparing for the vacated CCMC. The Defendant served an Order on the Claimant which included no order as to costs. Therefore, the Claimant made an application to vary an Order pursuant to CPR 3.1 (7).

On Wednesday I travelled on the 7 a.m. train from Leeds to Manchester. I got an opportunity to observe the advocacy of two opposing barristers from Exchange Chambers-

Richard Tetlow (who represented the Defendant) and Ben Lafferty (who represented the Claimant). Richard demonstrated that logical and persuasive narratives are imperative. Richard used the evidence to demonstrate that the Claimant's failure to provide a breakdown of the costs was obtuse and unreasonable. While shadowing Ben Lafferty in this matter I learnt that when discussing the case beforehand with the instructing solicitor, Counsel should ensure that the weaknesses are identified. Secondly, the Claimant's claim for costs was correct in principle but failed because those instructing failed to properly quantify and justify the costs.

While shadowing Ben in court I received the papers for Friday's training session 48 hours beforehand, in time honoured solicitor tradition. This is realistic practice for the future. Therefore, I spent the rest of the day preparing before attending the drinks and dinner at Manchester Business & Property team's first cheque party. Drinks began at 5pm and dinner at 7pm. It was an incredible turnout. This was a wonderful opportunity to meet and network with many barristers in the Business and Property team. Given the numerous train cancellations that day, I left around 8:30pm to catch the 9pm train back to Leeds. I arrived in Leeds around 10pm. It was a tiring but enjoyable day.

Thursday was spent preparing for the training session. The matter involved a road traffic accident involving personal injury and vehicle losses. On Thursday night my co-pupil Penny Emmott and I attended the University of Leeds Law Society Careers Dinners at the Queen's Hotel. From 7p.m.- 8p.m. we networked with solicitors, students, pupils, and barristers from other Chambers. This was a good opportunity to meet new people and catch up with familiar faces. At 8pm we were seated for dinner. Penny and I sat at a table with 7 other students. We discussed pupillage related topics over delicious food. It was a delight to sit and talk to such keen students who clearly have bright futures ahead of them. Our night concluded around 10:30p.m.

On Friday I attended an all-day common-law training in Liverpool. It was a welcomed opportunity to visit Chambers in Liverpool and receive training in witness handling, making, and resisting applications and costs. Matthew Stockwell and Alex Williams provided encouraging feedback and pragmatic information which will be invaluable to us in our second six and beyond!

Thank you for travelling onboard the Christmas pupillage sleigh. Ensure that you take all of your belongings with you. See you soon!

Yours truly,
Nia Marshall