Issue 20 Summer 2016

THE PEARS

THE Worcestershire LAW SOCIETY

Orange Alert!

Medical Accident Group hold Sepsis awareness day

ALSO:

- Trusts & Lies - Fraud in Tolata cases • WJLD Update
- The Home Moving Trends Survey is back!

This edition...

THE PEARS

Issue 20 Summer 2016

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President's Introduction

This is my first introduction as President and I would like to thank all those that attended the AGM on 2 June. The committee's thanks are extended to Deputy Vice President Joe Egan and David Waters, both of whom provided great insight into their respective responsibilities.

I write this foreword on 24 June 2016; a date I am sure you will all remember regardless of when you are reading this. Yesterday's referendum saw Britain elect to leave the EU. Whilst the Law Society has maintained a neutral stance on the subject, it has highlighted the importance of the legal sector in the debate about the future of the UK's relationship with Europe. UK legal services make up over a quarter of the entire EU legal services market and through reports and debates, the Law Society has ensured that the legal profession has been at the heart of the discussions.

Regardless of how the next few months pan out, your Law Society is committed to ensuring you are provided with the most up to date training and information about the changes to our profession. Personally I would love to hear from our members on which aspects of their Practice satisfy and/or infuriate them the most. I am not suggesting an agony column, but it's always comforting to know that others are experiencing similar issues.

Our next planned event is the Worcestershire Law Society's 'End of Summer Party' which is to be held in association with the WJLD. This event is always well attended and allows us to showcase future events and provides great networking opportunities for both lawyers and business professionals with all levels of experience. Invitations will be sent out shortly via email.

This year our circulation will be expanded to include a number of local businesses and business professionals so that they too can keep up to date with the comings and goings of their local Law Society and I hope will provide a platform for local businesses to become more integrated with each other.

As always, if you have feedback for the committee, please feel free to get in touch.

Many thanks and have an enjoyable summer.

Priya Tromans
President

News News News News News News
All for a good cause!

Thomas Horton LLP are continuing to raise money for their chosen local charity of the year, Primrose Hospice. So far the firm has raised over £1700 for the charity.

Primrose Hospice is an independent charity supporting patients and families living with a life-limiting illness, across North East Worcestershire. The charity runs a Day Hospice, Family Support Service and Primrose at Home Service. The charity relies on donations to provide our services for free.

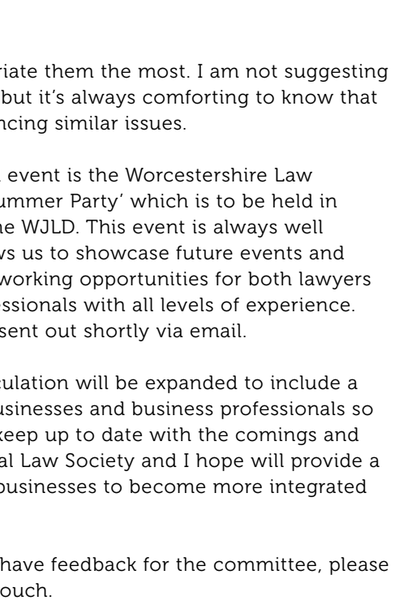
Staff at Thomas Horton LLP have been keen to get involved and raise funds for the charity. Highlights have included:

• **Jenny Barnes** and **Tina Circus** taking part in a gruelling triathlon in Abingdon, Oxfordshire on 25 March 2016 with all sponsorship was donated to Primrose.

• Staff kindly donating items for an Easter Hamper which was raffled off to raise money for the hospice. **Ian Marshall** from Primrose drew the winning ticket for a lucky client of Thomas Horton!

• A cake sale inspired by The Great British Bake Off and World Baking Day on 22 May 2016.

• **Angela Lee** recently taking in a skydive, jumping out of an airplane at 10,000 feet. Angela raved about the experience so much that she has convinced five other members of staff including Managing Partner, **Richard Hull**, to give it a go. The skydive will be on 24 September and will be in a continued effort to raise funds for Primrose Hospice. If you would like to sponsor the skydive, you can do so at *https://www.justgiving.com/fundraising/ThomasHortonSkydive*.



STEP exam success


Zoe Perry

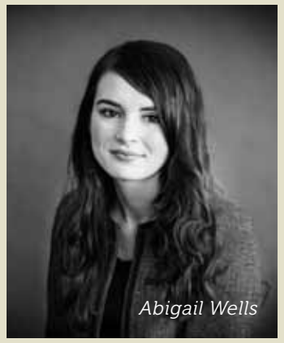
Thursfields congratulates Zoe Perry, Solicitor in the Wills and Estate team at Thursfields' Worcester office who has recently passed another of the exacting examinations towards the achievement of her Diploma in Trusts and Estates from the Society of Estate and Trust Practitioners (STEP), as well as Abigail Wells, Trainee Legal Executive in the Wills and Estate team at Thursfields Halesowen office who has also passed her recent exam working towards the same Diploma award from STEP.

The STEP academic and professional qualification is highly regarded within the legal and professional services industry and is recognised across 95 jurisdictions around the world.

STEP is a niche worldwide professional association for practitioners dealing with family inheritance and succession planning.

Zoe joined Thursfields growing Wills and Estates team in January 2014 after qualifying as a Solicitor in September 2013 and has now been working in practice for nearly 12 years. She advises on matters including trusts, wills, estate planning and probate, powers of attorney and Court of Protection matters.

Zoe commented: "I am very pleased to have achieved a distinction in the latest STEP module. A lot of hard work and dedication has gone into studying for this on top of the 'day job', but it's very rewarding to be part of STEP and further my specialist knowledge."


Abigail Wells

Abigail Wells joined Thursfields growing Wills and Estates team in September 2015, after qualifying as a Trainee Legal Executive in June 2014 and working in practice for two years since graduating in Law she now advises on matters including trusts, wills, estate planning and probate, powers of attorney and Court of Protection matters.

Abigail commented: "I am thrilled to have achieved this qualification towards my STEP Diploma. These exams are rightly very difficult for such a prestigious Diploma and I would like to thank Thursfields for their support for my continued development, which shall in turn benefit my clients."

Michelle Hetheridge, Director and Head of Thursfields' Wills and Estates Department commented: "Congratulations to Zoe and Abigail – STEP are extremely tough exams and I am pleased that they are both now well on their way to achieving this internationally recognised and respected qualification. Our private client team continues to develop specialist knowledge and expertise further strengthening our client offering throughout all of our offices across the West Midlands and Worcestershire".

thursfields solicitors

Much-loved Kidderminster solicitor passes away

A well-known Kidderminster solicitor and much respected member of the community has died.

Roland John Painter, who worked as a solicitor in the town for more than a quarter of a century, died on Friday, March 25, at the age of 96.

Born the eldest son of Colonel Roland W.A. and Mary Edith Painter, John was educated at Kidderminster High School – now King Charles I – and later as a boarder at Shrewsbury School. He volunteered for the British Expeditionary Force at the age of 19 and fought with the Royal Artillery at Dunkirk in 1940 where he swan to save his life. He went on to serve in the North Africa campaign, and then in Italy, where he achieved the rank of acting major.

On November 8, 1944, while serving with the 30th Field Regiment, John was very badly wounded near Forli airport, in northern Italy. He was one of four soldiers travelling in a Jeep which he received a direct enemy hit.

His youngest son, James, said: *"The other three were killed but John miraculously survived.*

"However, he lost the sight in one eye and suffered bad injuries to the rest of his body.

"He recovered, aided by his loving wife Mary, obtaining a law degree from Birmingham University, and passing his law exams in 1949."

John began his legal career, first at Talbot and Painter, and then as a senior partner for many years at Painter and Sons, in Church Street. There he worked with his father, brother Bob, eldest son Richard and nephew William.

His failing eyesight forced him to step down from being a solicitor in 1975, but he continued as chairman of the Kidderminster Permanent Building Society, which later was taken over by Northern Rock.

In 1982, he moved with Mary, his beloved wife for more than 70 years, to West Sussex. During his time in Kidderminster, he was a very active member of the community as a mason in the Lodge of Faith and Charity, and as a keen cricketer and hockey player, serving as the secretary of the hockey club for 15 years.

James added: *"He rarely complained of his injuries, and rarely spoke of his time in the war.*

"But the war left him with a strong sense of traditional values, of army camaraderie, and of the huge importance of regularly remembering those who had fought.

"He regularly marched on Remembrance Day in London, often with other supporters of the St Dunstan's charity, now known as Blind Veterans UK.

"He loved his family deeply, and particularly his four children – Richard, Alan, Elizabeth and James – and his seven grandchildren. He will be sorely missed."

His hero was Sir Winston Churchill and he travelled down to London on the day of his funeral in 1965 to join the thousands lining the funeral route. He wrote an article for the Shuttle about his experience and the first line captured the sadness of the occasion – *"Tears fell unashamedly from the eyes unaccustomed to weep."*

His eldest son, Richard, added: *"My father lived for most of his life in Kidderminster and despite his physical abilities, contributed much to the local community, as a solicitor, mason and keen sportsman.*

"For many years he was one of the mainstays of Painter and Sons, offering legal services to many local people, whose respect and affection he gained."

A service to celebrate John's life was held at Oxford Crematorium on Thursday April 14.

Firm funds tools for living in digital age

Jenny Gage, right, with volunteers and visitors at Sight Concern.

Giving the partially-sighted the tools they need to live in a digital age was the aim of Harrison Clark Rickerbys Charitable Trust's (HCRCT) donation of an iPad and iPad mini to Sight Concern Worcestershire.

The charity, which is dedicated to improving the lives of blind and partially-sighted people in the county, helping them to lead independent lives, will use these devices to demonstrate how the devices can be used by blind and partially sighted people. They will show people how to use the in-built technology that enables the user to magnify what is on the screen or turn on the screen reading capability. They will also show them useful 'apps' that are created to help blind and partially sighted people.

The tablets can therefore help those with sight loss to live their lives independently, accessing the internet, using social media and staying in touch with friends and family.

Mat Waddington, chair of the HCRCT, said: *"We take digital technology so much for granted that we forget how hard it would be if we couldn't communicate, bank, make bookings, check train times or just read a good book on our devices. These tablets have the technology built into them to make them accessible to those with little or no sight and they are just the same as any other device, so they won't make users feel conspicuous. I am very glad that we could help in this way."*

Jenny Gage, the charity's chief officer in the county, said: "We are delighted to receive this funding; so many people are afraid of using this type of technology, this will give us the opportunity to show them exactly how they can be used, opening up the world of technology to them."

The trust donates money to good causes across the Three Counties several times a year – it gave a £1,000 donation to St Paul's Hostel in Worcester before Christmas.

harrison clark rickerbys SOLICITORS

Harrison Clark Rickerbys has 400 staff and partners based at offices in Worcester, Hereford, Cheltenham, the Wye Valley, Birmingham and the Thames Valley, who provide a complete spectrum of legal services to both business and private clients, regionally and nationwide. The firm also has a number of highly successful teams specialising in individual market sectors, including health and social care, education, agricultural and rural affairs, defence, security and the forces, and construction.

Sleeves rolled up and ready for action!

Anna Roby-Welford, Peter Savage, Elizabeth McCumisky and Ally Taft roll up their sleeves ready for World Blood Donor Day

Ready to give a whole armful of blood if necessary, staff at Medical Accident Group are doing all they can to support World Blood Donor Day on June 14.

The clinical negligence and personal injury lawyers will be giving blood themselves on the day at the Methodist Church Hall on Pump St in Worcester and are keen that others should join in too. Contrary to popular belief, the average donation is of about a pint of blood and takes about an hour in total.

Partner Ally Taft said: *"Clean, safe blood is such a vital part of any operation or critical treatment, and we feel very strongly that as many people as possible should take up the challenge of World Blood Donation Day and play their part. Their donation could help to save someone's life – how much more important could it be?"*

The message of this year's event, backed by the World Health Organisation (WHO) is 'Blood connects us all', and they are also emphasising that voluntary, unpaid donors, especially those who give blood regularly, are the safest contributors of blood – 62 countries, including the UK, source all their blood supplies from volunteers like the Medical Accident Group staff.

Sessions will be held at the Methodist Church Hall on June 14 and 28, at Christopher Whitehead school on June 2, and at Lyppard Grange community centre in Warndon villages on May 29 and June 12.

Medical Accident Group is dedicated to working for those who have suffered medical negligence or a serious personal injury. Its leading lawyers are amongst the most experienced in the country. They contribute to seminars and education courses on the experiences and after-effects of catastrophic injury and medical accidents, and also regularly host presentations and conferences to inform the medical profession and other solicitors of the effects of negligence and injury.

Trusts and Lies; Fraud in Tolata Cases

Careful, accurate and early advice is important in every Tolata matter, but is particularly crucial in cases which involve an element of fraudulent or illegal behaviour; such cases run a greater risk than most of failing to settle and then unravelling at trial. With this in mind, the aim of this article is to address the impact of illegality in Tolata cases, and provide some practical tips on what to do if a case involving illegality lands on your desk.

The General Rule

The basic principle at play here is found in the law student staple of *Tinsley v Milligan*[1]; a party will not be permitted to rely on his or her own fraud or illegality in establishing either a claim or a defence ("the Illegality Principle").

'A party will not be permitted to rely on his or her own fraud or illegality in establishing either a claim or a defence.'

How the principle operates in the context of a Tolata claim will depend on whether the claim being brought is for a resulting trust or a constructive trust.

Fraud in Resulting Trust claims

As a resulting trust arises by presumption, a fraudulent party bringing a claim under a resulting trust will, in the first instance, be able to establish his or her claim notwithstanding the fraud.

The familiar facts of *Tinsley v Milligan* itself illustrate this; here, the parties had purchased their home in Ms Tinsley's sole name in law for a fraudulent reason - to enable Ms Milligan to continue to claim state benefits to which she would otherwise not have been entitled. Ms Milligan brought a claim for a declaration that Ms Tinsley held the property on trust for both parties in equal shares. Ms Milligan had made financial contributions to the acquisition of the home, and, because this was a pre *Stack v Dowden* case, the presumption of a resulting trust arose in her favour. Ms Tinsley couldn't bring any evidence to rebut that presumption, and so Ms Milligan was awarded half of the beneficial interest in the property. Ms Milligan could thus establish an interest in the property without relying on her fraudulent behaviour to do so.

If, however, a defendant is able to adduce evidence that rebuts the presumption of the resulting trust, things get trickier. Here, whether the claimant establishes an interest will depend on whether it is evidentially possible to show that the presumption should not be rebutted without any reliance on the fraud.

As an example, consider a (now non-domestic) situation where Ms Tinsley claimed that Ms Milligan's financial contribution to the property was a loan, and that this was why the property was in Ms Tinsley's sole name. Ms Milligan would – by virtue of the Illegality Principle - have been precluded from adducing evidence of the true (fraudulent) reason the property was in Ms Tinsley's sole name, the presumption of a resulting trust might (depending on the quality of Ms Tinsley's evidence) be rebutted, and Ms Milligan might come away without a beneficial interest in the property.

Fraud in Constructive trust claims

In constructive trust cases, the question of illegality is most likely to cause an issue where a non-legal owner is claiming a beneficial interest in a property. The relatively recent case of *O'Kelly v Davies*[2] tells us how the Illegality Principle will operate in these circumstances.

The facts of *O'Kelly v Davies* were as follows: Ms O'Kelly and Mr Davies purchased a property ("Property A") in their joint names. They transferred Property A into Ms O'Kelly's sole name, following which Ms O'Kelly sold Property A to Mr Davies and then used the proceeds of the sale to buy another property – ("Property B") – in her sole name. The parties lived together in Property B, whilst Mr Davies rented out Property A until eventually it got repossessed. The purpose of the transfer of Property A and then Property B into Ms O'Kelly's sole name was to enable her to fraudulently claim benefits for the family. When the relationship broke down, Mr Davies claimed he had an interest in Property B by virtue of a constructive trust.

At first blush, you might think this scenario would create real problems for Mr Davies' constructive trust claim. To establish an interest in Property B, Mr Davies had to rebut the presumption that equity follows the law, and show that the parties' common intention was that he should have an interest in the property. On the face of it, it seems this would be difficult to do without providing an explanation as to why Property B was not in his name, ie without relying on the parties' illegality. The trial judge disagreed. He considered the fact the parties lived together, and the fact that Mr Davies made the bulk of the mortgage payments on Property B, and decided that the parties' common intention, viewed objectively – and without reference to the parties' illegality - was that Mr Davies should have a beneficial interest in the property.

'For the Court of Appeal the focus is on the parties' common intention taken simply from their general conduct, and that it is the conduct that mattered, not the explanation for it.'

Ms O'Kelly appealed the decision, arguing that Mr Davies couldn't in fact rebut the presumption that equity follows the law, and thus couldn't make out his case, without relying on the illegal agreement between them.

The Court of Appeal agreed with the trial judge, and concluded that Mr Davies didn't need to rely on the parties' illegality to establish that it was the their common intention that he should have an interest in Property B. In particular, the Court held it was clear this was the parties' common intention taken simply from their general conduct, and that it was the conduct that mattered, not the explanation for it;

'While the reason for purchase in Ms Kelly's sole name was unlawful, the acquisition of a beneficial interest in the property arose not from the illegal purpose but from the parties' common intention, inferred from their continuing course of dealing, that Mr Davies should have such an interest. The unlawful purpose may have explained their conduct but it was the conduct itself that gave rise to the constructive trust.[3]*'*

Following *O'Kelly v Davies*, a non-legal owner who, for fraudulent reasons, does not have legal title to property will nonetheless be able to establish a constructive trust in respect of that property if there is enough evidence - without making reference to the reasons why the property isn't in his or her name - to support the contention that the parties intended he or she should have such an interest. Accurately assessing the view a judge will take on this in any particular case is clearly not going to be straightforward; constructive trust claims are already awash with uncertainty, and this muddies the waters further.

The withdrawal exception ("locus poenitentiae")

There is one occasion on which a party can rely on his or her own fraud to establish their case; if he or she can show that they withdrew from the relevant transaction before the illegal purpose had been either wholly or partly performed.

This exception was relied on successfully in the case of *Tribe v Tribe*[4]. Here, the claimant father transferred his shareholding in the family company for no consideration to his defendant son. This was done so the father could conceal the shares from chasing creditors. In fact, the father managed to sort out his financial matters without carrying out any deception of his creditors. The father and son then fell out about who was entitled to the transferred shares. The father couldn't simply say he was entitled to the shares under a resulting trust, because at that time the presumption of advancement applied, and so the shares were taken to be a gift unless he could prove otherwise.

The Court held that on the facts, although the father had transferred the shares to his son pursuant to an illegal purpose, he had withdrawn from his illegal purpose before it had been carried out because he hadn't at any point actually deceived his creditors. The father could thus, exceptionally, adduce evidence of his illegal purpose to rebut the presumption of advancement. On this basis, he was entitled to have the shares transferred back to him.

Again, this causes problems with uncertainty; what exactly will constitute a whole or part performance of an illegal purpose in any given case? It wouldn't have been difficult for the Court to find that the father had in fact carried out his illegal purpose; after all, he had managed to divest himself of the shares until any threat from his creditors had gone[5].

Practical Points

The above should make it clear that illegality on the part or one or both of the parties can have a significant impact on the outcome of a Tolata case. Accordingly, it is imperative that prompt steps are taken in any case to confirm whether or not illegality is going to be an issue.

If, on gathering all the necessary information and documentation, it becomes clear that your client has behaved fraudulently, it's vital to consider very carefully whether they have a case at all. Unless the client is pleading withdrawal, statements of case should be drafted (and – if you have a case – be capable of being drafted) without making any mention of the illegality.

Even where the client does prima facie have a case, it's important to be mindful that the outcome is going to be much less certain in a constructive trust case involving illegality than a resulting trust case, and also particularly uncertain if he or she intends to rely on the withdrawal exception. This uncertainty will obviously need to be factored into and impact upon settlement negotiations.

Pranjal Shrotri,
36 Property,
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36 Bedford Row,
London WC1R 4JH

[1][1993] UKHL 3
[2][2014] EWCA Civ 1606
[3][30]
[4][1995] EWCA Civ 20
[5]To see the uncertainty in the application of this principle, the case can be contrasted to Collier v Collier [2002] EWCA Civ 1095, a case in which the withdrawal principle was run unsuccessfully.

'Orange' you glad you dressed up?

Medical Accident Group staff wear orange to raise awareness of sepsis

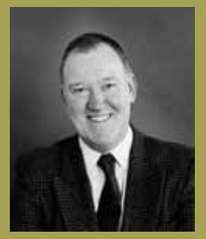
The clothes were fun but the aim was serious – Medical Accident Group staff donned orange on Friday to mark Orange4Sepsis Day, raising awareness of the medical condition which kills 44,000 people a year in the UK.

The firm has links with the Sepsis Trust, which aims to highlight the problem, support those affected by it and improve care.

Inez Brown, partner with Medical Accident Group, said: *"Sepsis is life threatening and we want to play our part in helping to tackle it. If we can make more people aware of it, we know we can make a difference."* Sepsis, also known as septicaemia, occurs when the body's response to an infection injures its own tissues and organs, leading to multiple organ failure and death if not recognised and treated promptly.

Medical Accident Group is dedicated to working for those who have suffered medical negligence or a serious personal injury. Its leading lawyers are amongst the most experienced in the country. They contribute to seminars and education courses on the experiences and after-effects of catastrophic injury and medical accidents, and also regularly host presentations and conferences to inform the medical profession and other solicitors of the effects of negligence and injury.

The cost of not getting a clean break order in divorce



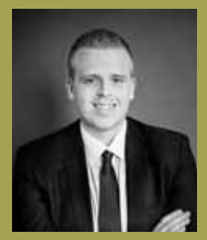
The cost to Mr Vince of not obtaining a clean break order, in the divorce that took place 19 years before his former wife made a financial application, was a payment to Mrs Wyatt of £625,000. This was a payment of £300,000 for the wife and £325,000 towards her legal costs. She may have additional costs on top of this. Mr Vince's legal costs have not been disclosed but are likely to be at least the same as Mrs Wyatt's legal costs. The total cost to him therefore is of the order of £1,000,000.

When Mr Vince was divorced from Mrs Wyatt, he could probably have obtained a clean break order at that time. This would have dismissed all financial claims that the parties have against each other in life and on death. The legal costs for obtaining this will vary depending upon whether such an order is agreed in the first place or is obtained after contested Court proceedings. The minimum cost would be in the region of £1,000 plus VAT plus £50 Court fee. It is important to think of this as some sort of insurance policy. You always hope that you will never make a claim on an insurance policy but you understand the need to insure yourself against something going wrong in future. Most people would not leave their house uninsured. Mr Vince discovered the problems that can arise, even 19 years after he was divorced, by not obtaining a clean break order.

Clean break orders are not automatically made by the Court, particularly where there are dependent children. However the Court is under a duty to see if a clean break order can be achieved. If no clean break order can be achieved now, the Court can look at the basis on which a clean break order can be made in future, for example when the children are no longer dependent.

If you have any questions with regard to obtaining a clean break order then please contact **Nigel Davies** on **01562 820575** or email *ndavies@thursfields.co.uk*.

Setting aside a default judgment – a checklist



A common theme among instructions for lawyers who deal with money claims is that of default county court judgments (CCJs). These are judgments obtained by one party against another who has failed to do something, usually failing to reply, defend, or pay the amount claimed. A court will typically issue a default judgment without checking the merits of a claim, which can be viewed as unfair by a defendant who would have otherwise been successful in defending it.

It therefore follows that the "losing party" to a default judgment is, of right, entitled to apply to have it set aside.

A default judgment "must" be set aside if it has been "wrongly entered", even if there is no defence on the merits. These situations include, but are not limited to:

- The Defendant filed an Acknowledgement of Service within the time limits given;
- The Defendant applied for summary judgment before default judgment was entered;
- The Defendant filed an admission and request for time to pay before default judgment was entered; or
- The Defendant satisfied the whole of the claim before judgment was entered

In other cases, a default judgment "may" be set aside by the discretion of the court in the following circumstances:

- The Defendant has a real prospect of successfully defending the claim; or
- It appears to the court that there is some other good reason why the judgment should be set aside, or the Defendant should be allowed to defend the claim.

There are other rules which will be considered by the court in these situations, and the process (and resulting hearing) is far from simple. For instance, the court looks at whether an application was made promptly.

If you have received a default judgment, it is important that you seek legal advice quickly, and ensure an application is made to have it set aside if appropriate. We are specialists in litigation and can advise you on your prospects of success, and how to draft your application in a way that ensures you the best chance at success.

Our litigation executive, **Daniel Tetsell**, handles applications of this nature on a regular basis, and can advise you on your options, and is able to draft applications for you. He can be contacted on **01905 730462** or by email, on d*tetsell@thursfields.co.uk*.

The Home Moving Trends Survey is back!

tmgroup

The largest survey of home movers has returned, with more than 5400 respondents giving feedback on their experiences with their conveyancers. Conducted by the Property Academy in association with tmgroup, the comprehensive annual survey seeks to shed light on the opinions of those who have moved house over the previous 12 months, including how they found, selected and rated their conveyancers. Along with the results of the survey, tmgroup provides insight and interpretation of the findings as well as practical advice for conveyancers to implement to take their firms further.

This report is vital for law firms who want to understand what their clients want, what they are already doing well and what could be done to improve. Amongst the findings, conveyancers will discover...

Why homeowners want the human touch:

This year's survey revealed that 8 out of 10 home movers are looking for their conveyancers to be good communicators. Around two thirds of respondents also told us that they are looking for evidence that you can be pro-active not reactive.

"Most home movers were very complimentary about their conveyancers, focusing on the human elements of customer service such as communication and approachability. But even when things do go wrong, you can ensure that you've provided the best possible customer care by pro-actively communicating with your client that you're doing everything you can to resolve the issue, don't wait for them to chase you."
- Jon Horton, Account Director - tmgroup

Why low fees alone won't sway them:

In 2015, just 11% of home movers chose the conveyancer that quoted the cheapest fees. A reduction from 13% in 2014 and 18% the year before that. Surprisingly, it was also found that no-one in their twenties chose the conveyancer that quoted the cheapest fees or considered price to be important when choosing a property solicitor.

"Whilst it can be tempting to cut prices to be more competitive, for the past three years home movers have repeatedly told us that they are not choosing the conveyancer that quoted the cheapest fees. Know your value and explain what the client can expect for their money, rather than simply cutting prices to win more business."
- *Ben Harris, Sales & Marketing Director - tmgroup*

Why estate agents could be your route to higher revenue:

In 2015, 51% of home movers chose their estate agent's recommended conveyancer, compared to just 38% the previous year - an increase of more than a third.

"With estate agents now accounting for more than half of consumers' choice of conveyancer, you can't afford to be complacent when it comes to building strategic relationships with the right agents. Also, with a significant proportion of home movers returning to a conveyancer they've used previously, you should also focus your energy on ensuring that your existing client's experience is a positive one which will, in turn, encourage them to use you again when they move in the future and recommend you to friends and family."
- *Ben Harris, Sales & Marketing Director - tmgroup*

For more information about tmgroup please contact our helpdesk on 0844 249 9200

Anika Pancholi, Jenny Staples, Charlotte Thornton-Smith, Rebecca Leask and Ann Bibby

Paddle, Plod, Pedal!

The Blister Sisters are hoping that they don't live up too closely to their name as they get set for the Paddle, Plod, Pedal event in aid of St Richard's Hospice on Sunday – the nine-strong team from Harrison Clark Rickerbys have been getting in some paddling practice and aim to raise £1,500 for the hospice by making their way from Pershore to Tewkesbury by boat, then hot footing it from Tewkesbury to Kempsey before taking to two wheels and returning to Pershore.

WJLD Update

Children's Party For Adults

The WJLD hosted a Children's Party For Adults on 20 May 2016 at Keystones in Worcester.

The event was held to raise money for New Hope. New Hope are a charity based in Worcester who work with families who have children with disabilities and complex health needs. The charity provides daytime short break care for children and organises activities for children both at their own centre and at external locations.

The evening involved legal professionals donning party hats and bringing out their inner child! With games such as Pin The Tail On The Donkey, Giant Connect Four and Pass The Parcel and cupcakes and sweets washed down with prosecco rather than the orange squash we were used to as kids, the evening went down well with those who attended.

A special thank you must go to Wesleyan who sponsored the event which allowed money received to on the day to go to New Hope. Over £200 was raised on the night which we will be presented to New Hope shortly.

Mentor Scheme

The WJLD launched a mentor scheme with the Heart of Worcestershire College at the end of March. The aims of the scheme are to offer support and guidance to undergraduates looking to start careers in the legal profession.

Students have been paired with paralegals, trainees and newly qualified solicitors who have kindly volunteered their time to share their advice and experience about a career in law. Mentors have been helping mentees with reviewing CVs, interview technique and giving mentees an insight of what it is like to work in a law firm.

The scheme is coming to it conclusion at the end of June and we look forward to receiving feedback from mentors and schemes to see how they have found the scheme. We will be looking to run the scheme again later on in the calendar year and if you are interested in become a mentee please email Harjinder Bains at *hb@thomashorton.co.uk.*

Last but not least...

The WJLD supported our very own James Osborne who took part in Strictly Worcestershire 3 on 26 May 2016 at The Chateau Impney. On what was a fantastic night, James and his partner Dawn Owen impressed the judges on the night and walked away in 3rd place. A great effort!

Finally, the WJLD would like to congratulate **Priya Tromans** who has become the President of the Worcestershire Law Society. Priya was the previous Chair of the WJLD and we are immensely proud of this achievement for her and wish her all the best in her new role.

If you would like to join the mailing list for upcoming events for the WJLD, please email Lara Wilkinson, Secretary, at *LWilkinson@russell-law.co.uk.*

Time, money and passion – Warriors chief covers key sports issues

Big Breakfast - Mark Fabian (Harrison Clark Rickerbys), Ken Nottage (Three Counties) , Jim O'Toole (Worcester Warriors) and Chris Eldridge (Bruton Knowles)

Worcester Warriors chief executive Jim O'Toole shared the three keys to sports management – time, money, and passion – with business people from across the region at the Three Counties Big Breakfast today.

He gave business leaders and entrepreneurs an insight into the challenges of managing the redevelopment of facilities, competing in the Premiership and being a sustainable business, speaking from his considerable experience in international sport marketing and management. He spent seven years consulting to global brands and rights holders such as Manchester United, Williams F1 and FIFA.

His talk formed the heart of the second event in the 2016 Big Breakfast programme, supported by Harrison Clark Rickerbys, Bruton Knowles and Three Counties.

His presentation was followed by a lively question and answer session, part of the event's popular format which enables successful businesses from across the three counties to share valuable insights into their own vision and ambitions for the future. More than 90 guests enjoyed one of the liveliest networking events in the Three Counties and proceeds from the event will be donated to charity.

Robert Capper, head of Harrison Clark Rickerbys' commercial team in Worcester, said: *"The combination of Jim's passion for sport and the hard financial realities with which he works made for a fascinating session – for rugby fans, his sounds like a dream job, but it held interest and commercial lessons for everyone."*

Angus Taylor, Commercial Partner at Bruton Knowles, said: *"Sport business professionals work in one of the most competitive industries in the world so it was interesting to hear first-hand about the various opportunities to create revenue generation."*

Ken Nottage, CEO of Three Counties, said: *"We're delighted to have welcomed Jim O'Toole to Three Counties Showground today for our business breakfast. Jim has shared some interesting insights into the world of sports management, and I am sure our guests today will have enjoyed listening to him speak."*

The next Big Breakfast, on Thursday 15 September, will give Ecotricity Ambassador Helen Taylor the chance to share the "Another Way" vision that has seen Dale Vince establish a successful and meaningful business supplying green energy. Helen joined Ecotricity five years ago and the business currently employs 700 people in Gloucestershire and operates a not-for-dividend approach which is referred to as a 'bills into mills' business model.

The format is the same for each event with registration at the Three Counties Showground at 7.30am followed by breakfast, meet and mingle, speakers and a Q&A session wrapping up at 9am.

For further details of the Three Counties BIG Breakfast programme go to *www.threecountiesbigbreakfast.co.uk*

From eternity to paternity

In the recent case of *Spencer v Anderson*[1], the applicant had previously been made aware that a male who died of bowel cancer, may have been his biological father and in the action he sought to establish his paternity and his exposure to disease risk. The alleged father's DNA had been stored in extracted form by a local hospital.

As identified by Peter Jackson J, DNA tests post mortem fall outside of the scope of the Family Law Reform Act 1969 which inter alia only applies to the living and to the testing of bodily fluid/tissue… not DNA. In an interesting twist, such tests also fall outside of the Human Tissue Act 2004, which refers to biological samples and the intent to conduct a DNA test. It does not refer to stored DNA samples, which may or may not have an associated consent for its use in paternity testing. In this case, there was no way of knowing if the deceased would have consented to a paternity test. The judge had quite rightly identified a legislative void as neither paternity testing post mortem nor paternity testing on extracted DNA are adequately covered by the law.

In order to analyse DNA from the living (unless it is for an excepted purpose such as a criminal investigation) the consent of the donor is required or indeed, in the case of a minor, the consent of a person with Parental Responsibility. DNA is the means by which your genetic information is carried from one generation to the next. It carries the information necessary to establish your biological relationship to others but also can give some indication of other characteristics, such as disease risk. According to Peter Jackson, *"DNA testing is an interference of the highest order with the subjects right to confidentiality and the privacy of their known family members".* In Spencer, the alleged father's samples had been given for one purpose (determination of his bowel cancer susceptibility status) and this did not imply blanket consent for other purposes such as a paternity test. If the court were to allow unconsented DNA testing for paternity post mortem, this could open a raft of new inheritance disputes and may discourage the provision of samples during medical treatment if there was a possibility of paternity testing after death. On the balance of argument, Jackson J allowed DNA testing to establish the paternity of Mr Spencer in the interest of justice using the inherent jurisdiction of the High Court.

On the other hand, a recent ruling in Germany held that the alleged father's right to privacy under Article 8 of the European Convention on Human Rights ranked higher than the woman's right to identify her father[2]. Maybe the balance was swayed because the alleged father was alive and his fundamental rights might have been affected. The extended effects upon the alleged father's family are likely to have been broadly similar to Spencer, whether alive or not.

In the Spencer case, knowing that the alleged father had disease risk would be sufficient for an individual to ask for direct genetic testing in order to determine whether the susceptibility genes had been inherited at all. In our view the determination of paternity was not necessary for this purpose and contrary to the arguments made, does not contribute to the mitigation of disease risk.

[1] Spencer v Anderson
(Paternity Testing: Jurisdiction) [2016]
EWHC 851 (Fam) (15 April 2016)
[2] *http://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2016/bvg16-018.html*

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Expert Witnesses: Offering a 'Rolls Royce' service for the courts in a more complex age


Sir Anthony Hooper

Many people do not know much about expert witnesses until they need them! I hope this short summary of what they do and the organisation which supports them will help our readers de-mystify the work of the expert witness in our ever more complex society and its court processes.

The Chair of the "The Expert Witness Institute" (EWI), Sir Anthony Hooper, has described a "Rolls Royce service" given by expert witnesses who supporting justice as "providing a Rolls Royce" service for us. Alas, for many people expert witnesses provide a service which is often underestimated and misunderstood. So let's hope this profile today about the EWI gives this type of witness a better profile, too!

"I'm completely depressed" he said. *" I started out in the legal profession 30-odd years ago when we had as Rolls-Royce a system as you possibly could have."*

"This has been destroyed gradually and then quickly over the past few years. Whatever we have said it's not made any difference at all."

"If the Conservatives come back into power it's revolution time. We have to stop helping them and stop working."

"The bar Council are not going to do anything. The Law Society is not going to do anything. The Judges are not going to do anything."

"Unless you (lawyers) are prepared to withdraw your labour you have no hope. If the Tories get back in, they haven't even started on us."

Sir Anthony Hooper 2015

Until often quite late in proceedings, or the very last moment when decision day nears in what are often complex court proceedings the weight of the expert evidence is given heavy scrutiny. So who are "experts" and "expert witnesses" and how does the system work under CPR Part 35?

From actually becoming known as an expert witness -- to developing and perfecting the essential skills -- to building a wider reputation -- and to enhancing knowledge of basic law, whatever challenges expert witnesses face, the EWI as the leading organisation for expert witnesses in England and Wales offers substantial help, guidance and support, whilst keeping everyone up to date with current developments... and this includes us as users of the service as well.

At the EWI, there is also a membership database which is available providing a referral service designed to help expert witnesses promote their expertise. It tells us what they do. Solicitors and others seeking such witnesses in a particular field of specialisation can now find them more easily using this convenient online tool. If you are an EWI member, you can have unlimited access to their Helpline, which provides prompt -- and often detailed -- answers to any queries you may have.

The weight of evidence and of responsibility for expert witnesses

A court of law is a place where a fact is not a fact until it is proved -- or in certain cases, disproved -- by incontrovertible evidence. Here, the role of the expert witness becomes paramount. Often, the evidence put forward in a trial by an expert witness can be a deciding factor in tipping the balance in favour of a well-informed, reliable well considered judgment. And it may seem a fatuous statement which says "to be an expert witness, you need to be an expert"! And it may seem obvious, but remember that an expert is not the same as an expert witness.

An expert and an expert witness

So an expert offers special expertise in a particular field. As an expert witness however, needs to offer additional skills and abilities – courtroom skills and report writing, for example -- which can be enhanced by training and developed over time which is where the EWI is developing specific events and currently reviewing its methods of accreditation this year. When in court, the expert witness methodically presents opinion evidence based on evidence of fact. The subsequent report -- which the expert witness also prepares – is generally written within a specified time scale in compliance with specific legal guidance under CPR.

The EWI holds an annual Conference and it's always well attended by experts... and quite a few lawyers nowadays. The organisation is headed by the energetic Sir Anthony Hooper, a former Lord Justice of Appeal who retired from the bench in 2012 after a distinguished legal career. Hooper is the inaugural Judicial Fellow of the Judicial Institute of University College, London and will be interviewed for a later edition of the journal.

So, an "expert" can be described as anyone with specialist knowledge not commonly held, or likely to be understood by a layman. When there is no intention to place an expert's opinion before the court, that person is referred to as an expert advisor and may take on a number of behind-the-scenes roles.

An expert witness is an also an expert, but one whose specialist knowledge supports considered opinions which may be placed before a court (or other judicial or quasi-judicial body – for example, a tribunal or arbitration). So the role of the expert is to provide technical analysis and opinion which will assist the court in reaching its decision.

The opinion evidence put forward by experts is based on evidence of fact. They are supporting justice in an era of change and it looks very much as though their importance will increase significantly as our society and its litigation becomes more complex this century.

Phillip Taylor MBE,
Richmond Green Chambers
Member, EWI Editorial Board

Give us the tools...

ACCREDITED FORENSIC ACCOUNTANT & EXPERT WITNESS


Chris Makin

...and we will do the job.

In this case, the job is to value a holding of shares in a private company, and the tools are the details about the company which the valuer needs to be able to perform such valuation. A recent High Court (Chancery) decision should be helpful.

The case is *Cosmetic Warriors Ltd & Lush Cosmetics Ltd –v- Andrew Gerrie & Alison Hawksley [2015] EWHC 3718 (Ch).* Cosmetic is the company holding the intellectual property, and Lush is the manufacturer and retailer of those cosmetics which look like huge lumps of fudge with embedded vegetation. Gerrie and Hawksley, husband and wife, owned 22% together of the shares in both companies, and wished to sell their shares. The companies applied to the Court for interpretation of the Articles of Association in two respects: should the shares be valued as a block of 22%, giving rise to minority discounts or on a quasi partnership basis; and what information should be made available to the accountant tasked with valuing the shares?

I deal with the first issue briefly, since it is specific to this case. The Articles said that "...the prescribed price shall be such sum per share as shall be agreed..." between vendor and purchaser, or by taking the median price determined by two independent chartered accountants, acting as expert determiners. The Court found that, because the Articles referred to shares and not to holdings or blocks of shares, the fair value price of the vendors' holdings was to be decided by valuing the entire companies, dividing by the number of shares in issue, and multiplying by the number of shares held by the vendors. Thus one arrived at an exact pro rata value of the whole companies, hence no discount for minority holdings.

The second is of much broader interest, since it deals with a situation which I, and others who value companies, often encounter. I value shareholdings quite frequently in three situations:

- the Section 994 *"unfair prejudice"* regulations, where the Court orders that an aggrieved shareholder is to be bought out at a fair value by the company or the other shareholders;
- in family law where a clean break is sought and the value of the company to be taken out of the marriage by one spouse is to be balanced against other matrimonial assets;
- and where, for example, a director and shareholder wishes to retire and his colleagues wish to pay him a fair price for his shares.

Indeed, I am on the panel of the President of ICAEW as an expert determiner, I was in the first batch of only five to be accredited as such by The Academy of Experts, and I now act as an examiner at The Academy for those seeking accreditation.

So for all these reasons, I am keenly interested in knowing how much information about a company I have the right to demand.

So far, I have used common sense. My approach has been to put myself in the shoes of the hypothetical arm's length purchaser, given access to all the information necessary to perform due diligence: fully detailed financial statements, business plans, top customers and suppliers, intellectual property, employment contracts, leases, and so on. And as an SJE in family matters, I prepare a bespoke questionnaire so that both spouses can tell me what they know about the company. Quite often one spouse does not know much about the other's business affairs, but each must be given the right to express their views to me.

Yet it is surprising how often I am fobbed off by parties, or even their solicitors, telling me that I can find all I need to know from Companies House. The majority of companies filing accounts are defined as small companies, and all they need to file each year is a balance sheet, a couple of notes, and little else. With such limited information a valuation is impossible, and I have turned down instructions where it is clear that I am to receive nothing else.

Now – hopefully – it's different. At clause 115, the judge in Lush said:

"...my ruling...is that a potential transferee...is not to be provided with publicly available information only, but is instead to be provided with such further information available and relating to [the company] as [the other party] knows and are not prevented from disclosing due to obligations of confidentiality..."

It follows that a chartered accountant acting as valuer, for either party or for both, can demand to see as much information as he regards as necessary to perform the valuation.

The judge recognised that confidentiality may cause problems, but suggested that they can normally be resolved by undertakings. After all, all that a spouse departing a marriage normally wants is for the matrimonial "balance sheet" to be fair to both sides. Unless a fair price can be put on the company which the other spouse is taking, how can such a balance sheet ever be compiled? And similar considerations usually apply in commercial cases.

I come back to common sense. A valuer needs to know much about a company before he can value it. Lush merely gives judicial authority for the approach I have for many years taken to valuation assignments. Give me the tools...

Chris Makin

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Biog: Chris Makin was one of the first 30 or so chartered accountants to become an Accredited Forensic Accountant and Expert Witness – see www.icaew.com. He is also an accredited civil & commercial mediator and an accredited expert determiner. He has performed about 100 mediations, given expert evidence at least 100 times and worked on a vast range of cases over the last 27 years. For CV, war stories and much more, go to *www.chrismakin.co.uk*.

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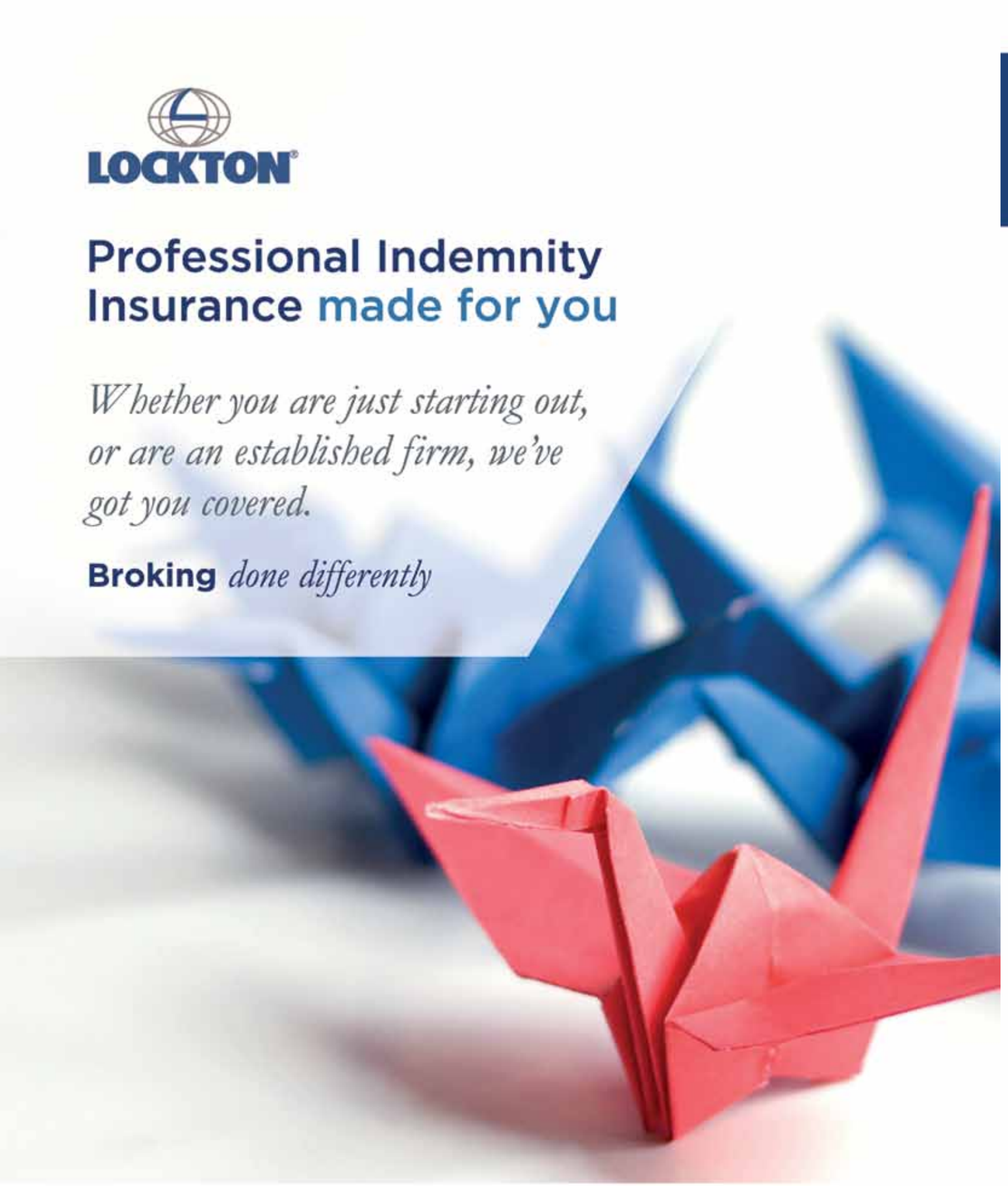

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Professional Indemnity Insurance (PII)

A Soft Market, but is it really?

Most Industries experiences both growth and contraction over a period of time, the Insurance Industry is no different, often described as cyclical in its nature, and referred to as either a "Hard" or "Soft" market. A hard market is where sourcing cover is quite difficult and often premiums are more expensive, a soft market is generally where obtaining insurance is easier and often more competitive.

The characteristics of a hard market include	• Higher insurance premiums • More stringent underwriting criteria is adopted • Reduced capacity, meaning insurers write less insurance policies • Less competition among insurers
The characteristics of a soft market include	• Lower insurance premiums • Broader coverage is offered • Reduced or more relaxed underwriting criteria • Increased capacity, which means insurance carriers underwrite more policies and offer higher limits • Increased competition amongst Insurers

The majority of PII brokers and even the Law Society backed MGA seem to be suggesting that the Insurance market is softening for Solicitors in England and Wales, however I am not sure that this will be the case for all firms. Furthermore, when you review the characteristics of a soft and hard market it can be argued that for Solicitors PII this year it is more likely to be a combination of the two, especially given the New Insurance act and the recent decision by the British electorate to leave the European Union.

Regardless of the point in the cycle, and whether or not it is a "soft or "hard" market, for those firms that have performed well (from a claims perspective), have a strong business model, and demonstrate that they control and mitigate the risks associated with the work they undertake, competition has and will *always* be there from Insurers for those firms. The same can also be said for firms who undertake what Insurers perceive as lower risk categories such as criminal and family law. The majority of these firms have experienced competitive pricing for a number of years. The Insurance cycle impacts negatively or positively more on those firms that have experienced claims, and undertake more "risky" areas of work, like conveyance and commercial work, it is these firms that I believe benefit more from a soft market. Firms that cannot show that they have strong risk management controls in place and/or have an extensive claims history may struggle to benefit from a soft market as will those firms who don't conduct a reasonable market exercise.

Many firms, particularly smaller firms experienced a softer market last year, as we saw new Insurer entrants along with established Insurers focusing on providing further solutions and being far more protective of their portfolios. That said I am not sure all firms would have experienced this, particularly firms with conveyancing exposure.

I am sure you will agree there are various factors to consider this year, when deciding on your firms strategy for this year, we recommended that you get your broker to seek more than one option for you to provide you with peace of mind. Ask your broker, who they can directly access and review the Law Society's Insurers guide to make sure you are covering off all of the insurers that you may wish to seek an alternative from. I hope that many firms experience a satisfactory renewal this year, please be mindful that in order to fulfil this you will need to cover all bases.

Brian Boehmer, Lockton Companies LLP
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How could the Insurance Act impact on you?

'The Insurance Act 2015', the legislation applies to ALL solicitor practices in England and Wales when you are seeking renewal of your Minimum Terms and Conditions (MTC) PII policy on or after the 12th August 2016.

Similarly to the recent changes in regulation to the legal profession, the Act, rather than being a rigid code, sets out principles to be followed, with the aim of being suitably flexible regardless of the size of a firm.

(i) More detailed due diligence required

The duty of fair presentation of risk requires you to act differently in respect of your disclosure investigations than you did under the duty of disclosure and we would recommend that you start this process early and collate evidence of your investigations. You should present information clearly and flag material issues to insurers. 'Data dumping' is prohibited.

Effective due diligence and a comprehensive proposal form response is likely to assist ensure a faster renewal process in the long-term with fewer subjectivities.

(ii) Changes to MTC wording: insurers maybe more likely to seek re-imbursement from insured practices who fail to disclose properly.

The Act has no impact on the extent of coverage that PII insurers will be offering: the priority of the policy continues to be the protection of the public. The SRA have issued an amendment to the Minimum Terms and Conditions citing the Act, It now provides insurers with broader grounds for seeking reimbursement from an insured practice, where information has not been fairly disclosed. It is therefore important that you fully comply with the Act.

For more information please contact myself or one of Lockton Solicitors team on 0330 123 3870, or alternatively please visit our website www.locktonsolicitors.co.uk

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Julian Bryan appointed Chair of Legal Software Suppliers Association (LSSA)

Julian Bryan, Managing Director of Quill Pinpoint has been appointed as the new Chair of the Legal Software Suppliers Association (LSSA), the UK industry body for legal systems developers and vendors. Julian Bryan takes over from Matt Lancaster.

Julian Bryan, LSSA Chair comments: *"I am delighted to be picking up the chairman's baton and build on the successes of my predecessors. With technology touching every aspect of our business and personal lives, it is time for the LSSA to extend its membership offering to a far wider spectrum of software suppliers to the legal sector. I see this as a key component of the LSSA's strategy for the forthcoming year."*

Dominic Cullis of Easy Convey Ltd continues in the role as Vice Chair and Phil Snee of Linetime Ltd continues as Treasurer.

The LSSA is responsible for setting and maintaining professional standards within the legal software industry, and also manages areas of mutual interest between lawyers and software providers. The LSSA also has links with a number of legislative bodies – including the Land Registry, HMRC, The Law Society, the Court Service and the LAA – and is committed to developing clear channels of communication so that law firms can gain the maximum benefit from their selected software solutions.

Biography

Julian has owned and managed software businesses in the legal and veterinary professions for the past 20 years. Julian has been Managing Director of Quill since 2012 and was appointed Chairman of the LSSA in 2016.

Quill's been a leading supplier of software and outsourcing services to solicitors for 40+ years. Quill's dedicated to employee engagement and holds silver Investors in People accreditation and 1 star status by Best Companies in recognition as such. Quill's earned a host of awards for its software and, most recently, won the employer category in the MS Society Awards 2016 because of its support for employees with MS and ongoing fundraising efforts for the charity.

Quill is also the UK's largest outsourced legal cashiering bureau so Julian is often found waxing lyrical about the benefits of outsourced services for companies of any size, particularly start-ups. Read his latest blog at *www.quill.co.uk/10-reasons*.

On a personal level, Julian's moved from his upbringing in West Dorset to Worcestershire and spends much of the working week in Quill's central Manchester-based head office. With a passion for gardening, he hasn't deviated too far from his farming roots. Another of his keen interests is photography and his camera goes everywhere with him. Julian is married to Carolyn and they have one daughter, Alexandra.

New Worcestershire Law Society Members Benefit

Would you or a member of your family like to drive a discounted brand new vehicle? Are you spending a fortune keeping your car on the road? You may have never considered driving a brand new car or van and paying for it monthly, but with discounts of up to 50%, resulting in monthly prices starting at £89, and no deposit deals available, now is the time to contact Affinity Leasing.

Worcestershire Law Society Members benefit

Bewdley based Affinity Leasing offers brand new cars and light commercial vehicles on monthly finance. Supplied direct from the manufacturer, with full manufactures' warranty, WLS members are able to source new vehicles for personal or business use. There are a variety of finance options available: PCH – straightforward lease and hand back, PCP – the option to buy at the end but no obligation to do so, company contract hire and traditional hire purchase, **and the scheme is open to friends and family also.**

Immediate availability

If you need a new vehicle in a hurry, we can deliver a number of models from stock. However if you would like a car or van with optional extras to suit you, the discounts are still available on factory orders.

No deposit needed and part exchange available

Affinity Leasing Director, Michelle Howles explains *"many monthly finance deals are advertised with large initial payments. The majority of our deals have no deposit at all, ideal if you are facing expensive repairs on your existing vehicle, it has failed an MOT or if it has just reached the end of the road!"* You can even part exchange your current car which will be taken away when your new car is delivered – the perfect hassle free solution. You can use the value as deposit on the new car, have some of the money back and use some as deposit, or have it all back and take advantage of a no deposit deal.

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Land Registry: Caution urged over vital piece of national infrastructure

Mounting concern over government plans to privatise the Land Registry have prompted the Law Society of England and Wales to say it hopes the government will reach a sensible decision over a 'vital piece of national infrastructure'.

'It's no surprise to us that concern over the idea of selling off the Land Registry is growing - we're talking about a vital piece of the national infrastructure,' Law Society president **Jonathan Smithers** said.

'Whatever the political and ideological debates around privatisation, the Land Registry is not a commercial operation which can be easily privatised. Placing it in private hands presents unique challenges and risks, which would have to be addressed should any form of sale proceed.'

Major concerns raised by the Law Society in its submission to government include:

the vital role that public trust and confidence in the registry plays in the smooth operation of the property market
privatisation could hinder efforts to combat the laundering of illicit funds through the property market in England and Wales the risk of fee increases to generate profits for private owners, at the expense of property buyers the loss of the potentially huge future value of the information held by the registry the great difficulties in ensuring a newly privatised natural monopoly couldn't act in anti-competitive ways.

Smithers said:
'Last week a debate in the House of Commons made it clear that these concerns are felt across the political spectrum.

'If these widely held concerns are not carefully addressed, we fear that the public will be the real loser from any sale.'

The Law Society has also set out a number of legislative safeguards that would be necessary to protect the public interest should the Land Registry be sold.

'With so many problems, costs and risks to the public to be carefully managed, it's pleasing to hear the government say that they intend to listen to concerns raised during this consultation,' Smithers said.

'Decisions on the future of the Land Registry should place the public interest in this vital institution first.'

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