



**"AND THE  
WINNER IS..."  
WORCS LAW  
SOCIETY  
AWARDS  
2020**

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## St Philips moves forward in difficult times

Despite these somewhat challenging times, St Philips Chambers continues to thrive in all areas of expertise.

Since Lockdown, Chambers has welcomed back **Richard Atkins QC** from his stint as Chairman of the Bar and his practice goes from strength to strength whilst also taking up the role as Head of Chambers.

Additionally, Chambers have four new Recorders following the latest round of Judicial Appointments – **Andrew Charman** (Commercial), **Tom Walkling** and **Ben Williams** (Crime) and **Jack Redmond** (Family).

St Philips have been ranked as a Tier 1 Leading Set in the 2021 edition of Legal 500 with **William Horwood** (Family) being the only practitioner on the Midlands Circuit to achieve the ranking of 'Rising Star'. Across all disciplines 13 barristers achieved new rankings, taking our combined total of barristers ranked to 66.

Chambers Director, **Joe Wilson** said: "It is our mission to provide the very best legal services in an environment that blends maximum support and the very zenith of expertise."

"The tireless work of our barristers and staff allows us to keep our standards consistently high and I am pleased that this has been recognised in this way. These rankings are a shining endorsement of their talent. Congratulations to all those members of chambers who are ranked; and thank you to our loyal clients for their continued support."

Also, **Lorna Badham** (PI & Employment) and **Ben Close** (Crime) have also been elected to the Bar Council for 2021, and very recently, **Juliet Allen** (Family) was presented with the prestigious "Barrister of the Year" accolade at this year's Worcestershire Law Society Annual Awards Ceremony.

Chambers wish to place on record its gratitude for the continued support of their clients and Instructing Solicitors during these unprecedented times.

"An outstanding set with very strong practice groups across the board, supported by excellent clerking. A significant number of the practitioners in the set are recognised as leaders in their field and rightly singled out for praise." *Legal 500, 2021*



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# President's Introduction



Dear WLS members,

This is the last time I shall write to you as President with my extended term shortly to come to an end.

It has been a pleasure and an honour to act as your President over the last 18 months. For a large part of that we have seen a world very different to that which any of us will have experienced before and sadly that has meant that I've not been able to achieve everything I had initially hoped. Nonetheless, I was delighted that we were still able to proceed with the Worcestershire Law Society Legal Awards 2020 on 24th September. It was a fantastic evening and a huge congratulations to the winners. That is our showpiece event of the year and although it was a little different this time round the evening was still a great success.

A huge thank you to the support from the rest of the committee during my term as President and in particular to Laura, our administrator, who allows us to function effectively and efficiently.

I know that the Worcestershire Law Society remains in very safe hands as Charlotte Perry takes the reins from me as I move in to the role of Treasurer.

In these difficult times I must reiterate that if there is anything the WLS can do to support its members then please do let us know.

Best wishes,  
**James Osborne**,  
President, WLS  
2019-2020

**ELIZABETH J. SOILLEUX**  
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In the recent Court of Appeal case of *The London Borough of Islington v Bajaj* [2020] EWCA Crim 1111, we successfully defeated a Local Authority attempt to obtain a near £1 million confiscation order and maintained the original order that we had argued for in the Crown Court of just £200.00. We represented a landlord prosecuted by the Islington Borough Council for offences relating to unlicensed houses of multiple occupation. During protracted litigation concerning two properties in North London, the client was acquitted of over half the charges he faced following a trial at the Highbury Corner Magistrates' Court and was then committed to the Crown Court for confiscation proceedings.

Once in the Crown Court, the Local Authority adopted what the Court of Appeal later described as "a highly complex (as well as indirect) approach" to calculating the landlord's 'benefit' pursuant to the Proceeds of Crime Act 2002.

To maximise the potential confiscation order, the Local Authority argued that the landlord's benefit amounted to the costs avoided in not providing lawful accommodation for the tenants overcrowded into the property. The Local Authority initially put four options before the Crown Court Judge: (1) constructing an extension at the property; (2) purchasing a new property; (3) leasing a property; or (4) building a new property. The figures for the varying options, and thus the benefit alleged, and confiscation order sought, ranged from £345,840 to £917,000.

The Local Authority jettisoned the extension option when it realised that its planning department would not grant planning permission for an extension. We had no doubt that the other approaches were also flawed. First, it meant that the more land the landlord owned, the lower the benefit figure would be, as it was cheaper to build on already owned land than to purchase a new property. Second, as landlords will be aware, sometimes a Local Authority will require a landlord to provide alternative temporary accommodation where premises are deemed unsuitable. As the Court of Appeal noted in this case, however, the "cost of providing temporary hotel or hostel accommodation for the occupants seems not to have featured as part of the prosecution's thinking".

We argued that the Local Authority's approach appeared designed to maximise the confiscation figure (of which they would receive over 35%) rather than trying to discern the correct level of benefit within the terms of the legislation. The Local Authority denied that this featured in their thinking when considering whether to pursue confiscation proceedings.

In the Crown Court, the Judge agreed that the Local Authority's approach was incorrect. That left the prosecution with recourse, as we had argued, only to the rent which the landlord received. On the particular facts of the case, because of the way it was charged, we were again able to argue, successfully, that it should be restricted to a single day's rent of £200.00.

The Local Authority appealed the Crown Court Judge's finding, but the Court of Appeal reached the "clear view" their application should be refused finding that their approach to benefit was "far too broad, indeed speculative" to have a sufficient connection with the conduct alleged. Key to the Court of Appeal's decision was that there was no lawful obligation to house the 12 "overcrowded" occupants. The Court of Appeal was not impressed with the Local Authority's approach and certified its judgment "as one which may be cited: so that other Local Authorities are aware of the prospective limitations on pursuing confiscation proceedings ... in the way which occurred here".

The judgment, however, also represents a warning to landlords.

The Court of Appeal was sympathetic to the argument that the costs of putting the property into a proper state of repair could have been a benefit. The problem in this case was that the cost of repair was disputed and, procedurally, the Court of Appeal was unable to revisit the figure. It had been the subject of evidence in the Crown Court when we successfully argued that the Local Authority's figures could not be relied upon. Confiscation orders in future cases may be sought on this basis.

The determination of the Local Authority in this case should though serve as a warning to landlords. If landlords fall foul of the law and are prosecuted (and the Court of Appeal suggested more emphasis should be placed on the Enforcement Notice regime when prosecuting), they can expect to face Crown Court confiscation proceedings. When that happens, there will need to be careful scrutiny of the prosecution's approach to calculating benefit in this fast-changing area of law. Otherwise, landlords may find themselves the subject of expensive confiscation orders, with lengthy periods of imprisonment if the order is unpaid.



**Richard Atkins QC** and **Ben Close** are available for instruction in similar cases and can be contacted via Phil Jones (email [crime@st-philips.com](mailto:crime@st-philips.com))



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Victoria Alicea

## Breaking new ground – Solicitors set up own mini tax chambers

Harrison Clark Rickerbys is taking a bold step into the future, taking on trainee tax barristers (pupils), to create a mini tax chambers within the firm, expanding on its existing expertise.

The first pupil, **Victoria Alicea**, joined this week – the first of two pupils who will serve their two-year pupillage under the firm's tax barrister **Sarah Woodall**. She also won a coveted Grays Inn pupillage scholarship on her first day at HCR.

Sarah explained: "There are very few other specialist tax chambers outside London in England and Wales, and opportunities are very limited – here, pupils will have all the benefits of a large organisation but all the challenge of actually seeing real cases from the start."

"In a traditional tax chambers, pupils report feeling used as cheap labour, but here we have such a diverse range of cases that they will learn fast. We are very busy, so they will get the kind of experience that they might



Nick Gova and Rebecca Kirk

have to wait a long time for in London – we expand our team, and pupils get hands-on experience, so it is a win-win."

Finding a pupillage, the important first step on the employment ladder for barristers, is getting tougher – in 2016/17, 815 people graduated from the Bar Professional Training Course, but only 474 pupillages were available, with 3,000 applicants each year. Given that the BPTC qualification runs out after five years, candidates have only that amount of time to find a pupillage, amid greater competition than ever.

Victoria, who has been working at the Supreme Court in London, helping judges to work remotely during the Covid-19 pandemic, is now herself working remotely – she said: "This step by HCR is a major move forward for clients and I think it is the way for the Bar to go."

"For a case to be handled from start to finish under one roof and within one team will make a real difference to clients – they will know us all, and we will know their case fully; that kind of case progression will really help them. They won't have to deal with a barrister they don't know and who doesn't know them – that's a real advantage."

"I think this is a brilliant development, especially for such a specialist area as tax; the support I have had already has been great, and I am looking forward to really being able to help clients within our new team."

## Backing talent from trainee to partner promotions

Two new partners lead the promotions round at Harrison Clark Rickerbys, with a range of other moves up the ladder, including nine newly-qualified solicitors.

Along with 30 trainees undertaking their professional development across HCR, the firm is growing and recognising talent and commitment at every level.

**Nick Gova** of the firm's family law team in London and **Rebecca Kirk** of the employment team in Hereford became partners from 1 October. In Cheltenham, **Louisa Leach** (corporate) and **Lauren McGurk** (wills, trusts and estates) were promoted to senior associate, along with **Joe Mulrenan** (corporate) in Worcester and **Jane Erlam** (wills, trusts and estates) in Hereford.

**James Morgan** and **Paul Watkins** of the education team in Cheltenham become associates, along with the employment team's **Catherine Jackson** in the Wye Valley and **Harpreet Kaur** in Worcester. **Stephanie Hallett** becomes a senior HR advisor for HCR's sister company Eagle HR.

Newly-qualified solicitors **Sahar Ali**, **Olivia Brooks**, **Sally Caldicott**, **Rory Ford**, **Gurinder Hayer**, **Louisa Jones**, **Kim Langford**, **Susannah May** and **Carris Peacey** earned their new status as from 7 September, and 30 trainees, across all disciplines and the firm's nine offices, are already working their way towards that position.

# News News News News News News

**Rod Thomas**, the firm's managing partner, said: "I cannot think of a better time to nurture talent within the firm – I congratulate all those who have been promoted and I look forward to seeing all their careers continue to develop with us."

**Rachel Turner**, training principal for HCR, said: "We are passionate about developing talent at HCR and recognise that when selecting our trainees we are really selecting HCR's future partners. So we make sure our training programme covers everything that our clients expect from their lawyers ... the best."

**Client deals put HCR in top spot in M&A deal league table**



Charlotte Thornton Smith

Client demand for mergers and acquisition in the first half of the year have taken Harrison Clark Rickerbys to the top of Experian's rankings for the most active advisors in the Midlands despite the Covid-19 pandemic.

Demand for deal making meant HCR soared up the Experian rankings nationally too, from 9th to 2nd place, with the firm helping clients to keep business moving in tough times – its 62 deals nationally took it ahead of many much larger global law firms.

This achievement has been replicated in other regions, with a first in the South West and South East, and third place in the East of England – all further up the rankings than previously.

**Charlotte Thornton Smith**, head of the firm's Worcester office and corporate partner, said: "This has been a tough period for many of our clients and our focus has

been on helping them to keep business moving so that they emerge in the best position possible. We have needed to be flexible and agile in our approach, and the team's readiness to do whatever it takes for the client is evident in these figures."

Experian ranks deals by volume and by value – all deals included are worth £500,000 or more.

**Praise from clients wins lawyers top rankings**



Dawn Oliver

Specialist knowledge, expertise, efficiency and professionalism are the hallmarks of Harrison Clark Rickerbys' private client team, according to clients and peers whose remarks won the law firm excellent rankings in a legal directory.

Chambers and Partners High Net Worth guide places both the firm and its outstanding partners in the top rank of legal advisors, with experts in Birmingham, Worcester and Cheltenham available to advise individuals and families on private client matters, including tax planning, estate administration and wills.

Clients and peers said: "The wills, trust and estate team are highly competent with excellent specialist knowledge," adding "they had the right level of employee with the right specialist knowledge...which gave the client the best service at the best value." One interviewee, focusing on HCR's strength and depth in this area, said: "My overall impression of HCR is good; it is confidence- building for the client."

In Birmingham, **Beth King-Smith**, who heads the disputed wills, trusts and estates

team, is singled out as a leader in her field, as a 'highly regarded litigator with experience in the full spread of trust and probate cases'. A peer described her as "absolutely excellent... she's very, very good at what she does," also commenting: "We've had nothing but fantastic feedback from all the clients we referred to her. She's an old-fashioned, proper litigator and she's just so good."

In Worcester, **Dawn Oliver**, head of the firm's Private Client team, is also a leader in her field – the directory notes that she is constantly engaged in complex wealth and tax planning mandates as well as issues related to wills and trusts. She also has considerable expertise in estate administration and succession planning for wealthy families and business owners.

In Cheltenham, **Mark Hartley**, **Alex Taylor** and **Phillipa Bruce-Kerr** are all singled out for praise – one clients says of the team that they are "streets ahead in their knowledge and professionalism in this area." Another says of Mark that "we cannot imagine anyone doing a better job for us."

Phillipa is highly regarded for her "elderly and mentally incapacitated client specialism," says a fellow solicitor, adding that she is "the real go-to person for that work." Alex is "very compassionate," says a client, adding, "he gets people quite quickly."

**HCR head of construction celebrates prestigious new post**

**Keith Blizzard**, head of HCR's construction and engineering team, has been chosen as a trustee for the Chartered Institute of Building (CIOB). He joins 15 others on the Board, responsible for setting policy and raising standards in the construction industry.

Keith, who is a chartered quantity surveyor and non-solicitor partner at HCR, brings a wide range of skills and considerable experience across the sector to his role both in the firm and for CIOB. He is also a chartered construction manager, arbitrator and panel adjudicator, and his experience and expertise has led him to teach construction law at several universities.

*Continues over page*

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Keith Blizzard

Of his appointment, he said: "I am very honoured to be appointed to an organisation that represents the best in construction management worldwide; I will serve for three years, and have been appointed as a trustee champion for Asia, including China, Hong Kong, Singapore and Malaysia, so I shall be keeping in touch with member committees in those countries."

"This is a very prestigious position to hold within the industry, and I'm looking forward to supporting CIOB in its development."

CIOB is the world's largest and most influential professional body for construction management and leadership. It has a Royal Charter to promote the science and practice of building and construction for the benefit of society, and was established in 1834.

## Scholarship success under diversity inclusion scheme

Two students are on their way to becoming solicitors, thanks to the diversity inclusion scheme set up by **Inez Brown**, president of Birmingham Law Society.

The scheme, which offers scholarships to two students who would not otherwise have been able to complete their Law Practice Course, has been supported by the University of Wolverhampton (the university Inez attended) and the University of Law.

The scholarships, awarded to **Drew Nelson** from Birmingham and **Sophie Murphy** from Wolverhampton, will be accompanied

by mentoring and support from HCR and from Gateley Legal LLP, with Pinsent Masons offering both a virtual internship. Mentoring will also be offered to **Sharon Nelson**, who impressed the selection panel with her determination and focus. Drew and Sophie have just started their post-graduate Legal Practice Course.

Inez said: "Both Drew and Sophie started their courses this week and I am really delighted that we had such excellent candidates. I wanted to support young people who, for a range of reasons, would not normally be able to afford to do their LPC – Government funding is available for their degrees, but there is no funding available for the LPC, so many people simply don't go ahead."

"Both Drew and Sophie have overcome challenges of different kinds to get to this stage. Sharon too, who achieved a 2.2 in her degree in spite of her dyslexia, clearly deserved our support and I'm so glad that, with our partners, we can offer such excellent opportunities."

Drew said: "After being awarded the scholarship, I was beyond elated. I was working two part-time jobs to self-fund the LPC in two years' time; the scholarship meant I could return to university this year, which was a relief. It is encouraging to see a law society invest in local youth. I am sincerely grateful to the Birmingham Law Society and am looking forward to what the future holds."

Sophie said: "I am absolutely honoured to have received a scholarship. The initial news was extremely overwhelming. It has shown me that with hard work and determination, rewards and recognition will follow in the long run, and to never lose focus on your true ambitions."

"It is truly an amazing opportunity and I cannot wait to get involved in everything that it has to offer! I would like to thank Inez Brown and the interview panel for taking this chance on me; it is greatly appreciated."

Inez was inaugurated as President last month – she is the Society's first black president, and had to overcome obstacles herself to reach her position as partner and clinical negligence specialist with HCR's

sister company Medical Accident Group. She grew up in Smethwick and worked as a legal secretary for 15 years before she was able to train as a lawyer.

## HCR scoops three wins at Worcestershire Law Society awards

No amount of social distancing or Covid-19 compliance could mar the delight of Harrison Clark Rickerbys' three award winners at the Worcestershire Law Society awards on Thursday evening.

**Elizabeth Beatty's** dispute resolution team took the professional discipline award, **Louise Crook**, head of the firm's real estate healthcare specialism, won Solicitor of the Year and **Kim Allsopp** from the family law team won Paralegal of the Year.



Kim Allsopp, Louise Crook & Elizabeth Beatty

Held at Centenary Lounge in Worcester and live streamed so that friends and colleagues could see the proceedings, the annual awards were very carefully managed to ensure Covid-19 guidelines were in place throughout. President of the Society James Osborne, a senior associate with HCR, presented the awards and was full of praise for all the winners, citing the difficulties of the past six months for so many people and the breadth of talent in the county's legal community.

**Charlotte Thornton-Smith**, head of HCR's Worcester office, said: "I really congratulate Kim, Louise and the dispute resolution team on their awards – it was a pleasure to be able to join the proceedings and celebrate with them, even if only virtually."

"I know that many staff watched the live streaming, and we are all delighted for our winners. I am very impressed that the Society went ahead, even after extra limitations were imposed, and appreciate how much thought went into keeping everyone safe."

## Partner becomes first black president of Birmingham Law Society



Inez Brown

Partner **Inez Brown**, who leads the team at Medical Accident Group, sister company to Harrison Clark Rickerbys, has been inaugurated as president of Birmingham Law Society, the first black person to hold the post, and has committed herself to enabling talented students to overcome disadvantaged backgrounds to pursue a legal career.

Inez, who herself came from such a background and did her law degree while working full time as a legal secretary for various Midlands law firms, with her husband paying her fees, said: "I had to overcome a number of obstacles in order to enter the legal profession, and I will set up a Diversity Inclusion Scheme to enable two students to take up that chance."

Scholarships and funding have already been pledged by Inez's own alma mater, the University of Wolverhampton, and also by the University of Law; successful candidates will also be supported with mentoring and advice by Harrison Clark Rickerbys and another Midlands firm.

Inez is a specialist clinical negligence lawyer, with many years' experience; her first big case brought about a change in procedures for local doctors from other countries

working in the UK. The case, *David Gray v Dr Ubani*, followed the death of Mr Gray after Dr Ubani, a German locum, administered 10 times the correct dose of diamorphine because his English was limited and he did not understand prescribing practice in the UK. Afterwards, an English language test and a competency test were introduced for all international locums.

**Rod Thomas**, managing partner of Harrison Clark Rickerbys, said: "I am absolutely delighted that Inez is the society's new president; she has served them very well for some years and thoroughly deserves this honour. Her plans are inspiring and wide-ranging and I have no doubt that she will have a successful year."

## Homeworking warning over security of confidential data

Bosses across Worcestershire are being warned about the need to ensure confidential data is secure as staff prepare to work from home for the foreseeable future.

Employment specialist **Darryll Thomas** has issued the alert as he says many employers believed working from home would be a temporary measure when people were told to stay at home at the start of the coronavirus lockdown.

However, the partner at law firm mfg Solicitors, said many employers had not made the necessary changes to their workers' employment contracts to ensure the security of confidential information – putting them at risk of breaching data protection laws.

He said: "There's often an express contractual obligation for workers not to disclose confidential information. Additionally, employers should have a data policy in place as well as having entered a Privacy Notice with all workers."

"In the workplace it is much easier for adherence to such policies to be monitored and maintained, however it's significantly more difficult to enforce this when your staff are spread across multiple locations whilst working from home."

"Quite simply, businesses who have staff working from home need to have a data privacy impact assessment and risk assessment, in which they cover who can access the employees' computer, password and encryption measures and what happens with data, paper and electronic files moving between the office and home."

Businesses should seek advice urgently if they do not have specific measures in place to cover homeworking, Mr Thomas added. He also warned them to ensure they had appropriate health and safety measures in place.

"Employers' duty to their staff does not end just because they are no longer in the same building," Mr Thomas said. "Staff will face hazards as well as mental health challenges due to the isolation and lack of support that comes from not being able to see colleagues regularly face to face."

"Working from home was something that was very much in the minority before coronavirus, but now it's common and since the resurgence of infections a few weeks ago, people are being told to start working from home again for the foreseeable future."

"Bosses had to act fast to get everyone set up at home in March and they did an admirable job. But now they need to make sure they're complying with the law and protecting their workers and their customers."



Darryll Thomas

Readers requiring more information can contact **Darryll Thomas** at mfg Solicitors through [darryll.thomas@mfgsolicitors.com](mailto:darryll.thomas@mfgsolicitors.com) or by calling 0845 55 55 321.



Hi, I'm Kate

## I'm seeing the conveyancing industry rising to the challenges



“70% more sales agreed this September than in the same month last year.

We're seeing firms reacting and adapting by investing in people and technology.”

**A**s the Managing Director of Index Property Information West Midlands, I'm speaking with conveyancers across Worcestershire and the West Midlands every day. Without exception, they're all working extended hours to meet the challenges of the liveliest property market we've seen for many years.

Rightmove figures say there were nearly 70% more sales agreed this September than there were in the same month last year. Alongside conquering the mountainous workload that creates, we're seeing firms reacting and adapting by investing in people and technology.

In September, Today's Conveyancer magazine reported a 100% increase in conveyancing job roles advertised on the Indeed website.

And a survey by Thirdfort showed 92% of firms agreed that digitalisation was a priority for the future of conveyancing with reasons of risk and compliance, and increased efficiency being the main drivers.

These are all good signs to me that the industry is rising to the challenges.

### Reacting and Adapting at Index West Midlands

Following this industry trend of reacting and adapting, we've pivoted our work patterns and resources to increase our capacity for more work, by recruiting new people and introducing a 'night shift'. New recruits need training and we've invested in that too, along with investments of time and money in other areas...

### Masterclasses On-Demand with Industry Experts

As many of you will know, we host Conveyancing Masterclass webinars throughout the year, most recently a series of three with Richard Snape of Davitt Jones Bould. Nearly 200 conveyancers from our region attended one or more of them, which was stunning!

All our future masterclasses will be available to view on-demand for anyone who registers. We'll be publicising them through our social media channels on LinkedIn and Twitter.

### Social Media for Conveyancers in Our Region

Our own regional social media channels on [LinkedIn](#) and [Twitter](#) are going from strength to strength and they're where you can keep informed and bang up-to-date with:

- Industry news
- The latest conveyancing advice & tips
- Legislative changes
- And anything else we think will be useful and help you
- Exciting new product releases

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### More collaboration with Our World-Class Partners

We're now collaborating even more with our world-class service provider partners, using our combined expertise to share news and insights with you, through all media including: our webinars, social media, and via email.



Lastly, because we're geared up for it, we're welcoming the many calls we're receiving from new clients, struggling to get searches returned quickly...

...If you're experiencing similar challenges, my team and I are here to help, and I'd be very happy to jump on a call with you.

Best regards

Kate Bould



T 0121 546 0377 E [westmidlands@indexpi.co.uk](mailto:westmidlands@indexpi.co.uk) [www.indexpi.co.uk](http://www.indexpi.co.uk)

**index**   
PROPERTY INFORMATION



Kirsten Bridgewater

## Kind-hearted law firm donates to Kidderminster's KEMP Hospice

A generous Wyre Forest law firm has donated £1,000 to a Kidderminster hospice to help the charity cope with the Covid-19 crisis.

Staff from Birmingham Road-based mfg Solicitors have donated the money to KEMP Hospice's Resilience Fund Appeal as the charity focuses on different fundraising methods to keep its services running as normal during the pandemic.

**Kirsten Bridgewater**, a partner at mfg Solicitors said: "KEMP Hospice does an outstanding job in supporting individuals and families across Wyre Forest.

"It is a charity many of our staff have connections to and therefore we know how much support they need at this time.

"We hope the donation will help boost the Hospice's fundraising drive and ensure as many nurses as possible can get out to local homes to help patients and their families during this difficult time. It's a vitally important service to our community"

Lawyers at mfg Solicitors are also involved in KEMP Hospice's annual will writing initiative which has raised thousands for the Kidderminster charity.

KEMP Hospice, based in Mason Road in Kidderminster, was founded in 1969 and provides specialist care for people affected by life limiting illness and gives support to those who have been bereaved in the Wyre Forest and surrounding areas.

They help ensure patients are treated with dignity and are given choices about their care, along with enabling them to access services to improve their quality of life.

## Lawyer's charity cycle ride in memory of admired newsreader brother



Iain Morrison with niece Ellen Johnson

One of Worcestershire's most respected solicitors took part in a 90-mile charity cycle ride in memory of his brother and to raise money for three national charities.

**Iain Morrison**, vice-chairman and Head of the Agriculture and Rural Affairs Department at law firm mfg Solicitors, rode from Malvern to Cheddar on 25 August as part of a John O'Groats to Land's End bike ride which was partly in memory of Iain's brother, Radio 4 newsreader Rory Morrison, who died of a rare form of blood cancer in 2013.

Ride for Alex and Rory was made up of 13 riders and had been organised by Rory's brother-in-law Peter Jenkins and Rory's widow Nikki. In addition, Charlie Baigler attempted the entire 1000-mile ride in just six days in memory of his wife Alex who died in 2017 of a brain tumour, age 43. Alex was the cousin of Peter and Nikki.

Iain was joined by Rory's two children, Honor, 22, and 19-year-old Reuben, along with his niece Ellen Johnson, 19, on the gruelling leg of the cycle which took in places of significance, including Malvern where Rory grew up. He was also a former pupil at Malvern College.

The law firm will be donating £1,000.00

to the cause with money being raised for the charities Headcase, The Brain Tumour Charity and The Rory Morrison WMUK Registry.

Iain Morrison, said in advance of the ride: "Rory was not only a wonderful father, husband, brother and son, but he was immensely respected for his work in the media and commitment to current news affairs. It was a tragedy when we lost him to what is a very rare form of blood cancer.

"We have always been determined to do everything to keep memories of Rory alive. The charity was set up in his name to give clinicians valuable data in the search for treatments and cures, but this needs constant donations. It's a very under-funded area of research."

"The charity cycle is part of that fundraising and links up closely with the amazing work that Charlie is doing in memory of Alex."

"It's going to be a tough cycle but we can't wait to get going, take in some tremendous scenery and raise money along the way."

Rory started his radio career at Beacon Radio in Wolverhampton before joining the BBC in 1990 in Leeds and has worked across other local stations in York and Cleveland. He had a short time at the British Force Broadcasting Service before joining Radio 4 in 1994.

Readers on social media can follow the progress of the Ride for Alex and Rory through the #R4AR2020 hashtag. The whole event took place between 17 and 28 August and donations can be given through <https://bit.ly/R4AR2020>.

## Newly qualified solicitors complete training contracts at law firm mfg

Three up and coming county solicitors are celebrating after completing their training contracts with one of Worcestershire's leading law firms.

Kidderminster-based lawyers **Katie Hodson, Abbey Jones and Victoria Wall** have completed their respective training contracts and are now set to take on more clients and cases at law firm mfg Solicitors.



Abbey Jones, Katie Hodson and Victoria Wall

The legal trio have worked their way through the ranks at the firm over the past few years - benefiting from working alongside leading legal experts.

Now she is fully qualified, Katie has joined the firm's commercial property division and will work closely with partners Clare Regan and Peter Copsey on a host of commercial leasing, property and acquisition deals. She will also play a key role as part of the firm's corporate and social responsibility committee which ensures funds are given to good causes across Worcestershire.

Abbey, meanwhile, will concentrate on building her experience within mfg's growing corporate team working alongside partners Clare Lang, James Hayes and Stephen Wyr. She will advise on areas including corporate and commercial transactions, shareholder agreements and joint venture deals. She will also continue as the national representative for the Worcestershire Junior Lawyers Division.

The third lawyer to complete her training is Victoria Wall. As part of the firm's contentious probate team, she will now work alongside partners Suzanne Lee and Robert Weston, on a range of complex wills, probate and inheritance cases.

**Maynard Burton**, chairman of mfg Solicitors said: "Victoria, Katie and Abbey are quite rightly regarded as stars of the future and they have excelled during their respective training contracts.

"All three have exceptional qualities and are already popular with our clients for their manner and professionalism. They each fully deserve their success and I look forward to seeing them contributing more and more in the months and years ahead."

All three lawyers will be based at mfg's Kidderminster headquarters but also work alongside colleagues in the firm's offices in Shropshire, Worcester, Bromsgrove and in Birmingham.

## Stamp Duty holiday is boosting housing market, says property lawyer

One of Worcestershire's leading residential property lawyers has praised the Government's Stamp Duty Land Tax reduction for giving a 'shot in the arm' to speed up the county's housing market.

**David Faulkner**, an associate at mfg Solicitors, says that the temporary Stamp Duty holiday on any home under £500,000 is having an effect with the firm dealing with hundreds of new transactions since the tax threshold was temporarily raised to boost the market because of the coronavirus crisis.

The temporary change, which came into place on 8 July, will run until 31 March next year and only applies in England and Northern Ireland.

Mr Faulkner said: "The coronavirus crisis

has had a negative impact on the housing market here in Worcestershire and during April and May sales slowed to record low levels.

"However, the Chancellor's move to raise the threshold has helped to turn that on its head and given confidence back to buyers and pushed sellers to complete transactions quickly.

"That is great news as the average Stamp Duty bill is believed to have fallen by around £4,500. People can see the holiday allows them to save thousands of pounds, money which instead is being used on home improvements and therefore also helping the building and DIY sectors.

"It has been a win, win situation, and overall, it has been a shot in the arm for the sector - helping people move into their new homes at a pace not seen for many years."

Based at mfg's Bromsgrove office, Mr Faulkner has acted on residential property sales and purchases for over 25 years. He added that despite confusion, a three per cent surcharge still applies for those, such as landlords, buying additional residential properties over £40,000.



David Faulkner

Readers needing advice can contact David through [david.faulkner@mfgsolicitors.com](mailto:david.faulkner@mfgsolicitors.com) or call 01527 831691.



mfg's Andrew Chandler & Robert Weston

## Worcestershire firm's legal experts make elite list again

Specialist lawyers from a Worcestershire law firm have been named among the best in the UK within the 2021 edition of the Legal 500.

Experts from mfg Solicitors are named in the elite legal list - with two teams ranked in the number one spot.

Highlighted in the guide as coveted 'Tier One' teams are mfg's Contentious Trusts and Probate department, together with its Agricultural and Rural Affairs team.

It is the seventh year in succession that mfg's Contentious Trusts and Probate department has been named as a top tier team. Representing clients across the country in complex wills and inheritance cases, it is led by lawyers **Robert Weston**, **Suzanne Lee** and **Andrew Chandler**.

Meanwhile, the firm's award-winning agricultural team move up to a Tier One

rating following another successful year advising farmers, landowners and rural businesses on a range of issues.

Also singled out for extensive praise is litigation partner and insolvency expert **Sam Pedley**, while senior associate **Andrew Chandler** and associate **Nick Playford** are labelled as 'rising stars'.

**Tom Esler**, partner at mfg Solicitors, said: "Led by Robert Weston, our Contentious Trusts and Probate team has consistently been one of the leading teams across the UK for several years.

"This is another tremendous milestone for them, but also for our agricultural department who with Iain Morrison at the helm are amongst the country's most sought-after specialists.

"It's a superb testament to the professionalism of our teams and underlines the quality of advice we provide to clients every day.

"We are also delighted to see rising stars

such as Andrew and Nick being recognised, while Sam Pedley is deservedly picked-out again for the strength and consistency of his advice to businesses.



Suzanne Lee, Robert Weston & Andrew Chandler

"Overall, it is a fantastic way to conclude what has been a successful but tough year."

More than 250,000 people were interviewed across the world during the past 12 months to produce the latest Legal 500. Firms and lawyers are recommended purely on merit. mfg Solicitors has six offices across the region in Kidderminster, Bromsgrove, Birmingham, Worcester, Telford and Ludlow.

"1484-2020

**A Chronicle of County Lawyers  
A history of the evolution  
of mfg Solicitors LLP  
The West Midlands Solicitors"**  
By Jim Quinn

I think that Members of the Worcestershire Law Society will be interested in the history that **Jim Quinn** has written. Its title appears to claim that mfg Solicitors LLP has been evolving as a firm of solicitors since 1484, the third year of the reign of King Richard III. If that is so, it would make them the oldest firm of lawyers in the world!

Jim's time and research has paid dividends. Meticulous attention to detail has enabled Jim to piece together the numerous component parts of the Firm that exists today. It provides a full description of the firm of mfg in its various earlier guises, Bird & Day, Day & Ivens, Ivens & Morton, Morton Fisher and eventually mfg, (Morton Fisher & Gwynne). The history mainly recounts

the way in which the firm developed in Kidderminster from 1960 to date and how it has joined up with 13 other firms in that time. That time of course covers the period that Jim has been working for or was a partner of the Firm. The book is decorated with photographs taken by one of mfg partners, Peter Simner and by copies of etchings taken from Nash History of Worcestershire (1781).

Jim has taken as his main theme the way in which he witnessed and was involved in the development of the Firm particularly through the 70s and 80s when all in Worcestershire were trying to come to terms with the new world of technology and Maggie Thatcher! Anyone who was a partner during or shortly after that period will find many harmonics to savour, and perhaps information that may satisfy a longstanding puzzlement as to how they did what they did. It is written in a plain and realistic way with an intention to reveal events and thoughts rather than to explore the finer points of the written English language. It really is very readable

and I am sure will be of interest to Solicitors who have known mfg (and its previous incarnations) over the years.

Members will recall that The Society honoured Jim in 2019 with the Lifetime Achievement Award and this book probably explains fully why that Award was given.

Jim tries to set some word pictures of what it was like in the various towns in which the firms forming mfg practiced when they first started, mainly in the mid-19th Century. The information and descriptions of Bewdley, where Jim seeks to justify his claim for 1484 as the firm's starting point, is particularly interesting.

If you fancy spending a little time finding out how it all happened contact Jim on [j.quinn789@btinternet.com](mailto:j.quinn789@btinternet.com) or telephone him at his home at **01299 851021**. You can have a signed copy for £10!

**Peter Simner**



mfg headquarters

# THE WORCESTERSHIRE LAW

On Thursday 24th September we held a socially distanced version of the annual Worcestershire Law Society Awards. The ceremony itself was slightly different to the large formal award ceremony we have become accustomed to over the years but we were keen to hand out the awards without any further delay to the shortlisted candidates who had waited so patiently.

The WLS Awards were originally planned to take place in April at Grafton Manor (after a record number of nominations) but by the end of March it was clear that this was not going to be able to go

ahead due to the worldwide pandemic. After a few months of hoping that we may be able to rearrange for later in the year, it became apparent that we would have to do things slightly differently in 2020, and we managed to arrange a socially distanced awards evening at Centenary Lounge in Worcester. It was a fabulous evening and was watched live via YouTube by a large amount of our members and the shortlisted candidates' friends and family. It was so lovely to still be able to get dressed up in our tuxedos and cocktail dresses and to still be able to make it a special occasion albeit with a tight timetable and conveyor

belt system to ensure the event was compliant with local restrictions.

Worcestershire Law Society President James Osborne commented of the evening "It was a pleasure and honour to host the awards ceremony. I was delighted to hand out a number of awards to some richly deserving recipients who had waited so patiently since their interviews which had taken place back in February. The quality of shortlisted candidates was superb and it was an incredibly difficult choice for the judging panel. A huge congratulations to all those that won."



# SOCIETY AWARDS RESULTS



# The Legacy of Coal Mining

A recent article in the Observer newspaper questioned whether we are facing the imminent end of Coal as an energy source in Britain.<sup>1</sup>



Looking back at where we have come from, UK coal production was around 70 million tonnes a year in the mid-18th century and rose to a peak of just under 300 million tonnes by 1913 according to the UK Government figures.<sup>2</sup> Usage of the fossil fuel has however dropped as residential use has largely ended and just eight million tonnes was reportedly used by UK industry last year, with only two million supplied from UK sources.

Today, UK mining is virtually wiped out, having fallen from 3,000 mines at the peak to just 13 now, with coal representing approximately five per cent of overall annual energy usage.

From the heights of the industrial era, coal production instead leaves behind a significant and long-lasting legacy that will continue to have an impact on the country, well into the future. Ground stability poses a real hazard for properties located over or even near mine workings for decades to come and is important to consider when transacting properties.

While Worcestershire is not one of the country's primary mining fields, however mining across the UK is known to have taken place since Roman times. Delving back so far and finding records of the coal extracted is very difficult. However, when you look at things more closely, it becomes clear that it does have a history with coal.

So, what do we know? In Worcestershire there is clear evidence of mining in the past with 264 recorded mine entries in the county, sourced from old maps and reported to the NCB, BCC or TCA when found. The probability that some 59 square miles of the county have been mined and the surface at these locations affected, meaning that ground risks may well be a consideration today.

I spoke to Phil Huddleston MRICS, a Director of PinPoint Coal Ltd and former Head of Mining Information at the Coal Authority to talk about what lawyers need to consider when undertaking ground stability due diligence on property transactions:

*"Mining coal below the ground can cause subsidence. With deep mining this lowering of the surface takes place over a relatively short period of time. This can manifest itself as tension or compression strains resulting in damage to buildings or quite simply a lowering of the surface and no damage at all. Shallower workings do not consolidate in the same way and the impact of these can continue for much longer, representing a continued present-day risk."*

Obtaining a Coal Mining Report enables prospective purchasers to be made aware of the related risks and to

also see whether there is any history of damage – including where a claim has been made, or even been rejected.

Continues Phil, *"If the claim was accepted and repairs were carried out, it is suggested that you might want to commission a survey to check if the repairs are of an adequate standard. In addition, if compensation was paid instead of repairs, it is important to know why and what, if anything, was done in relation to the damage."*

The new Landmark Coal Mining Report – powered by PinPoint – provides all the standard answers required by the Law Society together with (as appendices) additional information about mine entries and claims when they are reported. The reports are supported by professional opinion from a Chartered Minerals Surveyor.

While coal mining may be largely condemned to the history books, its after-effects leave behind a lasting legacy that certainly means it shall not be forgotten, and cannot be ignored.

<https://www.landmark.co.uk/landmark-legal>

**Allie Parsons,**  
Customer Success Consultant,  
Landmark Information

## Notes

<sup>1</sup> <https://www.theguardian.com/environment/2020/aug/09/is-this-the-end-for-king-coal-in-britain>

<sup>2</sup> <https://www.gov.uk/government/statistical-data-sets/historical-coal-data-coal-production-availability-and-consumption>

# WE DIG DEEPER

FOR BEST-IN-CLASS MINING DATA  
AND ENVIRONMENTAL RISK ASSESSMENT,  
CHOOSE LANDMARK COAL REPORTS



Working in collaboration with PinPoint's coal mining experts, Landmark can now extend complete environmental due diligence by providing coal reports alongside its trusted, market leading environmental reports. One source for consistency and expertise.

## Landmark Coal

Provides property lawyers and residential conveyancers with a detailed assessment regarding environmental or ground stability hazards resulting from past, current or future underground or opencast mining activities.

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[www.landmark.co.uk/landmark-legal](https://www.landmark.co.uk/landmark-legal)

**Landmark**  
INFORMATION

# Video Witnessing of Wills A Welcome Step, But Only if Safeguards are Met

REMEMBER A CHARITY  
IN YOUR WILL  
Help the work live on...

This September, a Statutory Instrument (SI) was laid in the House of Commons, enabling changes in the way that Wills can be legally witnessed. The change follows an announcement from the Ministry of Justice earlier this Summer, which recognised the difficulty for those who were shielding from Covid-19 or self-isolating to follow the normal legalities of making a Will – namely it being witnessed by two people.

The new law allows the witnessing of a Will to be carried out through video. After the Will is signed by the Testator, it is then posted to the two witnesses to sign through video conferencing too. It applies to Wills made from 31 January 2020 – when the first coronavirus case was registered in the UK – and is expected to remain in place until January 2022. Remember A Charity – the 200 strong coalition of charities working to inspire legacy giving – has welcomed the change, providing that the right sufficient safeguards are in place. Rob Cope, director of Remember A Charity, says:

"With over 100 people across the UK leaving a gift to charity in their Will every day, charitable Will-writing is becoming increasingly popular and it's all the more vital now while charities are facing critical funding shortages linked to the pandemic. Ultimately, the more accessible the UK Will-writing environment becomes, the easier it will be for people to leave a gift in their Will."

Legacy giving is the largest single source of voluntary income, raising over £3 billion for charity annually. This income has enabled many charities to continue to offer services during the height of the pandemic, while so many other funding streams were closed or heavily reduced, including events like the London Marathon through to charity shops. The consortium highlights that even a small increase in the number of people leaving a gift could raise millions of urgently needed funding, helping to tackle the current funding threat to frontline services.

Remember A Charity stresses the importance of always having sufficient rigour and safeguards in place to protect the public and ensure their final wishes will be met.

Cope says: "There are few that would argue with the fact that the process of Will-writing in the UK needs updating. At Remember A Charity, we see video witnessing as a significant and welcome step to make Will-writing more accessible in Covid times. However, we're conscious too that this decision brings in new areas of risk when it comes to issues such as undue influence and fraud. So, in these initial stages at least, we'd view it as a last resort."

"In other words, this route is ideal for those that it was created for – those that can't have their Wills witnessed in person as they are isolating

or for other reasons. But it won't be right for everybody."

With inheritance disputes on the rise, it seems all the more important that people's Wills are completed correctly, minimising the room for doubt or contention.

Cope adds: "We'd encourage anyone writing a Will to seek professional guidance and support about the best route for them. A professionally written Will is invaluable, helping to ensure that people's final wishes will be met, and that they can include all those things that truly matter to them; family, friends and good causes alike."

Since the pandemic took hold in the UK in mid-March, demand for Will-writing and charitable bequests has risen considerably, with Remember A Charity receiving twice as much traffic to the 'Making a Will' section of its website.

He concludes: "The pandemic has helped people see the importance of getting their affairs in order and encouraged us all to reflect on those things we truly care about. This includes the charities that so many of us rely upon and the causes we are passionate about in our lifetimes."

Find out more at: [rememberacharity.org.uk](http://rememberacharity.org.uk).



**WORCESTERSHIRE ACUTE HOSPITALS CHARITY**  
Putting patients first

## BE A HOSPITAL HERO, LEAVE A LASTING LEGACY

Leaving a gift in your will makes a huge difference to the future of all our patients and staff. No matter how large or small your gift, it could fund vital treatments, medical training, equipment and research.

All of the money we raise through donations and fundraising is invested in the staff, patients and services of Worcestershire Acute Hospitals Trust. The Trust manages three local hospitals – the Alexandra in Redditch, Kidderminster Hospital and Worcestershire Royal Hospital in Worcester – as well as providing a range of healthcare services from other sites across our county.

To speak to us, or for more information please call us on the number below, or download the Gifts in Wills pack from our website: [www.wahcharity.org](http://www.wahcharity.org)

**01905 768954 • [info@wahcharity.org](mailto:info@wahcharity.org)**

WORCESTERSHIRE ACUTE HOSPITALS CHARITY IS A CHARITY REGISTERED IN ENGLAND AND WALES NO. 1054612 • REGISTERED OFFICE: WORCESTERSHIRE ROYAL HOSPITAL, 3 KINGS COURT, CHARLES HASTINGS WAY, WORCESTER WR1 1DD



**sunfield**

Sunfield is an independent specialist school and children's home for young people with emotional, physical and learning difficulties.



"Sunfield is a caring, supportive and happy environment; this is a place of understanding, love and happiness." – Parent of Sunfield child

The greatest legacy you can leave behind is to positively impact the lives of others  
Please think of us when you make a will

[rmt.org/sunfield](http://rmt.org/sunfield) | charity no: 527552

## Legacy donations on the rise!



Record levels of charity donors say they have written a gift to charity into their Will or are preparing to do so, according to our latest consumer tracking study.

The study, carried out by nfpSynergy, reveals that 17% of charity supporters aged 40 and over have included a charity in their Will and a further 10% are preparing to do so. Annual tracking indicates a steady increase over the past decade, with 21% of donors in this age group saying that they have left or intend to leave a gift in their Will in 2010 rising to 27% in 2019.

Only 9% of donors actively reject the concept of leaving a legacy, down from 12% in 2010. The number of people unaware of legacy giving has fallen from 20% in 2010 to 11% in 2019.

Rob Cope, director of Remember A Charity, says: "We're continuing to see growth in legacy

giving over the long term, which is fantastic news for charities across the sector.

"It's clear that there's a real appetite for supporters to do something meaningful for good causes at the end of their lives, and that charities are communicating legacies well; creatively and sensitively, demonstrating how important they are in funding vital services."

"Legacy growth is being driven not only by charities communicating their own legacy case for support, but their willingness to work together to grow the market. Having a proactive and collaborative approach to legacies is critical if the sector is to succeed in normalising legacy giving and increasing the income pot so that there every charity can benefit."

Key findings from the tracking study are can be found in our latest Impact Report, along with highlights of our lobbying work and public awareness drive for legacy giving. Highlights from 2019 included:

- Providing evidence to the Office of Tax Simplification (OTS) that helped protect

current 'critical' tax breaks for legacy giving

- Collaborating with fellow industry bodies (including the Institute of Fundraising, NCVO and the Institute of Legacy Management) to scrap the proposed probate fee hike
- Driving up charitable conversation among Will-writing professionals, with a record level of 68% of solicitors / Will-writers saying they now always or sometimes raise the topic of gifts in Wills with their clients
- Widespread media coverage of the 10th Remember A Charity Week; a national celebration of gifts in Wills, with digital activity reaching 62% of all charity-minded people in the over 55 group on Facebook

Rob continues: "There's still a misconception amongst many that you have to be wealthy to write a charity into your Will or that you can't leave a gift if you want to take care of your family and friends. So, we'll be working hard to continue to address those myths this year and to support the sector in opening up conversation around legacy giving."

## If our brain breaks down, we break down.

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# Let's Hope the cat doesn't run over the keyboards!

## The Expert Witness Institute Virtual Conference

2020 Friday, 18th September 2020

An appreciation by **Phillip Taylor MBE**, Richmond Green Chambers



The strange times we live in throw up inventive new ways to conduct our legal business: working from home (WFH). None more so than attending the Expert Witness Institute (EWI) Annual Conference for 2020 held remotely for the first time. And it was a great success with first class speeches, panel discussions and "breakout sessions".



**Amanda Stevens**, the Conference Chair, began these historic proceedings almost as though they were a regular occurrence. It was a busy and detailed programme aiming as always to cater for current issues which experts face. Predominant is the mystique surrounding "virtual" or "remote" hearings which seem now to be a regular fixture for future litigation.



We heard first from **Lord Kerr** in one of his last remaining duties as a Supreme Court Justice giving the keynote address. Brian Kerr was the last of the Lords of Appeal in Ordinary and he holds a life peerage enabling him to remain in the House of Lords on retirement. His reflections on the legal changes he has seen were fascinating, bridging the gap between the Lords as an appellate committee, to the emerging UKSC. And the remote system for the keynote speech worked well.

The morning sessions covered what will probably be the most useful for the comments and observations on how we will now use virtual meetings, hearings, and trials for the foreseeable future. The chair of the Bar Council for 2020, **Amanda Pinto QC**, and the vice-chair of the Personal Injuries Bar Association, **Sarah Crowther QC**, opened an interactive session on "Covid-19: How the Pandemic shaped the role of technology in the courts". There was so much commonsense advice on display that it is worth watching any of the available conference videos to catch the suggestions. Probably the most important points which

participants will take with them include the need for more than one computer when you undertake remote work. That is because you need one screen for the hearing itself, either via the Cloud Video Platform (CVP) for similar systems such as zoom, skype or teams. You then need a separate screen for the trial bundle which you cannot turn, or cross refer to in quite the same way as the paper version. Finally, always have a mobile phone as (sadly) it is common for one party or another to lose a connection during the hearing.

To reinforce Pinto and Crowther, we were given "lessons from the courts- a panel discussion" chaired by **Dr Penny Cooper**, with **Alexander Hutton QC**, **Mrs Justice McGowan**, and **HHJ Nigel Lickley QC** from the Old Bailey. Readers will notice how top heavy the conference was with barristers so far. However, they proved the justification of their invitations with some great forensic tips for our new remote age. And at no stage did any of their cats run over the keyboards of their PCs to disrupt proceedings! Apart from animals or others contributing to virtual chats, there was also the recurring comments on the appropriateness (or otherwise) of the backgrounds- books rather than beds being the favoured option.

Networking and exhibitor sessions were useful dividers between the formal discussions. We were lucky to have contributions from **Bond Solon**, **Redwood Collections**, and the **New Law Journal**. The afternoon breakout sessions covered the more "bread and butter" sessions which I am sure the participants found useful for their professional updates, including these areas: improving practice in inquests; in arbitration; and post-Brexit. The final panel session brought back **Penny Cooper** for a discussion on "Lawyers and Experts: bringing together Experts and Instructing Parties" with contributions from **Duncan Hughes-Phillips**, **Frank Hughes**, **Jennifer Jones**, and **Robert Clayton**.



We missed EWI chair, **Martin Spencer**, this year although his welcome note was spot on- little did we know how appropriate the conference theme "bridging the gap" might be! We did end the conference knowing how we could improve our practice and develop our skills to make us fit for the future as lawyers and experts. And I think we all now know what to expect for the 2021 and that the next Conference, whether it is virtual or attended, will always remain professionally rewarding for everyone.



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# When experts wreck your case



Chris Makin

In recent articles for this journal I have gone on at some length about inadequate "experts", and the damage they can do to your carefully prepared case. Think of Prof Sir Roy Meadow, probably the most notorious example, the proponent of "Meadow's Law" (one cot death is unfortunate, two are suspicious, three are murder) who pretended to be a statistician when giving evidence as a paediatrician in the murder trial of Sally Clark. She was convicted, won her second appeal, but then died of alcoholic poisoning – utterly tragic. Then we have *Van Oord Ltd & Anr -v- Allseas UK Ltd* in 2015, where Coulson J listed the twelve respects in which the expert had failed in his duty, including admitting that his opinions were no more than the assertions of his client, and – glory be! – admitting in oral evidence that he didn't even agree with his own report.

More recently we have Andrew Ager, a favourite client of the CPS and a so-called expert on voluntary carbon credits (me neither) who disagreed with a world expert on the other side, who had written the leading textbooks (which Ager hadn't read, although he had once watched a video on carbon credits) and who had no professional qualification, and couldn't even remember how many A levels he had passed (if any?).

With all these cases, and some which I have come across as a member of the Investigation Committee at The Academy of Experts, the expert was quite inadequate with serious consequences for the client, the prosecution and for justice generally.

But what if it was the instructing solicitor who got it wrong? In a recent case, *Akebia Therapeutics Inc and Otsuka Pharmaceutical Co Ltd -v- Fibrogen Inc*, Arnold LJ sat as a high court judge because of the shortage of judges able to hear such very complex cases concerning medical research. And he was quite scathing of the instructing solicitors, stressing many times that it is the duty of the instructing solicitor, not just the expert, to know CPR 35 and the Practice Direction, and to ensure for example that the expert attaches their CV to their report (basic!), and that there is nothing in the published literature by an expert which contradicts the opinions they express in the present case.

So when things go wrong with expert evidence it isn't always the fault of the expert. Much of what follows has actually happened, during my 30-year career as a forensic accountant and expert witness. Of course I started in the bad old days when Lord Woolf was developing his ideas for Access to Justice and the Civil Procedure Rules, and many of the disasters I describe wouldn't happen now. Would they?

If you need a primer on how NOT to manage your expert, read on!

## Choosing your expert

You of course know all the technicalities of your case, inside out. You don't need to share that with an expert; just sign them up and let them get on with it. So don't waste your time reviewing CVs of experts who could add value to your case; you are far too important for such menial tasks. Give the job of finding an expert to the most junior lawyer or, better still, a trainee. They don't need to check whether an "expert" has any expert witness training, such as being a member at The Academy of Experts. All they need to do is match the profession to the job, ask if the expert is available for the already-fixed trial (choose your expert as late as possible; it saves a lot of bother) and choose the cheapest of three. But don't let your intended expert know enough

about the job for them to do a properly costed fee quote; tell your trainee to get a tight quote from the expert, and hold them to it.

## Letter of engagement

If your chosen expert is a member of a professional body, they will issue to you their letter of engagement, setting out what they have agreed to do for you and what you must do to enable them to do the job. Examples: they must not unreasonably withdraw from the assignment, you must provide them with all the evidence they will need, and you must advise them of court dates etc.

Of course, you will be far too busy to read such twaddle, so you will not get around to countersigning it. An expert desperate for the work will not hold you to signing it, and you will not give any thought to the competence of the expert if he is so desperate for work that he is willing to work for you without any agreed terms.

## Your instructions

You will be aware (because of course you know Part 35 inside out) that a letter of instruction is disclosable only if there is doubt about exactly what the instructions were. So don't bother to issue a letter of instruction; any half-decent expert will be able to work out for himself what needs doing. So dump on him a full copy of your filing cabinet (preferably scanned, so that he has to spend half the night downloading and printing it all) and he'll come up with the goods.

## Selected evidence

Alternatively, it may be a good idea to prune the evidence, and send to your expert only those items which will help your client. Don't bother that the expert will list the evidence he has seen, which will reveal the gaps in his knowledge, and which won't match up with the list from the opposing expert's report; you can trust your expert to talk his way out of that later.

## Expert reports

Don't trust your expert to express his unvarnished opinions. *Whitehouse -v- Jordan*, the *Ikarian Reefer* and CPR 35 are **wrong** when they say "The report of the expert must be, and must be seen to be, the independent product of the expert, uninfluenced as to form or content by the exigencies of litigation". No! No! No! The expert's report must say what you need it to say. So make sure you see it in final draft form before it is exchanged, and make sure the expert makes the amendments on which you insist.

Pausing there, in the bad old days before PDFs and the like, I once did an expert report which the solicitor wanted to "improve". He had the whole thing retyped, cut out my signature and pasted it into his/my new report, and exchanged it before I knew anything about it. Very naughty!

## Expert meetings

The courts think that the purpose of expert meetings is to seek common ground. Don't be fooled! Your aim must be to have your expert stress all your strong points and not be persuaded by anything the opposing expert has to say – though of course you will want to know what that expert has to say, so you can attack any strong points they have.

To be sure the meeting will go your way, have a long meeting with your expert just beforehand, and stress to him – time and time again – all the arguments you want him to make, and all those from the enemy which he must ignore. And make sure your expert understands that the Joint Statement must include all the strong points which you hope will help your client to win.

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## Dates

In his management of the case, a judge will set down dates by which certain things must be done. Some of these affect your expert: exchange of reports, meetings of experts, hearing dates etc. Of course you will be far too busy to inform your expert of any of these dates, and of course he will be pleased to cancel appointments, holidays, court appearances on other cases.... Yours is the only game in town, isn't it?

## Oral evidence

You will be banking on your case being settled at mediation or a Part 36 offer, but regrettably some do run the whole way to a court hearing. This is dangerous; your expert will have to give answers which you can't control. You will just have to pray he sticks to the story you have hammered in to him. And if it goes wrong, you can always blame your expert. That's what they are for, isn't it?

That's the end of the lesson. With a bit of luck, you won't pay attention to any of it!

**Biog:** Chris Makin has practised as a forensic accountant and expert witness for 30 years, latterly as Head of Litigation Support at a national firm. He has given expert evidence about 100 times. He also performs expert determinations.

Chris is a fellow of the Institute of Chartered Accountants where he has served on the Forensic Committee, and as an ethical counsellor; he is a fellow of the Chartered Management Institute, a fellow of the Academy of Experts where he serves on the Investigations Committee, and a mediator accredited by the Chartered Arbitrators.

He practises as a mediator, from his home in West Yorkshire and his rooms at 3 Gray's Inn Square, London WC1R 5AH, telephone 020 7430 0333. He has mediated 100+ cases so far, on a huge range of subjects, with a settlement rate to date of 80%. For more see his website with videos:

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# Software swap guide: 4 tips to protecting your data

The COVID-19 lockdown has forced all of us to be more reliant on technology and embrace working from home. But many legacy IT infrastructures are ill-suited or too outdated to handle all the demands of remote working. Cloud-based software is the solution, but where to start? Read on for four important considerations before making the software switch:

## 1. GETTING YOUR DATA BACK – IT'S YOUR RIGHT

Lots of variables should be considered before you commit to upgrading or swapping software. Not least your data: of which you store vast quantities. Your law practice stores a plethora of important documentation, such as contact, identity, matter and financial – all of which must be handled carefully.

Unfortunately, some providers make it as difficult as possible for clients to migrate their data. And yet, this data is not theirs to hold – it belongs to you. This is unethical as well as being the worst type of client retention strategy there is!

You don't want this to happen to you, especially if you discover the truth about locked data at the time you wish to leave. You shouldn't be denied access to your own property and your supplier has a duty to act as the custodian, not owner, of your data. Enquire about assistance with data extraction upfront.

It's not unreasonable to pay a fee for the service of delivering your data but it should be timely.

Additionally, once the migration has taken place, your supplier should delete your data from their stores otherwise both parties (you and your supplier) will fall foul of data protection rules; the Data Protection Act 2018 and GDPR amongst them.

## 2. RIGOROUSLY SAFEGUARD YOUR DATA

With the onset of stricter data protection rules and existing regulatory obligations comes more onerous duties. Heavier too are the fines imposed for non-compliance – both parties could be blamed for any data breach. Glance at legal news headlines and you'll see that leaked data can and does happen.

Your software supplier must follow the right procedures in safeguarding your valuable data. Check for accreditations which evidence sufficient cyber security standards; primarily ISO and Cyber Essentials certification.

Reputable organisations undergo rigorous annual re-certification processes in order to gain these quality marks, so make sure your new supplier carries these endorsements.

As standard, your supplier's security protocol should include at least the following measures:

- password access
- SSL encryption
- firewalls
- penetration testing
- system monitoring
- replication
- physical security measures
- other industrial-strength security protocols
- robust BCDR plans for further reinforcement

## 3. NEGOTIATE THE BEST POSSIBLE CONTRACT TERMS

We've already covered data export but what about your overall exit strategy?

Don't be rushed into signing contracts without poring over this legally binding agreement. It's the small print that often causes problems. If your supplier is forcefully requesting your signature and you feel pressured to commit against your will, alarm bells should be ringing.

## 4. ENSURE LEGAL SOFTWARE SUPPLIERS ASSOCIATION (LSSA) MEMBERSHIP

The LSSA is the UK body for legal software developers and vendors whose aim is to set and maintain professional standards within the sector.

The LSSA's sets out recommendations relating to data conversion such as extracting data in an industry-standard format within a reasonable timeframe, exporting associated case-related documents, generating reports on current data, supporting trial conversions through mutual supplier cooperation, transforming data to accommodate subtle differences between databases and checking data integrity once converted with any requisite correctional activity.

LSSA membership is confirmation that you'll be well looked after at all stages of the customer lifecycle from acquisition to termination. Suppliers not adhering to the LSSA's standards stand to lose their LSSA accreditation completely. You should apply extreme caution when dealing with companies whose reputation is questionable.

**8 things to consider before signing a contract**

Before making the switch to another software provider, it's always important to read the terms and conditions. Consult this handy checklist of key clauses before putting pen to paper.

- 1. Service level agreements (SLA)**  
What can you expect in terms of quality of service from the vendor?  
What remedies are you entitled to if that service level is not maintained?
- 2. Escrow agreement and insurance cover**  
What if the worst ever happens to your software provider? Would you still have access to the software or would a new vendor build you a replacement? An escrow agreement between you, the service agent and your chosen software supplier helps to mitigate this risk.
- 3. Server uptime guarantees**  
Downtime costs you money so does your team suffer a slow-down with server uptime guarantees? How would it make sure the service is reliable.
- 4. Training options**  
How easy is the software to use?  
Are there helpful user guides, resources for e-learning and training courses available?
- 5. Technical helpdesk support**  
Will you be looked after by the best people, with first and second-line support backing up any technical issues that may arise?
- 6. Hidden charges**  
Is there a minimum price point and what fees will be added over and above the base fee?  
Can you reduce your numbers without penalty?
- 7. Annual price increases**  
Is your software house building hidden price increases into complex licensing models?
- 8. Contract commencement and renewal dates**  
What is your notice period and when can it be given in your contract cycle?

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### SUMMARY:

Hopefully our tips will help you easily and painlessly switch to another supplier. Remember that you are responsible for safeguarding your data and the best way to do this is to find a reputable and trustworthy software vendor right at the outset. Use this guide as a starting point, supplement with other pressing questions of your own and you should be well on your way to putting into place your optimal IT set up to cope with COVID challenges and into the future.



**Julian Bryan** is the Managing Director of Quill, which helps law firms streamline and run their practice better by providing simple and easy to use legal accounting and case management software, as well as outsourced legal cashing services. Julian has been an advocate for quality software standards and served as the Chair of the Legal Software Suppliers Association from 2016 to 2019. He can be reached at [j.bryan@quill.co.uk](mailto:j.bryan@quill.co.uk).

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