

Book your place at the Legal Awards Dinner!

at the Chateau Impney Hotel,
Droitwich - see page 12

ALSO:

- Junior Lawyer's Division Annual Conference Programme
- Families in Debt Crisis following Separation
- Dates for your Diary
- Mediation - Do You Have a Choice?

VALUATIONS

Jewellery, Pictures, Furniture,
Silver, Ceramics and Textiles

Appointments are available at the office, or
in the privacy of your own home or bank.

A DIAMOND, SAPPHIRE,
EMERALD AND ONYX
"PANTHÈRE" BRACELET,
BY CARTIER
Sold for £182,500



ENQUIRIES
01564 776151
knowle@bonhams.com

Bonhams
The Old House
Station Road
Knowle
West Midlands
B93 0HT

Bonhams

bonhams.com/knowle

Prices shown include buyer's premium. Details can be found at bonhams.com

This edition...



Issue 15 Spring 2015

- 4 Committee Members and Member Firms
- 5 Editor's Introduction & President's Foreword
- 6 Thursfields' strengthens corporate team
- 7 Dates for your diary
- 7 Legal Awards 2015 Shortlist
- 8 JLD Annual Conference and Ball 2015
- 10 Families in Debt Crisis Following Separation
- 11 Save the date: In whose best interests? Conference
- 12 Legal Awards 2015 Dinner
- 13 Guest Speaker Profile: John Cooper, QC
- 14 Restrictive Covenants: a brief overview
- 16 More Heat than Light
- 18 The Open Spaces Society
- 20 High Court more than halves "unreliable" £9.5m budget
- 22 Mediation – do you have a choice?
- 26 A Sense of Self
- 28 Hospital treatment: a risky business?
- 30 Cedarwood Tree Care



**MIDLANDS
PSYCHOLOGICAL
SERVICES**

• CLINICAL • CONSULTANCY • THERAPY
• ASSESSMENT • FORENSIC

MIDLANDS PSYCHOLOGICAL SERVICES, LTD. is a private psychology practice based in Birmingham in the West Midlands. We have been providing Psychology services to the U. K. for over twenty years and have built a strong reputation for providing the highest standards of service. All of our Psychologists are educated to the PhD level and are Chartered with the British Psychological Society.

We supply a wide range of Psychology services including:

- Therapy for general Mental Health issues from depression to Sex Offender Treatment to Personality Disorders by experienced Clinical Psychologists
- Personal Growth issues including Stress Management, Anger Management and Assertiveness Training
- Forensic reports for use in the court system including Child Risk and Offender Risk Reports, Pre-sentence Reports, Life Review Panels and Parole Panel Reports
- Contracting psychology staff to Local Authorities, the National Health Service and the Prison Service.

2nd Floor, Quayside Tower, 252-260 Broad Street, Birmingham B1 2HF
Tel: (0121) 224-3051 Fax: (0121) 224 3252 E: mps@midpsych.co.uk

Published by:
EAST PARK COMMUNICATIONS Ltd.
Maritime House,
Balls Road,
Birkenhead, Wirral
CH43 5RE

Tel: 0151 651 2776

simon@epc.gb.com
www.epc.gb.com

Advertising
Simon Castell

Managing Editor
Kirsten Bridgewater

Marketing
Denise Challener

Accounts
Mandy Barlow

Design
David Coffey
East Park Studio

Media No.
1153

Published
April 2015

© East Park Communications Ltd.

Legal Notice

© East Park Communications Ltd.
None of the editorial or photographs may be reproduced without prior written permission from the publishers. East Park Communications Ltd would like to point out that all editorial comment and articles are the responsibility of the originators and may or may not reflect the opinions of East Park Communications Ltd. Correct at time of going to press.

Committee Members



Nick Hughes
Vice President
Painters Solicitors
Email: NAH@painters-solicitors.co.uk



Kirsten Bridgewater
MFG solicitors LLP
Tel: 01527 831691
Email: kirsten.bridgewater@mfgsolicitors.com within tn Division.



Robin Humphreys
Whatley Weston & Fox Solicitors
Tel: 01905 731731
Email: R.Humphreys@wwf.co.uk



Iain Morrison
Immediate Past President
mfg solicitors LLP
Tel: 01905 610410
Email: iain.morrison@mfgsolicitors.com



Deb Brown
Thursfields
Tel: 01905 730 450
Email: dbrown@thursfields.co.uk



Nicholas Turner
Secretary
Russell & Co Solicitors
Tel: 01684 892 000
Email: n.turner@russell-law.co.uk



James Sommerville
Treasurer
Thomas Horton LLP
Tel: 01527 839418
Email: jas@thomas.co.uk



Emma Childs
Harrison Clark Solicitors
Tel: 01905 612001
Email: EChilds@harrison-clark.



Robyn Ap Cynan
Shires Associated Lawyer
Mediators,
Tel: 0800 917 9078
Email: RMapC@aol.com



Tom Evans Secretary
Thursfields Solicitors
Telephone: 01905 730458
Email: tevans@thursfields.co.uk



Bally Sandhu
Russell & Co Solicitors
Tel: 01684 89200
Email: bsandhu@russell-law.co.uk



Kevin Joynes
Harrison Clark Rickerbys
Telephone: 01905 744896
Email: kjoynes@hcrlaw.com

Worcestershire Junior Lawyer Division JLD



Priya Tromans
Chair
Harrison Clark Rickerbys
tel: 01905 746469
email: ptromans@hcrlaw.com



Luke Boxall
Secretary
tel: 01299 872998
email: lb@lumsdonllp.com



Lara Wilkinson
Social Secretary
Russell & Co. Solicitors
email: LWilkinson@russell-law.co.uk



Victoria Burrow
Vice Chair
Harrison Clark Rickerbys
email: vburrow@hcrlaw.com



Asim Khan
Social Secretary
Harrison Clark Rickerbys
email: akhan@hcrlaw.com



Oliver Hunt
Social Secretary
Harrison Clark Rickerbys
email: ohunt@hcrlaw.com



Harjinder Bains
Treasurer
Thomas Horton
email: hb@thomashorton.co.uk



James Osborne
Social Secretary
Harrison Clark Rickerbys
email: josborne@hcrlaw.com



Christopher Finch
Social Secretary
Harrison Clark Rickerbys
email: cfinch@hcrlaw.com

Editor's Introduction



WELCOME to this Spring issue of the Pears, which invites you to the second Legal Awards. Building on the success of the inaugural event last year, this prestigious evening will be held at the Chateau Impney, Droitwich on 24 April 2015. We would be delighted if you are able to join us in celebrating firms and individuals across Worcestershire. For further details please turn to pages 12 and 13 and the short list of nominees can be found on page 7.

We also have a number of other. Upcoming events from our regular monthly "pint after work" at venues across the county to our AGM on 14 May 2015. We look forward to seeing you there.

Kirsten Bridgewater

Editor, for and on behalf of the WLS

kirsten.bridgewater@mfgsolicitors.com

President's Foreword



UNBELIEVABLY my Presidential year is drawing to an end although I've still got a couple of months to go before the AGM on 14th May where the new Chief Executive of the National Law Society, Catherine Dixon will be speaking.

a bad idea as we have been doing the job for years (or some of us have) and can usually see difficulties with ideas more than those who have only been in their job for a shorter while and with little experience of being "at the sharp end."

On 24th April we have our Annual Awards and Dinner at the Chateau Impney - if you haven't booked your tickets then please get a move on - it promises to be an excellent night again.

On the other hand clients now have longer to complain to LeO and the LSB are considering doing away with client accounts - a sledgehammer to crack a nut that is surely going to cause absolute chaos on the Thursday before Easter and other busy conveyancing days. Let us sincerely hope that this is another idea that is shelved.

Our Administrator, Ava Leighton-Carr left us at the end of January but has been ably replaced by Sue Harper and if you haven't met her yet, then I'm sure you will. Sue has been beaver away taking things over and helping sort out the Awards and Dinner arrangements.

Oh well, Happy Days ahead...

Our new website, after some teething problems and getting the domain names sorted out (I think I have got this right but my technological knowledge, or lack of it, may be letting me down) and many thanks to Debbie Brown, and her husband Steve for their hard work in achieving this. We will be adding further pages in due course to including events page, membership page, news and so on.

Nick Hughes

Painters solicitors

Tel: 01905 610410

Email: NAH@painters-solicitors.co.uk

As I write this the General Election is looming with its uncertainties - for non contentious solicitors, things seem to be looking up with Conveyancing work buoyant but for litigators, with increased Court and Tribunal Fees, things are not so rosy. In particular Legal Aid Solicitors with the decimation of Legal Aid are going to struggle - it is particularly disappointing that the Law Society's Court Action in respect of Criminal Work was not successful and the Appeal result was not quite far enough from the election to cause it to be quietly shelved. Those firms that do Duty Work will be deciding, if they haven't already, whether to go for a Contract in their own right or join with others. One can only wonder if those in the Ministry Of Justice that have championed these changes really understand the devastation they will cause by the removal of justice and the difficulties that will occur in the firms that have previously carried out an excellent service for low return. Lets hope there are still suitably qualified people left to sort out the chaos in the courts caused by Litigants in Person and Appeals by the innocent against incorrect verdicts brought about by lack of representation.

The SRA seems to be altering its stance on various points - I hesitate to say it is becoming more Solicitor friendly but at least it seems to be more receptive to the professions comments on their ideas. Not



Professional
communications
for professionals

www.epc.gb.com

News News News News News News News

Thursfields strengthens corporate team

Regional law firm Thursfields has further strengthened its corporate team with the promotion of Gareth Burge to Director and the appointment of Solicitor, Amy Harron.



Gareth joined Thursfields in April 2014 following a 10 year stint at the London office of an international law firm. His practice covers a broad range of corporate work with particular specialisms in the natural resources and pharmaceuticals sectors. He has experience in advising on deals including strategic alliances (joint venture arrangements and private equity fundraisings), mergers and acquisitions, corporate finance and commercial transactions. Since joining Thursfields he has attracted a number of high profile local, national and international clients to the firm.



Amy is a Corporate Solicitor with a broad practice having built a strong reputation with a local owner managed and family business client base.

Michelle Chamberlain, Head of Commercial Services, commented: "In growing our business, we recognise the need to offer breadth and depth of expertise to our commercial clients. We are pleased with the Corporate team's strong performance in 2014. We can now offer a credible alternative to city based practitioners."



Law firms report strong year, according to survey

The Law Management Section's 2015 Financial Benchmarking Survey has just been published. Sponsored by Lloyds Bank Commercial Banking, and compiled by Hazlewoods LLP, the results are unanimously positive and point to firms having a strong year.

One hundred and fifty nine firms from across England and Wales took part, making it one of the biggest surveys its kind in the UK; it is widely regarded as the leading annual health check for medium-sized practices. As in previous years, participants provided two years' data - the most recent accounting period and the previous one - allowing us to compare results on a like-for-like basis.

Key findings

- Median practice income increased by 8.7 per cent compared to 2013, with most geographic regions and most work types seeing growth.
- For the first time in several years, the ratio of fee earners to equity partners increased by 6.4 per cent.
- Median profit per equity partner increased for the fifth year running to £144,567 - a rise of 16.9 per cent.
- Participants predicted a median fee income growth of 3.3 per cent for 2015. The most optimistic participants predicted an increase of 9.4 per cent.

President of the Law Society Andrew Caplen said: 'We are encouraged to see continuing economic growth for our members' firms. Although financial stability can never be guaranteed, this is positive news given the challenging economic conditions of recent years.'

'The Law Society's Law Management Section helps firms stay on top of changes in the market and is a forum for sharing good practice within the profession.'

Paul McCluskey, Head of Professional Practices at Lloyds Bank Commercial Banking, said: 'The Financial Benchmarking Survey is a respected indicator of what constitutes best practice for law firms, enabling staff to see the progress of their firm and industry trends.'

'In a positive 12 months that has seen median practice income increase across the country, with further growth expected in 2015, it is also encouraging to see a change in attitude with the reduction in the number of firms where

partners' drawings exceed profits.

'Understanding what success looks like is crucial for local firms to plan ahead and deliver their objectives, and these results indicate a positive outlook within the sector as economic confidence continues to grow across the country.'

Andrew Harris, Director of Hazlewood LLP, said: 'We were pleased to be able to report improvements in all of the key measures of financial performance. The results for many are finally back to where they were six or seven years ago.'

'It was also very encouraging to see that practices seem to have taken on board the whole issue of financial stability, and are paying much closer attention to issues such as cashflow, lock-up and working capital.'

- See more at: <https://www.lawsociety.org.uk/news/press-releases/law-firms-report-strong-year/#sthash.Ub90X2G6.dpuf>

News News News News News News News

Dates for your diary

19 March	Pint after work at The Fleece, Bretforton from 6pm Join us for a drink after work.
16 April	Pint after work at The Fox Inn at Chaddesley Corbett from 6pm Join us for a drink after work.
24 April @ 7pm	Worcestershire Law Society Annual Legal Awards Dinner 2015 Worcestershire Law Society's Second Annual Legal Awards prestigious "Black Tie" Dinner at Chateau Impney, Droitwich, WR9 0BN
07 May @ 6pm	Worcester Cathedral Visit inc. tower
14 May	Annual General Meeting 2015 - The Annual General Meeting for Worcestershire Law Society TBC. Further details to follow shortly
21 May	- another JLD event - wine, cheese and cv's £15 limited spaces
18 June -	Pint after work at The Brandy Cask, 25 Bridge Street, Pershore from 6pm. Join us for a drink after work.

Legal Awards 2015 Shortlist

TRAINEE SOLICITOR OF THE YEAR

Tom Bell	MFG
Tarnjeet Rehal	HCR
Nerys Thomas	HCR

YOUNG SOLICITOR OF THE YEAR

Harjinder Bains	Thomas Horton
Lisa Kemp	MFG
Beata Nowakowska -Mrosek	WWF
James Osborne	HCR
Priya Tromans	HCR

BEST INDIVIDUAL SUPPORT STAFF AWARD

Christopher Finch	HCR
Elaine Mason	Thursfields
Nicki Wright	Thursfields

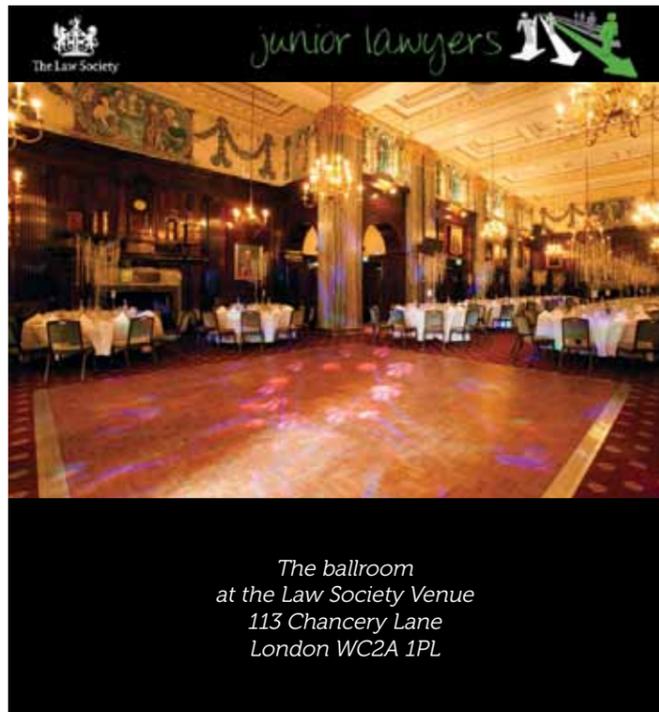
SOLICITOR OF THE YEAR AWARD

James Lowe	HCR
Shane Miller	Thursfields
Robert Weston	MFG

... and other awards

News News News News News News

Junior Lawyers Division annual conference and ball 2015



The Junior Lawyers Division Annual Conference and Ball 2015 is fast approaching, and this year the event will focus on business, media and the law.

Worth 5 CPD hours this event offers invaluable career development, keynote speeches on commercial topics, lively debates on recent policy updates as well as providing a great networking event for your employees.

The event is to be held on Saturday 18th April 2015 at the Law Society in London.

For further information about the JLD and other events please visit: <http://mxm.mxmfb.com/rsps/ct/c/1950/r/115497/v/60323>
www.lawsociety.org.uk/juniorlawyers

Yours Sincerely,

Yvonne Treacy
Junior Lawyers Division
The Law Society
T: 020 7320 5794
Email: yvonne.treacy@lawsociety.org.uk
yvonne.treacy@lawsociety.org.uk

Event Type: CPD course

When: 18/04/2015 09:30 - 19/04/2015 01:00 Add Junior Lawyers Division annual conference and ball 2015 To Your Calendar

Venue: The Law Society, 113 Chancery Lane, London WC2A 1PL

Cost: From £55

OVERVIEW

CPD hours 5

Join us for a day of lively debates, talks and networking followed by an evening of drinks, dinner and dancing.

HIGHLIGHTS INCLUDE:

- Finding out whether you have what it takes to not "get fired" in the session with Lauren Riley and Felipe Alviar-Baquero from BBC1's "The Apprentice"
- Increasing your commercial awareness with a session on MBA essentials and
- Learning how the media and law can work together effectively

and much more!

The conference and ball is aimed at all members of the Junior Lawyers Division. Membership of the JLD is free and automatic for LPC students, LPC graduates (including paralegals looking for training contracts), trainee solicitors, and solicitors with up to five years' post qualification experience.

Guests and non-JLD members are welcome to attend the black tie ball.

Sponsored by TM Lewin

Programme

09.45 - 10.15

Registration and refreshments

10.15 - 10.30

Welcome addresses

Max Harris, chair, Junior Lawyers Division
Andrew Caplen, president, The Law Society

10.30 - 10.40

JLD policy update: Minimum salary for trainees

JLD committee

10.40 - 11.25

MBA essentials for lawyers

Rupert Vernalls, ceo and founder of Stratology

11.25 - 11.40

Refreshment break and networking opportunity

11.40 - 11.45

JLD policy update: Work experience and internships

JLD committee

11.45 - 12.45

Understanding the business world: How not to "get Fired"

Lauren Riley and Felipe Alviar-Baquero, recent candidates on BBC1's "The Apprentice"

12.45 - 13.30

Buffet lunch and networking opportunity

13.30 - 13.40

JLD policy update: Alternative routes to qualification

Charlotte Parkinson, JLD committee

13.40 - 14.25

Interactive session (to be confirmed)

14.25 - 14.30

Transfer time

14.30 - 15.15

Break-out sessions - choice of one of the following:

Managing internal politics

Mary-Ann Wright, partner, DWF LLP and chair, Women Lawyers Division

Effectively using social media and how the media influences the law

Kevin Poulter, legal director, Bircham, Dyson Bell and editor at large, Solicitors Journal, Peter Wright, solicitor and managing director, DigitalLawUK

The transition from trainee to newly qualified solicitor

Speaker to be confirmed

15.15 - 15.30

Refreshments and networking opportunity

15.30 - 15.45

JLD policy update: What we expect to see in 2015

JLD committee

15.45 - 16.35

The Jackson Reforms: What has happened in litigation since the JLD annual conference 2014?

An overview of how the reforms are working in practice and the impact on firms and clients.

Professor Dominic Regan, City Law School and columnist New Law Journal

16.35 - 16.45

Closing remarks and launch of the JLD Essay Competition 2015

Leanne Maund, vice chair, Junior Lawyers Division

19.00 - 01.00

The JLD ball

Drinks reception and dinner dance at the Law Society (black tie/national dress)

19.00 - drinks reception

20.00 - dinner followed by dancing

01.00 - carriages

Guests and non-JLD members are welcome to attend the ball

WHO SHOULD ATTEND?

The conference and ball is aimed at all members of the Junior Lawyers Division. Membership of the JLD is free and automatic for LPC students, LPC graduates (including paralegals looking for training contracts), trainee solicitors, and solicitors with up to five years' post qualification experience.

CV CLINICS

Please send your CV to juniorlawyers@lawsociety.org.uk if you want to be considered for a 30 minute face-to-face slot to review your CV. These clinics will help you gain invaluable feedback and tips for improvement. You will be notified by email approximately two weeks prior to the conference as to whether or not you have been successful in securing an appointment with a JLD CV adviser. Please note that appointments are allocated on a first come first served basis and only available to registered conference delegates.

ANNUAL BALL

The black tie ball is also being held at the Law Society will include a drinks reception, three course meal and entertainment. Guest and friends of junior lawyers are more than welcome. Booking is based on first come first served and the ball was sold out in 2014.

ACCOMMODATION

Please visit www.hotelmap.com See attachment below for further information on hotels in the area and preferential rates.

SPONSORSHIP OPPORTUNITIES

For information about sponsorship please contact either David McKeever; david.mckeever@lawsociety.org.uk 020 7316 5598 or Quincy Takyi; quincy.takyi@lawsociety.org.uk, 020 7841 5583.

PRICE

All fees are subject to 20% VAT.

Booking fees BEFORE 27 March 2015

Qualified solicitor (conference and ball) - £115 + VAT
Qualified solicitor (conference only) - £70.00 + VAT
Trainee or paralegals (conference and ball) - £110 + VAT
Trainee solicitor and paralegals (conference only) - £65 + VAT
Student (conference and ball) - £95 + VAT
Student (conference only) - £60 + VAT
Ball only £55 + VAT

Booking fees AFTER 27 March 2015

Qualified solicitor (conference and ball) - £120 + VAT
Qualified solicitor (conference only) - £75.00 + VAT
Trainee or paralegals (conference & ball) - £115 + VAT
Trainee solicitor and paralegals (conference only) - £70 + VAT
Student (conference and ball) - £100 + VAT
Student (conference only) - £65 + VAT
Ball only - £60 + VAT

For more information about this event call 020 7316 5700 or email: events@lawsociety.org.uk

Families in Debt Crisis Following Separation



Hollie Styles

Resolution say that 28% of separated families admit that they have fallen in to debt by increasing the use of facilities such as loans, credit cards or an overdraft. This figure can increase to 36% when children are involved.

The emotional impact from separation is perhaps harder to see. Evidence by leading professionals suggest that in some cases, where there has been a period of frequent arguing before separation, children have fared better following the separation once clear routines have been established.

Parents can find this emotional time hard to come to terms with. It has been reported that 10% of separated adults (or their friends) have had to leave their jobs, 16% have seen their workplace hit by sick leave due to stress and 15% say that separation has had a negative impact upon the productivity of the employees with those who have separated. Financially, the impact on the business is significant and causes profitability to be diminished. The estimated cost of divorce upon the British economy each year is over £46 billion.

Whilst these figures may be frightening, there are things which families and businesses can do to support the process of separation. Hollie Styles, a family law expert at Thursfields Solicitors, advises "it is imperative that legal advice is taken at the start of the separation process as this can assist in eliminating the fear of separation and ensure that expectations for financial arrangements are set up as early as possible and are realistic for both adults. Financial arrangements tend to be the biggest concern that separating couples have and to be able to assist and ensure that both are able to live independently is key to the parties being amicable in the future." Thursfields have offices across Worcestershire and the West Midlands and are happy to make appointments to suit your needs.

From a business perspective, Thursfields have expert legal advisors who can assist in relation to issues of employment, insolvency and debt concerns for those businesses who are affected by separation. Encouraging employees to seek advice regarding their personal life could reduce the stress placed upon the business.

For family or business advice please contact one of our team who will be happy to help on 01562 820575.

Legal Humour

Aubrey Melford Stevenson

No study of legal humour in England and Wales would be complete without mention of Mr Justice Melford Stevenson. He was born in 1902 in Newquay in Cornwall in quite humble circumstances. He was called to the bar in 1925, he took silk in 1943 and was appointed a High Court Judge in 1957. In 1961 he transferred to the Queen's Bench Division where he tried criminal cases. In 1955 he was the leading Counsel at the trial of Ruth Ellis the last woman in the UK to be executed for murder.

Melford Stevenson was renowned for his outspoken remarks. Here are examples.

1. A man appeared before him for sentence. The man had a well known medical condition. His Counsel had advanced this in mitigation as to why his client should not go to prison. Melford Stevenson addressed him as follows:

"I understand you are a schizophrenic. I must advise you that if either of you come before me again in this Court I will send both of you to prison."

2. To a man acquitted of rape he made the following remarks "I see you come from Slough. It is a terrible place and you can go back there."

3. He told her husband who involved in a divorce case that his decision to live in Manchester was a "wholly incomprehensible choice for any free man to make."

4. In another case he addressed the Defendant as follows at the conclusion of the trial. "I must confess that I cannot tell whether you are innocent or guilty. I am giving you three years. If you are guilty you have got off lightly, if innocent let this be a lesson to you."

5. He was once trying a manslaughter case in which a man who had run down a child pleading in extenuation that he thought the child was a dog. Melford Stevenson was a great spaniel lover and promptly gave the maximum sentence.

6. In 1969 when he gave 30 years to both the Kray brothers Ronnie and Reggie he told them "Society has earned a rest from your activities."

7. He later remarked that the Krays had only told the truth twice in the trial, firstly when Reggie had referred to one of the Barristers as a "fat slob" and secondly when Ronnie accused the Judge of being biased.

8. He was reprimanded by his senior Judicial colleagues for describing the Sexual Offences Act of 1967 (which legalised homosexuality) as "a buggers' charter".



Save the Date: 'In Whose Best Interests?'

Determining best interests in health and social care

An inaugural conference for practitioners, academics and researchers in law, health and social care. A panel of experts will lead a range of presentations and workshops considering decision making and mental capacity, and a call for abstracts will be announced in January 2015. The event will be hosted by the University of Worcester in Association with the Worcestershire Medico-Legal Society and certificates of attendance will be provided for professional CPD purposes.

2nd July 2015 (9.30 - 16.30)
University of Worcester

Keynote Speaker: Alex Ruck-Keene

Alex has been a leading expert in the field of mental capacity for several years, appearing in cases involving the MCA 2005 at all levels up to and including the Supreme Court, appearing for the Interveners (The Intensive Care Society and the Facility for Intensive Care Medicine) in *Aintree University Hospitals NHS Foundation Trust (Respondent) v James (Appellant)* [2013] UKSC 67 [2013] 3 WLR 1299. He also writes extensively about mental capacity law and policy, works to which he has contributed including 'The Court of Protection Handbook', 'The International Protection of Adults' (forthcoming, 2014, Oxford University Press), Jordan's 'Court of Protection Practice' and the third edition of 'Assessment of Mental Capacity' (Law Society/BMA 2009). He is an Honorary Research Lecturer at the University of Manchester, and the creator of the website www.mentalcapacitylawandpolicy.org.uk.

Cost:
£90.00

Book your place

To book a place please contact Esther Dobson (Study Day, Conference & Events Co-ordinator)
Email: e.dobson@worc.ac.uk Telephone: 01905 542 711

Institute of Health & Society,
Henwick Grove, Worcester WR2 6AJ
Tel: 01905 855000



Legal Awards 2015 Dinner



...celebrating firms and individuals across Worcestershire

Annual Dinner Friday 24th April 2015 at 7.00 p.m

Chateau Impney Hotel, Droitwich WR9 0BN

Individual tickets £55, Tables for 10 people £500

Menu

Starters

Leek & Potato Soup, bacon snippets
Roasted Butternut Squash Soup with
Feta & Crispy Leeks
(vegetarian)

Main Courses

Pan-fried British Chicken Breast with
Fondant potatoes, Tarragon Veloute
Wild Mushroom & Goat's Cheese Tart, Pear
& Balsamic Drizzle (vegetarian)

Dessert

Traditional Sherry Trifle
with Toasted Almonds
•
Coffee & Mints

Practise Name:

Address:

Contact Name:

Telephone no: Fax no:

Email:

I would like to book table(s) for 10 people @ £500 each

I would like to book tickets @ £55 each

I would like to book vegetarian option meals

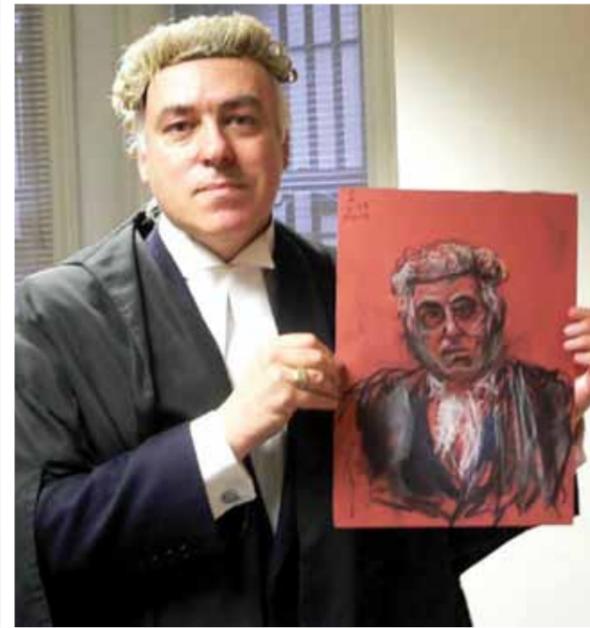
(Invoices will be issued once the booking form is received. Payment to Worcestershire Law Society no later than 9th April)

The simplest way to reserve your table(s) or ticket(s) to this prestigious black tie event is to download the booking form and menu returning to:

Mr T Evans, Secretary, Worcestershire Law Society, Thursfields, 42, Foregate Street, Worcester WR1 1EF

DX: 716251(Worcester) **Email:** tevans@thursfields.co.uk

Guest Speaker, John Cooper QC



JOHN Cooper was born in Wolverhampton in the West Midlands. He attended Regis Comprehensive School and achieved a Law Degree from Newcastle University in 1980.

- He was the Butterworths Law Prizeman.

- Called to the Bar of England and Wales in 1983 and the Australian Bar in 1989, he spent a period of time with one of the worlds leading Law Firms, Clifford Chance in London

- He was awarded the title of Q.C in March 2010.

- He is a Bencher of Middle Temple

John is Honorary Visiting Professor of Law at Cardiff University...

- He is now recognized as being one of the leading barristers in London .

- John was made a Fellow of the Royal Society of Arts in 2009.

- His writing work spans television, theatre, academic, journalism and leading text books, with a Broadcasting career including a six part Channel 4 series "Teens on Trial".

- Recently described in the Legal 500 as "head and shoulders above the majority of other QC's" he was named by The Times as one of the top 100 "influential lawyers in the UK".

- He was also described by The Times as "a rising star of the Criminal Bar" and was shortlisted by Liberty, Justice and the Law Society as Human Rights Barrister of the Year in 2009.

- He practices at 25 Bedford Row – www.25bedfordrow.com in London and is represented for his literary work by Paul Stevens at Independent Talent, Oxford Street, London.

- John Cooper can now receive work directly from the public without the need to instruct a solicitor. For details of the work he accepts, contact his clerk on 0207 067 1500.

- Cooper is referred to in the influential Chambers and Partners Directory as a Leading Barrister in Crime and Civil Liberties.. For further information go to: <http://www.google.co.uk/search>

- He also appears in Who's Who and Debretts People of Today as one of the most influential people in his field.



Defending Legal Aid outside the Houses of Parliament



With Chris Williamson MP and former Chair of the League Against Cruel Sports

FOLLOW JOHN COOPER ON TWITTER ON [John_Cooper_QC](https://twitter.com/John_Cooper_QC). HE IS ALSO ON FACEBOOK

Restrictive Covenants: a brief overview

RESTRICTIVE covenants can have a serious impact upon the potential for development of a piece of land. In some cases the development will fail completely. Simon Wood, Barrister within the Commercial Litigation department at law firm Hart Brown, summarises how restrictive covenants work and how they may be circumvented.

The first point for the developer to appreciate is that planning permission does not override the covenant. The planning authority will usually only consider the application in respect of its planning merits and will not consider the private rights as between the respective parties. This can also often be a source of confusion to the person who has the benefit of the covenant and who is intending to object to the planning application.

The developer should then check that the covenant still affects the land. Usually, this can be confirmed at the Land Registry where extant covenants will be recorded in the Office Copy Entry for the property. If the land is unregistered it may be more difficult to establish whether the covenant still has effect especially if it was granted many years in the past.

The developer should then find out who may have the benefit of the covenant: anybody who currently owns any part of the land originally benefitted by the covenant will be able to enforce the covenant provided they can show that the covenant benefits or preserves the value of that land.

The developer should certainly not simply proceed with the proposed development without considering the possible consequences. This is because any beneficiary of a restrictive covenant can apply to the courts to have any threatened breach (e.g. the building of another property on the land) stopped by an injunction, and/or they can claim damages.

Nevertheless, the developer has several options to circumvent this potential stumbling-block.

The first is to try and negotiate the

release or variation of the restrictive covenant. This will only be effective and should only be attempted where the full extent of the land that benefits from the restrictive covenant can be ascertained and all of the owners of the benefiting land can be identified and located. The developer should be prepared to make some payment for any release or variation of the covenant. However, this need not be unreasonable if the developer has done his or her homework and can show what effect the new development would have on the value of the land with the benefit of the covenant.

Secondly, it is possible to obtain indemnity insurance to protect against the risk of a person with the benefit of a restrictive covenant seeking to enforce it. However, it is unlikely to be available in circumstances where beneficiaries of the covenant have made it clear that they will seek to enforce the covenant.

Finally, the developer can make an application to the Upper Tribunal ("UT") (formerly the Lands Tribunal) for the modification or discharge of the restrictive covenant pursuant to section 84 of the Law of Property Act 1925.

The UT can discharge or modify the restriction if satisfied that one of the following grounds apply:

1. the covenant is obsolete because of changes in the character of the land and/or changes in the character of the neighbourhood or other material circumstances;
2. the covenant impedes some reasonable use of the land. If planning permission has been obtained, this may assist in proving that the covenant impedes some reasonable use of the land;
3. the beneficiaries expressly or impliedly agree.

It should be noted that the UT has power to order the applicant to pay compensation to the person or persons entitled to the benefit of the covenant, either for any loss or disadvantage suffered as a result of the discharge or

modification of the covenant, or to make up for any reduction in the price originally received for the land on account of the imposition of the restriction.

In conclusion, restrictive covenants can have a serious impact upon the potential for development of a piece of land and the grant of planning permission cannot override their effect. Nevertheless, there are measures which the developer can take in order to sidestep the problem; the likelihood is that they will involve additional expenditure.

Simon Wood is a Barrister within the Commercial Litigation department based at Hart Brown's Guildford office. He was called to the Bar in 1987. He was a tenant in chambers in Middle Temple for 10 years where he had a broad practice in general commercial and civil litigation before specialising in property litigation.



About Hart Brown

Hart Brown, a leading law firm with offices throughout Surrey and in London, has been offering a full range of legal and financial investment services to businesses and individuals for the past 90 years. With 15 partners, more than 110 staff, six offices and a reputation for delivering high quality service, Hart Brown is committed to building long-term relationships with its clients.

In particular, the firm puts great emphasis on regular communication with clients, as well as the need for efficiency and value for money in order to deliver a high-quality service. Hart Brown currently operates from offices located in Cobham, Cranleigh, Godalming, Guildford, Wimbledon Village and Woking. For more information please visit www.hartbrown.co.uk

Contact:

Rebecca White
Tel: +44 (0)1483 887766
Email: rjw@hartbrown.co.uk
www.hartbrown.co.uk



Our market leading self-issue pack is now better than ever! The 3rd edition pack offers great policy coverage at exceptional premiums

Conveyancing insurance for everyday needs

ci self-issue policies are a fast, efficient and cost effective way of dealing with routine residential conveyancing issues benefiting from:

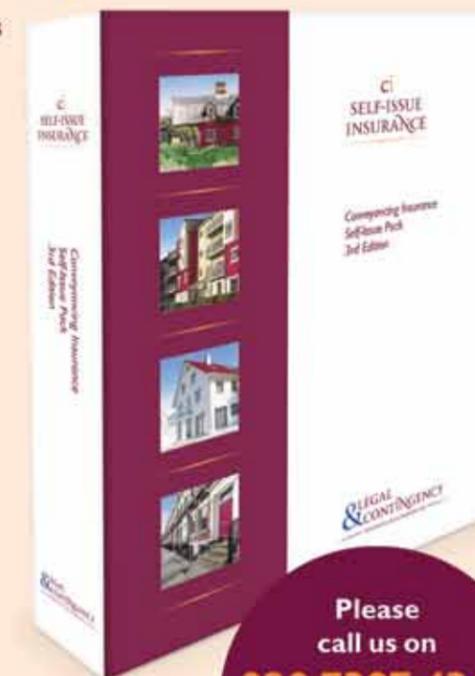
- Straightforward issuing instructions and policy wordings
- Limits of indemnity up to £3m
- Free escalator clause on all policies at a rate of 5% per annum for 10 years
- CML compliant policies providing you and your client with peace of mind and protecting any lender's interest
- Two new policies – Breach of Leasehold Covenants and Absence of Build Over Agreement (Sewer)

More than just a self-issue policy provider

Self-issue policies not appropriate? Our expert underwriters can quickly find you a bespoke solution for your needs.

Why shop around to get the best deal?

Unlike other legal indemnity providers, we have the advantage of working with and on behalf of more than just one insurance company when dealing with bespoke matters. This means you always get the right policy, at the right price.



Please call us on
020 7397 4363
if you require assistance or wish to order a pack

Email: enquiries@conveyancinginsurance.co.uk
Legal & Contingency corporate website: www.legal-contingency.co.uk

Prefer to order your policies online?
Simply head to our website: www.conveyancinginsurance.co.uk

Let Legal & Contingency do the hard work for you

ci
SELF-ISSUE
INSURANCE

& LEGAL
& CONTINGENCY
EXPERTS IN LEGAL INDEMNITIES

Conveyancing Insurance (ci) Self-Issue is a portfolio of insurance products provided by Legal & Contingency Limited. Legal & Contingency Limited – 19-21 Great Tower Street London EC3R 5AR | DX: 843 London/City – Tel: +44 (0) 20 7397 4363 – Fax: +44 (0) 20 7397 4364 Legal & Contingency Ltd is authorised and regulated by the Financial Conduct Authority. Registered in England No. 3511606 | Registered Office: 19-21 Great Tower Street, London, EC3R 5AR.

More Heat than Light: important new rules affecting landlords of multi-let buildings

Stephen Boyle, from law firm Hart Brown, comments on the new regulations.

JUST as EU energy efficiency regulators have recently outlawed traditional light bulbs, high powered vacuum cleaners and the £4 coffee maker, so they have now focused their attention upon landlords of multi-let buildings. The time honoured system of dividing the cost of supplying heating, hot water and (where available) air conditioning by the number of tenants and charging them an equal share through the service charge is set to become a criminal offence following the introduction of the Heat Network (Metering and Billing) Regulations 2014.

Landlords of such buildings, whether commercial or residential, must register with the National Measurement Office not later than 30 April, 2015, and must install individual meters, or cost allocators in EU speak, in each unit by 31 December, 2016. Failure to do so can result in criminal as well as civil penalties.

This is a wakeup call for landlords of any kind of multi-let building where the cost of heat, hot water and air conditioning is not separately metered. First of all, they must get themselves registered and, secondly, they must survey their properties to assess the cost and feasibility of installing individual meters. There is an exemption where it is not cost effective or practical to install meters, but the case has to be made for this. If the rapid demise of our favourite domestic appliances is anything to go by, the regulators will be pretty hard to persuade.

Hart Brown Contact:
Rebecca White, Hart Brown
Tel: +44 (0)1483 887766
Email: rjw@hartbrown.co.uk
www: <http://www.hartbrown.co.uk>



Drayton Group Corporate Team. Helping you to secure the best.

We are a cost effective fleet supplier and when you take a closer look at what we have to offer, you'll love the Mercedes-Benz range and offers we have available.

Offering a wide range of vehicles that offer excellent performance combined with low CO2 emissions means low running costs.

Why choose us?

- Extensive range of vehicles
- Outstanding cost-efficiency
- Class leading safety
- Strong residual values
- Expertise and flexibility
- Excellent customer service

Call Vikki Perkins on 01905 412119 for more information on what we have to offer.

Drayton Group
Mercedes-Benz of Worcester
Hindlip Lane, Blackpole, Worcester WR3 8SB
01905 412119 www.draytongroup.co.uk



magazine INSITE LAW

DAILY ONLINE NEWS AND LAW BLOGS



INSITE LAW features a daily new podcast from Charon QC, links to news stories, links to law related posts from UK and other bloggers and a small but fairly sophisticated Discussion board run by the members.

We are keen to develop the profile of UK bloggers who produce sophisticated legal content – so please do not hesitate to email me on if you would like me to profile a post(s) on Insitelaw.

PODCASTS • LAW BLOGS • FREE LAW BOOKS & LECTURES • LPC • BVC • GDL LAW DEGREES... AND MORE!

WWW.INSITELAWMAGAZINE.COM



Helping you solve the property puzzle

PSG Providing quality searches for over 15 years
At PSG we know that every conveyance is different and putting all the pieces together to provide the complete picture for your client can be a puzzle.

We solve puzzles every day, let us help solve yours.

Contact us on 01707 386 101 or email nickwild@propertysearchgroup.co.uk
Visit www.psgconnect.co.uk



The Open Spaces Society



Photo: Ian Rowat

changes to public paths in Worcestershire and we study them carefully, objecting if we believe the change is against the public interest. This means that we may need to appear at public inquiries and hearings. We cannot afford legal representation so we make use of our in-house expertise from staff and volunteers with long experience.

In the 1990s we helped to defeat a massive path-reorganisation scheme at Ombersley, which would have shifted more than 100 footpaths and bridleways to inferior routes. It was a 15-year campaign culminating in a public inquiry, involving the society in much time and effort—but it was an important victory, for if it had gone ahead it would have encouraged landowners throughout Britain to devise similar schemes detrimental to the public interest.

The society's local representatives defend the public-path network and we advise our members in protecting commons, green spaces and paths, taking up hundreds of cases each year. We lobby parliament for better, tougher laws. We have no public funding; we depend on legacies and donations to support our vital work.

Web: www.oss.org.uk Tel: 01491 573535
Email: hq@oss.org.uk

Registered in England and Wales, limited company 7846516
Charity no 1144840

THIS year is the 150th anniversary of the Open Spaces Society. Founded in 1865 as the Commons Preservation Society it is Britain's oldest national conservation body. In its early years it saved many commons and other open spaces in and around London: Hampstead Heath, Epping Forest and Wimbledon Common for example. Then it extended its remit to the whole of England and Wales and embraced open spaces and public paths too.

The splendid county of Worcestershire is rich in open land, and it is thanks to the Open Spaces Society that so many of its commons and green spaces are still unspoilt and available for public enjoyment. The society helped to stop enclosures on the Malvern Hills and to secure the Malvern Hills Act 1884 which protects this magnificent range from encroachment and gives the public rights to enjoy it.

In 1895 the society's founders created the National Trust as a landholding body. The society then established local committees who raised money to buy threatened properties for the Trust. An example is Poor's Acre, near Woolhope in Herefordshire, which the society bought for the Trust in 1931.

Today the society still champions common land: as a statutory consultee it scrutinises every application for works there. Commons are important to their local communities and it is vital that the society examines all the applications for works. These can be particularly contentious where land managers propose to fence commons so as to introduce grazing, such as at Hartlebury Common, Stourport, and it is important that they recognise the public's interest. Consequently the society published guidance to land managers, *Finding Common Ground*, on how to ensure that they take account of all those with a stake in the common before they proceed with plans which might alter its appearance or ecology.

We also help communities to protect their green spaces, by registering them as town or village greens. In Worcestershire we have helped communities to register village greens at Chawson, Droitwich Spa and Austin Rise, Lickey Hills among others. This gives local people the right of recreation there and protects the land from development.

It is more difficult to claim land as a green now that the Growth and Infrastructure Act has been passed, outlawing the registration of greens where land is threatened with development. So we are promoting an alternative means of protecting land, by applying for its designation as Local Green Space in the local or neighbourhood plan. The society is also notified of all proposed

Open Spaces Society

Campaigning since 1865

Remember those open spaces

"The Open Spaces Society campaigns to create and conserve common land, village greens, open spaces and rights of public access, in town and country, in England and Wales."

Leave us a legacy to help ensure that future generations will enjoy commons, open spaces and paths, in town and country, throughout England and Wales

You can contact the Open Spaces Society at:

25a Bell Street
Henley-on-Thames
RG9 2BA

Tel: 01491 573535
Email: hq@oss.org.uk

Registered charity no 1144840

or you can visit our website at www.oss.org.uk

Scan with your phone to visit our website



Legal Software
for progressive law firms

Legal Software
with a real future

Legal Software
with outstanding support

Powerful and flexible business process management (BPM) software for the new legal landscape.

SOS Connect will help you streamline operations across your entire firm, deliver legal services more effectively and adhere to regulations with more confidence.

- Case management workflows can be configured to underpin any process
- Integrated practice and matter management
- Built in CRM and marketing functionality
- Robust reporting and flexible KPI tools



Visit the new SOS website and watch our intro video of SOS Connect

www.soslegal.co.uk
Solicitors Own Software Ltd
2 Widcombe Parade, Bath, BA2 4JT

For more information or
to arrange a demonstration
01225 787700 or info@soslegal.co.uk



High Court more than halves “unreliable” £9.5m budget



THE High Court has more than halved a claimant's proposed £9.5m costs budget in an excoriating ruling that found it an “entirely unreliable document” that had been “deliberately manipulated”.

Mr Justice Coulson decided that both the costs already incurred by the claimant and its estimated costs for the future were disproportionate and unreasonable, setting instead a figure of £4.3m – by coincidence, approximately the sum that the claimant had already spent.

The case of CIP Properties (AIPT) Ltd v Galliford Try Infrastructure Ltd & Ors (Costs No2) [2015] EWHC 481 (TCC) first made headlines last autumn, when Coulson J ruled that the courts have “unfettered discretion” to order costs budgets, whatever the size of the damages at stake.

In a judgment handed down last Thursday, he said: “This hearing focused on issues which, in my view, stemmed from the unreasonable stance adopted by the claimant. At one point, there were 26 people in court, excluding me, considering the detail of its costs budgets.”

“Such satellite litigation, and the costs incurred in consequence, is very far removed from the spirit and purpose of the new costs management provisions in the CPR. I am bound to say that none of this reflects any credit on the claimant's decision to contest the principle of budgeting in cases over the threshold.”

The claimant – which is represented by US firm Squire Patton Boggs – is seeking £18m to repair alleged defects in the development of a site in Birmingham, although Coulson J said there are “significant arguments that the claim has been grossly inflated”.

His experience of such cases suggested that the claim would be “relatively straightforward” to pursue and that the greater burden in the litigation from now on would be on the defendant.

In the first case management conference a year ago, the claimant estimated that it had spent nearly £1.6m and expected the total spend to be £3.4m. A year later £4.2m had been incurred – even though disclosure had not been completed and work on witness statements, experts' meetings and reports, and other matters, not yet started – with a further £5m to come, with the judge putting the total with all element at £9.5m. The defendant contractor, who has also commenced proceedings against the four other parties, had incurred costs of just under £1.5m and estimates incurring future costs of around £3m, with those other parties' total costs coming to around £5.5m between them.

The judge said: “The claimant has not sought to explain how such a vast increase in costs has come about, nor why such an increase can be justified. On behalf of the third party, Ms Smith QC submitted that, in the circumstances of this case, the absence of such an explanation is highly significant. I agree.”

“I find that nothing that has happened over the course of the last year could begin to justify an increase in the costs actually incurred by the claimant of £2.5m, and I take the absence of any attempt to justify this increase as a tacit acceptance by the claimant that the costs incurred over the last year are unjustified.”

He rejected the claimant's suggestion that the court should not take the other parties' budgets into account because they had “an incentive” to advance low figures.

“It seemed to me to be an unwarranted accusation. In truth, the party who was most vulnerable to such an accusation was the claimant itself... In my view, the unexplained and significant increase in costs said to have been incurred renders the claimant's costs budget unreliable.”

There was a similar lack of explanation as to why the level of future costs had escalated so much, which was on its face “wholly unjustified”. Coulson J continued: “I find that this is a further indication of the

unreliability of the claimant's costs budget.”

Further, a list of 65 “separate assumptions and alleged contingencies... are so widespread in nature and effect, that they alone render the claimant's costs budget wholly uncertain and therefore unreliable”.

He said: “The schedule of assumptions goes far beyond the legitimate identification of contingencies in Precedent H. I find that it is designed to ensure that the claimant's legal team is not limited to the already vast costs in the budget document, and can come back under a vast range of heads in order to claim more than the amount in the costs budget. It is a wholly illegitimate exercise in avoiding the certainty and clarity that comes from costs management orders; it is designed to undermine the whole basis of such orders.”

He added that, given the lack of explanations and the approach to the schedule of assumptions, “I am driven to conclude that the claimant's costs budget has been deliberately manipulated. The claimant did not and does not wish the court to make costs management orders. I find that the production of the costs budget in this format and in this way is a continuation of that stance by other means”.

Coulson J went on to look at the proportionality of the budget. “The value of the claim is of course a factor in calculating proportionality although, in a case of this type, it is not as important as complexity. After all, it might cost £300,000 or £30m to rectify drainage defects, but the expert evidence necessary to prove those defects (and the reasonableness of any remedial scheme) will be broadly the same.”

“In my view, even if I took a value of £12m for this claim, it would not be appropriate for the claimant's costs to be assessed at 75% of the value of the claim. That would be disproportionate.”

Among his observations on the reasonableness of the budget was around hourly rates, work done and estimated hours. “Although the claimant's solicitors are based in Birmingham, they are claiming for a partner at a grade A rate of £370 per hour. This is to be contrasted with the guideline grade A rate for Birmingham of £217 per hour. I consider the £370 to be unreasonable.”

“In addition, the claimant's costs budget identifies vast swathes of hours worked/estimated to be done by the lead grade A partner, with much less work being performed by junior lawyers. Having considered the written submissions on this issue, I consider that this is a specific cause of the unreasonable level of the claimant's costs.”

“The hourly rate is too high but more importantly, the claimant is using the grade A partner for work which is inappropriate and could be done more cheaply by lower grade assistants. This goes right through the claimant's costs budget.”

“Thirdly, I consider that the hours said to have been worked so far and the hours estimated to be worked in the future, particularly in the trial preparation and trial stages, are both excessive for each phase of costs. The hours claimed are much more extensive than is reasonable or appropriate for a case of this type.”

It was pointed out that for the pleadings alone, the claimant was claiming the equivalent of one year's worth of lawyer time.

Coulson J concluded by considering what his next step should be: to order a new budget, to decline to approve the claimant's budget, to set budget figures or to refuse to allow any further costs.

He said setting the budget figures was the only workable option, but he modified this to identify and set out in a costs management order the various figures he had set, tailored to the phase of costs in question.

This article originally appeared in the ACL e-Bulletin.

Checkap^{professional}.com

Where reputation matters



The Online MARKETING REVOLUTION FOR LEGAL SERVICES

Brought to you courtesy
of our sister company
Checkatrade.com

Today, clients are looking for an informed choice when choosing a legal service and Checkap^{professional}'s new online service is providing just that.

The Checkap^{professional} website will give instant access to all legal service providers who have agreed to be vetted by us and continuously monitored by their clients, who can post verified feedback on the site. It will provide a FREE one-stop shop to finding the right legal professional for a client's particular needs.

Find out about the unique advantages Checkap^{professional} membership could provide for your online marketing.



Membership Enquiries:

0808 901 9042

www.checkap^{professional}.com

Checkap^{professional}.com IS PROUD TO ANNOUNCE THAT OUR WEBSITE HAS ASSESSED ITSELF AGAINST THE LEGAL SERVICES CONSUMER PANEL'S STANDARDS FOR COMPARISON WEBSITES.

- ESTATE AGENTS
- MORTGAGE BROKERS
- FINANCIAL ADVISERS
- LEGAL SERVICES
- SOLICITORS
- COSMETIC SURGEONS
- SURVEYORS
- HAIR & BEAUTY
- ACCOUNTANTS
- THERAPISTS
- OPTICIANS
- DENTAL
- VETS
- IT

Mediation – do you have a choice?



Chris Makin

ADR stands for **A**lternative **D**ispute **R**esolution, being an alternative to formal litigation. The term implies that parties and their solicitors have a choice: go down the litigation route, or the mediation route.

In *Garritt-Critchley –v- Ronnan* [2014] EWHC 1774 (Ch), Judge Waksman QC held that a failure to engage in mediation or any other form of ADR was so serious that an indemnity costs order was made.

And in *Northrop Grumman Mission Systems Europe Ltd –v- BAE Systems (Al Diriyah C41) Ltd* (No 2) EWHC 3148 (TCC) – another snappy case name – Ramsey J criticised a party for an unreasonable refusal to mediate, quoting from the Jackson ADR Handbook in his judgment. The party avoided a costs sanction only because of the unusual circumstances of the case.

In PGF, all the usual arguments for contending that mediation was inappropriate were set out, and all were rejected by the judge. He said that reasons put forward for declining to pursue ADR will be closely scrutinised. In particular, where one has an ‘all or nothing’ case because one party considers they have a strong legal position, that will not necessarily avoid a costs sanction. And looking at all three judgments, we see a list of the reasons normally given for refusing to mediate, and we see such arguments rejected by the judges. They include being miles apart on liability and/or quantum, Part 36 offers made and rejected, total confidence that one will succeed at trial, and the failure of other attempts to settle.

But is it all gloom and doom? Is the success of mediation purely the result of judicial bullying? I am sure it isn't. As a forensic accountant and expert witness for over 25 years, I have seen far too much time and money wasted in needless litigation. And as an accredited mediator for 16 years, I have the other side: cases properly prepared by experienced litigators, then mediated to everyone's satisfaction.

Let me close with a couple of references to the judgments of Sir Alan Ward when he was at the Court of Appeal. He often gave strongly worded judgments to encourage mediation; when he retired he qualified as a mediator, and I had the great privilege of co-mediating a dispute (which settled). And since I had by then done almost 100 mediations and it was Sir Alan's first, he graciously allowed me to lead.

Back to the Court of Appeal.

As a petrol-head, I find *Egan –v- Motor Services (Bath) Ltd* [2007] EWCA Civ 1002 memorable because it concerned an Audi TT, which Mr Egan contended had faulty steering. There is a fuller summary at the Case Law tab of my website, but Sir Alan included these words:

“What I have found profoundly unsatisfactory... is the fact that the parties have between them spent in the region of £100,000 arguing over a claim which is worth about £6,000. In the florid language of the argument, I regarded them, one or other, if not both of them, as “completely cuckoo”... “This case cries out for mediation” should be the advice given. “It brings an air of reality to negotiations ... Mediation can do more for the parties than parties sitting at the same table but hearing it come from someone who is independent. At the time this dispute crystallised, the car was practically brand new. ...perhaps a replacement vehicle...Audi's good name intact and probably enhanced, but perhaps with each of them a little less wealthy. The cost of such mediation would be paltry by comparison with the costs that would mount from the moment of issue of the claim. In so many cases, and this is just another example of one, the best time to mediate is before the litigation begins. It is not a sign of weakness to suggest it. It is the hallmark of common sense. Mediation is a perfectly proper adjunct to litigation. The skills are now well developed. The results are astonishingly good.

“Try it more often.”

Finally, there is *Faidi & Faidi –v- Elliot Corporation* [2012] EWCA Civ 287 where, by the time the case came to the Court of Appeal, £140,000 had been spent on legal costs concerning whether, in a block of (rather expensive) flats, the failure of the occupants above to lay a sound-deadening carpet had spoiled the enjoyment of the couple below. Sir Alan said this:

“Not all neighbours are from hell. They may simply occupy the land of bigotry. There may be no escape from hell but the boundaries of bigotry can with tact be changed by the cutting edge of reasonableness skillfully applied by a trained mediator. Give and take is often better than all or nothing.”

Conclusion: litigators don't have an alternative to using ADR, but that's no bad thing, is it?

Chris Makin
chris@chrismakin.co.uk
www.chrismakin.co.uk

Biog: Chris Makin is one of only 60 or so chartered accountants to become an Accredited Forensic Accountant and Expert Witness – www.icaew.com He is also an accredited civil & commercial mediator and an accredited expert determiner – www.chrismakin.co.uk.

But is there really a choice?

I suggest not, on three authorities.

First, from the executive summary of Jackson LJ's Final Report in 2010 we see: *“...mediation has a vital role to play in reducing the costs of civil disputes, by fomenting the early settlement of cases. ADR is, however, under-used. Its potential benefits are not as widely known as they should be.”*

Secondly, the 2013 supplement to the White Book on civil procedure says: *“The aim is that, in general, no case should come to trial without the parties having undertaken some form of alternative dispute resolution to settle the case.”* (my emphasis)

And thirdly, in CPR 14 – Court's duty to manage cases – there is this: *“(1) The court must further the overriding objective by actively managing cases. (2) Active case management includes:- (e) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure...”*

And if that were not encouragement enough, The Jackson ADR Handbook has been issued to all judges, who thus have no excuse for not knowing all about ADR; and Standard Disclosure includes a new ADR direction, as follows:

“At all stages the parties must consider settling this litigation by any means of Alternative Dispute Resolution (including Mediation); any party not engaging in any such means proposed by another must serve a witness statement giving reasons with 21 days of the proposal; such witness statement must not be shown to the trial judge until questions of cost arise.”

Then we have had several cases recently which illustrate the perils of ignoring ADR.

In *PGF II SA –v- OMFS Co* [2013] EWCA Civ 1288 (the “alphabet soup” case!) the judge found that silence in the face of an invitation to mediate was not acceptable behaviour, and that costs sanctions must follow.

Chris Makin

Chartered Accountant
Accredited Civil Mediator
Accredited Expert Determiner

Chartered Accountant with 20+ years experience as Forensic Accountant and Expert Witness at national firm partner level; Mediator for 10+ years; High settlement rate. See website for more details, including mediation scale of fees.

Mediated disputes in:

- Partnerships
- Share Valuations
- Company Sale & Purchase
- Professional Fees
- Rights of Way & Boundaries
- Construction
- Intellectual Property
- Professional Negligence
- Business Interruption
- Defamation
- Housing Disrepair
- Very Expensive Motor Cars
- Employment
- Contractual Failings
- Inheritance Act and ToLATAs

Civil and criminal experience as expert for over 20 years in:

- Loss of Profit and Consequential Loss
- Business & Share Valuations
- Matrimonial Valuations
- Partnership & Director Disputes
- Professional Negligence
- Criminal & Commercial Fraud Investigations
- Personal Injury & Fatal Accident
- Drug Trafficking etc. Asset Tracing & Confiscation
- Section 994 Disputes
- Director Disqualification
- Expert Determinations

Accredited Forensic Accountant

ICAEW

Accredited Expert Witness

APIL Expert 1st tier

Member CIARB

APIL Expert 1st tier

N Christopher Makin FCA FCMI FAE QDR MCIARB
Call for a **FREE** initial discussion without obligation
01924 495888 or **07887 660072**
www.chrismakin.co.uk

BROMSGROVE SCHOOL
FOUNDED 1553

Fun sports and craft-based activity day camps for children aged 8 - 15

Monday 29th June - Friday 21st August

Cookery, Basketball, Netball, Football, Jewellery Making, Dance, Athletics, Cricket, Hockey, Drama, Badminton, Swimming, Mosaic, Pottery, Mad Science, Martial Arts, Photography, Tennis

£40 per day or £130 per week - including a hot lunch everyday.

For more details or to book a place please contact the Camp Co-ordinator, Mrs Liberty Chance on 01527 579679 ext 347 or email activities@bromsgrove-school.co.uk

www.bromsgrove-school.co.uk

Dr Anthony K Clarke
BSc MB BS FRCP

Consultant in Rheumatology and Rehabilitation Medicine

I was Senior Physician at the Royal National Hospital for Rheumatic Diseases in Bath.

I have thirty years of medico-legal experience, with a wide portfolio which includes, in the rheumatological area, general rheumatology, ankylosing spondylitis, musculo-skeletal pain, back pain, occupationally-related and traumatic chronic pain, including complex regional pain syndrome, and fibromyalgia.

With my rehabilitation background, I have expertise in traumatic brain injury, spinal injury and stroke.

I was Medical Director of my NHS Trust and have expertise in medical negligence and matters of competence. I helped to establish the Bath & Wiltshire Chronic Fatigue Syndrome service.

I have extensive experience in the preparation of medical reports and joint statements, and court appearances. I am willing to undertake domiciliary visits on claimants who are unable to travel, including abroad.

●

The Bath Clinic, Longwood House,
Claverton Down Road,
Bath BA2 7BR
Tel: 01225 838849
Mob: 07774 658522
Fax: 01225 743215 / 832535
Email: akclarkefrcp@yahoo.co.uk

For good
law firms only

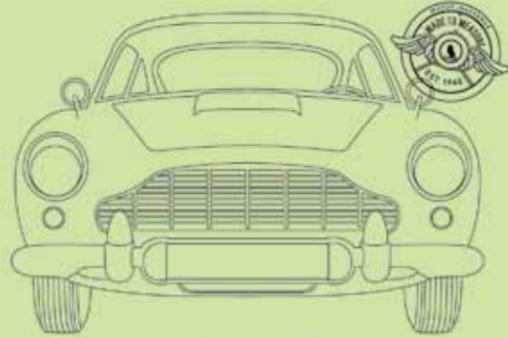
the chance
to be great!

TITANIUM PARTNERS
Performance Development Catalysts

Want to know how?
Contact: Ifti Ahmed
Managing Partner
ifti@tpsarl.com

LARK

INSURANCE MADE TO MEASURE



PERSONAL MOTOR INSURANCE

Discounted motor insurance for Law Society members.

For further information please contact:

Steve Harris
Business Development Executive
01252 359 079
steve.harris@larkinsurance.co.uk



PRIVATE CLIENTS BROKER OF THE YEAR 2013 & 2014
AND INSURANCE BROKER OF THE YEAR 2013



experience, expertise and innovation in law

The University of Huddersfield Law School offers a range of qualifications geared to the needs of the profession and delivered by trained and experienced staff.

Full and part-time study options in:

- Legal Practice Course (LPC)
- LLM by Dissertation
- LLM in International Law
- LLM in Commercial Law

The Law School
University of Huddersfield
Queensgate
Huddersfield
HD2 3DH

T: 01484 472192
E: law@hud.ac.uk



University of
HUDDERSFIELD

Leading the way in After-the-Event Legal Insurance

We lead, others follow. With our unrivalled knowledge of the ATE market and award winning products, we provide certainty in an ever-changing legal environment.
Call us on 0117 917 1680.



Approachable, accessible and knowledgeable

A Sense of Self

BOTH the Commons and the House of Lords have recently voted for the UK to be the first to accept the creation of a baby using DNA originating from three different people. This IVF (in vitro fertilization) technique is known as mitochondrial replacement therapy and concerns the prevention of certain genetic diseases, which could potentially assist up to 2,500 women of reproductive age in the UK. The popular press, perhaps unfortunately, coined the phrase "three parent babies", which immediately upped the ante in the debate and brought forth intense discussion involving church and pro-life groups. In particular this has concerned the ethics of this procedure, set against long held fears of designer babies and eugenics. Safety concerns have also surfaced and there have been warnings that any children of this technique could be born sterile or be at risk of cancer

and premature aging. There has also been international condemnation where authors have commented that, because these children would have heritable genetic changes, that there are significant risks to the health of future generations.

Mitochondria are present to generate energy for the cell. They come from the mother and have their own genetic material, which sits alongside the germ line DNA of the "conventional" mother and father. The thought that this DNA might constitute parentage (i.e. the third parent) brings forth some interesting legal points. Parenthood has both a genetic and social meaning, although the former is regarded as the fundamental tie between parent and child. This contribution must be both direct and immediate. To clarify, grandparents provide a quarter of a child's DNA but are not accorded the status of "half" genetic parents. The recent proliferation of

assisted reproductive technologies has of course complicated matters and given that the donor of the mitochondria is making a direct and immediate contribution of generic material, then in my view, we have a new biological parent. In preparation of this article, I have found it difficult to make the counter argument. Pertinent to this of course, is now the fact that the new (third) parent is a second female parent. Avoiding this issue by trying to claim mitochondrial donation is merely a tissue donation is not adequate. Others may say that the contribution of the third parent to the child's DNA is low, less than 0.1%, but in the world of genetics, where we are examining disease-causing changes which occur at a frequency of one in three thousand million (the size to the human genome), this is significant. We simply do not know enough to say that the mitochondrial DNA will have no material effect on the characteristics of the child.

In the UK, the mother is the person who carried the child and gave birth, the father is the man who provided the sperm. So what could be the status of the donor of the mitochondria? Is it that they have the same status as a donor of an egg or sperm for IVF or perhaps the status of those who donate blood, organs or bone marrow? Egg or sperm donation is in effect normal reproduction from a genetic point of view but the donation of mitochondrial DNA does not fall into that category; it may create a set of unique parental rights. Equally, mitochondrial donation cannot be considered simply as a tissue donation; there is an impact on future generations as the DNA will be passed on.

Since the courts quite rightly take the view that a child should "know" its biological parents, the second female parent may well wish to take an interest in the child (via appropriate application of her Parental Responsibility rights) or they may wish to give up Parental Rights. Their view may change over time; how the donor feels at the time of donation could be very different to how she feels once the child is born. Current provisions under the Human Fertilisation and Embryology Act 2008 do not cover this situation adequately. For example, a Parental Order as it relates to surrogacy (to gain or relinquish parental rights) can only be granted after a child has been

born (and then for a fixed period only), not at the point of conception. Perhaps the mitochondrial donor will be able to gain Parental Responsibility via a court order or a formal 'parental responsibility agreement' with the child's birth mother (let us presume that she is the egg donor as well... it gets even more complicated if she is not!).

If the premise of the second female parent is accepted, which I believe it should be, then we are in new legal territory as it relates to assisted reproduction and it is likely that several legislative amendments will be required to provide for mitochondrial donation.



Dr Neil Sullivan is General Manager of Complement Genomics Ltd, which provides the dadcheckgold service for parentage testing. He is a PhD level molecular biologist with a LLM in commercial law and has a particular interest in consent.

dadcheckgold
Simply a better DNA testing service

- Experts in DNA testing for paternity and other biological relationships
- Accredited by the Ministry of Justice for s20 tests*
- Adherence to court dates
- Sample collection service

Award winning customer service

Please contact us on
0191 543 6334

*By virtue of having ISO 17025 accredited UK-based laboratories, we have also been accredited by the Ministry of Justice as a body that may carry out parentage tests directed by the civil courts of England and Wales under section 20 of the Family Law Reform Act, 1969.

School of Law

BIRMINGHAM CITY University

Law courses designed to enhance your career prospects

With over 40 years' experience of providing innovative legal education, our courses will equip you with the skills and knowledge you need to flourish in this challenging profession. Courses are academically rigorous with a vocational emphasis, helping you to apply your academic knowledge to the real world. Our active research programme includes a particular focus on the American legal system, the death penalty and international human rights. This approach gives you excellent knowledge of the legal system and a range of relevant experience designed to increase your employability.

Our courses:

- Common Professional Examination I Graduate Diploma in Law
- Legal Practice Course (LPC) - with LLM Legal Practice Top Up
- LLM International Business Law
- LLM International Human Rights
- PhD Law

Register for Postgraduate Event 22 April, 2-7pm
T. 0121 331 5595 www.bcu.ac.uk/opendays

[/bcuschooloflaw](https://www.facebook.com/bcuschooloflaw)
[@bcuschooloflaw](https://twitter.com/bcuschooloflaw)

Hospital treatment: a risky business?

Avoiding clinical negligence claims.

Marek Bednarczyk, Partner at law firm Hart Brown, looks at the law in relation to making clinical negligence claims and argues prevention is better than cure.

On 1 April 2013 the government's reforms on legal aid came into force, dramatically restricting the types of clinical negligence cases which would receive legal aid. Now in effect cases involving brain injury to babies may receive legal aid, but other cases (unless they are exceptional) will not.

If the incidences involving clinical negligence were on the decrease this reduction in access to legal aid might appear to be less harsh. However, concerns over clinical standards have not diminished.

At almost the same time as the legal aid reforms mentioned above were being put into effect the long awaited report by Robert Frances QC on Stafford Hospital was published highlighting that there had been some 400 to 1,200 more deaths than would have been expected at the hospital.

More recently in March 2015 another report was published into the standard of care at Cumbria's Furness General Hospital's Maternity Unit. The report concluded that the serious shortcomings in the unit led to 11 babies and 1 mother dying where appropriate care would have prevented those deaths.

It should not be forgotten that the NHS treat huge numbers of patients each day – it is suggested that this is as high as one million patients every 36 hours – and many patients (probably most) receive the right standard of care. However, as the reports mentioned above show things can still go badly wrong.

In order to make sure that patients can achieve the best outcome for themselves it is vital for them to be proactive, rather than reactive, in terms of how they interact with the medical personnel concerned. Needless to say most patients would much rather avoid suffering from clinical negligence in the first place, rather than have to take legal action afterwards.

To this end, patients and their family members can take a few important steps to help reduce the risk of clinical negligence and before any problems arise:

1. Don't waste any time. It may sound obvious, but – where possible – seek medical treatment before you become an emergency patient. There is evidence to show that many individuals (and men in particular) will quite often suffer from severe symptoms for a long time before taking action, and therefore they don't go to see their doctor as early as they should.

2. Do not suffer in silence. If you are in hospital, make sure to explain your symptoms and full medical history to the doctors and nurses very clearly. If the medical professionals treating you aren't fully aware of your medical history and current symptoms, it's much easier for them to make mistakes in diagnosis and treatment.

3. Instruct your relatives to communicate any issues or concerns. Post-operative recovery can be problematic, especially if a patient is unable to talk to doctors and nurses. Family members should therefore be ready, willing and able to provide information and/or raise any concerns with hospital staff on behalf of a patient. However, that doesn't mean that relatives should take up the medical team's time on minor matters unnecessarily. Anyone communicating with doctors and nurses should make sure that the information they're providing is both accurate and relevant.

4. Do not be afraid to "make a fuss". Raising genuine concerns in a reasonable way is not the same thing as "making a fuss" over nothing; this is no time to be shy. It's also a good idea to monitor what happens after any discussions with staff by keeping a written record or diary. If any problems do arise, this written account may help if you do need to pursue a legal claim later.

5. Listen carefully. Ask nurses and doctors to explain any risks and potential complications in plain English, and without any medical jargon. If you know what to expect, you can inform your doctor and/or other hospital workers about any adverse reactions or other problems straight away, so that they have more time to respond.

Even with this type of advance preparation, however, the main responsibility for treatment still lies with the clinical staff. If clinical standards fall short and you suffer from avoidable injuries, a specialist clinical negligence lawyer should be contacted without delay.

Time is of the essence as there is a three-year time limit for making claims regarding injuries caused by clinical negligence. This limit starts from the date that the injury occurs, or the date that you become aware of the negligently caused injury which may come later, especially if any problems or complications only become apparent over time.

Finding a specialist clinical negligence lawyer is not difficult. The Association of Personal Injury Lawyers (APIL) has a website (www.apil.org.uk) and they provide a "Find an Injury Lawyer" service. Alternatively you can go to the website of Action against Medical Accidents (AvMA) (www.avma.org.uk or phone 0845 123 2352). AvMA also provides a "Find a Solicitor" service on their website. Other websites include that of the national Law Society (www.lawsociety.org.uk) or individual law firms.

Conditional Fee Agreements (No Win No Fee) are widely used in clinical negligence cases. Your lawyer will advise on your funding options and they will help you choose the right form of funding for you, even if thanks to the government's reforms in 2013 it may mean that legal aid is no longer a valid option save in very limited circumstances.



We'll help your client purchase a residential investment or commercial property

By looking at each case individually we can offer more flexible finance

At Bridging Finance we care about your clients as much as you do. So we know that there are times when they need funding to acquire further investments.

We will assess each case individually; there's no computerised approach. Funding is available within 5 working days and we can complete inside 24 hours if your client's case requires it.

All bridging finance is secured on land, residential investment and commercial property.

Find out more about our flexible, no nonsense approach to short-term lending.

Call 0161 933 7174
or visit www.bridgingfinance.co.uk

Helping you to help your clients.

- Total clarity and transparency
- Highly professional service
- Loans from £30K-£5m
- 1st and 2nd charges
- Substantial funding available



Trees and Planning: Using BS5837:2012 to Provide The Enlightened Approach

WHEN new developments are proposed, they can generate concerns about impact. This can include the potential loss of trees, which can detract from the merits of a proposal. However, with care, it can be possible to retain trees within a site, and enhance it in the process. I start by surveying the trees in accordance with BS5837:2012. This assesses each tree for its contribution to the site, suitable for the setting, condition and future life expectancy. It is a really useful way of identifying what is worth keeping.

Trees can enhance a site through providing maturity to another-wise sparse canvass. They can screen eyesores and help to connect the development with the surrounding area. They provide shade and can become a focal point to the setting.

The survey identifies if there are no trees of value, in which case site clearance is usually appropriate. Where trees of value are identified, this enables the site to be designed them. A benefit of this is it enables the developer

to highlight the positives. Buildings can be designed with the needs of the trees in mind. This can include the construction of minimum dig hard surfaces and avoiding trench foundations.

One of the important elements of the process is to ensure that trees have been accurately plotted showing the full extent of crown spread and the Root Protection Area for each tree. Whilst it can be tempting to show trees as standardised circles, in reality, they are rarely uniform in size and underplaying the real scale of trees can indicate a developable area which is larger than exists.

BS5837:2012 only provides recommendations for what should be in a report. It does not provide model reports, and the only way to be sure that you are commissioning such a document is if the template has been subject to peer review. The reports provided by Cedarwood Tree Care meet this requirement and we are happy to provide independent feasibility assessments for potential development sites.



Cedarwood
T R E E C A R E



Principal consultant Mark Chester, BSc (Hons); Tech. Cert. (Arbor. A.); C.U.E.W.; MIOH; M. Arbor. A.; C. Env.

Mark has experience in Tree Preservation Orders, boundary disputes, amenity tree valuations, planning permission and tree works.

He can provide feasibility assessments, support mediation and produce technical reports, and can guide your case through to a court hearing. He has had specific training in cross examination and has an excellent track record of successful courtroom witness cases.

T: 01981 570246 M: 07888 838360 E: enquiries@cedarwoodtreecare.co.uk

www.cedarwoodtreecare.co.uk

Out of the Ordinary™

Investec
Wealth & Investment

A horse, a horse, my kingdom for a horse!

It's a strange old time we live in. 530 years after the Battle of Bosworth the UK General Election was, for a couple of evenings, pleasantly shunted off the air waves as we remembered a Medieval monarch (who only reigned for two years) and watched his reburial after his remains were found in a council car park in, of all places, Leicester. Perhaps he didn't die in battle but rather just got lost on the 'ring road' somewhere? I'm certainly not brave enough to risk the wrath of the Richard the Third Society by passing comment on the possible murder of his nephews but re-reading the Shakespeare play I was taken by one particular quote. "I will deliver you, or else lie for you." How appropriate for a General Election year!

As we approach what is likely to be a tense election the markets enter a period of nervousness. Elections are a useful excuse for deferring decisions and, at a time where many UK equities are looking 'generously valued', it is an opportunity for investors to take some profits. In fact, as I write this article, the wonder has been that we have not already seen a more significant market retreat (although by the time you read this fate may have taken a hand).

Some time ago I listened to an economist who defined a 'European Economy' as one that got along 'despite' government rather than 'because'. I am sure there are some German industrialists who would vehemently (and rightly) disagree with this description but perhaps this is the key to what the market is telling us, that the politicians no longer really matter? Looking at the constituents of the FTSE 100 one can, perhaps, understand this to a degree. The 100 share index is not made up of 100 equal sized companies but is rather composed of 100 companies weighted according to their

capitalisation. For example HSBC makes up, approximately, 8% of the index, Vodafone 5.76%, BP 5.46%, Royal Dutch Shell 8.54%, BATS 3.52%, etc. BHP and Rio between them make up 4.35%. Most of these companies make most of their money outside the UK. In short, will the outcome of a General Election really affect their earnings or share price?

To some extent this is a partly fatuous argument. Tax policy would certainly have an effect (and the general anti-business agenda in the media at the moment, whilst understandable, is not helpful to UK plc) but the long-term impact a national government can have in a globalised economy is far less than back in, say, the 1970s. In short, whilst the election matters the markets may be reminding us that it doesn't matter as much as it used to. Perhaps we'll find out over the next few weeks?

So, this election, sit back and watch the politicians sweat for our votes but keep your most wary eye on what is happening abroad rather than at home. That may be what really matters? As for the politicians over the next few weeks, I am reminded of a quote from another Shakespeare play about the intricacies of politics, Julius Caesar: "Cry 'Havoc!', and let slip the dogs of war." I wonder what Richard III would have had to say about that? But then history is written by the victors. Politicians please take note.

Please bear in mind that the value of investments and income derived from them can go down as well as up.

Ian F Bailey Chartered MCSI
Senior Investment Director
Investec Wealth & Investment



To see how we could be of service to you please contact Ian Bailey on 0121 232 0700 or email ian.bailey@investecwin.co.uk

investecwin.co.uk

Individuals International Financial Advisers Charities Court of Protection

Member firm of the London Stock Exchange. Authorised and regulated by the Financial Conduct Authority. Investec Wealth & Investment Limited is registered in England. Registered No. 2122340. Registered Office: 2 Gresham Street, London EC2V 7QP.

Offices at: Bath Belfast Birmingham Bournemouth Cheltenham Edinburgh Exeter Glasgow Guildford Leeds Liverpool London Manchester Raigate Sheffield

NEW!



Manage your matters from the palm of your hand.



Contact us for an obligation free demonstration.
0845 683 2517
leap.co.uk/mobile

