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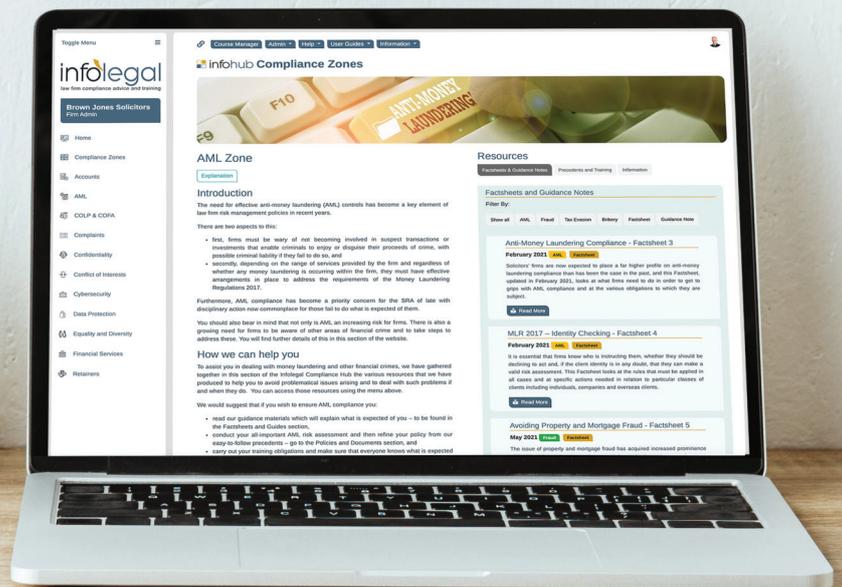
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President's Introduction



Another three months of the year has passed by with legal professionals around the country working tirelessly to provide good service to clients.

We have been busy at the Law Society ensuring our members are supported and engaged with, and looking at opportunities to deliver interesting and fun events.

It was with much relief and excitement that the Law Society were able to host the first 'in-person' event in 18 months! The Law Society Charity River Walk took place on 10th July 2021. You will find an article and pictures of the day in this edition of the Pears magazine. As you will read, the event was in aid of Onside Advocacy, our charity partners. The total amount raised was £750.00. A huge thank you to everyone that gave up their time, made donations and joined us on the day.

This year the annual Presidents' and Secretaries' Conference moved online to deliver a virtual experience providing

an opportunity for all local law societies' stakeholders to meet in a virtual setting and share learning, knowledge and experience. I was honoured to have been invited to represent Worcestershire Law Society as a panel member discussing attraction and retention of junior lawyers.

Our next event will be the long awaited in-person Annual Worcestershire Law Society Awards taking place on 10th September 2021 at Grafton Manor. Nominations were at an all time high this year and the Committee were at times in difficulty shortlisting from such exceptional nominees. Those shortlisted were interviewed on 17th June and 15th July and the winners will be announced on the night!

A big thank you to my fellow interviewers, Toby Hooper (Retired Judge), Douglas Wotherspoon (University of Worcester Law Lecturer), Kate Bould (Index PI), James Osborne (Partner, HCR and Committee Treasurer) and Laura Osborne (Committee Administrator).

Finally, I draw your attention to the announcement on the right of the passing of District Judge Parry. On behalf of the committee, our thoughts are with his family and friends at this time.

If you or anyone you know needs support at this time, please contact me or a committee member or visit the Law Society pages at <https://www.lawsociety.org.uk/en/career-advice/career-development/stress-and-mental-health> for support, help and advice.

Charlotte Perry

President, Worcestershire Law Society 2021-2022

It is with great sadness to inform you that Martin Parry, who will be known to all of you as a great servant to the City of Worcester as a District Judge, and before that a Solicitor with March & Edwards [now SME Solicitors] passed away on Monday 26th July 2021 peacefully at St. Richards Hospice.

Our thoughts and condolences go out to his wife Nicky and family.

The esteem and affection with which Martin was held was evidenced by the tremendous turnout at the recent valediction chaired by the President of the Family Division on Martin's retirement.

Information relating to a memorial will be circulated in due course.



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Hi, I'm Kate

A culture of compliance is now essential. Here's why, and here's how...

Kate Bould, Managing Director, Index PI West Midlands

Now the SDLT holiday is winding down, firms I'm speaking to are turning their minds to tightening their compliance, as they look to reduce their exposure to risk.

This is being driven, in part, by:

- In June, the SRA beginning its promised enforcement action against firms over their anti-money laundering obligations
- In July, the CLC confirming 6 of its regulated firms had been forced to close after failing to get PII cover
- Firms looking into applying for accreditation on The Law Society's Conveyancing Quality Scheme (CQS)

With too much at stake for it to be otherwise, a committed culture of compliance is now a must for all conveyancing firms.

These 4 products, from Index, seamlessly integrate with most case management systems to increase your firm's protection, efficiency, and consistency:

COMPLETIONmonitor by Lexsure

COMPLETIONmonitor, is a supervisory risk management software, providing completion checklists to mitigate the risk of non-registration and noncompliance of lender requirements. Supported by brokers, insurers and lenders, as a key compliance tool, there is no equivalent system on the market.

- Reduce the possibility of claims by evidencing risk management & compliance to lenders, regulators & PI Insurers
- Stay up to date & compliant with links to and assists with ever-changing lender requirements
- Increase firm-wide efficiency with a detailed overview of all pre/post-completion activity
- Reduce your PI insurance premiums with many leading insurers

Thirdfort Digital ID

Thirdfort Digital ID checks will:

- Reduce PII premiums with insurers
- Reduce risks during client interactions with fast, safe & secure automated ID & source of funds checks
- Help conveyancers avoid the stress of exposure to financial & reputational risks
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- Fast AML checks to confirm source of funds with FCA-regulated bank verification

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Law Society and Land Registry compliant, HelloSign will:

- Speed up processes, with documents signed & returned digitally
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e-ROT by Lexsure

Lexsure's e-ROT (electronic Report On Title) brings increased protection, consistency and efficiency to building the most important, but time-consuming document in a purchase transaction.

- Complete a Report on Title in half the time
- Powerful, context-driven template offers a host of add-in sections covering commonplace to very obscure conditions that may be relevant to the property
- Frequently upgraded to cover new areas of risk or emerging areas of concern such as Green Deal advice, solar panels & short leases
- Fully customisable elements allow you to retain control & ensure quality control

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*“ Increase your firm’s
protection, efficiency
and consistency
with Index ”*



If you're also looking at ways to increase your protection, efficiency, and consistency, I'd be very happy to jump on a call, discuss your challenges and demonstrate our products. You can call or email me on:

0121 546 0377 or KateBould@IndexPI.co.uk

Best regards

Kate Bould

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Merger completed between Harrison Clark Rickerbys and Hewitsons

Award winning top regional law firm Harrison Clark Rickerbys (HCR) has completed its merger with well-established firm Hewitsons. The two firms will work together as from June 1. Managing partner **Rod Thomas** said: "We are pleased both that the merger has been completed successfully and that it has been received positively by the staff and clients of both firms."



Rod Thomas

Colin Jones, former managing partner of Hewitsons, said: "We all recognise the strengths each party brings to this merger and we're looking forward to developing those further across a wider network."

The merger brings the two firms together into a firm of approximately 780 people and £65m turnover.

Harrison Clark Rickerbys (trading as HCR Hewitsons in Cambridge, Milton Keynes and Northampton) has more than 780 staff and partners based at offices in Birmingham, Cambridge, Cardiff, Cheltenham, Hereford, London, Milton Keynes, Northampton, Hereford,

Thames Valley, Worcester and the Wye Valley, providing a complete spectrum of legal services to both business and private clients regionally and nationwide.

The firm has global reach via its network of independent law firms, LawExchange International. It also has a number of highly successful teams specialising in individual sectors, including health and social care, education, technology, agricultural and rural affairs, finance and financial services, defence, security and the forces, and construction.

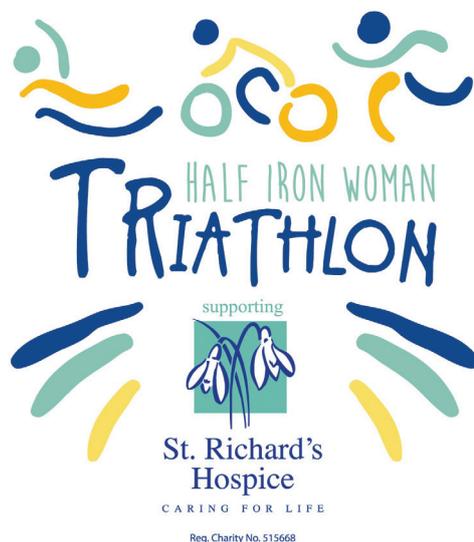
Half Ironwoman Challenge – Rebecca Widdowson, Managing Partner of Hallmark Hulme

70.3 miles otherwise known as a Half Ironman Triathlon or in this case Ironwoman Triathlon... must be nuts! For my 50th birthday I decided on a challenge which frankly terrifies me... I am not good at running and thinking about running a half marathon at the end of a 1.2m swim and 56 mile cycle is a huge mental obstacle. So why do it? I suppose the answer is 'why not?' And along the way raise some funds for a great local charity (St Richards Hospice) that not only cared for my late father-in-law a few years ago but this year cared for my neighbour's and close friend's mum.

On the day I am being supported by Rivers Fitness who have agreed to let me swim in their pool at Droitwich and on the cycle stage by Mark Dodwell and Jonny Arr (in the picture).



Mark Dodwell, Rebecca Widdowson and Jonny Arr



12th September 2021 - Droitwich & Worcester

Swim 1.2 miles - cut off time 1hr 10 mins
Cycle 56 miles - time 4 hrs 10 mins
Run 13.1 miles - 2hrs 50 mins

With 20 mins transitions I am aiming to complete in 8hrs 30 mins. The distance is known as a 70.3.....

<https://uk.virginmoneygiving.com/RebeccaWiddowson>



Clive at Sanders Fitness, who is my PT, and has the toughest job in getting me ready for the challenge is running with me along with other friends. By this stage, I fear I will be crawling!

If anyone would like to donate (please do as it is going to hurt.....alot!) my Virgin Money page is below: <https://uk.virginmoneygiving.com/Team/HalfIronwomanChallenge>

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Online divorce service to replace paper D8s for legal representatives from September 2021

Many aspects of life have been moved online since the first national lockdown in March of last year, and the transition to digitalisation is here to stay insofar as divorce is concerned.

The online divorce pilot scheme was first trialled by legal representatives as early as 2018, when the Ministry of Justice also launched its online divorce service for litigants in person. However, the digital divorce service was not open for use by all legal professionals until 16 December 2019. Since then, it has proved a popular alternative to the original paper D8 process. The government has reported more than 100,000 online divorce applications being received by HM Courts and Tribunals Service (HMCTS) since its launch in April 2018. The introduction in April 2021 of the facility for a respondent's solicitor to complete the acknowledgment of service online has now resulted in a fully digital process for legal representatives.

The benefits of the online process are clear to see, with less than 1% of online applications being returned due to user error as compared with 40% using the old system. Regular court users will be aware that the paper application could take months to complete, with time estimates of six months or more not being uncommon. This is so despite the only real delay in the process being the wait of six weeks and one day from Decree Nisi until an application can be made for Decree Absolute. The courts often had a large backlog of

work and would regularly be working several weeks behind in terms of post received. In contrast, the online system takes considerably less time and some stages in the process are actioned within a matter of hours of submitting the relevant document.

The Law Society has met with representatives of HMCTS who have confirmed that from 13 September 2021, they will be mandating the digital divorce process. Legal representatives will therefore need to process their divorce applications online rather than using the paper D8 form. There will be exceptions to this in cases of civil partnerships, judicial separation and nullity.

This is a welcome change which will hopefully alleviate some of the stress experienced by clients going through such emotional events in their lives by enabling matters to be dealt with expeditiously by the courts. The financial remedy and child arrangements procedures also appear to be following suit with an increase in digital services.

In preparation for September, HMCTS encourage firms to sign up to MyHMCTS in good time by following these steps:

- check that your firm is not already signed up to MyHMCTS (firms with probate departments may already have accounts); if your firm is using MyHMCTS, request a username and password from your administrator
- if your firm has not signed up, register for the service – your firm needs to nominate an administrator to set the organisation up and manage the account
- to register, organisations

must have an active fee account (also known as Payment by Account, or PBA); registering for an account is easy and accounts are usually confirmed within three working days – if you have any questions about setting up an account, email MyHMCTSsupport@justice.gov.uk

- once an account has been created, the administrator will be able to manage the account, add additional users and manage permissions

Guidance on applying online is available on the gov.uk website and further support is available by contacting HMCTSFInancialRemedy@justice.gov.uk.

Joeli Boxall, QualitySolicitors Parkinson Wright

Businesses warned against cutting corners in scramble to fill vacant posts

Businesses looking to recruit and fill vacancies as the UK emerges from lockdown are being warned not to cut corners when it comes to their legal duties.

Worcestershire employment lawyer **Darryll Thomas** has said firms are likely to be advertising significantly



Darryll Thomas

more vacancies over the coming months as Covid-19 restrictions are lifted and trading returns to pre-pandemic levels.

However, Mr Thomas, a partner at mfg Solicitors, said firms needed to ensure they comply fully with their responsibilities in order to avoid being hit by fines and court action further down the line.

He said: "Research suggests over half of firms may be looking to accelerate their recruitment soon, which is fantastic news for the economy and for jobseekers.

"The difficulty for employers is that while they will want to emerge from lockdown full steam ahead and get those vacancies filled, that's not a reason to let their compliance with the law lapse.

"The haste in filling these roles means many may be tempted to cut corners, which could cost them dearly."

Mr Thomas also urged employers to pay careful attention to their adverts, ensuring they did not discriminate, either directly or indirectly, against any of the protected characteristics.

He is also reminding them of their responsibilities to ensure a standardised interview process, which avoid questions on illness and disabilities, work absence and family plans. Other potential pitfalls include data protection under GDPR and checking someone's right to work in the UK.

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"It has been a really difficult time for employers and jobseekers over the last 18 months, with millions furloughed and many businesses effectively mothballed," Mr Thomas added.

"Employers looking to recruit need to brush up on their duties as employers and ensure they've taken the appropriate advice before they post their vacancies. Then they can get on with rebuilding and emerging from the pandemic ready for the new normal."

Readers requiring more information or advice can contact Darryll at mfg Solicitors through darryll.thomas@mfgsolicitors.com or by calling 0845 55 55 321.

mfg Solicitors announces ten partner and associate promotions

Worcestershire law firm mfg Solicitors has announced the promotions of ten specialists following another year of growth across a variety of departments. Award-winning farming

expert Alexandra Phillips is promoted to partner within the firm's nationally-recognised Agriculture and Rural Affairs department. Meanwhile, Andrew Chandler, who deals with a variety of contentious probate cases, also becomes a partner.

Commercial property specialists Ben Rothery and Rhiannon Clark are also promoted to partner level whilst Sally Smith from the firm's Private Client team is the fifth partner promotion.

Five lawyers have also been promoted to senior associate and associate level.

Residential property lawyers Sharon Lerry and Nichola Wilson become senior associates following a sustained period of growth in the past 12 months. Respected commercial property specialist Lisa Morrison also steps up into a senior associate role.

In a further two key promotions, employment law expert Chris Amys, and Becky Husband in the firm's Residential Property department, both become associates.

Maynard Burton, partner and chairman of mfg Solicitors said: "All ten solicitors fully deserve their promotions and they come after a hugely difficult year where they have shone time and time again, supported clients and expanded their reputation as first-class lawyers.

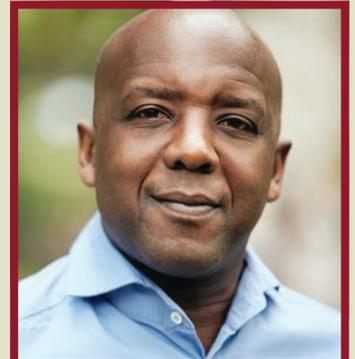
"Alexandra, Andrew, Ben, Rhiannon and Sally have rightly been thought of as rising stars for several years now and will take on further responsibilities as partners. Sharon, Nichola and Lisa each have exceptional track records, whilst Chris and Becky also deserve their next step into more senior roles."

mfg Solicitors has six main offices across Worcestershire, Shropshire and Birmingham. Its head office is in Kidderminster.

Solicitor elected 'first black senior partner' at UK top 100 law firm

By **Monidipa Fouzder** – Law Society Gazette

A personal injury solicitor is believed to have made history



Trevor Sterling

by becoming the first black senior partner to be elected at a UK top 100 law firm.

Trevor Sterling said it was an honour to be elected as Moore Barlow's first senior partner since a merger between Moore Blatch and Barlow Robbins last year. "I really hope this inspires greater diversity and social mobility within our profession," he said on Twitter.

Sterling appeared in the Gazette's My Legal Life section in 2016, where he revealed that he entered the legal profession by 'good fortune', having left school at 17. He began working as an outdoor clerk for trade union firm Rowley Ashworth. He qualified as a legal executive while working full-time and had 10 years' experience when he qualified as a solicitor. He obtained partnership when he was 28.

He said one of the hardest challenges was 'developing in a profession which has not historically been the most diverse. However, this has changed significantly over the years. I hope the challenges I have overcome will inspire more junior lawyers coming through'.

Sterling helped to establish the Mary Seacole Trust, a charity that promotes equality in public and private service.



Maynard Burton (centre) with newly promoted lawyers from mfg Solicitors

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Daniel Williams, Phil Harris, Esme House and Daniel Maiden

It's a family affair at QualitySolicitors Parkinson Wright for Graduates of the School of Law, University of Worcester

QualitySolicitors Parkinson Wright is proud to support the School of Law at the University of Worcester and their students.

The firm has been able to offer work experience and summer placements to students at the School of Law since it formally opened at the University of Worcester in 2016.

We are delighted to have four graduates from the University working in our family department at the Worcester office.

Daniel Maiden was our first work based placement in 2018 and joined the firm as a paralegal prior to his

graduation in 2019. Daniel has now completed his Legal Practice Course (LPC) and is currently half way through a training contract. He is a finalist for Trainee Solicitor of the Year at the Worcestershire Law Society Awards 2021.

Phil Harris became our second work based placement in 2019 and joined the firm as a paralegal in 2020. Phil commenced his LPC in 2020 and was offered a training contract in May 2021. He is also a finalist at the Worcestershire Law Society Awards 2021 for Paralegal of the Year.

Daniel Williams joined the firm as a paralegal in July 2020 and will be starting his LPC in September 2021.

Esme House graduates from the School of Law this year and has joined the firm as a paralegal. Esme will also start

her LPC in September 2021.

Peter Lewis, Partner and Head of Family Law says, "We were pleased to be able to offer work based placements to Daniel Maiden and Phil Harris. Both showed excellent promise during the placements and were offered a position in the firm upon the completion of their degree. As a result of their hard work and commitment at QualitySolicitors Parkinson Wright they have been able to progress to a training contract. The calibre of students from the University has been exceptional and due to the expansion of the family department we had no hesitation in offering additional paralegal positions to Daniel Williams and Esme House."

Cyril Arridge, Managing Partner says, "I am delighted the firm can offer support

and career opportunities to the students and graduates of the School of Law. It is very rewarding to see the next generation of lawyers coming from our local University."

Doug Wotherspoon, Senior Lecturer at the School of Law at the University of Worcester says, "All students undertaking our law degree will acquire a variety of practical legal skills: those students who elect to do work placements in their final year of study gain a very valuable opportunity to put into practice what they are learning in an academic setting and to demonstrate to potential employers that they have both academic ability and skills which transfer readily to the workplace. We are delighted that the efforts of four of our students and the worth of our law degree have been recognised by Quality Solicitors Parkinson Wright."

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Worcestershire Law Society & Legal Bricks Charity Walk Success

We are delighted to report that our Charity Walk has raised £750 for Onside Advocacy.

Worcestershire Law Society members all met at The Anchor Diglis on Saturday 10th July for a Charity River Walk in aid of Onside Advocacy charity. All donned in our WLS branded T-shirts we took a lovely 5.5 mile walk along the River Severn and back to the Anchor for a well deserved drink at the end!

Money was raised through a small entry fee for the walk, sponsorship from Michael Connelly at Legal Bricks and a raffle for a Luxury Hotel Chocolat Hamper on the day.

A fabulous event which we may look to do annually moving forward!

We need to send HUGE thanks to our sponsors Legal Bricks (with the team led by Michael Connelly) and also to all of the Worcs Law Society members and friends (and dogs!) who joined us on the day for the walk and donated :)

If you would like to make sure you are in the mailing list for all of our events please email info@worcestershirelawsociety.com

Legal Bricks – Charity Walk Sponsor

Legal Bricks sponsored our Charity Walk on the 10th July. Managing Director Michael Connelly, who also took part on the day, tells us more about Legal Bricks.

We started life as a property search company around 12 years ago now, but over the past 4 years, we have evolved with the demands of the market-place and now offer a full suite of software solutions to support conveyancing solicitors and estate agents.

Searches still remain core to our business focus and we are extremely proud of the service we provide. In addition to this, we now support firms in a multitude of ways through our custom-built technology solutions. These solutions comprise a conveyancing quotation and referral platform, full suite of conveyancing searches and insurances, AML and Biometric solution and a hybrid service which aims to fill the void between a firm's case-management system and the end user.

We will also kick off August with the launch of our new solution, LB-Connect, which we see as being the final part of the property puzzle. Via LB-Connect, law firms will have access to a complete client on-boarding solution, where their clients can complete a whole range of tasks.

Some of the innovative features include an E-Signature service for those key



on-boarding documents, the ability to complete protocol forms, client questionnaires and joint ownership forms online, where they can subsequently be signed electronically, and an in-built messaging service for clients and solicitors to reduce emails and centralise data.

Alongside these features, we also include our new biometric face scanning technology and an integrated source of

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funds solution, enabling law firms to verify client identity and source of funds, in real-time. Based on feedback to date, we believe this is exactly what the property industry needs to remove those bottle necks and create even further efficiencies for each practice.

Conveyancers have been under an enormous amount of pressure leading up to the end of the SDLT holiday at the end of June and indeed most are still extremely busy as the housing market remains buoyant. Solutions such as ours will be really key in making their

life easier and, we hope, less stressful, with less chaser calls and a much more streamlined approach.

See www.legalbricks.co.uk for more information.



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Presidents' and Secretaries' Conference 2021



This year the annual Presidents' and Secretaries' Conference moved online to deliver a virtual experience providing an opportunity for all local law societies' stakeholders to meet in a virtual setting and share learning, knowledge and experience.

This flagship event took place on 16th July 2021 from 1:30pm to 6:30pm and incorporated a varied mix of plenary and breakout sessions providing delegates with the opportunity to discuss common challenges, share experiences and hear practical tips from both their peers and expert speakers.

It was an opportunity to hear from other legal professionals as they shared experiences and practical examples in areas such as diversity and inclusion, delivering value to members and engaging and attracting members to your society and take part in interactive break-out sessions.

The national Law Society presented on key areas of interest such as Access to Justice, Professional Indemnity Insurance and Solicitors Indemnity Fund.

The Law Society President, **Stephanie Boyce** opened the conference with a warm

welcome and gave an overview of her first 100 days as President and her priorities and plans moving forward.

Followed by a summary by **Louise Hanson**, Executive Director, Law Society of England & **Paola Uccellari**, Director of Policy, Law Society of England & Wales of the Society's influencing achievements and support for members, business plan themes and big topics on the horizon for the profession and members.

An afternoon of sessions followed including:

- Identifying and delivering value to members, championing diversity and inclusion: practical ideas to engage members locally
- Concurrent Breakout Sessions including Access to Justice – court reform and legal aid
- Tell the Legal Services Board: What are the risks and benefits from unregulated providers in legal services?
- Professional Indemnity Insurance and the Solicitors Indemnity Fund
- Building Engagement with the Law Society and with each other
- Member Engagement Locally - topics and activities

which members of local law societies find engaging and ideas and plans for their delivery

Our President **Charlotte Perry** was joined by **Jordan Brown**, President, Scarborough Law Society, **Laura Uberoi**, Council and Board member, Law Society of England & Wales and **Mumtaz Hussain**, President, Surrey Law Society to host the final session of the day 'Attracting and Engaging Members'. The session looked to tackle the big issue that faces many local law societies – attracting members. In particular, attracting and engaging the young and junior solicitors who are so important to our future and also encouraging solicitors to join the committees and stand as office holders.

Online Speed Networking closed the event.

Feedback so far has been positive and included the delegates found the sessions to be lively, intelligent, useful and fun!

3PB tops The Lawyer's Top 30 Chambers survey for growth and gender diversity



Posting tenant headcount growth of 33.7% from 163 to 218 barristers over the last five years saw 3 Paper Buildings (3PB Barristers) featured as the fastest growing chambers in the latest report from The Lawyer on the Top 30 sets in the UK.

The six-office, full-service

chambers also headlined with 50% growth in their silk numbers over the last five years.

3PB also tops the tables for the largest increase in female tenants over the last ten years – up 9% to 42%. The national chambers also saw a 40% rise in female silks as a % of its total number of barristers.

Simon Astill (pictured left), 3PB's Chief Executive, said of The Lawyer survey: "This in-depth report sees 3PB at the top of key measurements against our competitors. I'm hugely proud of all the hard work that the barristers and staff have given in successfully growing this fantastic set."

'Questions of Accountability' Conference

1st – 5th November 2021



Dear Sir or Madam,

We are writing to invite you to the **Questions of Accountability: Prerogatives, Power and Politics Conference** which will be taking place entirely online between 1st-5th November 2021 and is free to attend. It explores what is meant by accountability and does this by bringing leading public figures and academics to debate key issues and explain the challenges in achieving greater accountability. The event is open to everyone to attend and we very much welcome the attendance of members of the public.

The keynote speakers include **Baroness Hale** (former President of UK Supreme Court), **Baroness Helena Kennedy QC**, **Lord David Blunkett** (former Home Secretary), **Professor Bruce Ackerman** (Yale), **Professor Margit Cohn** (Hebrew University), **Professor John Keane** (Sydney), **Prof Conor Gearty QC** (LSE), **Professor Vernon Bogdanor** (King's College London), **Baroness Manningham-Buller** (former head of MI5 and current chair of Wellcome).

Highlights include:

Keynote Lecture on Impeachment in a Comparative Context (1st November) - this will be delivered by **Professor Tom Ginsburg** (Chicago) and with a response by **Professor Anibal Perez-Linan** (Notre-Dame).

Keynote Panel Discussion on Judicial Review and Accountability (2nd November) - this will include **Baroness Hale**, **Baroness Helena Kennedy QC**, **Lord David Blunkett** and **Professor Conor Gearty**. It will be chaired by **David Lock QC** (Landmark Chambers).

Keynote Speakers Event (3rd November) - the speakers are drawn from around the world and will discuss various aspects of accountability.

Keynote Panel Discussion on Impeachment (4th November) - speakers include **Joshua Matz** (the US House Judiciary Committee prosecution counsel in both Trump impeachments) and **Karen Popp** (Associate White House Counsel during the Clinton impeachment). It will be chaired by **Professor Richard Albert** (Texas).

Keynote Panel Discussion on Front-end Constitutional Guardians (4th November) - speakers include **Elizabeth Gardiner** (First Parliamentary Counsel), **Liam Laurence Smyth** (Clerk of Legislation, Public Bill Office), **Jack Simson Caird** (Counsel, Justice Committee) and **Joanna Dawson** (Commons Library).

To book a place email QofA2021@worc.ac.uk.

The conference website is now live at the following address and this contains the full schedule: <https://www.worcester.ac.uk/about/academic-schools/school-of-humanities/humanities-research/international-exhibition/>

If you have any further questions, please do not hesitate to contact the organisers at QofA2021@worc.ac.uk.

Yours sincerely,

Matthew Flinders, University of Sheffield, **Chris Monaghan**, University of Worcester

ELIZABETH J. SOILLEUX
MA, MB, BChir, PhD, FRCPath
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TOLATA: a brief guide to issuing proceedings



TOLATA work can be the bane of many family practitioners' lives. Whether it presents itself by way of an intervenor action in FR proceedings,

as a response to a claim under Sch.1 of the Children Act or as a 'plain' cohabitee claim, distinct procedural and, more importantly, costs implications arise. This article will provide an overview of the procedural elements of starting a standalone TOLATA claim and (hopefully) provides some useful practical advice for this stage.

The court's powers in respect of TOLATA claims are somewhat more limited than the Financial Remedies Court. In TOLATA matters, the court cannot make property adjustment orders to reflect what it sees as a fair outcome for the parties, nor can it adopt a quasi-inquisitorial approach to do so. The court's powers in respect of beneficial ownership extend only so far as a declaration of an existing beneficial interest, save for cases of proprietary estoppel where the court may declare the existence of a beneficial interest to avoid the otherwise unjust result of an unremedied estoppel.

The vast majority of TOLATA claims involve an argument over the parties' respective beneficial interests in the disputed property. These claims are generally the more troubling to litigate given the reliance on often years old discussions about each parties' respective interests. I focus on those claims in this article for the sake of convenience.

Pre-issue

Given most TOLATA claims turn on historical conversations, obtaining a detailed factual background including the following, if possible: dates of conversations and details of exactly what was said; copies of any emails/messages, etc. sent between the parties; photocopies of any handwritten letters or "family-meeting notes". It is absolutely key that as much detail as possible is gleaned about the circumstances of the trust as early as possible in the case. Your initial meetings with the client will inform your advice as to prospects and any without prejudice offers, dealt with below.

Obtain Office Copies as soon as possible and

any other Land Registry documentation, in particular, any TR1 (express declaration of trust) forms registered on the property. The existence of a TR1 will often complicate matters for a party wishing to assert the existence of an implied trust and will inform your advice as to prospects of success.

Regardless of prospects, alternative dispute resolution (ADR) is often the most prudent solution in respect of TOLATA claims. The majority of cases do not boast significant equity and it is simply disproportionate to litigate matters rather than taking a sensible and pragmatic approach at mediation, private FDR or arbitration.

Costs and offers

A further rude awakening for family practitioners is the application of CPR 44 and the general rule that costs follow the event. TOLATA claims must be pursued with the utmost precision given the very real possibility that, if your client loses, they will be paying not only your costs but the costs of the other party.

It is for this reason that realistic and persuasive without prejudice offers should be considered at the earliest opportunity. Generally, offers under the CPR should be sent in accordance with Part 36, a complex self-contained procedural code governing the consequences, timing and validity of such offers. It is open to parties to make Calderbank (without prejudice save as to costs) offers instead, though your client won't benefit from the positive consequences of a successful Part 36 offer if you do so. The primary point of offers, whether Part 36 or Calderbank is to insulate the client against a costs order and, in the best-case scenario, to net your client a more favourable costs order than what would otherwise have been available.

Issue

If ADR hasn't been successful or isn't suitable for the case for whatever reason, the next question is under which procedure to issue.

TOLATA claims can be brought under CPR Part 7 or Part 8 depending on the circumstances. Part 8 claims are likely to be dealt with quicker and are simpler to issue, but a Part 7 claim can be extremely useful and, indeed, necessary if the facts require it.

CPR 64 specifically provides that cases

concerning the execution of a trust (which necessarily include claims under TOLATA) must be started using the Part 8 procedure (CPR 64.2 & 64.3). Part 8 claims are started with a claim form and supporting witness evidence. If the Defendant wishes to defend the matter, they must serve and acknowledgement of service along with any witness evidence. The Defendant can, however, object to the use of Part 8 if there is a substantial dispute of fact (CPR 8.8). The consequence of this is that the claim will normally be transferred to Part 7 and be subject to the relevant case management directions thereafter.

Part 7 entails a more formal approach with the filing of statements of case (particulars of claim, defence, counterclaim, etc.) in accordance with the strict procedural timelines and requirements outlined in the CPR. Though Part 64 appears to militate against issuing under Part 7, if it is likely that there will be a substantial dispute of fact then the best course of action in the writer's view is to issue under Part 7. Indeed, the White Book makes clear that adverse costs orders are likely to be made where a party issues Part 8 proceedings and they know there are likely to be substantial disputes of fact. Given the somewhat contradictory guidance, provided that you are able to evidence appropriate consideration of which procedure to use, the court is unlikely to penalise your client even if it takes the view the wrong procedure was adopted.

Nevertheless, it is essential that the right procedure is adopted when issuing a TOLATA claim. Well-particularised statements of case can significantly narrow the issues in difficult cases of complex family arrangements and emotions; whilst a quick Part 8 claim form and witness statement can relatively swiftly dispose of a straightforward dispute.

Conclusion

TOLATA claims are by their nature legally and procedurally complex. Coupled with the stricter civil costs regime and rules in respect of without prejudice offers, it is essential to have the client's house in order before issuing. If finances allow, it is useful to involve counsel at the earliest possible stage. If not, it is hoped this article provides a useful, albeit brief, summary of the factors to consider when issuing a TOLATA claim.

Luke Nelson
3PB Barristers

WLS Law Awards Shortlisted Nominees 2021



The Interviewing Panel

The Worcestershire Law Society is pleased to announce its shortlisted candidates for the WLS Awards 2021.

Solicitor of the Year:

Nazia Riaz: Harrison Clark Rickerbys
Rebecca Randle: Painters Solicitors
Hayley Phelps: Harrison Clark Rickerbys
Lisa Johnson: Bradley Haynes Law

Junior Solicitor of the Year:

Rachel Chambers: MFG Solicitors
Jessica McSorley: MFG Solicitors
Sophie Ballinger: QualitySolicitors
Parkinson Wright
Harpreet Kaur: Harrison Clark Rickerbys

Paralegal:

Lauren Hammond: Painters Solicitors
Jodie Billings: Painters Solicitors
Phil Harris: QualitySolicitors
Parkinson Wright

Trainee Solicitor:

Amy McGovern-Docherty: MFG Solicitors
Elisabeth Cox: Painters Solicitors
Zahida Shah: Silverback Law
Daniel Maiden: QualitySolicitors
Parkinson Wright

Administrator:

Tim Clack: MFG Solicitors
Paulette Clarke: QualitySolicitors
Parkinson Wright
Alex O'Toole: Painters Solicitors



Lisa Collins: Harrison Clark Rickerbys
Samantha Thompson: QualitySolicitors
Parkinson Wright

Residential Property Team of the Year:

Harrison Clark Rickerbys
QualitySolicitors Parkinson Wright
MFG Solicitors
Hallmark Hulme
Painters Solicitors
Bradley Haynes Law

Barrister of the Year:

William Horwood: St Phillips Barristers
Angus Burden: No 5 Chambers
Tom Lawal: St Ives Chambers
Matiss Krumins: 3PB Barristers

Outstanding Achievement Award:

Theresa Freer: Hallmark Hulme

Pamela Hill: MFG Solicitors
Debra Kelly: QualitySolicitors
Parkinson Wright
Gill Wooldridge: Bradley Haynes Law

The interviewing panel had a wonderful day interviewing the nominees and celebrating the fantastic legal talent we have in our county. We are grateful to the panel consisting of Kate Bould from Index PI (Main Awards Sponsor), Charlotte Perry (WLS President), Douglas Wotherspoon (Worcester Law School), James Osborne (WLS Treasurer and previous President) and Toby Hooper (retired judge).

The winners of each category will be announced at the Awards ceremony which takes place on 10th September 2021 at Grafton Manor.

Breathing Space for those with problem debts



Breathing Space protects debtors from any action taken by creditors for up to 60 days, a welcomed reform for those who are struggling to manage their debts as they will be able to seek much needed advice without facing increased interest and charges as a result. It also protects debtors from enforcement action.

There are extra protections for those individuals who are receiving mental health crisis treatment. The protections will last as long as the person's mental health crisis treatment plus 30 days.

When does this commence?

The scheme launched on 04 May 2021.

Breathing Space can only be started by either a debt advice provider who is authorised by the Financial Conduct

Authority or by a local authority (where they provide debt advice to residents).

The debt advice provider will be responsible for the administration of Breathing Space and will be the main point of contact for debtors and their creditors.

Who will be eligible?

Individuals are eligible if they are assessed by a debt adviser as being in problem debt and they have not used the scheme within the last 12 months. The debt must be a "qualifying" debt as set out in the Debt Respite Scheme (Breathing Space) guidance for creditors published on Gov.UK.

The debt adviser might decide that Breathing Space is not appropriate for someone who can enter a more suitable debt solution straight away, without needing the protections. If the debtor can access funds or sell assets easily to clear the debt, Breathing Space would not be the right solution.

What does this mean for creditors?

If you are told that the debtor is in a Breathing Space, you must stop all

action related to that debt and apply the protections. These protections must stay in place until the Breathing Space ends. The electronic service will send you a notification.

Breathing Space is likely to have a huge impact on cash flow particularly in respect of large debts. However, Breathing Space is not a payment holiday and you are still entitled to accept payments.

Breathing Space seeks to protect those who are most vulnerable by giving them the encouragement and headspace to seek professional advice. This will hopefully lead to an increased percentage of repayment to creditors. Allowing debtors to seek advice at an early stage could prevent the pool of creditors from growing and the pot of money to potentially recover from becoming ever smaller.

Need further assistance?

For further advice please contact our debt recovery specialists in the Commercial Litigation Team on 01562 820181.

Jessica McSorley
mfg Solicitors LLP



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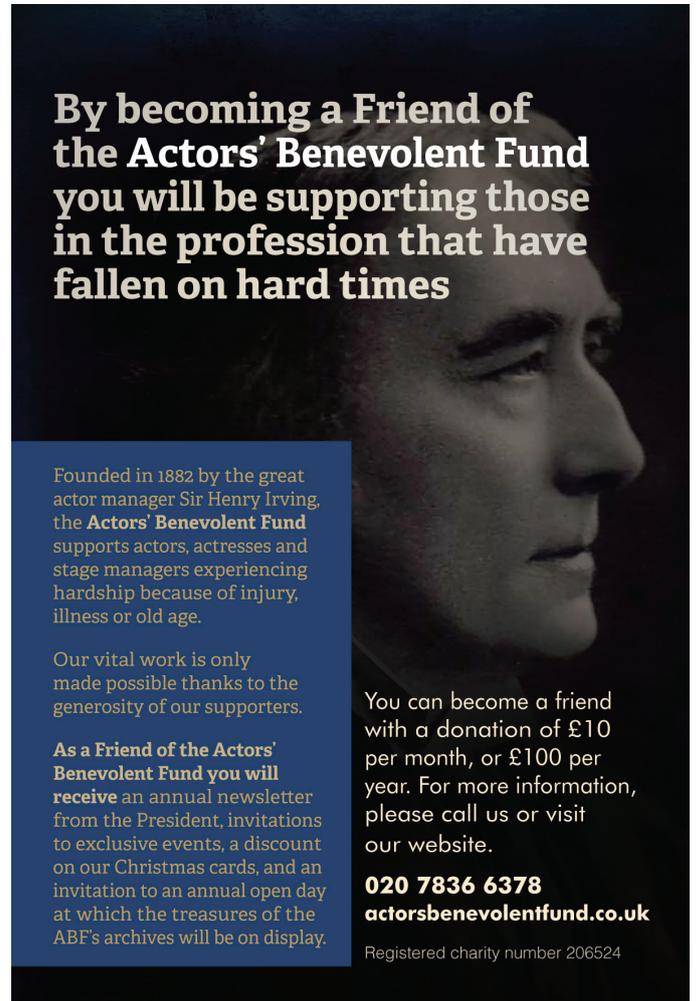
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Registered charity number 206524

Record levels of solicitors raise the topic of legacies with clients

REMEMBER US IN YOUR WILL
Help our work live on...

The proportion of solicitors and Will-writers mentioning the option of legacy giving with clients has risen to an all-time high, according to new research commissioned by Remember A Charity.

The tracking study, carried out by Future Thinking, monitors solicitors' and professional Will-writers' approach towards legacy giving and attitudes towards working with charities. The study reveals that 68% of solicitors and Will-writers always or sometimes proactively raise the subject of legacy giving with clients, up from 58% in 2012.

Almost one quarter (24%) occasionally raise the topic, while only 7% say they never do, down from more than twice that (16%) in 2012. On average, advisers report that 20% of the Wills they deal with annually contain a charitable bequest, having risen steadily from 16% in 2012. 85% of the legal firms in the study had assisted in administering estates that included a legacy.

Rob Cope, Director of Remember A Charity, says: "Over the years, we've seen a marked change in the way that advisers are approaching gifts in Wills with clients. Legacy giving is becoming more common across the client base, and there's much less reticence when it comes to raising the topic of charitable giving.

"Increasingly, advisers now see discussions about gifts in Wills as part and parcel of offering a comprehensive service to clients. In most cases, clients will want to look after friends and family first – and that's something we'd encourage.

"But a simple question asking all Will-writing clients if they'd like

to consider leaving a donation too can make a huge difference to the number of people that choose to give in this way, which is why working with advisers is such a key part of our strategy."

For the first time, the tracking study also explored the reasons for and barriers against opening up legacy giving conversations with clients. Advisers that always open up legacy giving conversations with clients said they typically do so because it is part of their standard Will-writing process or because they want to alert clients to the tax breaks linked to writing a gift into their Will.

Any legacy gift to charity is currently exempt from Inheritance Tax (charged at 40%), and a lower rate of tax (36%) is applicable on estates where 10% or more is donated. The most common barrier for not always mentioning legacy giving is that clients have already made clear their intentions, such as wanting their family and friends to be sole beneficiaries.

Rob adds: "Clearly, there's much further to go before legacy giving becomes a social norm and every adviser feels comfortable and confident about raising the conversation with clients. We'll be working more closely with the legal sector in the coming months to encourage greater consistency in the way that advisers approach gifts in Wills with clients and to provide resources that help them do so."

Remember A Charity is now working with the legal sector to develop a new suite of materials that will help to bring greater consistency and demonstrate best practice for the way that advisors can reference charitable giving with clients.



PAIN RELIEF FOUNDATION RELIEVING CHRONIC PAIN THROUGH RESEARCH

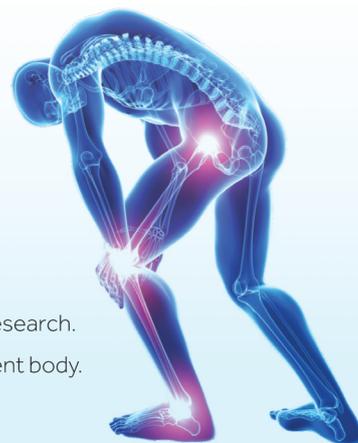
CHRONIC PAIN - THE SILENT EPIDEMIC

- › 1 in 10 people in the UK suffer from chronic pain – which does **not** go away.
- › Over half of sufferers endure chronic pain all day, every day of their lives.
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- › Thousands of sufferers lose their jobs because the pain is so bad that they **cannot** work.
- › Pain stops sufferers enjoying walking, shopping, sleeping; even playing with their children.

Chronic Pain affects people of all walks of life, 43% of the population suffer from chronic pain. Research costs money, and there is always an urgent need to provide more funds for more research.

The Pain Relief Foundation DOES NOT receive funding from the NHS or any other Government body. Instead, our vital work depends entirely on donations and the generosity of people like you.

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James Jarvis at Silver Fox Chambers offers personal development opportunities to aspiring professionals



In 2018 I decided to set up Silver Fox Chambers in Worcester with the sole purpose of giving away time for free. Pro bono work? Well, not exactly. I don't do client work for free. I provide opportunity to local sixth-form students considering

life at the bar.

This isn't entirely altruistic. I absolutely love the buzz I get from working with aspiring professionals - it is what gets me through the working day/week/year.

I am pleased to say the project has proved a success, even through COVID. However, this is not me patting myself on the back. I have worked closely with some extraordinary lawyers and outstanding secretaries and junior fee-earners within local firms and the WJLD. I am not going to name you. You know who you are. Thank you.

Before starting Silver Fox Chambers (as a barrister) I was a solicitor for 25 years and held various management positions that enabled me to drive my professional development agenda: training principal, head of various business units,

managing partner, and, briefly, training monitor for the Law Society. However, I had never started anything from scratch and I didn't know how that would go. My experience now tells me that entrepreneurial endeavour is not about the individual; it is all about the people you pull in around you. In particular, in my case, David Bugg (mentor and marketing director), Bruce Rodford (clerk, ICT and office manager), Natasja Enthoven (mini-pupil) and Holly Jennings (mini-pupil and communications) have made all the difference.

So, the successes:

- Six mini-pupillages
- Five professional 'soft' skills training courses
- Four school careers fairs
- Three school mock-interview days
- Two university careers talks
- Two WJLD presentations
- Two work experience blocks (i.e. curious non-barristers)
- One university mentoring programme
- One litigation seat (trainee solicitor)
- One clerk inspired to do a law degree

I am on the cusp of offering pupillage proper. There are some forms to fill in. Lots and lots of forms. And I thought the BSB operated light-touch regulations compared with the SRA. Pah!

Anyway, in the meantime, I have decided to sponsor the Worcestershire Law Society Awards. Specifically, you'll be drinking from bottles

bearing the chambers logo. I want nothing. I am just saying thanks.

I will shortly be starting a new project based in the South West. I will be using my Yachtmaster certificate, for which I now have a commercial endorsement, to provide sailing experiences for youth groups. It will be free of charge to those who can't afford to pay for it. There will be no positive discrimination involved - anyone who feels they can pay something will be asked to make a charitable donation. The project will be funded by offering paid team-building sailing experiences to corporate groups. The slight hold-up is that the staycationers seem to have bought all the suitable boats this year and driven the prices up - I know this because I am in Southampton as I type, on the lookout, hence the sartorial blunder in the photo. So, the aim is now to start next Summer/Autumn. If anyone is interested, either to nominate a suitable youth group or to find out more about the corporate team-building experience, please get in touch. I may be slow to respond - I have 'real' work coming out of my ears at the moment.

James Jarvis
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Flood Data Insights from Landmark Information

Data from the first in a new series of Data Insights Reports from Landmark Information has shown the broad extent to which flooding poses an ongoing threat across England and Wales.

The report provides land and property industry professionals with insightful snapshots of rich flood data to explain the true impact risk upon communities across the country. It highlights the local authorities that have the highest rate of properties located in Flood Zones 2 and 3, and reveals that 37 out of the 335 local authorities have at least a fifth of properties in Flood Zone 2 within their jurisdiction.

The report also identifies that more than 27,000 (6.7%) notable Listed Buildings are based in areas deemed to be at the highest Flood Risk parameter (3), in addition to almost 12% of all 200,000 Scheduled Monuments are situated in Flood Zones 2 or 3, which include highly notable buildings like the Tower of London, Hampton Court Palace and Caerphilly Castle.

The new series of Data Insights Reports, which will be published every quarter, will focus on specific themes, from a review of planning updates and the local and national impacts, to uncovering information relating to a range of environmental hazards.

Chris Loaring, managing director of Landmark Information (Legal), said, "According to the Environment Agency, approximately one in every six properties in England are considered to be at risk of flooding. This is forecast to grow as climate change continues to

translate into shifting impacts on both current and evolving land use.

"It is no secret that flooding poses a continued risk across our country – whether from surface water floods from heavy rainfall, groundwater flooding, through to coastal erosion and rising sea levels. It is something property professionals in all sectors need to be highly tuned to.

"We are therefore pleased to share a series of Data Insights Reports that provide valuable and revealing insights derived from our data and help better inform those working across the property industry who can benefit from a clearer view of the future.

Data: the lifeblood of the property transaction

.....
"In the two decades that Landmark Information has been supporting the property industry with vital due diligence, the way the data is captured, accessed, assessed and delivered has shifted."
.....

"From paper-based reports, CD-ROMs and PDF reporting, now the transition is taking us to digital. The reliance on documents and PDFs will ease and we will see an increased appetite for digital data that feed directly into an organisation's existing workflow. Instead of capturing a single moment in time,

the data will instead be continuous and provide a current flow of data that is relevant at any given moment in time.

"Flood data, alongside planning datasets, is one of the most dynamic risk types. The data is continually changing, driven by many factors – from local community and infrastructure updates, to the changing picture of the global climate. Having access to data that considers historical flood events while assessing modelled data relating to future impacts offers precise insights that developers and purchasers need, in order to make informed decisions.

"From a legal conveyancing perspective, the way you manage – and access – that data is critically important to ensure the most appropriate advice is provided. Live data feeds will provide the most up to date picture, and this approach will herald a significant new chapter in the evolution of due diligence in the property sector.

"We are proud to be driving forward this digitised approach and working closely with industry stakeholders to consider how the continued evolution of data feeds can benefit every part of the property industry."

Landmark Information has an extensive wealth of data that is used across the property industry, every day, by developers, property lawyers, environmental consultants, estate agents, surveyors, architects and planners to help in confident decision-making and in transactions.

For more information visit, <https://www.landmark.co.uk/news-insights/industry-reports/>.

www.landmark.co.uk



1 in 6

properties in the UK are
affected by flooding.

Not all flood reports are created equal.

The Law Society Flood Practice Note 2020 identifies that 'The market for flood searches is not regulated. There are different types of searches available with marked variations in the cost, quality, range, analysis and interpretation of data.'

So it's reassuring to know that every single Landmark Flood Risk report that identifies a high risk, is assessed by a consultant leading to more first time passes.

Choose data interpretation, not just data.

Minimising the impact of the Insurance Market condition on your practice

In recent months, much has been reported on the current condition of the professional indemnity insurance market. Unfortunately, experience tells us there will not be a quick resolution to these prevailing market conditions.

Insurance companies are commercial enterprises; just like legal practices, they want to turn a profit or at worst, break even for the transferring of risk. However, several leading insurers are unable to do this in the current climate. Right now, claims activity in the legal profession surpasses the premiums collected, and both the severity and the frequency of claims are also on the rise.

Indeed, not all practices experience claims, and firms that have may be unlikely to repeat them. Either way, the insurance policy has to respond in the event of a claim. Losses experienced will impact insurers' premiums in the relevant practice areas, with this adjustment likely to affect even claim-free practices. Those that experience claims are likely to be impacted more severely, as these could influence the base rates of their practice areas. If the claims burn cost (explained below) is impacted, premiums could be affected.

Example of claims burning cost calculation

$$\frac{\text{Total value of claims over X years}}{\text{Premium collected over X years}} \times 100 = \text{claims burn \%}$$

In light of the above, today's insurance market is a challenging environment for firms. The whole premise of insurance is that the premiums of the many pay for the claims of the few. If this simple metric isn't working, there will naturally need to be a change. In light of the current circumstances, insurers' appetites have been suppressed and PII insurance rates and premiums are typically increasing. Practices can, however, take steps to

minimise the impact to them specifically. Firstly, to protect the short, medium and long-term costs of your insurance, it is imperative to continue to evolving your approach to risk management, taking time at regular intervals to assess the risks associated with your specialisms. Risks evolve, and if you do not dedicate the time to assess exposures and implement appropriate procedures, you will be increasing your chances of claims. Failure to implement an effective risk management plan could have significant consequences; some practices will experience much higher price adjustments due to the market conditions and loss deterioration.

We recommend taking the following steps to protect your practice from tough market conditions:

1. Prepare a quality presentation, including detail beyond the minimum required information. Your PII presentation is effectively your shop window to insurers, so we recommend using this opportunity wisely.

Many practices claim to be 'low risk' in their activities, but few articulate why. Providing evidence for the underwriter's file is absolutely critical, and we recommend providing additional information to support the numerical data in your proposal form. Be careful not to overdo this; if the documentation is too wordy, it will defend itself well from ever being read.

Your proposal should highlight the key and salient points, focussing on how you mitigate the risks associated with your specialism, while also pointing out the accomplishments of your practice and its fee earners.

Please remember that your presentation is not the only window a prudent underwriter will look into, they will also check your web presence.

We recommend ensuring that your website accurately reflects what you actually do – this goes for imagery too.

Do also check the law society website

does not contradict your presentation in any way. Look out for the descriptions of your work, your staff and your accreditations – if you identify errors, you can request an edit. Any online reviews or any commentary from open sources will also need to be addressed.

2. Selection of the right representative is key. Comprehensive and direct insurer market access are crucial components, so anyone professing to be a specialist broker should be able to demonstrate these to you. You should be provided with a clear understanding (in writing) of the insurers that the representative plans to approach on your behalf. An important consideration in your selection is that, regardless of the size of your practice, a comprehensive market exercise cannot be undertaken without Lockton. This is due to sole distribution rights to various insurers.

You may also wish to check the representative's claims infrastructure. While no practice wishes to experience claims, if this happens you want assurance that your representatives have the experience and expertise to assist you in your hour of need.

3. Start early. For those that renew in October, I would suggest that now is the time to start. While preparing your presentation, request your claim summaries to check that these are accurate. If you have experienced claims, a narrative will be expected around what happened, along with measures implemented to prevent a repeat occurrence. Insurers will also expect an explanation around any open notifications, including your view on merit and quantum.

Right now, the market is challenging, but Lockton can still create healthy competition and deliver innovative solutions for your business. To find out how we can assist you, or to request support as to what to include in your presentation, please contact me or another member of the Lockton team.

Brian Boehmer,
Partner, Lockton

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Post-Nominals – do they matter?



Chris Makin

This is a moral tale about your choice of expert.

A little while ago – see <https://chrismakin.co.uk/when-experts-wreck-your-case/> - I wrote about Andrew Ager, an “expert” appointed by the CPS to give evidence at the trial of some men accused of the sale of voluntary carbon credits. His incompetence, lack of experience and malpractice were quite breathtaking, causing the criminal trial to collapse and the CPS having to revisit several previous trials at which his unsafe expert evidence had helped to achieve convictions.

I will not repeat Ager’s failings here, but that article tells a story which is difficult to believe.

More recently, we hear of the failings of Carl Stokes who gave evidence at the Grenfell enquiry. This is another story which is difficult to believe, but please read on.

Carl Stokes is a former firefighter who became a fire safety consultant on retirement, and bid for the work of assessing fire safety at Grenfell Tower for the Kensington and Chelsea Tenant Management Association (KCTMO). He carried out six fire safety inspections between 2009 and 2016; that is, from long before the fire on 14 June 2017 until after installation of the disastrous cladding which Sir Martin Moore Bick, the enquiry chairman, found did not comply with building regulations.

Stokes’s evidence to the enquiry was that he got the job with KCTMO because he appended to his name six post-nominals to which he was not entitled or which did not exist. The report I have seen makes reference to some of them, from which one may deduce that his business card must have read something like this:

Carl Stokes fire eng (FPA), IFE assessor/auditor (FSO), NEBOSH, FIA BS5839 system designer, competent engineer BS 5266 (plus one more, unknown).

That’s ugly enough, but some of these were simply reference numbers for courses he had attended, and he was not an IFE (member of the Institution of Fire Engineers). When challenged on that, he replied that anyone could check that he did not have that qualification if they had looked at the list of members at IFA!

This was clearly a person whose competence should have been questioned. And in further evidence it was revealed that he did not carry out proper inspections; in fact he cut and pasted extracts from other reports into his Grenfell reports, with the result, for example, that he commented on the Grenfell balconies. Grenfell did not have balconies.

The moral is that someone at KCTMO should have checked this man’s qualifications when he was selected. And preaching the obvious, this should also be done by you as instructing solicitors when choosing your experts.

Your intended expert’s post-nominals should stand scrutiny. As an example, here are mine with their provenance:

- FCA = Fellow, Institute of Chartered Accountants in England & Wales
- FCMI = Fellow, Chartered Management Institute
- FAE = Fellow, The Academy of Experts (one of only about 60 worldwide)
- QDR = Qualified in Dispute Resolution. (In fact, I have this twice: as an accredited mediator at The Academy of Experts and as an accredited expert determiner there, in the first batch of five ever to be awarded this. I could put QDR QDR after my name, or perhaps QDR2, but that would be pretentious!)
- MCI Arb = Member, Chartered Institute of Arbitrators (as an accredited mediator)

Chris Makin

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- Drug Trafficking etc. Asset Tracing & Confiscation
- Section 994 Disputes
- Director Disqualification
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N Christopher Makin FCA FCMI FAE QDR MCI Arb

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And even before checking my extensive experience as a forensic accountant, expert witness, civil & commercial mediator and expert determiner, you could gain assurance that I am who I say I am, by checking the members’ lists on all those professional bodies.

You, dear litigation lawyer, will have spent a great deal of time and effort on your cases. When you reach the point of instructing experts, don’t be fooled by a long string of invented qualifications. Relying on the likes of Andrew Ager or Carl Stokes as your expert may not be wise.

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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What the court expects of a competent Expert Witness

Lord Hodge, Deputy President of the Supreme Court gave the keynote address at this year's EWI Online Conference.

In his first year as the EWI President, Lord Hodge had been encouraged to reflect on his own experience of expert witnesses, both as a judge and advocate. In his address, he explored the critical role of the expert witness in the administration of justice, together with judicial expectation. Lord Hodge also shared his thoughts on the impact of the pandemic on the courts. He said the title of the conference, 'Lawyers and Experts: Facing the Future together', felt particularly apt.

Lord Hodge cited examples from several cases, and in particular referred to the South Australian case of Bonython, when outlining the considerations governing the admissibility of expert evidence. On impartiality, Lord Hodge endorsed Mr Justice Cresswell in the case of the 'Ikarian Reefer'. In the same case Mr Justice Cresswell laid out the judicial expectation of the expert witness, which is now codified in England and Wales in practice direction 35, supplementing CPR part 35.

Building on these foundations Lord Hodge offered his own observation on what the court expects of a competent expert witness. These were:

Independence and Impartiality. While this might seem obvious, he felt it was concerning that in a 2019 survey 25% of expert witnesses had felt pressurised to change their report in a way that damaged their impartiality, and 41% indicated that they had come across other expert witnesses they considered to be a 'hired gun'

Expert evidence must be 'expert'. In addition, an expert witness had to undertake the task of 'being an expert', being aware and competent in their duties to the court,

Continual critical examination of their own work or opinion.

Ownership, or, as expressed by Lord Justice McFarlane in a 2018 speech in one word: 'Clarity'. Both clarity of thought and clarity of expression or presentation of the evidence will assist the judge greatly. Lord Hodge stressed that it was imperative that expert witnesses take full responsibility throughout the process of preparation and presentation for his or her opinion evidence.

Lord Hodge then turned to the expert's cooperation with other actors and the role of professional organisations. Having quoted Judge Claire Evans: "There are plenty not very good experts around. Some *soi-disants* experts are worse than not very good, they do great harm". He proceeded to give some examples. Lord Hodge praised specialist organisation and institutions such as the EWI for their role in minimising the occurrence of harmful expert witnesses by advocating for high standards in expert evidence. Membership of these bodies could give credibility to an expert witness, as it showed that he or she is taking the role seriously by signing up to a set of standards of behaviour and competence and is maintaining his or her continual professional development.

Lord Hodge pointed out that lawyers and instructing parties also played an important part, not just by ascertaining that an expert did possess the necessary expertise and making them aware of their duty to the court, but by ensuring the expert was made aware of all the facts of the case, including material that did not support the client's case. Returning to the results of the 2019 survey, Lord Hodge said that "Lawyers must do better. They may obtain useful assistance on best practice on consulting experts in guidance issued by the Civil Justice Council". Also, just as expert witnesses must learn to grapple with the intricacies of law and court proceedings, so, too must lawyers improve their scientific and technical literacy to do their

job effectively in cases concerning experts and testimony. The task of policing compliance with an expert's duties falls to the court. The 'judicial primers project' presented a valuable opportunity to assist judges in their task. Importantly, the primers are not intended to replace scientific evidence, but in assisting judges in understanding and assessing evidence. In conclusion: "judges, lawyers and experts have to face the future together."

Lord Hodge reflected on the impact of the COVID-19 pandemic on the courts. He was very much aware that life had not been easy for expert witnesses during the pandemic both in terms of carrying out physical site visits or examinations and in financial impact, be that through postponed trials, or delays in payment. However, not all consequences of the pandemic were bad. The court's operations during the pandemic were, as in the words of the Lord Chief Justice: "the biggest pilot project the justice system has ever seen". It was important to take time to reflect on what had worked well and how this could be harnessed more broadly to improve the overall

function of our system of justice.

Some immediate improvements were bound to stay, for example, online filing had been introduced at the Supreme Court and that practice would continue. This would save money and have a positive environmental impact. Modern technology had been adopted on a wide-spread basis. Lord Hodge expected that remote hearings were here to stay, particularly for incidental and case management business. There was scope for more radical changes within the judicial system in the coming years, more widespread access to justice could be provided by the accelerated move to digital services.

The task of transforming our justice system required the input of all actors in the court system. As concluded earlier: "judges, lawyers and experts have to face the future together." This conference presented an opportunity to enhance the contribution of expert witnesses and those lawyers who work with them in support of that aim.

Simon Berney-Edwards

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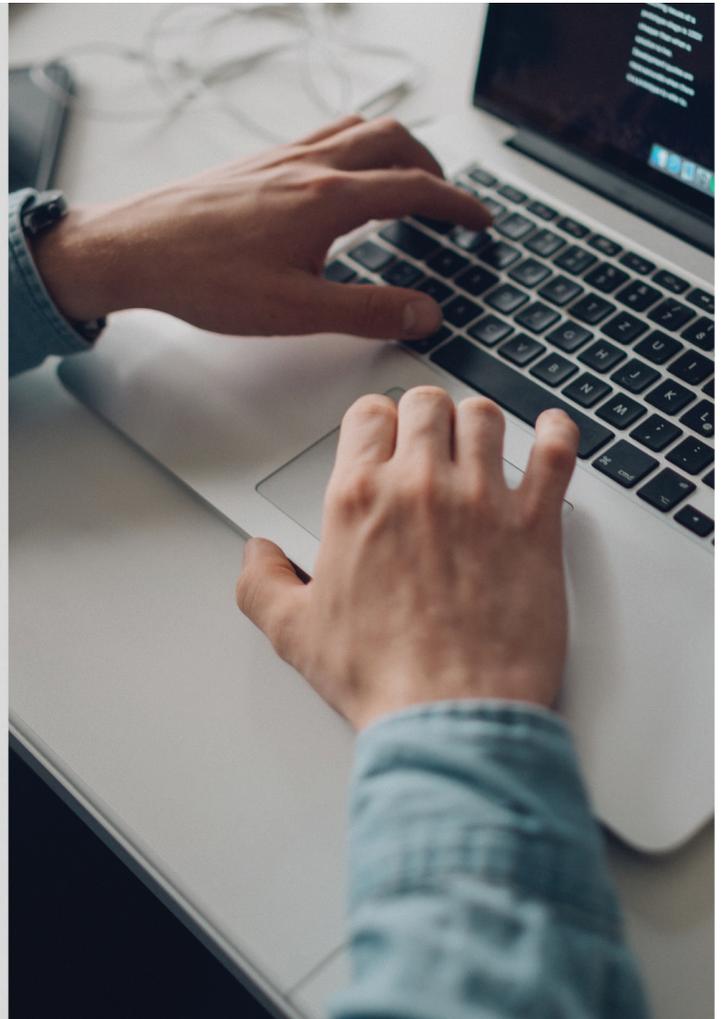


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Solicitors Professional Indemnity in the Covid 19 and Technology Era



The October 2021 renewal season is fast approaching for law firms renewing their Professional Indemnity Insurance (PII) in October. Unfortunately it promises to be another difficult renewal year for the profession.

The market has changed dramatically from the competitive years, or as the industry calls it "Soft Market" of 2014 to 2017. Back then the market had huge capacity to write professional indemnity insurance as a result of investors and new insurers coming in to the market offering lower premiums and forcing some of the more established insurers to lower their rates to secure business. The Grenfell disaster of 2017 triggered the overall professional indemnity insurance market to shift in 2018, as insurers started to worry about and see huge losses in the construction sector, Actuaries also noticed award payments increasing far more than initially expected and specific claims were starting to impact on the legal sector such as buyer funded property investment schemes and cyber-crime (Friday afternoon fraud). The following Lloyds review resulted in syndicates/ insurers either increasing rates or completely withdrawing from the professional indemnity market. The Covid 19 pandemic has certainly delayed the chance of the market softening any time soon, as insurers are wary of the financial and management impact this may have on the sector.

As we enter this renewal season we find a lack of available insurers and in particular a lack of appetite from the existing insurers to offer quotations for new clients unless they can demonstrate an excellent claims record and can fit within the insurers current underwriting criteria, which in the current climate is not easy! Underwriters have been told to reduce their capacity, not increase it! It is essential that firm plans and prepares early for their renewal. Completing your proposal form, gathering the required information and discussing with your Broker any potential issues and looking to seek an early offer or at the least initial advices from your insurer is imperative. If a market review is required a firm needs to ensure they have sufficient time to speak to alternative insurers and have the information available to put their risk in the best possible light to obtain alternative terms.

Firms will note the addition of a cyber liability insurance proposal form and IT security questionnaire attached to the professional indemnity application for this year. There has been much debate

with the SRA and PI insurers this year on what is, and isn't covered under the PI minimum terms policy. In past years we saw a number of losses following a cyber-attack on a law firm which resulted in a loss of client money from the client bank account which has been/is covered under the minimum terms policy. Over the past eighteen months the industry has noted a steady decline in these incidents, partly due to a greater awareness from law firms and consumers. Increased risk procedures from law firms and their banks has helped reduce and stop such attacks. Unfortunately we are seeing a greater number of ransomware attacks on the legal sector which can have a devastating affect on a law firm's ability to operate short term and the reputational/ financial impact this can have on a law firm. It has never been the intention that such losses would be covered under the PII policy. It is essential that firms evaluate and manage their risk of a cyber-attack and put in place a disaster recovery plan for such attacks. Underwriters will be expecting law firms to demonstrate they have reviewed and updated their cyber policy and risk. Many insurers will be offering a separate cyber liability quotation alongside the PII quotation this year and it is recommended that this is discussed and reviewed with your insurance Broker.

If you have any concerns regarding your professional indemnity please do not hesitate to contact TLO Risk Services for guidance.

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