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Journal

Journal of the Law Society of Scotland

Volume 65 Number 10 – October 2020

Up in smoke?

New lawyers finding their career plans stalled by the recession should not despair – say those who came through the last slump in 2008

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Chapter 23: Title Conditions and other Burdens

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Chapter 25: Servitudes

Chapter 26: Judicial Variation and Discharge of Title Conditions

Chapter 27: Public Access Rights

Chapter 28: Nuisance and other Delicts

Chapter 29: Social Control of Land Use

Chapter 30: Compulsory Acquisition

Chapter 31: Community Rights to Buy

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Sounding the alarm

Last month I voiced concerns over the lack of appreciation in government (central and local) of the role of lawyers in defending individuals' rights and challenging abuses of power. What has happened since is worse.

At that point the Home Office had withdrawn following protests a video referring to "activist lawyers" intervening on behalf of people it wished to deport, which its permanent secretary accepted should not have been so expressed.

Regrettably, indeed alarmingly, UK ministers are showing themselves impervious to adding to their understanding of the importance of the law and lawyers in a pluralistic society. For the second time in a few weeks, our own Law Society, like its English & Welsh counterpart and the Dean of Faculty, has felt moved to protest, this time at the "inflammatory language" of the Home Secretary, repeated by the Prime Minister, in party conference speeches. And while the former's reference to "lefty lawyers" was in the relatively narrow context of asylum, the Prime Minister chose the same phrase to cast aspersions indiscriminately at criminal defenders.

I make no apology for returning to the subject, which is of critical importance. Likewise, to her credit, our President, via Twitter, said she would take a stand "AGAIN and AGAIN as necessary" while she holds office.

Those who doubt the need to do so should consider the 7 October news item on the website of Duncan Lewis Solicitors, the largest provider of civil legal aid services (including much immigration work) in England & Wales. In the wake of such ministerial agitation, and tabloid coverage of its headline earnings – from many thousands of cases over three years – it reports: "We are now seeing our lawyers experience abusive behaviour and receive abhorrent and threatening messages online daily for simply trying to do their job and be a voice for the most vulnerable: victims of torture, victims of trafficking and unaccompanied asylum-seeking children. This has to stop."

As if that were not enough, the Government is now quite openly putting itself in conflict with the rule of law, international and domestic, through its UK Internal Market Bill – internationally through its provisions purporting to override the EU Withdrawal Agreement, concluded by the same Government less than a year ago, and domestically through its attempt to exclude any form of review of potentially far reaching orders made under its powers. The Advocate General for Scotland, at least, felt himself unable to remain in office in consequence; the position of others still in post is difficult to defend.

My conclusion last month, predicting a need for constant vigilance, and readiness to stand up for those who most need our help, has now to be restated on a broader basis and at a more fundamental level. Our voices must be heard loudly and clearly. J

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THE JOURNAL OF THE LAW SOCIETY OF SCOTLAND
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ONLINE INSIGHT

PUBLISHED ONLY ON **WWW.LAWSCOT.ORG.UK/MEMBERS/JOURNAL/**

Brexit, the UK Internal Market Bill and devolution

Charles Livingstone explains how the market access principles in the controversial UK Internal Market Bill are intended to work, and how the bill will interact with the devolution settlement.

Remote working and employment rights

Practical concerns apart, remote working gives rise to a number of legal issues, including as to the operation of basic rights and potentially even the application of the UK employment regime, as Brian Napier QC explains.

An extension to an extension: pre-irritancy notices

As the temporarily extended period in a pre-irritancy notice remains in force due to statutory extension, Kieran Buxton recalls some key legal rules, and considers how to transition back to the previous position.

Article 14: the Strasbourg court's approach

Introducing a new resource on ECHR article 14 (non-discrimination) case law of the European Court of Human Rights, from Equinet, the European Network of Equality Bodies.

OPINION

Elaine Motion

As efforts to contain the coronavirus pandemic look set to continue throughout the winter, the importance of parliamentary sovereignty and accountability should be recognised by ministers when introducing or extending emergency regulations

When the Coronavirus Act was passed by the UK Parliament without opposition in March, it gave ministers sweeping emergency powers to enforce lockdowns. In those confusing, troubling and unprecedented times, there was little dissent.

However, the Act required a vote by MPs after six months to stay in force, and September there was widespread concern across all parties about how those emergency powers had been used, particularly to enforce tight lockdowns in specific areas and impose fines for a range of violations. Concerns have also been voiced about ministers' propensity to bypass Parliament by announcing new regulations on Twitter, or through their newspaper of choice – often with only hours or even minutes before they take effect.

Critics gathered around Sir Graham Brady, chairman of the 1922 Committee. That committee of backbenchers is often described as "influential", and it might be argued its apparent lack of influence in recent months was reflected in Sir Graham's amendment to the renewal of the Coronavirus Act – insisting any new restrictions must first be approved by MPs.

This was vehemently opposed by Downing Street, who said ministers needed the ability to act fast in response to the pandemic. Few would argue with the need for speed when necessary, had we not gone far beyond this to a point where parliamentary sovereignty and accountability were being challenged, and possibly undermined.

With 50-odd Conservative backbenchers supporting the amendment, the Prime Minister's apparently comfortable 80-seat majority suddenly looked shaky. In the end, the Speaker, Sir Lindsay Hoyle, said legal advice prevented him taking the amendment – but he voiced the thoughts of many MPs by declaring that the Government had treated Parliament with "contempt" and shown a "total disregard for the House".

Sir Graham had called for "a new *modus operandi*" in place of imposing new COVID-19 laws by decree without debates or votes. Although the vote was not taken, the Speaker's comments were seen as a green light to MPs on all sides to assert their right to bring ministers regularly into the Commons to be questioned on new regulations.

It seemed appropriate that this latest dispute between executive and legislature bubbled to the surface in late September – exactly a year since Lady Hale delivered the dispassionate yet withering UK Supreme Court judgment that Boris Johnson and his Government had acted illegally in proroguing Parliament at the height of Brexit fever.

Part of the judgment that day, on parliamentary sovereignty and accountability, seems very relevant to current events. That sovereignty, it said, would be undermined as the foundational principle of our constitution "if the executive could, through the use of the prerogative, prevent Parliament from exercising its legislative authority for as long as it pleased".

The second fundamental principle is parliamentary accountability. The court quoted these words of Lord Bingham, former senior Law Lord: "The conduct of Government by a Prime Minister and Cabinet collectively responsible and accountable to Parliament lies at the heart of Westminster democracy".

It is this sovereignty and accountability that has seen concerns coalesce in recent weeks. Back in March, most people seemed ready to accept restrictions to personal freedoms to tackle a novel virus which spread rapidly through human interaction and killed in its thousands.

Yet since then, many questions have been asked and there is far less unanimity now about what people are ready to live with. Many argue that personal freedoms and human rights have been curtailed far beyond what is reasonable, even in these circumstances.

There has been no debate at all in Parliament since March, of the ever-changing instructions to the population communicated by the Prime Minister and his Cabinet – albeit with little apparent sense of collective responsibility or uniform understanding. Only recently, the Prime Minister admitted he "mis-spoke" in answering a question on social contact rules in a specific region.

As cases rise and we face the prospect of a long, hard winter fighting a virus which thrives in colder weather, parliamentary frustration over new restrictions seems unlikely to subside.

Many MPs have spoken of the upset and frustration of being unable to speak up for their vulnerable constituents in Parliament, and the comments of the Speaker and unhappiness on the back benches suggest this issue will not go away. The Presiding Officer in Holyrood has raised similar concerns about the lack of debate in the Scottish Parliament.

It is a stark reminder that however unprecedented the times, we should all, whatever our political inclinations, be extremely vigilant about passing unprecedented powers into the hands of the executive.

Elaine Motion is chairman of Balfour+Manson

CORRESPONDENCE

Fraud: don't ignore the signs

Some weeks ago, at 8.30am, my landline rang. The phone didn't recognise the number so I left the answering system to deal with it as a likely nuisance call. However, it wasn't going to be quite so simple.

Throughout the morning I was, literally, bombarded with further calls all of which went answered only by the answering system. No voice message was left. Additionally, there were text messages to my mobile telling me to get in touch immediately with my bank about a suspicious transaction on my account. They even provided the number to call, God bless 'em! Aye, right, as they say. I got the full treatment.

Eventually I was left with no option but to contact BT and go through the rigmarole of blocking those landline calls via Call Protect, the first occasion I ever had to block any phone call. I recorded the origin of the calls but otherwise forgot all about it. Again, however, it wasn't going to be so simple. I had made the mistake of doing nothing.

Fast forward to 2 October and the monthly bank statement arrived. It is easy to spot amongst the mail and normally is simply put aside to be filed away later, unchecked. Unusually, I checked it, still not thinking about those phone calls and texts of weeks previously.

A superficial glance revealed the routine debits: Amazon, Paypal, Online This, Online That, supermarkets – the usual pandemic suspects. However, a closer look revealed more than two pages of debits, something I had never clocked up previously. A series of six transactions, for exactly the same amount of money on the same day, took up more than half a page.

On 18 September some Russian had been very busy with my card. He, or she, had managed, somehow or other, to pass him, or her, self off as me and divest my account in six identical transactions of £10.38 and convert a total of £62.28 into rubles – not bad for a small sideline or, for all I know, even 10 minutes' work.

Along with non-GBP transaction and purchase fees – which had alerted me to the transactions given the space they took up on the statement – the total depletion to the account amounted to £67.14. Small beer, I know, and it could have been worse, much worse. Had the statement entries been simple one-liners, I don't suppose I would ever have noticed.

What I would like to know – and am most unlikely ever to find out – is who provided this fraudster, or fraudsters, with my bank and phone details in the first place. As I write, I am awaiting a new debit card but my faith in such cards, so essential in this pandemic, has taken a bit of a battering.

Is security better, by any chance, with a credit card? I don't know, but what I do know now, through experience, is that it is essential, however inconvenient it might be at the time, to cancel and replace a bank card after every suspicious activity, and, equally important, to check bank statements line by line the moment they arrive on the doormat.

That will certainly be my *modus operandi* from now on. It may avoid a lot of bigger problems later.

John Macaulay, Glasgow

BOOK REVIEWS

Financial Provision on Divorce and Dissolution of Civil Partnerships (2nd ed)

ALAN BAILEY AND RUTH McCALL
PUBLISHER: W GREEN
ISBN: 978-0414035539; PRICE: £69

This book states on its cover that it is written by lawyers for lawyers. The description could not be more accurate.

The book is well set out. Nine chapters cover an overview of financial provision, s 8 orders, s 9 principles, the relevant date, matrimonial law and partnership property, special circumstances, interim aliment and miscellaneous matters. Each chapter is then broken down into a general discussion, then the specifics of each subsection of the Act with case law and practical tips.

There is extensive detail on each provision, and it would be hard to find any aspect of financial provision which is not covered. The pension section makes a complicated subject easy to understand. The chapter on s 9 claims includes a helpful cases section showing successful and unsuccessful arguments.

My copy is already well thumbed. It provides all the answers to all the questions you had not even thought of asking. It is definitely one for practitioners to carry around, and a must-have for anyone dealing in family law.

Kathryn Wilson, Melrose & Porteous
For a fuller review see bit.ly/3nuTMTC

Enemies of the People? How Judges Shape Society

JOSHUA ROZENBERG
PUBLISHER: BRISTOL UNIVERSITY PRESS
ISBN: 978-1529204520; PRICE: £14.99
(E-BOOK £10.04)

"Rozenberg has written a highly readable yet sophisticated book... Great food for thought."

Read the review by David J Dickson, review editor, at bit.ly/3nuTMTC

The March Fallen

VOLKER KUTSCHER
(SANDSTONE PRESS: £8.99; E-BOOK £3.22)

"The television programme was brilliant, but not a patch on the books. Another triumph."

This month's leisure selection is at bit.ly/3nuTMTC

BLOG OF THE MONTH

mintedlaw.wordpress.com

With a war of words developing between UK ministers and the legal profession, we highlight this blog from Kent legal aid lawyer Robin Murray. While somewhat polemical, he voices a wider alarm at the present direction of travel and threat to the rule of law. "There are those who will take [the Prime Minister's] comments as a signal that we are fair game", he writes. "They also make our role difficult to sustain as they reduce our reputation for integrity in dealing with others."

To find this blog, go to bit.ly/33DwNDi

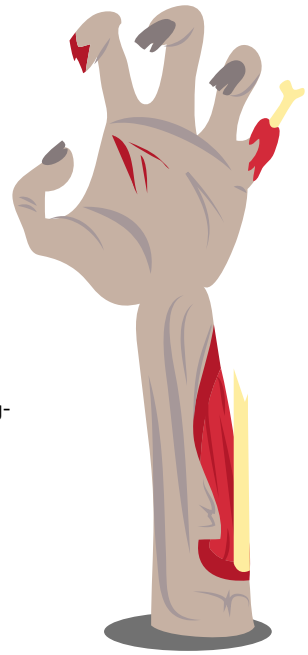
Language of the law

Dry observations in judicial opinions are becoming a thing.

Mr Justice Turner won attention by opening with: "Cheryl Pile brings this appeal to establish the liberty of inebriated English subjects to be allowed to lie undisturbed overnight in their own vomit soaked clothing." The action, against the police for trespass to the person and invasion of privacy for removing and changing her clothes, fell flat – like the claimant on the night in question.

And why did Mr Justice Marcus Smith utter: "To take a somewhat extreme example, were an alien from outside the galaxy to present itself before the courts of England & Wales, I would like to think that it would not be denied legal personality simply on the grounds of unforeseen extraterritoriality"? Answer: ruling on an attempt to patent an AI-derived invention.

But probably the deepest feelings were revealed by Western Australia's Master Sanderson. In "not so much a judgment as a requiem", the dismissal of a winding-up application after 25 years of litigation in which "more than a few have gone mad", he had, he admitted, been tempted "to drive a wooden stake through the heart of the company to ensure it does not rise zombie-like from the grave".



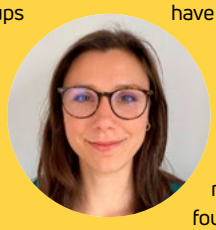
PROFILE

Olivia Moore

Olivia Moore is careers and wellbeing manager at the Society, and is working with SeeMe on the Pass the Badge campaign focusing on mental health

1 Tell us about your career at the Law Society of Scotland?

I joined the Society (by chance!) in 2016 and have primarily focused on engaging with new lawyers. My evolving role has included running the Student Associates scheme, hosting various careers events, talking to university groups about the route to qualification, one-to-one career support, and latterly, leading work on Lawscot Wellbeing.



2 Have your perceptions of the Society changed?

Absolutely. I was used to working in catering, which is incredibly fast paced, and I imagined the Society might be a bit slow! I couldn't have been more wrong. It's a really dynamic organisation and we are constantly doing new things on the engagement side.

3 What have been the highlights for you personally?

Launching Lawscot Wellbeing, our dedicated online resource, in 2018 was a real high point and I am proud to lead this area of work. I really enjoy giving careers advice, and love public speaking, so delivering careers talks to 200 people is always good, but I get a lot out of one-to-one calls too. Plus, if someone gets back in touch to say they have a traineeship, that's a great feeling.

4 If you could change only one thing for members, what would it be?

I would like workplaces to be more mentally healthy. I left catering as I found the stress overwhelming. In law, though, I would like to see better work-life balance and the culture of flexible working improve. It would be good if as a society we could give each other a bit more breathing space. The Pass the Badge campaign for World Mental Health Day (passthebadge.co.uk) shows that everyone has a story to tell.

Go to bit.ly/3nuTMTC for the full interview

WORLD WIDE WEIRD

1 Plot hatching

A Texas attorney and district judge hopeful is facing court for throwing an egg at a judge's car, in an admitted act of retribution over an "unconstitutional" order to stay at home as the COVID-19 pandemic took hold.
bit.ly/2HZbELa

2 Not the full picture

A struggling Indian shopkeeper, unable to repay a loan, took to YouTube to teach himself how to rob a bank – but not, it seems, how to cover his tracks.
bit.ly/33EV4Zv

3 Crossing a line?

An award-winning French film made as a social commentary against the sexualisation of young children has been indicted by a grand jury in Texas as depicting the "lewd exhibition" of children.
bbc.in/3jHXpbF

TECH OF THE MONTH

Self-cleaning UV water bottle

If you're getting back into your exercise routine after lockdown, this water bottle will keep you refreshed... and it actually cleans itself! The WAKEcup 550ml bottle has an ultraviolet light in the lid that gets rid of 99.99% of bacteria. It costs £45 and keeps water hot or cold.
Visit globalwakecup.com for more details.

PRESIDENT

Amanda Millar

Sharing experiences and ideas is vital at this time to help achieve positive outcomes to present problems, find support when needed to help us carry on – and deliver a collective effort to defend professional independence and the rule of law

So ... autumn is with us. Greater personal restrictions are with us. Since I last wrote here, I have attended my first in-person event as your President. I was very pleased to remember to leave the house and make it to Edinburgh in time, with the necessary regalia and mask, to take my socially distanced seat in court 1 of Parliament House to attend the opening of the legal year. Congratulations to those recognised for achieving silk this year, in particular to our member Christine O'Neill QC.

Rule of law remains an ongoing topic of public discussion in a way that many of us would never have imagined. Independence of the rule of law is a fundamental pillar of the civil and democratic society we live in. We are told by elected members that this independence is valued and that they seek and expect that approach to be followed by other jurisdictions. We continue to stand up for this and to give an appropriate challenge where that principle is placed at risk.

Every external engagement I have had in recent weeks, national and international, has included a concerned discussion about the risk to the independence of the rule of law, independence of the judiciary and preservation of the separation of powers. We must maintain continued vigilance at these challenging times to ensure that the current health crisis does not lead to a different kind of crisis with a long-term impact on our society – as I talked about in the *Scotsman* article published on 2 October 2020.

Benefits from sharing

Thanks to all the members who have taken part in the constituency visits, sharing your experiences positive and negative with us. Since last writing here, I have written to various sheriffs principal with local concerns and positive experiences. I encourage members to continue to share their experiences, either through a constituency visit or by emailing comms@lawscot.org.uk.

Every sector of the justice system is under strain. Encouraging collaboration and sharing of experiences and knowledge will hopefully help us achieve positive outcomes which will benefit all. A new approach to jury trials is being trialled thanks to an idea that we shared, a perfect example of the benefits of collaboration. Robust discussions have also been had with SLAB and the Scottish Government re the specific challenges for legal aid practitioners, on which we've shared updates with these practitioners.

Members will have received the practising certificate renewal info in recent weeks. Thanks to all those who have completed this, including the diversity survey which is at the end of the renewal process. Don't follow my mistake of expecting it to be before the "payment page" and using the "back" button, as that will upset the tech and prevent you seeing the relevant page! Simply follow the process through to the end. This information is important as it allows us to collect pseudonymised data to assess the current diversity of the profession, helping inform future work to achieve our aim of ensuring the profession reflects the society that it serves.

Words of praise, and advice

You will read more of this elsewhere in this month's issue, but I repeat here my congratulations to the winner, highly commended and all those shortlisted in the In-house Rising Star Award competition. The standard of applicants was phenomenal and I am grateful to the panel of judges for their work in what would have been a very challenging task picking the winner. Congratulations and thanks to all.

As part of our mental wellbeing work we launched our participation in SeeMe's Pass the Badge campaign on World Mental Health Day. I encourage you to read the blogs by members and colleagues on the Society's website. I also encourage you in these ever changing times, when things may start to feel too much, to be kind to yourselves and your loved ones; take a minute; take an extra breath and see what you have achieved for your clients and society.

Take care of yourselves, be kind to yourselves and stay safe.

Amanda Millar is President of the Law Society of Scotland – President@lawscot.org.uk Twitter: @amanda_millar

People on the move

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Rob Aberdein

ABERDEINS has launched as a practice offering legal and other professional services, with offices at 5 Renfield Street, Glasgow G2 5EZ, and 4 Rutland Square, Edinburgh EH1 2AS (t: 0344 571 5200; e: info@aberdeins.com). Its managing director is **Rob Aberdein**, formerly of ABERDEIN CONSIDINE, Aberdeen, and WALKER MORRIS, Leeds, and its board will be led by chairman **Tom Barrie**.

ANDERSON STRATHERN, Edinburgh, Glasgow and Haddington, has announced a round of 18 promotions. There are six new senior associates: **Kate Bond** (Rural), **Danielle Edgar** (Family), **Sarah Lonie** (Private Client), **Gillian Murray** and **Laura McCabe** (both Commercial Litigation), and **Robin Turnbull** (Employment). Eight advancing to associate are **Fionn Blair** (Public Law), **Ross Cameron** and **Nichola McAtier** (both Commercial Litigation), **Scott Fyfe** (Corporate), **Gregory Gardiner** and **Derek Morrow** (both Commercial Real Estate), **Laura Murray** (Private Client), and **Catherine Macdonald** (Rural); while **Laura Flounders** (Commercial Real Estate), **Kimberley MacNeil** (Corporate), **Liam Smith** (Commercial Litigation) and **Ilaria Moretti** (Employment) are promoted to senior solicitor.

BLACKADDERS LLP, Dundee and elsewhere, has appointed four newly qualified solicitors to positions on completion of their traineeships with the firm: **Stephen Annis** (Commercial Property), **Rachel Crighton** (Commercial Property) and **Millie Crocker** (Private Client Executries), who are based in the Dundee office, and **Andrew Shaw** (Private Client) of the Glasgow office. Nine new trainees have joined the firm across its offices.

BTO SOLICITORS LLP, Glasgow and Edinburgh, is delighted to announce the recruitment of senior associate and corporate lawyer, **Michael Cox**. Based in BTO's Edinburgh office, he joins from GILLESPIE MACANDREW.

DLA PIPER SCOTLAND LLP, Edinburgh, has promoted **Carolyne Hair** (right) to partner, Real Estate, and **Sarah Letson** to legal director, Finance, Projects & Restructuring.

FIFE LAW CENTRE, Lochgelly, has appointed **Louise Laing**, an accredited specialist in child law, as a solicitor.

JUSTRIGHT SCOTLAND, Glasgow and Edinburgh, is delighted to announce the following promotions: **Farida Elfallah, Lyndsay Monaghan** and **Anushya Kulupana** to associate solicitor, and **Jenny Cook** to head of Operations. It also welcomes **Maria MacLeod** as a solicitor on completion of her traineeship, and **Hanan El-Atrash** as a first year trainee solicitor.

LINDSAYS, Edinburgh, Dundee and Glasgow, has appointed **Caroline Fraser** as a partner in the Private Client team at its Dundee office. She joins from MILLER HENDRY.

MBM COMMERCIAL, Edinburgh and London, has announced the promotion of **Alexander Lamley** to director and **Craig Edward** to senior associate in the Corporate team; and of **Susan Donald** to senior business development manager. **Harry Martin** has joined the firm as an associate in the Employment team, having recently completed his traineeship at ANDERSON STRATHERN.

Duncan and **Rosemary MacPhee**, Fort William, intimate their retiral from practice on 31 October 2020, after a collective period of over 80 years practising law in the Highlands. The firm of MACPHEE & PARTNERS, Fort William, Oban and Tiree, continues to thrive, and has their full support, under the leadership of **Christine MacKay**, senior partner.

Mr and Mrs MacPhee thank all professional colleagues for the cordial and harmonious relations over the years and wish all in the law every future success.

SCULLION LAW, Glasgow and Hamilton, has promoted solicitor advocate **Urfan Dar** to senior associate. In addition, the firm has appointed **Anna MacKay**, who joins from BRIDGE LITIGATION, as an associate, and road traffic litigator **Lucy McKenna**, who joins from PATERSON BELL on 4 November 2020, as a solicitor.

SHAKESPEARE MARTINEAU, Birmingham and elsewhere, has appointed Scots and English qualified **Amal Kaur** as a partner in the Commercial Real Estate team, based in Birmingham. SHAKESPEARE MARTINEAU (GLASGOW) LLP has opened at 272 Bath Street, Glasgow G2 4JR.

SOUTH FORREST, Inverness, are delighted to announce the assumption of their associate solicitor, **Rebecca Fraser**, as a partner of the firm with effect from 1 October 2020.

TAYLOR & HENDERSON, Saltcoats, are delighted to announce the appointment of **Emma Pyper** as a partner with effect from 1 October 2020.

WOMBLE BOND DICKINSON, Edinburgh, Aberdeen and internationally, has appointed **Paul Mason**, previously a partner at DWF, as a partner in its Real Estate practice in Edinburgh.

WRIGHT, JOHNSTON & MACKENZIE LLP, Glasgow, Edinburgh, Inverness and Dunfermline, has appointed its former chief executive **Liam Entwistle** as the firm's new chairman. He succeeds **Colin Brass**, who has served as chairman for the past 15 years.


Duncan and Rosemary MacPhee

2020 Hindsight?

Looking back, how did your software provider help you in 2020?

Lockdown Business Continuity

Keeping service and support uninterrupted for our law firm clients

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2020 hindsight: making good use of the lockdown

Nobody anticipated how 2020 would pan out.
Clearly, it has been a year where you have had to do your best to control those aspects of work that you could control and roll with everything else.

That said, at LawWare, we've not let the lockdown prevent us from getting on with things...

Lockdown Business Continuity

Faced with social and economic challenges the likes of which we have never seen, we triggered our business continuity plan. This ensured our service and support remained uninterrupted during lockdown. All our team moved immediately to homeworking – in exactly the way LawCloud software is designed to operate.

In addition, all our LawCloud data centres activated their own business continuity plans to ensure maintenance of service at all times. Many clients also approached us to ask for help. We were happy to oblige by assisting them to set up remote / home work stations and by offering "own server" clients the option to move to the cloud. We believe this made a real difference.

Electronic signature and Outsourced Post Office

As a result of lockdown a planned initiative involving Sign&Send was fast tracked.

Sign&Send provide both electronic signature and outsourced print and post services. Electronic signature gives you the ability to generate a Word document to email your client for them to sign and return it to you via email. As many of us are now working from home this makes a lot of sense for things like terms of business letters, mandates, etc. But you will also want to support clients that don't have smart phones/tablets or even email. Sign&Send copes with this as well. You can generate your document and with a few clicks of your mouse, Sign&Send take it from your screen, add your letterhead, sign it, print it (overnight), put it in an envelope, add the postage and put it in the post for you.

So, Sign&Send provides a way of generating a physical letter / agreement and getting it to your client via Royal Mail without you having to leave your home / office. The combination of these options delivered through a single interface means that you get on with your work without having to stop for any admin at all whilst providing the optimum level of service that your client can receive. This integration was added in May and has been well received by our clients

LawWare Academy

June saw the launch of the LawWare Academy. This free resource for LawWare clients contains manuals, training videos, webinar schedules and a whole host of useful information about LawWare software in a single resource library available on demand.

The online video and documented courses cover many aspects of the LawWare system from introductory lessons for beginners and interactive quizzes right through to specialist training for advanced users. Our clients can now learn wherever and whenever they like, track their progress as they learn and earn CPD credits. Many have now used this to improve their software skills.

Additional integrated forms

In July we added an integration with FormEvo. FormEvo are the only independent forms supplier across the UK and will eventually replace the previous Oyez forms that are now being withdrawn from the market by new owners Advanced. As it turns out this is a blessing in disguise. FormEvo not only has a huge range of forms covering all types of work in Scotland and England/Wales, but where these forms are electronically submittable, our clients can do this as well.

This is the future for all forms. Users completing them will be able to submit them to the relevant agency over the internet. We are just starting to see this happen now and it's definitely the way forward. Agencies are under pressure to support electronic means of working both internally and with their partners and are scrambling to get their IT systems up to speed. Again sitting at my laptop with a range of forms as part of my LawWare document template list just makes my working life easier and more effective. Capturing the salient information for populating forms and letters means I have less keying, less duplication and more functions available to me in one place.

Re-mortgage Portal integration

This year also saw a commissioning client wishing to add bulk re-mortgage work to their new LawWare system. This involved integrations with their new instructions Portals –LMS and TM Connect.

A lot has happened in 2020 and we are not finished yet.

To find out more about these and other new developments, please contact us on: 0345 2020 578 or innovate@lawware.co.uk.

Simon Greig, Sales Director.

Lessons from the class of 2008

Life is hard for many would-be trainees or NQ solicitors at present, but others can offer advice from experience. Amy Walsh, a trainee during the 2008 recession, spoke to contemporaries who found their chosen paths blocked, but have since made good

In June 2008, I was a fresh-faced(ish) trainee solicitor about to embark on the career I had worked so hard towards. I was aware of the collapse of Northern Rock and was starting to hear about a "credit crunch", but in the naivety of youth I didn't spend much time dwelling on what this might mean for my career. On reflection this is, perhaps, where I first learned what "commercial awareness" really meant.

I went on to have a crash course in empathy and workplace realities, as I watched my new colleagues being put through gruelling redundancy processes or shifted to reduced working hours. My carefree student days were very quickly behind me.

I'm sure others will recall how they spent 2008, and I suspect it will largely be with a heavy heart. Each evening news bulletin reported another high-profile business casualty. But where most of us felt it pinch the hardest was in our own offices. Banks failed, work dried up, and for a time, the profession looked a little bleak.

It's hard, therefore, not to draw comparisons with the world we now find ourselves in, as we brace for a second recession in 12 years. The root cause might be different this time but, sadly, the effect is very similar. A quick look on LinkedIn reveals many post-Diploma students still looking for their coveted traineeship, and newly-qualified solicitors looking for their first position.

As a tutor on the Diploma at the University of Glasgow, I'm often contacted by students to discuss hints and tips for securing traineeships or work experience. Unsurprisingly, this conversation has changed recently. There's just no escaping that there are currently more students than there are traineeship opportunities. In one recent call, I found myself reflecting on my experience of 2008 to explain that while it might feel rubbish now, things do get better. I recalled some fantastic success stories from friends and peers who didn't get the smooth start to their career that they had planned.

That made me wonder if we – the class of 2008 – owe it to the next generation entering the profession to share the lessons we learned as we fought to establish ourselves and that we can now say have positively shaped our careers, even if we didn't appreciate it at the time.

Those who entered the profession around 2008 are now roughly 10 years' PQE, and well advanced on our career paths. I put out some feelers to see if there was a willingness to reflect on that period, and was taken aback by the eagerness I

met. There was a desire to give something back, to share some optimism with new entrants. Trainees and NQs of 2008 are among the decision makers of 2020, and all were agreed that it was worth sending a reminder that opportunities still come about in hard times, particularly if you are willing to be nimble or show perseverance.

When the traineeship goes

Someone who felt the blunt trauma of the last recession is Bruce Langlands. He received a letter telling him his traineeship offer – secured 18 months previously – was being withdrawn with just five weeks' notice.

"Devastated" is how he describes his feelings on reading the letter, which he can still recall vividly today. "There was panic. What was I going to do now?"

Thankfully, Langlands wasn't left wondering for too long. Despite having held a career goal of becoming a corporate solicitor in M&As, he was presented with an opportunity of a traineeship at a personal injury firm and soon learned the value of keeping an open mind. Any initial feelings of resistance quickly gave way to a determination to fling himself into a completely different role.

"I never wanted to do personal injury work. I never thought it a worthwhile career choice. It wasn't until I started that I realised I was helping people who, without that help, might not be able to pay their bills. It was really fulfilling and I wouldn't have realised that if I hadn't taken the personal injury role I never thought I wanted."

It might be a cliché to say "and the rest is history", but in Langlands' case, it really is. He went on to immerse himself in personal injury law, culminating in his recent move to the bar.

Sorry, no NQ positions

The merit of keeping an open mind was a recurring theme. In 2009 Scott Whyte, now managing director at Watermans, was given the news that he, along with the other trainees in his cohort, would not be kept on in NQ roles. Whyte, who had aspirations of becoming an IP solicitor, found himself re-evaluating his career when he had the chance to interview for a role also at a personal injury firm – an area he had taken a seat in as a trainee and had not enjoyed at all.

Whyte admits he initially viewed this move as a plan B, going so far as to say that plan A hadn't been mothballed at any point. He reflects on the determination to prove himself that helped him push through.

"I knew that if I went in and gave it a good go, there would be transferable skills that would help me move into another area of law," he says. However, much like Langlands, Whyte found himself settling into the role and that he was an able personal injury lawyer. He thrived in the fast-paced environment and found the qualified role very different to his previous experience.

"It gave me a completely different perception of a qualified job in personal injury compared to my six months as a trainee. Going into it with an open mind was important, and making the most of the opportunity I was given was key."

It's hard to argue with that when you understand that just five years and a job move later, Whyte became managing director of Watermans, one of the country's leading personal injury specialists.

Sector specific?

Reflecting on both of these stories, it's fair to say there is little coincidence that the happy endings emanate from personal injury firms. Personal injury work was the boom area of the 2008 recession – as has historically been the case during economic downturns. I ask if there is a lesson to be learned in picking out trends when considering your future career. Both agree, but with a little hesitation: while there might be merit in thinking about careers in family law and corporate restructuring in 2020, they prefer to emphasise that overall market knowledge is what will keep you ahead.

"We owe it to the next generation entering the profession to share the lessons we learned as we fought to establish ourselves"

Whyte talks about his interview preparation for the personal injury role and taking time to speak with a colleague who already worked in this area. "I needed to back up my sales pitch," he recalls. "I treated a colleague to a coffee and bent their ear for an hour to ask them for every pearl of wisdom they had. It definitely made the difference in getting that job."

For would-be trainee solicitors and NQs, that is sage advice no matter the condition of the global economy.

We go on to consider a renewed focus on traditional skills. Langlands agrees about the value of perfecting your interview technique. Thinking about the moment he decided to interview for the personal injury traineeship, he says: "I still had the insight to go for the interview. If nothing else, it had been two years since I'd last done an interview and I valued the chance to practise, even if I didn't get the job."

The same applies to your CV. When you're panicking about job hunting, quantity might be tempting, but Whyte spoke about the importance of quality and flexing the muscles of your CV. "Don't worry about going back to basics. Redraft it and make sure your experience and highlights are tailored towards the firm and job you're applying for."

Transferable skills

Having strong transferable skills will also take you far. Gillian Treasurer is now head of Legal at Scottish Rugby, a dream job for many solicitors. However, it was not the post she thought she would find herself in when she qualified without an NQ role to go to.

"I thought I wanted to be a private client solicitor," she remembers. "When I qualified in 2011, things were still quite bleak and there weren't enough jobs to go round. I had no interest in the jobs that were being made available. It was terrifying; but it turns out that it was the best thing that could have happened to me – it forced me to be creative about my career path and the way I thought about the skills I had obtained."

Treasurer took a risk and applied for a commercial contract post working for a single client, despite having no commercial experience. "During my traineeship, I had a seat in the private client team where I was managing my own executry caseload. While it might appear that has no connection to commercial contracts, my experience of handling a high volume portfolio was the crucial skill that helped me get the job."

She encourages students and new solicitors to be proactive and think about the practical skills they might not realise they already have that would help them transition into the working environment. "The ability to go into an office, work with a team and hit the ground running can often be more practical than a week's work experience in a prestigious law firm. Practical skills are way more important than anything else." In fact, both she and Whyte are agreed in saying "no experience is bad experience".

"Opportunities still come about in hard times, particularly if you are willing to be nimble or show perseverance"

The leap of faith paid off. The commercial contract role gave Treasurer a "grounding" that has become the foundation for her career. Having enjoyed working closely with the client's in-house team, she started to consider the merits of an in-house role herself, and from there her career went from strength to strength. She acknowledges that while the industry she is in now might be considered glamorous to some, it is fundamentally a commercial role underneath; and that knowledge was gained by taking a brave decision to apply for a role where she had no hands-on experience.

Life in the high street

Much has been said about the idea of keeping an open mind about the practice area you work in, but what can be said of being flexible about where you work?

A lot, it would seem. The firm of Semple Fraser collapsed in 2013, in many ways a product of the 2008 recession. Gary Somers was a trainee at the time and, after being able to finish his traineeship at McClure Naismith, he again found himself looking for a job.

Having spent his traineeship working on large corporate deals, following a smooth progression until that point from school, to university, to a coveted big-firm traineeship, the next natural step was for him to move into an NQ role at a large corporate firm – even if not Semple Fraser. However, that progression came to an end when he found himself rethinking his next move.

Somers used this time to harness his resources. "I spent a lot of time working on speculative CVs, going for interviews, keeping an eye on *Scottish Legal News*, Lawscotjobs, the RFPG page and really keeping an ear to the ground." It was after this period of grafting that he got the chance to take up a temporary role at a high street firm in Lanarkshire, to assist with a specific deal they were working on. He agrees that until that point he hadn't envisioned his career taking him to the high street.

"It was my first glimpse at general practice, and it gave me some key exposure to work such as wills and residential conveyancing, together with the practicalities of preparing files to be sent to a law accountant – that was new." Somers credits this time for busting the misconception that life outside a big commercial firm meant a lower quality of work. "The work was really interesting, and not any less sophisticated or challenging – quite the contrary."

When the opportunity to move to the Highlands presented itself later in his career, he grabbed the chance to embrace rural life with his young family. Now an associate at MacPhee & Partners in Fort William, he admits: "It was a brave decision, but it's been a great move. No commute, fresh air, good schools as well as great quality commercial work and a positive work-life balance. Lockdown has especially brought this into focus."

He goes on to commend the high street to students thinking about where their careers might take them. "The high street provides great experience for students, and at my firm our summer placement students often get quality, first hand exposure to a variety of legal work and learn some of the office practicalities, which prove pivotal and help build a solid foundation for their careers, going forward."

Keep believing

Throughout my conversations, one message rang clear: things do get better. It wasn't unqualified, though. As can be seen from every success story I heard, there was also a tale of hard work, grafting and refocusing in challenging circumstances.

I asked everyone what advice they would give 2020 trainees and NQs. You have read their top tips. However, the words that really stood out came from Gillian Treasurer. She said simply: "Don't lose heart." Those of us who are lucky to be able to look back at tough times in our career with the benefit of hindsight will say that while it might have felt make or break at the time, it does all work out in the end. The hardest part is achieving the understanding that there's rarely a straight path to get there. My hope is that this article will contribute to that.

To the class of 2020, I wish you the very best with your endeavours over the coming weeks and months. I know you will do well.

Amy Walsh is a senior associate with Harper Macleod

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Children first, by rights

The bill to incorporate the UNCRC into Scots law is a first for the Scottish Parliament, a major step forward for children's rights, and a precedent for the wider human rights framework, Bruce Adamson believes

Fully and directly incorporating the United Nations Convention on the Rights of the Child (UNCRC) into domestic Scots law is the most important thing we can do to ensure children's rights are respected, protected, and fulfilled. The UNCRC (Incorporation) (Scotland) Bill, which was introduced to the Scottish Parliament in September, is a bright ray of sunlight in what has been a gloomy year.

Founded on the concept that all children should grow up in a family environment of happiness, love and understanding, the UNCRC contains a broad array of rights designed to ensure children are treated with dignity and fairness; that they are protected; and that they develop to their full potential and can participate in their communities. It builds on the Charter of the United Nations (1945), which recognised that the inherent dignity and the equal and inalienable rights of all members of the human family are the foundation of freedom, justice, peace and social progress, and breathes life into the Universal Declaration of Human Rights (1948), which proclaimed that childhood is entitled to special care and assistance.

It is the first legally binding international instrument to incorporate children's full range of civil, cultural, economic, political and social rights, as well as aspects of humanitarian law. It also requires states to adopt comprehensive legislative measures to ensure that rights are protected. As the UN Committee on the Rights of the Child has made clear, "for rights to have meaning, effective remedies must be available to redress violations".

Effect of incorporation

Unlike many of the parties to the UNCRC which have constitutional systems where international treaties become part of domestic law automatically, in the UK we require domestic legislation to give effect to international obligations. Scotland will be following in the footsteps of an increasing number of countries including Norway, Finland, Iceland and most recently Sweden, which have incorporated the UNCRC into national law. Their experience shows that this is an important way to ensure systematic and effective legal implementation of the UNCRC at a national level.

The UNCRC (Incorporation) (Scotland) Bill will make it unlawful for public authorities to act incompatibly with the UNCRC, making many of these rights fully justiciable for the first time. The legislation comes after decades of campaigning by children and young people and civil society organisations, and years of work by international experts. It is the first time the Scottish Parliament will consider a bill to bring a full international human rights treaty into Scots law, and it sets a precedent for the work being done on strengthening the wider human rights framework.

All children (everyone up to the age of 18) will benefit from incorporation. But it is the most disadvantaged children who will benefit most. The UNCRC requires the Government to give special attention to disabled children, care experienced children and those at risk. It requires all available resources to be used to address poverty and provide services like mental health support.

Human rights model

The bill provides for rights and obligations derived from the UNCRC and the first two optional protocols to be given effect in Scots law, by seeking to take a maximalist approach to incorporation of the UNCRC, while recognising the limits of Scotland's devolved competence. This has been achieved through the redaction of parts of the UNCRC and optional protocols which relate to wholly reserved matters.

Some of what is set out in the bill will be familiar, as it is broadly modelled on the Human Rights Act 1998, which brought the European Convention on Human Rights into UK law. This includes a prohibition on public authorities acting incompatibly with the UNCRC, and the provision of substantive and legal remedies when a violation occurs. This last point is particularly important, given that the Committee on the Rights of the Child has made clear that "for rights to have meaning effective remedies must be available to redress violations".

While the phrase "public authority" is not exhaustively defined, interpretation of this term has been subject to a significant amount of discussion recently, including by the UK Parliament's Joint Committee on Human Rights, and in the aftermath of the Inner and Outer House judgments in *Ali (Iraq) v Serco* [2019] CSIH 54. It is likely to be the focus of further debate before the Scottish Parliament to ensure that the intention of providing the fullest possible protection

of rights is realised, whether actions are "undertaken by public or private bodies". UNCRC article 3(1) provides that "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

Court enforceability

Children and young people often face additional barriers in bringing proceedings to protect their rights. A key part of the bill is to ensure justiciability of rights, as part of an effective remedy, so it is a welcome protection that the one-year time limit, or any other legal time limit, does not start until a child turns 18. Courts or tribunals will have the full range of relief or remedy, including damages, within their powers, as they consider just and appropriate.

In accordance with the Vienna Convention on the Law of Treaties, courts are specifically enabled to consider the preambles and excluded provisions of the UNCRC as sources of interpretation. General Comments, Concluding Observations or decisions relating to the third optional protocol of the UNCRC, which the UK has not yet ratified, are not specifically included as interpretive guides for courts (although they are for public authorities), but form essential elements in the interpretation and implementation of the UNCRC. This is important as it allows Scotland to keep pace with developments in international law and practice, while retaining judicial independence and autonomy. The recent UN Committee's General Comment no 24 (2019) on children's rights in the child justice system, and the new General Comment no 25 currently being drafted on children's rights in relation to the digital environment, are examples of our developing understanding of children's rights and they will be of significant assistance in understanding the UNCRC.

Importantly for the role of my office in safeguarding and promoting the rights of children and young people, the bill sets out a power to take cases directly on the grounds that a public authority has acted, or proposes to act, incompatibly with the UNCRC requirements, and to seek to intervene in proceedings initiated by someone else against a public authority.

Bruce Adamson is Children and Young People's Commissioner Scotland

Compatibility checks

The draft bill provides a "strike down" power which allows a court to make a declarator where it determines that an existing legislative provision (within the competence of the Scottish Parliament) is incompatible with UNCRC requirements. The relevant provision ceases to be law to the extent of the incompatibility, and the court may suspend the effect of the declarator to allow a period of time for the incompatibility to be remedied. By contrast, for future legislation, Scottish ministers must make a statement of compatibility, although if not satisfied, the court may make an incompatibility declarator under s 21. In considering whether to make either a strike down declarator or an incompatibility declarator, the court must intimate proceedings on the Lord Advocate and the Commissioner for Children and Young People, who are entitled to intervene as parties.

The bill requires Scottish ministers to make a Children's Rights Scheme setting out mechanisms and arrangements to ensure that they comply with the duty to act compatibly with the UNCRC. The scheme ensures a proactive culture of rights protections across all areas of children's lives. Ministers are required to engage with children and young people to create, then revise and report annually on the scheme. Finally, the bill makes undertaking child rights and wellbeing impact assessments (CRWIA) a mandatory requirement for ministers on legislation or decisions of a "strategic nature" relating to the rights and wellbeing of children.

Kept waiting

This bill has been a long time coming, and many of the children and young people who have been part of the process are now well into adulthood, but it is exciting to see the culmination of their efforts in this bill. The Scottish Government has shown real human rights leadership in bringing forward this bill, and the world is watching. Many of the countries who have not yet incorporated the UNCRC are looking to follow our lead.

One thing that is not on the face of the bill is a fixed commencement date. Over the next few months children and young people will be making their voices heard through the parliamentary process, and one message I'm sure that they will make loud and clear is that they have waited long enough: the time for incorporation is now.

Tech wherever you turn

Naturally, this year's Law and Technology Conference went online – and had no shortage of topical subjects to air, as Peter Nicholson reports

Well, you would expect the Society's Law and Technology Conference to survive lockdown and go virtual this year, wouldn't you? And over two mornings, with up to 200 or so people logging on, it did not disappoint.

President Amanda Millar set the tone by reflecting on the scale of changes over the previous six months, and the work that had gone into making them happen.

Asked what had been her big learning point, she replied that the biggest struggle had been conducting tribunal and other hearings remotely, and making sure the issues were covered. Words were important in advocacy skills, and the challenge was to make sure your meaning was getting across.

However she had been able to attend more conferences, not having to travel, and cited as a success story the Society's summer school for prospective law students, which took 25 participants in its traditional format but this year had seen 70 attend virtually.

As to what we might expect over the next year, she predicted some form of hybrid between the old ways and the new, whether for meetings or court hearings. For the latter, we must not have "a blanket approach to digitisation", but look at what the hybrid may be while "maintaining the fundamental principles of what we do for society".

Life after COVID

Not surprisingly, the impact of coronavirus on legal service delivery was a running theme, in particular in the first round table discussion.

Eoin McGrath, lead developer at Thread Legal, opened by saying he had been pleasantly surprised at how the legal industry had responded, with (against some expectations) people working well from home. Previously underused technology was allowing people to be more productive, co-work in real time, give faster feedback, and interact better and more quickly with individual clients.

Before we could become too smug, Lauren Riley, solicitor and founder of The Link App, described how, coming from customer service, she had been shocked at the legal profession's general approach to technology and client engagement. It was behind other sectors – she instanced the challenger banks – and the gap was growing. While it had adapted quicker than ever over the last six months, there was "still a way to go".

Clients would respond positively to better communication. "This is an opportunity for firms," she insisted. "Those who get it right will excel."

André Boyle, head of IT at Millar & Bryce, addressed how to deliver greater efficiency. Some of his advice involved workflows for routine tasks and spreadsheets to map out your path to progress, but he also valued the personal approach: quiz your vendor or supplier on their system's full potential; "lean on others" to get where you want to be; and "embrace feedback". "Everyone has great ideas for the little things that would make their life better" – but don't pursue them all at once.

> *"This is an opportunity for firms. Those who get it right will excel"*

McGrath, agreeing, added that everyone now has the opportunity to push changes. The hierarchy of firms had flattened, with people able to put their ideas during Zoom calls rather than having to go "knocking on the door".

Both acknowledged that it can be difficult for smaller firms to choose the best investment – but now that systems are more accessible, they can be the nimble ones bringing in changes, instead of following in the wake of bigger firms: the jet ski against the tanker, the speakers agreed! And Riley urged practices to make the most of free trials of software.

Addressing issues of work-life balance from homeworking, Riley admitted it can take time to get right, but she had learned to try and separate work from home life. Firms should set clear expectations of what was reasonable. Boyle agreed it was human nature for work to expand into space created, for example commuting time saved. He had a dedicated working space and made a point of leaving it at the end of the day. "It's OK to disconnect."

McGrath dealt with greater expectations among clients, which should also be managed, in business terms or otherwise. Make clear that if you are contacted out of hours, you will respond as soon as possible. Some clients work flexible hours too. Overall, you have the chance to improve communication and with it your customer service. "Reach out to clients by whatever means necessary," was his takeaway.

Riley's final message was to put yourselves into the shoes of the consumer, and consider how you feel when you are one. "Having technology won't prove to the consumer that you are innovative."

Still a world leader

At a time when worries about the UK's trade and economy abound, some comfort could be found in the keynote presentation by Jenifer Swallow, UK director of Lawtech. While warning against complacency, she highlighted that the UK is in the top three in the world for AI, Europe's number one for tech startups, and a global fintech hub. We can leverage local strength for a global impact.

Lawtech's vision is for a digital transformation of the legal sector – a "transformative evolution" delivering world-leading legal services and systems, and it has UK Government funding to help accelerate this. But while Swallow noted the many benefits IT is bringing the profession, she emphasised there is still "a mountain to climb ahead". Whereas 92% of financial services companies have a "digital first" strategy, many law firms still rely on "antiquated" systems and infrastructure. There are cultural barriers to change: legal services are not yet seen as a product that people consume, and one to be optimised on that basis; and even "digital natives" coming into the profession have a low awareness of the technology in use and its benefits – something she believes should be an integrated part of their courses.

Swallow told us that 60% of businesses

"unlock new opportunities" through digital transformation – and SMEs, though they pay out £11.6 billion a year in legal fees, remain underrepresented in terms of getting legal advice. Traditional law firm management structures can be a barrier to change, but she urged her audience not to give up and to keep advocating for change. This needs a bottom-up as well as a top-down approach, the former through changing workflows and improving customer focus. (She is no fan of time based billing either.)

Defence strategy

While honourable mentions should go to Thorntons and Amiqus, who combined to share their experience in making Thorntons a "virtual law firm" through new processes especially at the client information capture stage; to the panel who shared experiences in skills development; and to the closing speakers from ScotlandIS and FinTech Scotland for conveying the importance respectively of digital technology and the FinTech sector to the Scottish economy, in the space available it is worth taking a closer look at the round table on business resilience.

Panel member David Fleming of Mitigo, which provides cybersecurity support especially for smaller firms lacking their own expertise, warned that the worst threat to those whose remote connections are insecure is ransomware. There are a "scary" number of cases coming up; fraudsters scan for remote connections and attack those not securely set up. Phishing emails, tempting the recipient to click on links containing malicious software, are another threat.

His advice was personal training as well as regular warnings – in particular the simulated attack, to test which members of staff will click on a bad link (usually 10-20%). Back these up with email filters, anti-virus software and strong policies on use of social media. Who in the practice should have access to what data, and prompt action to remove the rights of anyone leaving, should also be addressed. But the important thing was to "overcome paralysis" and get started.

Kirstie Steele of the Scottish Business Resilience Centre agreed on the need for a mix of measures to change a firm's security culture. But it was also important to avoid a blame culture, as the criminals are very clever. She recommended the National Cybersecurity Centre's Small Business Guide, which has five basic, easy to understand steps that "prevent up to 80% of the most common attacks".

Lawyer panel members in this session, Austin Lafferty from a small firm perspective and Lynsey Walker from Addleshaw Goddard, respectively promoted the value of spending the money on ongoing training and awareness – not least to protect the funds in the client account – and the importance of a firm's underlying technical infrastructure, not just to business resilience but much more broadly, and of regular reviews of the platforms in use.

Get the message

If there was one word that cropped up in almost every session, it was communication. Service delivery? Communicate to get everyone facing the same direction and delivering the same goals. Client or customer service? Communication always improves it, and gives reassurance during lengthy transactions. You don't have to be there 24/7. (And it can become more personalised.) How to retain the firm's culture and values as we face radically changed working methods? Communicate through your teams. Remote supervision? It's all about communication. There was even advice to intending future lawyers to get an education in technology – because it's about communication as well as legal transactions.

Don't say we didn't tell you.

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Help as you take the plunge

Some pointers on the tech to consider when starting your own practice

The idea may have been swirling around in your head for a while. The vision of you hanging that handwritten sign above your desk in the spare room that reads "**[your name] Solicitors**". You might have even picked the office location, or maybe you're enjoying the thought of working from home long term. Whatever you're feeling and however your vision looks, there is a lot to consider when doing something on your own.

Many will say it's a "daunting task" and rhyme off all the things you need to consider. Not us. Our view is that if you really want to do it, you will. Just go for it! Granted, going through the process will be exhausting. We have no doubt you will have moments of regret and times when you want to throw in the towel. But persevere, because if you leave it too late you will regret much more not doing it.

Even if you've already taken the plunge, you're out there working, grinding and building up your client base, the same considerations we relate in this article exist.

Here's a quick checklist to help you on your way.

What hardware do I need?

A reasonable spec Windows laptop or Mac will allow you to connect onto our cloud hosted solution from anywhere with an internet connection.

You may want to consider a portable scanner, and all lawyers love a printer, despite our best efforts at selling the paperless office!

What about email?

We can research on the best domain name for your chosen firm name and source this along with appropriate Office 365 licences.

Thinking about the name is important; we will do the rest. People looking for lawyers no longer search for names on their phone books. They use Google. Your business's website works as the first point of reference for people looking to check your firm's credibility. So, when you're setting up your firm's domain name, think about what key words people use when they search online for lawyers. "Edinburgh Lawyers", for example, might start sounding a bit more promising than "Jo Bloggs & Co".

What about a website?

Your website is more than a brochure. It's the beating heart of your firm's marketing. It's a shopfront, a salesperson and a source of new business. It's an asset which will continue to deliver value, and requires ongoing care and attention. You need to support such an asset with a range of activities designed to help you get the most out of your online marketing. Content marketing, search engine optimisation (SEO) and pay per click (PPC)/adwords all make up the fabric of a successful website. We recommend speaking to Moore Legal Technology to really enhance your brand.

What about cashroom requirements?

Our SOLAS qualified Cashroom team are ready to advise on the way forward with this as well. From consultancy to day-to-day queries, our team will handle all your cashroom obligations to take another stress off your mind.

What about the RIGHT software?

With software you want to tick a few boxes. You want software that is simple to use, compliant, and mitigates the administrative tasks relating to your work types. Ultimately you want everything you need in one place – case management, legal accounts and cashroom services. That's part one.

Many providers will say they do that, but in reality, they don't offer a whole practice management solution like CaseLoad. Many will offer a decent looking web browsing platform, tell you there are no setup/training fees, and try and sell you something that has "no add-ons with full functionality" at a low price and rolling contract. Others will try and wow you with their app that looks a bit cool but ultimately isn't compliant with Law Society regulations. And there are some that will show you a system that works, but after you sign up you realise that it is limited in what it can do and you're basically left to your own devices with a product that never gets updated.

After the honeymoon period is over and you realise that it doesn't quite solve your problems, what will you be left with? That's part two, and it's important you don't fall victim to it.

Advice

So, before you start spending money on the wrong tech or jump into bed with a software provider who can't really tick all the boxes, ask yourself... Am I making the right decisions for my practice?

If you are thinking about starting your own practice or are in the process of doing so, the Denovo team are here to help you get up and running. Call us on 0141 331 5290, email info@denovobi.com or visit www.denovobi.com to get some advice from our legal technology experts.

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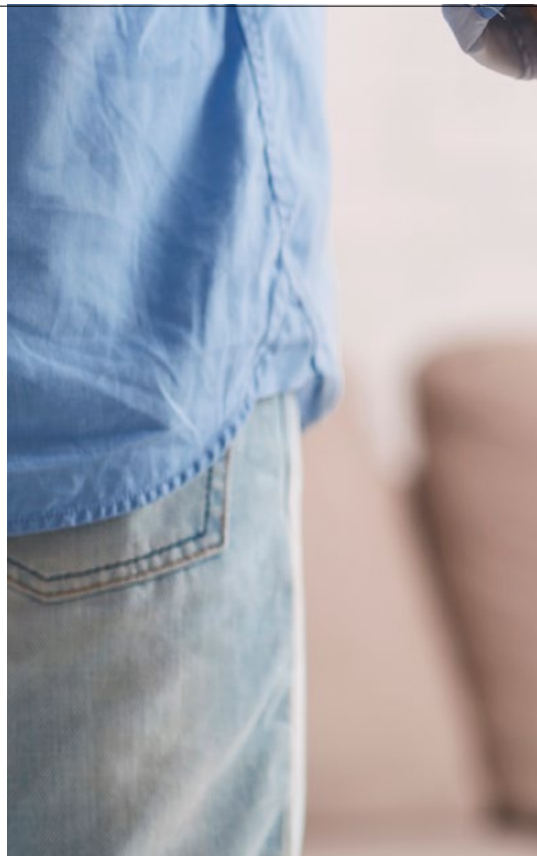


From 7 November the defence of "reasonable chastisement" for parents who hit their children is repealed. Elaine E Sutherland explores the background to the new law, the efforts to support its effective implementation and why any legal challenge is unlikely to succeed

On 7 November 2020, the Children (Equal Protection from Assault) (Scotland) Act 2019 will come fully into force. Parents (and others) will no longer be able to rely on the defence of "reasonable chastisement" to prosecution for hitting their children.

Any lingering common law rule that would permit this shall cease to have effect (s 1(1)), and the Criminal Justice (Scotland) Act 2003, s 51 is repealed (s 1(2)).

Finally, the law has recognised that children are entitled to protection from physical violence to the same extent as adults, and the state has removed its imprimatur from physical punishment as an acceptable parenting strategy. The legislation is prospective, so the defence will remain available in respect of anything that occurred prior to 7 November (s 3).

A United Kingdom first

The Scottish Parliament was the first UK legislature to pass a statute of this kind. The Welsh Assembly followed with the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020. The defence of "reasonable punishment" remains in place in England and Northern Ireland.

Lest we be tempted to boast "Here's tae us; wha's like us", it is worth remembering that Scotland is hardly in the vanguard on this issue. In 1979, Sweden led the world when it banned all physical punishment and humiliating treatment of children. Similar reforms were instituted in many other jurisdictions, with physical punishment of children in all settings now prohibited in 36 European countries. In February, Japan became the fourth state in the Asia-Pacific region to take that step, and in May the Seychelles became the 60th country in the world and the ninth in Africa to do so.

Activity has not been confined to legislatures, and the South African Constitutional Court recently found the common law defence of "reasonable or moderate chastisement" to be unconstitutional (*Freedom of Religion South Africa v Minister of Justice and Constitutional Development* [2019] ZACC 34).

The background

Scots law has long sought to protect children from assault through the child protection system and the general criminal law. However, the common law permitted a parent to hit a child under the umbrella of "reasonable chastisement" (*B v Harris* 1990 SLT 208). While the Scottish Law Commission recommended modest reform in 1992 (*Report on Family Law* (Scot Law Com No 135), para 2.105), it was not until 2003 that statute clarified the law, providing that an assault would never be considered "justifiable" if it involved a blow to the head, shaking the child or the use of an implement. In other cases, "justifiability" has been assessed by reference to a list of criteria and all the circumstances of the case (Criminal Justice (Scotland) Act 2003, s 51).

Why change was necessary

Those who support (limited) parental freedom to hit children often cite their own experience, claiming: "It didn't do me any harm." Their position may reflect just how deep-seated is the harm that was done to them, but no matter. There is ample evidence of the damage caused by permitting physical punishment of children, including harm to the child's psychological and physical wellbeing; modelling violent behaviour as acceptable; the risk of escalation; and real doubts about whether it works in terms of altering behaviour.

International human rights law is quite clear in its condemnation of all violence against children. The United Nations Convention on the Rights of the Child addresses the issue squarely. The UN Committee on the Rights of the Child elaborated on how physical punishment violated specific articles in the Convention in 2006. Little wonder, then, that the United Kingdom had been warned about the violations by both the United Nations Human Rights Committee, in 2015, and the Committee on the Rights of the Child, in 2016.

The road to the 2019 Act

Given the Scottish Government's oft-repeated commitment to "make Scotland the best place in the world to grow up", one might have expected it to address this glaring violation of children's rights. It did not, and it was John Finnie, a Green MSP, who used the member's bill procedure in order to bring forward the legislation. The Scottish Government eventually gave its support, and it may be no accident that it did so in the 2018-19 Programme for Government, where it signalled plans to incorporate the Convention on the Rights of the Child into Scots law. Clearly, it made sense to address such a flagrant breach of Convention rights prior to incorporation. The Children (Equal Protection from Assault) (Scotland) Bill was passed in the Scottish Parliament, by 84 votes to 29, on 3 October 2019.

Implementing the Act

Much of the Act came into force on the day after it received Royal Assent, on 7 November 2019 (s 4(1)). However, the key provision, s 1, removing the statutory and common law defences, came into force 12 months later (s 4(2)), in order to allow time for it to be publicised and to ensure that social services and law enforcement agencies were properly prepared (see the bill's policy memorandum (2018), paras 121-122).

Scottish ministers have a statutory obligation to "take such steps as they consider appropriate to promote public awareness and understanding about the effect of section 1" (s 2). To that end, the Scottish Government established an implementation group, comprising the various state agencies, children's rights organisations, parenting groups and representatives of the Scottish Youth Parliament, to address raising awareness of the legislation; develop guidance for the public on reporting incidents of physical punishment; explore how services will respond; assess whether additional parenting support is needed and how this could be provided; and monitor the impact of the Act.

The group began work even before the bill passed, and devised a sophisticated model for how these various goals were to be achieved along with a detailed timetable. Clearly, the appropriate means of achieving one goal may differ from achieving another. So, for example, ensuring public awareness of the law involves different strategies to those employed for communicating with voluntary organisations which, in turn, differ from guidance for professional practitioners. Individualised guidance is (or soon will be) available to social workers, police officers and procurators fiscal. While the timetable was adversely impacted by the COVID-19 pandemic, the first general circular is available on the group's web page, and it is anticipated that other information will be published there.

The goal of the 2019 Act was never the wholesale prosecution of parents, and the implementation group was anxious not only that parents should be aware of the change in the law, but also that they should be offered support and advice on positive parenting. The Parent Club website (parentclub.scot) seeks to do that at the same time as publicising the Act.

"If educating the adult population about the law is challenging, it is all the more so with children"

If educating the general, adult population about the law is challenging, it is all the more so with children. Granted, most children attend school (even amid COVID), and there is a real opportunity to pursue legal education of children in that setting. In addition, a number of the children's rights non-governmental organisations seek to do so. The implementation group has produced eyecatching posters, highlighting the Act and the difference it will make, and these will be available online for use by the various organisations involved in its work.

A human rights challenge?

Spurred on by their success in burying the named person scheme, it is possible that some parents, supported by specific interest groups, might mount a human rights challenge to the 2019 Act. Predicting the outcome of potential litigation is a risky business, but some preliminary thoughts are offered here.

First, the Act clearly aims to further accepted human rights norms (see above), which means that it starts from a strong position. Secondly, it was the ambiguous nature of the information sharing provisions in the Children and Young People (Scotland) Act 2014 that led to the downfall of the named person scheme under article 8 of the Convention (*Christian Institute v Lord Advocate* [2016] UKSC 51). There is no similar ambiguity in the 2019 Act. Finally, any appeal to parents' rights under article 9 (freedom of thought, conscience and religion) is unlikely to succeed, since article 9 is not unqualified and interference with the parental right could be justified in so far as it seeks to protect the rights and freedoms of children (*R (Williamson) v Secretary of State for Education and Employment* [2005] UKHL 15). Of particular relevance, in the present context, is Lord Nicholls' observation at para 50, that "Parliament was entitled, if it saw fit, to lead and guide public opinion".

Moving forward

The Children (Equal Protection from Assault) (Scotland) Act 2019 removes what was always a blot on the Scottish record on children's rights, a record that has many strengths. It is regrettable that it took so long to reach this milestone, but it is helpful that the problem has been addressed before we move forward with the more comprehensive realisation of rights in the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, discussed elsewhere in this issue. The full realisation of the rights of children and young people is, as in most other countries, an incremental process, but the very real signs of progress give hope that, perhaps one day, Scotland really will be one of the best places in the world to grow up.

Elaine E Sutherland is Professor of Child and Family Law at the University of Stirling; Professor at the University of Bergen; Distinguished Professor of Law Emerita at Lewis & Clark Law School, Portland, Oregon; and a member of the Child & Family Law Committee of the Law Society of Scotland

ADR: get one jump ahead

Scotland is still waiting for legislation supporting the use of mediation in civil disputes, but contract drafters can improve their client's position through dispute resolution provisions

One of my favourite television adverts was the genius O2 campaign "Be More Dog". You might remember that it follows a day in the life of a cat: "I used to be a cat, aloof till lunch then coldly indifferent after". Suddenly the cat realises its tedious existence could be fun if only it could "be more dog". Cue the cat, its head now on a dog's body, launching out the cat flap to Queen's *Flash*, chasing a ball, catching a frisbee and digging holes ("running... amazing, chasing cars... amazing, sticks... amazing!"). In a comical way, it epitomised what commitment to a change of mindset can achieve.

For years, many dispute resolution lawyers have been beating the mediation drum, seeking to change the mindset of those litigation lawyers of a more traditional courtroom culture. The COVID crisis has put mediation, particularly online, in the spotlight. For the first time, the global dispute resolution community of mediators, arbitrators, litigators and others are widely promoting mediation as an effective and appropriate way of managing the huge surge in litigation, and the backlogs in civil justice generated by the crisis.

Scotland: stuck in a tunnel

However, in Scotland, the uptake of mediation remains comparatively low. In the US, perhaps surprisingly, the majority of disputes (for example around 98% of litigated cases in California) are mediated as soon as court proceedings are commenced. That's largely influenced by costs not automatically following success, and the prevalence of lawyers charging contingency fees. In England, parties are often incentivised to mediate due to the potential for adverse judicial costs (expenses) awards if a reasonable offer to mediate is refused. In some regions of Ontario, Canada, mediation has been a mandatory and automatic stage in the court process for 20 years. This could soon be extended to the whole province, following support from the Ontario Bar Association.

In Scotland, mediation is an entirely voluntary process, requiring both or all parties to consent to engage in. There are no incentives to consider or recommend mediation, as there are England. Nor do we have a culture of contingency fees which aligns the lawyers' interests in getting paid with the clients' interests in a quicker and more cost effective resolution. So, while it is common for one party to a dispute to advocate for mediation, in reality getting all parties round the table is often a negotiation in itself.

There may soon be some light at the end of the tunnel. The Scottish Government plans to consult on the proposals of the Scottish Mediation Report, *Bringing Mediation into the Mainstream in Civil Justice in Scotland*. In a nutshell, that report makes bold recommendations to introduce an element of compulsion to mediate. So it is possible we will see legislative changes to promote the use of mediation in civil justice in Scotland.

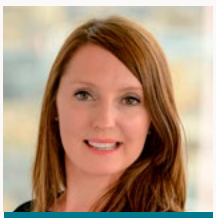
Agree in advance

Until then, transactional lawyers, in-house lawyers and business leaders have a secret weapon at their disposal: the insertion of clear and concise dispute resolution provisions in contracts. A dispute resolution clause is one of the most vital provisions in any contract. It allows the parties to agree within the contract the process to be followed in the event a dispute arises. There is much to be said for agreeing how a dispute will be dealt with while the parties are on good terms. Once a disagreement or dispute raises its ugly head, parties are usually less willing to adopt a collaborative approach to the process of resolving their differences.

Multi-tiered dispute resolution clauses (sometimes called dispute escalation clauses) are increasingly used by businesses, enterprises and organisations across all sectors and in a wide range of contracts to assist with resolving disputes quickly, efficiently and cost-effectively, and potentially preserving the contractual relationship. Such clauses allow a claim to be escalated in stages, typically by binding the parties to engage first in negotiation at different levels within each party's business, followed by mediation, as a precondition to arbitration or litigation. Often the clauses will go further and name the organisation from which a mediator (and arbitrator) must be chosen, thereby preventing further potential for disagreement and delay in choosing a third party neutral (www.squaringcirclesodr.uk/dispute-resolution-clauses/).

Provided the terms of a dispute resolution clause are sufficiently clear to create an enforceable obligation, the courts will enforce the terms the parties agreed when they executed the contract.

While there have been no reported decisions on the enforceability of such clauses in Scotland (perhaps an indication that they are not used nearly enough), in a number of decisions in the English courts over the last 20 years, parties have been prevented from progressing with court proceedings where the dispute resolution clause has created a contractual obligation to engage in mediation as a condition precedent to litigation. There is no reason to believe the Scottish courts would have decided these cases any differently.



Rachael Bicknell is founder and director of dispute resolution service Squaring Circles

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Law and wellbeing: how far at odds?

Burnout and other mental health issues are well known in the legal sector, but the scale of the problem remains uncertain. To mark World Mental Health Day, LawCare has opened a survey which all readers are invited to complete

Life in the law can be fantastic, and many thrive in this fast paced, high pressure industry and are very successful and happy. However, that is the not the case for everyone. Lawyers and support staff regularly contact us at LawCare to talk about feeling overwhelmed, stressed, anxious and burnt out. We hear about long hours, demanding bosses, incivility from clients, a feeling of never being good enough or getting things done, and the constant dread of making a mistake.

Although there has been research done in other countries, notably America and Australia, we have little data from the British Isles on how the culture and practice of law affects wellbeing. Are lawyers more at risk of poor mental health than other professions? And how will the issues created by a global pandemic – a lack of routine and support structure, no separation between home and work, too much time or not enough time alone, a lack of supervision – feed into this?

To this end, LawCare set up a research committee last year made up of academics and experts with the aim of launching the biggest ever research study into the wellbeing of legal professionals in the UK, Ireland, Channel Islands and Isle of Man. This is a cross-profession, cross-jurisdiction piece of research that seeks to understand the day-to-day realities of life in the law, and includes three academic research scales for burnout, psychological safety and autonomy. All three are issues we believe to have a significant impact on the wellbeing of lawyers.

Burnout: occupational, not medical

Burnout is recognised by the World Health Organisation as an occupational phenomenon rather than a medical condition, and results from chronic workplace stress that has not been successfully managed.

Those who are experiencing burnout are likely to feel:

- low energy or exhaustion;
- increased mental distance from their job, or feelings of negativity or cynicism related to their job;
- reduced professional efficacy.

Legal professionals with burnout may feel angry or irritated by colleagues, or feel misunderstood. They will feel under a lot of pressure to do well at work, but will feel like they aren't really getting anywhere as they find it impossible to focus, feel overwhelmed by the amount of the work they have to do, and procrastinate. They will often become forgetful – perhaps missing deadlines or meetings. Their judgment may be affected and they will often think of leaving their job or even the law profession entirely. We hear from many individuals like this at LawCare; our research will show how common this is in the legal profession and which specific issues may be causing it.

Psychological safety: true self

Psychological safety at work means "being able to show and employ one's self without fear of negative consequences of self-image, status or career". Legal professionals who feel psychologically safe at work will feel comfortable expressing their opinions and giving feedback, able to admit a mistake, to ask for help and to be their true self at work. Often legal workplaces are very hierarchical and many junior members of the profession find it very hard to put their head above the parapet – and this is where problems can start to grow.

Workplace autonomy: trust

Autonomy in the workplace means how much freedom people have at work. An autonomous workplace is based on trust, respect, dependability and integrity. Can people regulate their own hours and workload, for example? Are they able to make decisions without running them past managers? Do they feel in control of their own working life and career? Often the traditional structures in the law and the long hours culture make it difficult for legal professionals to feel autonomous, which can reduce engagement at work and job satisfaction.

Tell about your life in law

Anyone working in the legal industry in any capacity, including support staff, can complete the online questionnaire, which launched ahead of World Mental Health Day on 10 October and runs until the end of the year. The results will form the basis of an academic paper, and will help us to improve the support available to legal professionals and drive long lasting change in legal workplaces so that people working in the law can thrive. We urge you to take part and share your experiences at lifeinthelaw.org.uk

If you are finding things difficult and need to talk, LawCare can help. We provide emotional support to all legal professionals and support staff. You can call our confidential helpline on 0800 279 6888, email us at support@lawcare.org.uk, or access webchat and resources at www.lawcare.org.uk

Elizabeth Rimmer is chief executive of LawCare

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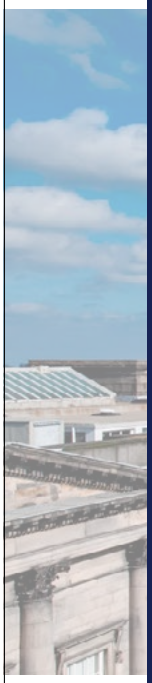

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The limits of *Moorov*

Though hearing fewer cases recently, the Appeal Courts have still had to consider the application of the *Moorov* rule, along with sentencing young offenders and penalties for contempt of court, as this month's criminal law roundup explains

Criminal Court

FRANK CROWE,
SHERIFF AT EDINBURGH

A quieter month for appeal cases, as your contributor foresaw in early lockdown. Now that we are six months on, the number of appeal cases has diminished. Although courts have resumed hearing trials on a limited basis, it will be a while until contentious points work their way through to appeal.

High Court trials are resuming with jurors located at a cinema near you, and sheriff and jury trials should resume in November on a similar basis. However, solemn trials which were fixed for around now are having to be adjourned on "joint" motion to dates perhaps in 2021, due to limitations in what can proceed to trial at present. Priority will be given to trials where a diet was previously due to take place, and a draft trial programme is being created (to clear a backlog of about 750 cases). This makes for an anxious time for all concerned: witnesses, accused and lawyers. Summary bail trials are being fixed for February 2021, so there is a bit of catching up to do. It is not clear what will happen if a second wave of COVID cases emerges, and to that extent the legal authorities are in no better position to work out how matters will pan out in the ensuing months than the rest of us.

We can hope that electronic bail monitoring is brought into force soon, to reduce remand numbers as the backlog is worked through. The present bail curfew condition is of limited effect, and police officers calling regularly at domiciles of citation often results in householders evicting the bailee in exchange for a decent night's sleep. As I see it, the power to allow accused out on bail with a curfew tag has been available since the Management of Offenders (Scotland) Act 2019 was given Royal Assent on 30 July last year, and a new five year contract was agreed with the suppliers last November on the basis of the extended powers and improved technology. The emergency powers to extend the 140 day period by six months must put the onus back on the courts to release as many accused awaiting trial as is safe and manageable, although in some instances the likelihood of bail being granted must still be problematic. I believe some parliamentary processes are moving with a view to commencement around the turn of the year.

Moorov disapplied

Of this month's group of cases one can summarise that it was not a particularly good one for the ubiquitous Mr Moorov, as I shall explain.

The circumstances of *Ahmed v HM Advocate* [2020] HCJAC 37 (18 September 2020) were well known in the tabloids long before the trial in September 2019. The self-styled lifestyle coach offered tips how to pick up young women, calling himself "Addy A-game". Ultimately he faced an indictment containing 18 charges covering a period from May 2016 to January 2019, arising in the Uddingston and Glasgow areas. No case to answer pleas were upheld in respect of nine charges, and the Crown dropped another four. The appellant was convicted on the remaining five charges, which were contraventions of s 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010 involving accosting young women, trying to chat them up, requesting their phone numbers and in one case sending abusive messages, and was sentenced to two years' imprisonment.

There were criticisms in the appeal of the sheriff's conduct. The Appeal Court held his questioning went beyond clarifying matter into cross-examination, and he should not have ordered the appellant's counsel to sit down when she was seeking to make a submission in front of the jury. The court also highlighted various adjournments at the instance of the court which seemed to disrupt the flow of proceedings. Your time is not your own when you are presiding over a trial.

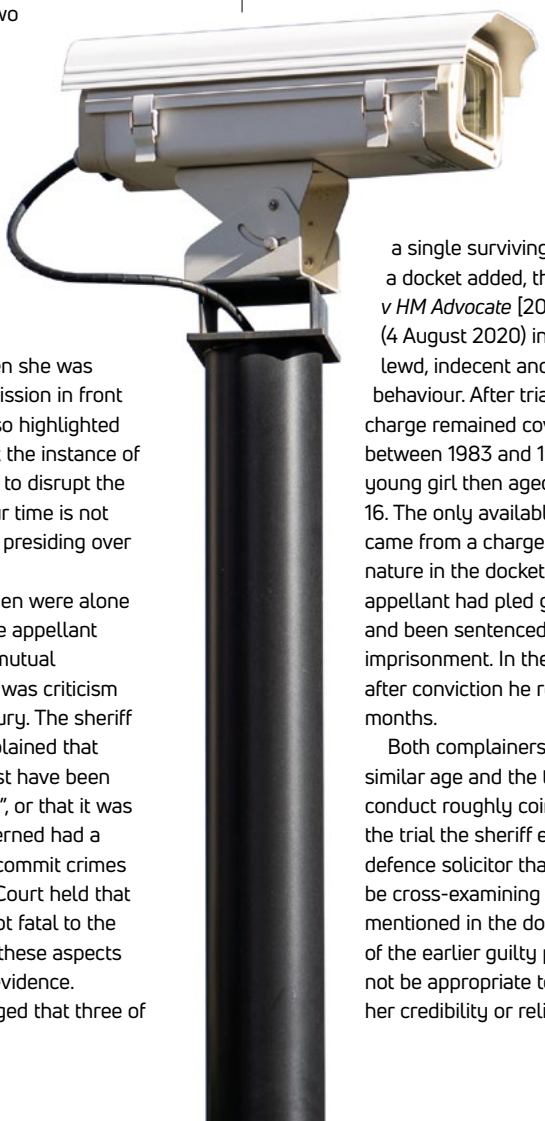
Since the young women were alone when approached by the appellant the case proceeded on mutual corroboration, but there was criticism of the directions to the jury. The sheriff accepted he had not explained that the conduct alleged must have been "systematically pursued", or that it was shown the person concerned had a "general disposition" to commit crimes of this sort. The Appeal Court held that these omissions were not fatal to the case, presumably since these aspects were obvious from the evidence.

The third ground alleged that three of the five charges did not disclose the commission of a crime, as there was no abusive behaviour or threats and the "chat up" conversations were not sinister, were politely communicated and had not been persisted in. The parties were of a similar age and the conduct could not be regarded as threatening merely because it was uninvited and unwelcome. While in one of the remaining two charges an abusive text was sent after the meeting in the street, the circumstances could not corroborate an earlier charge and the Appeal Court was satisfied the doctrine of mutual corroboration had not been available.

Convictions on all five charges were quashed and the appellant was released from custody.

Docket corroboration

All that can be said about *Burke v HM Advocate* [2020] HCJAC 34 (20 August 2020) was that the appellant supposedly was convicted on a *Moorov* basis on a single charge occurring shortly after another charge of which he was acquitted. It was submitted that the complainer's evidence was uncorroborated, but evidence from the complainer in the other charge was of assistance together with CCTV evidence of the incident and photographs showing the damage which had occurred to cars involved in the incident(!).



Also concerning a single surviving charge, but with a docket added, the case of *Penrice v HM Advocate* [2020] HCJAC 32 (4 August 2020) involved historical lewd, indecent and libidinous behaviour. After trial only one charge remained covering conduct between 1983 and 1987, involving a young girl then aged between 12 and 16. The only available corroboration came from a charge of a similar nature in the docket, to which the appellant had pled guilty in 2015 and been sentenced to 18 months' imprisonment. In the present case after conviction he received 15 months.

Both complainers had been of a similar age and the time spans of the conduct roughly coincided. During the trial the sheriff elicited from the defence solicitor that he would not be cross-examining the complainer mentioned in the docket, as in view of the earlier guilty plea it would not be appropriate to challenge her credibility or reliability. The

sheriff's charge was criticised as going too far, as he highlighted the lack of challenge to the second complainer's testimony but directed that the jury had to decide if the evidence of both charges was credible and reliable but could accept the evidence in the docket as true. It was submitted that all that needed to be said was that the jury required to be satisfied that the witness giving evidence in support of the docket could be treated as credible and reliable.

The Crown response was that the defence solicitor had wrongly suggested in his speech that the fiscal had made a "big deal" in her speech about the lack of cross-examination of the second complainer, and this ought to have been corrected by the sheriff; but looking at the whole charge it was clear the sheriff had not directed the jury they must treat the evidence of the docket witness as true. Much of the report criticises the defence solicitor in relation to how statements to the court must not be incorrect or misleading. However, it overlooks the fact that the solicitor very properly did not cross the complainer about a matter to which his client had previously pled guilty.

The appeal against conviction and sentence was refused.

It reminds me of the case back in the day at Kirkcaldy, the opposite of the present case, when the court was critical of a fiscal who could not be bothered to cross-examine an accused who gave evidence: see *Young v Guild* 1985 JC 27. It was always the highlight of the case for a prosecutor if the accused chose to give evidence. The only time I did not rise to this opportunity was when I prosecuted in Kirkcaldy and was able to say in my closing remarks that the accused's testimony was so incriminating I doubted if I could improve my case by cross-examination!

I think lawyers sometimes get subliminally confused about the lack of cross in criminal proceedings with the position in a civil proof when if there is no cross in certain areas of the pleadings, these facts may be held established.

Sentencing young offenders

JB v HM Advocate [2020] HCJAC 35 (25 August 2020) is the latest in a line of authority that special care requires to be taken when sentencing young offenders, i.e. those under 25, and particular care if they are under 21 or 16.

The appellant pled guilty by s 76 letter to assaulting a young man by repeatedly stabbing him to his severe injury, permanent disfigurement and danger of life, and attempting to murder him.

Both had been 16 at the time. The appellant had no convictions and the offence appeared to be out of character. As the complainer and a friend walked up the road about 5pm, the appellant and his friend who had been in a house nearby ran out. The appellant stabbed the complainer repeatedly with a large kitchen knife and ran off. The incident was captured on CCTV.

The appellant was sentenced to four years' detention, reduced from six due to his early plea. He had lived at home with his mother, who was present in court. He had not previously been in trouble, had obtained a qualification to be a mechanic and was studying to be an electrician. It was submitted he had acted impulsively and now bitterly regretted his actions. It was accepted that owing to the gravity of the matter a sentence of detention was inevitable.

A psychological report concluded the appellant had experienced childhood trauma resulting in "toxic childhood stress", which affected the body's self-regulatory system, leaving an individual less able to manage their emotions, and caused biological alterations in the body. He had suffered the sudden disappearance of his father, his mother's mental health difficulties, erratic housing and care, bullying, a period of hospitalisation, observing life-threatening violence and intergenerational trauma. Counsel referred to the long line of authorities dealing with sentencing young offenders, in particular *Green v HM Advocate* [2020] JC 20, Lord Justice General Carloway at para 80 (see also *Hay v HM Advocate* [2020] HCJAC 30, referred to in the August briefing).

The Appeal Court noted the appellant showed some maturity and considerable empathy and appeared to have progressed well in detention. It regarded the judge's starting point of six years as excessive, as it did not pay adequate attention to the best interests of the appellant and his reintegration into society. It substituted a starting point of five years, reduced due to the plea to 40 months' detention. This will have the effect of taking the appellant out of the long-term prisoners' regime.

Contempt of court

There is only one decision reported from the Sheriff Appeal Court: despite having potentially a numerically larger appeal population they are not very prolific opinion writers, and as a result the profession has less guidance to work on.

Much of the text of *Meade v Procurator Fiscal, Dunfermline* [2020] SAC (Crim) 4 (12 August 2020) is taken up with how the appeal should have been by bill of suspension rather than a note of appeal against an incompetent sentence. Fortunately the solicitor advocate appearing for the hapless appellant had the quick wit to seek to invoke s 300A of the Criminal Procedure (Scotland) Act 1995 which can cure most ills (normally as the fiscal's friend).

The facts are simple (read from para 7 onwards). Meade failed to appear as a witness and was found in contempt of court. That requires the court to be satisfied that the witness "was wilfully defying the court or was intending disrespect to the court or was acting in any way against the court or was attempting to pervert the course of justice". In this case, the sheriff did not explain why he rejected the explanation that the appellant had forgotten his citation. No challenge was made to the finding, but parties were agreed that there was a more fundamental difficulty with the disposal, which was incompetent.

Section 307 of the 1995 Act specifically excludes contempt of court from the definition of sentence. The penalty in cases such as this is in s 155 of the 1995 Act: a fine up to £1,000 or 21 days' imprisonment. There is no provision for alternatives to imprisonment, and a restriction of liberty order under s 245A, chosen by the sheriff, can only be imposed as an alternative to a prison sentence. Furthermore, proceeding immediately to a finding of contempt when the witness was first brought to court was incorrect unless the explanation afforded was manifestly absurd: the sheriff should have borne in mind the guidance in *Robertson and Gough* 2008 JC 146 and chapter 29B of the Criminal Procedure Rules. The finding was accordingly quashed.

The bench should proceed with caution when contempt is alleged or an awkward situation arises. The case does highlight the need for widespread reform of the law and the over-clumsy appeal procedures would-be appellants face. However, since we are living in a "war economy" and traditionally there is a lull in innovation prior to an election, I suspect like most things we may have to wait until 2022 at the earliest for common sense to prevail.

Licensing

AUDREY JUNNER, PARTNER, MILLER SAMUEL HILL BROWN

For the majority of us, until recently, a Zoom was a rocket shaped ice lolly and a Teams meeting was just that – a meeting of your team in your office. COVID-19 changed all of this by catapulting licensing lawyers and licensing boards and their clerks into the modern age with the introduction of remote hearings.

In effect from 7 April, the Coronavirus (Scotland) Act 2020 provides that where a hearing cannot be conducted in person due to a reason relating to coronavirus, the licensing board must give any person who would have been given the opportunity to be heard at that hearing the chance to be heard instead by phone, written representation or videoconference. This has allowed licensing business to continue despite the nationwide

lockdown and ongoing restrictions.

The majority of licensing boards very quickly adapted and went online. As with all innovations, teething problems were inevitable; but council staff across the country should be commended for their efforts in putting the technology in place. Some boards prefer telephone hearings to video, and written submissions have been encouraged by others, particularly in non-contentious applications. Where video is used, practitioners have been obliged to familiarise themselves with the quirks of various platforms: Zoom, Microsoft Teams and WebEx.

The pandemic forced these measures to be introduced under pressure, but it's clear that conducting a licensing board hearing remotely has many advantages. It enables truly remote working, with agents able to present applications from their homes, and dramatically reduces the amount of cross country travel. It is now possible to "appear" in a review in Inverness at 10am and a new licence application in Dumfries at 2pm. It also benefits applicants who may have struggled to find local representation and, where the application is non-contentious, it makes for very succinct hearings.

The downsides

However, remote hearings are not without challenges. In the context of criminal court proceedings, Sheriff Napier in Aberdeen recently refused to deal with any more cases via video link and branded the technology being used "appalling". The technology there was in place to enable the accused to appear via video link, and a particularly poor connection meant the proceedings were interrupted by loud, distorted feedback. This is a stark reminder that IT is fallible. Can we always be certain that board members hear submissions in their entirety and that they haven't missed a vital point? Where a board member fell asleep during review proceedings before the Aberdeen City Licensing Board in 2012, Sheriff Derek Pyle found on appeal that there were serious breaches of natural justice. Could board decisions be more liable to challenge on those grounds where technology is involved and the quality of that technology is in dispute?

On a personal level, one of the benefits of attending hearings is to gain knowledge of how boards approach certain applications, and also to engage with fellow agents, board staff, officials and clerks. This element is sadly missing, particularly where you are given an individual time slot for your Zoom meeting. Your client may also be on the call, but taking instructions on a material point with any degree of privacy can be tricky, especially where the virtual "mood music" suggests that trimming back an application may be the only means of getting it over the line. Advocacy by video link or phone involves very different techniques to face-to-face interaction, and "reading the room" can be far more challenging during online submissions particularly when you can't see the body language of those you are seeking to persuade. Recently objectors to an application suggested that a remote hearing did not allow them a proper opportunity to participate meaningfully, a concern heightened by the absence of a right of appeal on their part, albeit they were invited to attend in line with the legislation.

Here to stay?

Astonishingly, some licensing boards have not yet convened a remote board meeting, meaning that they have not heard a single application in six months. In some cases they are refusing to accept applications for new licences entirely, as they don't believe they can be processed remotely. That is clearly the exception rather than the rule. As time goes on it appears that remote hearings will be more than just a temporary fixture. Prior to lockdown, the Aberdeenshire board was already leading the way with the introduction of remote hearings. Although the Coronavirus (Scotland) Act specifically deals with remote hearings in light of the coronavirus pandemic, there would appear to be nothing to prevent licensing boards continuing to use alternative methods in the future. J

The Journal welcomes Audrey Junner as our new regular contributor, and records our sincere thanks to Tom Johnston, who has now retired, for his long and loyal service in the role.

Family

ASHLEY McCANN,
SENIOR SOLICITOR,
GILLESPIE MACANDREW LLP

Since the Grenfell tragedy in 2017, the fire risk associated with cladding has made it difficult, if not impossible, for many flat owners to sell or remortgage their properties. Family lawyers should be alive to problems this could cause in the context of separation.

Scope of the problem

Multi-storey buildings of *any* height with cladding or other external wall systems ("EWS") such as wooden balconies are an issue unless lenders and would-be buyers see fire safety paperwork that says otherwise. Currently surveyors mark the EWS as a category 2 or 3 issue on home reports.

To overcome this, homeowners must instruct a new fire-risk assessment called an "EWS survey" by a "qualified professional" who then signs an EWS1 form. This will confirm either that the EWS contains no combustible materials (and is safe) or that remediation works are required (it is potentially dangerous). Without the EWS1 most lenders refuse to mortgage multi-storey properties with any EWS, and surveyors are forced to report a £0 valuation to the lender in the transcript of their survey until the lender confirms their satisfaction with the said paperwork.

Obtaining an EWS1 form is expensive, with each homeowner having to instruct their own report from a small pool of qualified professionals at not insignificant cost. The question of who should pay in the context of a separation could result in dispute and further delay, particularly where one party is reluctant to engage.

If parties are unsure whether an EWS survey is needed for their property, a practical solution would be to obtain a draft home report first (that way it doesn't expire), and thereafter instruct an EWS1 if the surveyor raises concerns.

Limited options

Lenders will be reluctant to transfer or vary existing mortgages due to the perceived financial risk of remediation works, and will not do so without satisfactory EWS1 certification in place. The upshot is that a transfer between spouses might not be feasible where there is a joint mortgage unless they bear the cost of an EWS1.

The situation becomes infinitely more difficult if substantial remediation works are required. In Scotland this is less likely to be a common issue, due to the lower number of buildings thought to have Grenfell-style cladding, but is a risk worth considering from a family law

perspective. Who is liable for the cost of making the building safe for its residents (and are they solvent)? That question would merit its own proceedings. And while the hope is that public funding will be made available for expensive remediation in due course, owners could be in limbo for years to come – a reality that is at odds with a clean break divorce.

It is vital that we alert clients to the potential risk and liability before agreeing any deal involving a clad property. Any agreement should be conditional on a satisfactory EWS1 being provided and, where there is borrowing, an offer of loan from the lender – two crucial points that could be missed when instructed to act on an implementation only basis.

Valuation

Valuation could be contentious, especially if satisfactory EWS1 certification cannot be obtained or if the parties separated pre-Grenfell. If there is "no willing buyer at any price" due to dangerous cladding, could it be argued that working to a valuation above £0 is a "fictional exercise" (per Lady Clark's comments in *M v M* 2011 Fam LR 24) pending remediation works? Perhaps not, but there is scope for dispute.

With a pre-Grenfell separation, if one party is seeking a transfer, recourse may be had to the Family Law (Scotland) Act 1985, s 10(3A), which provides for the use of the current valuation. If however the property is to be retained by a sole owner and there has been a significant drop in its value, and/or it has effectively become an illiquid asset since the emergence of the cladding issue, consideration will require to be given to parties' respective resources in terms of s 8(2)(b) of the Act. Delaying settlement until the policy on funding for remediation is finalised may be the most practical option, where possible.

Risk management

Clad properties are a recent addition to a constantly evolving list of assets that cause additional cost and complexity for separating couples. The issues are often similar: practical issues around additional paperwork and coordination at a time of strained relations and competing priorities, disagreement about costs, problems with identifying a true and fair valuation, and liquidity, and an overlay and interlinking with current affairs, law and politics. They bring a timely reminder that family law does not exist in a vacuum.

IN FOCUS

...the point is to change it

Brian Dempsey's monthly survey of legal-related consultations

Merger and market undertakings

The Competition & Markets Authority is consulting on proposed guidance on its approach to actual or potential breaches of final undertakings and orders addressing concerns identified in investigations under the Enterprise Act 2002. See www.gov.uk/government/consultations/markets-and-merger-remedies-guidance-on-reporting-investigation-and-enforcement-of-potential-breaches
Respond by 30 October via the above web page.

COVID and legal services

The Scottish Legal Complaints Commission seeks intelligence on the likely impact of COVID-19 lockdown measures on "the shape and health of the legal services sector, and the impact that might have on incoming complaint numbers", to inform its planning and budgeting processes. See www.scottishlegalcomplaints.org.uk/about-us/news/slcc-seeks-intelligence-on-the-impact-of-covid-on-the-legal-sector/
Respond by 31 October via the above web page.

Debt and fraud powers

Under the Digital Economy Act 2017 the Scottish Government will list public authorities able to acquire information sharing powers to reduce debt owed to, or fraud against, the public sector. It seeks views on which additional Scottish bodies should be listed, including the Scottish Legal Complaints Commission, Scottish Qualifications Authority and Scottish Enterprise. See consult.gov.scot/digital-directorate/public-authorities-sharing-data-2/
Respond by 6 November via the above web page.

Permitted development rights

The Scottish Government seeks views on its draft proposals for changes to permitted development rights and the accompanying update to the 2019 Sustainability Appraisal. See consult.gov.scot/planning-architecture/programme-reviewing-extending-pdr/
Respond by 12 November via the above web page.

Addictive "loot boxes"

The UK Department for Digital, Culture, Media & Sport seeks views on amending the Gambling Act 2005 to address concerns about the impact of video game "loot boxes" on problem gamblers. See www.gov.uk/government/consultations/loot-boxes-in-video-games-call-for-evidence/loot-boxes-in-video-games-call-for-evidence
Respond by 22 November via the above web address.

Demand for prostitution

The Scottish Government is consulting on how to further challenge "men's demand for prostitution, working to reduce the harms associated with prostitution and helping women to exit... commercial sexual exploitation". See consult.gov.scot/violence-against-women-team/equally-safe-reduce-harms-associated-prostitution/
Respond by 10 December via the above web page.

.... and finally

As noted last month, the Government seeks views on proposed changes to the requirements for pre-application consultation with local communities in national and major developments under the Planning etc (Scotland) Act 2006 (see consult.gov.scot/planning-architecture/pre-application-consultation-requirements/ and **respond by 6 November**).

Briefings

Insolvency

ANDREW FOYLE, SOLICITOR ADVOCATE, JOINT HEAD OF LITIGATION (SCOTLAND), SHOOSMITHS

In a judgment dated 16 March 2020, but published on 6 August, the Sheriff Appeal Court has upheld the decision of the sheriff at first instance and refused HMRC's appeal in the sequestration of VCY. The judgment is a potentially significant one for creditors in cases where the debtor seeks to recall their sequestration on the ground that they have repaid their debts in full, as it clarifies the circumstances in which statutory interest may be claimed.

Background

The debtor, referred to by the initials VCY, was sequestrated by HMRC in March 2016. VCY's application for recall in July 2018 represented his third attempt at a recall, and on this occasion he relied on the ground of being in a position to repay his debts in full.

HMRC received notice of the application in accordance with the rules and took the position that payment of VCY's debts in full could only be achieved if this included statutory interest from the date of sequestration up to the date of payment. The principal sum due to HMRC and interest to the date of sequestration were paid. HMRC objected to recall on the grounds that statutory interest had not been paid and therefore the debt had not been paid in full.

Sheriff's decision

At first instance Sheriff Holligan held that the debts had been paid in full and allowed the award of sequestration to be recalled.

Noting that the sheriff was afforded discretion in the matter and that "recall" is broader than an "appeal", he went on to consider the meaning of a debtor having "paid his debts in full".

The sheriff identified that the Bankruptcy (Scotland) Acts do not define the word "debts". The definition of "ordinary debt" was held not to assist with interpretation, as it makes no mention of interest. However, where the Act set out what a creditor can claim in a sequestration, it does appear to differentiate between "debt" and "interest". Moreover, where the Act sets out the order in which funds ingathered by a trustee should be distributed, it can be seen that statutory interest is payable only after payment in full of other debts set out in that section. Again, it is therefore clear that the Act makes a distinction between "debt" and "interest".

In light of the foregoing, the sheriff was content to hold that the debts had been repaid in full and that recall could proceed. Creditors were accordingly not entitled to statutory interest in these circumstances.

The appeal

The Sheriff Appeal Court upheld the sheriff's judgment. The court agreed with the general principle that a word used in a statute should be given a consistent meaning throughout the statute, and that "interest" appeared to be regarded as a debt in certain provisions of the Act; however the court went on to explain that the Act clearly treats interest separately from the various classes of debt.

As per the sheriff's judgment, the court pointed to the fact that under the relevant provisions of the Act, statutory interest was only payable after various other classes of debt had been paid in full and that the overall scheme of the provision made clear that "debts" were distinct from "interest payable thereon".

Whilst that finding would have been sufficient to dispose of the appeal, the court also pointed out that the purpose of recall was stated in the Act as being to restore the debtor and any other person affected by the sequestration to the position they would have been in had sequestration not been awarded. The court took the view that awarding interest up to the date of sequestration achieves that. The application of statutory interest post-sequestration in addition to pre-sequestration interest would place the debtor in a less advantageous position than if sequestration had not been awarded.

Comment

As a result, a creditor faced with an application for recall on the ground that a debtor can repay their debts in full will be unable to claim post-sequestration interest.

While this result was not entirely unexpected following the well reasoned opinion of the sheriff at first instance, the binding nature of a Sheriff Appeal Court judgment now puts the question broadly beyond doubt.

For debtors, it is positive news and will help set the bar for any recall application they may wish to make. For creditors, the case will help inform whether they go to the time, trouble and expense of objecting to recall applications in the future.

Tax

CHRISTINE YUILL, PARTNER, AND ZITA DEMPSEY, SOLICITOR, PINSENT MASONS LLP

The impact of the COVID-19 pandemic has resulted in many concessions to, and terminations of, various contractual agreements, particularly lease agreements and contracts for goods and services. The VAT treatment of both arrangements is complex, and HMRC has made recent announcements in relation to both. While HMRC's clarification of the VAT treatment of some barter transactions between landlords and tenants is helpful, its (potentially retrospective) change to the VAT treatment of contract termination and compensation payments is surprising, especially in the current circumstances.

VAT and lease variations

As many tenants have faced financial difficulty as a result of the pandemic, landlords have agreed to vary the terms of existing leases with tenants paying no additional rent in return for such variations. These are termed "barter" transactions if any non-monetary consideration is given for the variation, and could potentially be subject to VAT.

HMRC helpfully clarified in guidance issued on 29 July 2020 that certain lease variations will not constitute barter transactions and will therefore be outside the scope of VAT. If a landlord and tenant agree to a rent concession, such as a rent-free period or a period of reduced rent, and the tenant does nothing in exchange for the concession, no supply will have taken place for VAT purposes.

HMRC has also clarified that a tenant does not make a supply to a landlord for VAT purposes simply by agreeing to an extended lease or to the variation of a break clause, provided that the tenant has only agreed to pay rent for a longer period and has not, for example, agreed to carry out works on behalf of the landlord.

While the clarification by HMRC is helpful and welcome, the guidance does not cover all possible lease variations – for example a variation in which a landlord agrees to a rent-free period in return for the tenant carrying out works to the property – and there are many other examples of property barter transactions where the VAT situation is less clear. If the parties' specific situation does not fall within HMRC's guidance, they must consider the VAT implications on both sides of the barter transaction carefully, and clearly document the agreed consideration for any transaction.

Contract termination and compensation payments

The pandemic has also resulted in many more contract terminations, and also the settlement of disputes that would otherwise go to court. HMRC has recently changed its practice in relation to such payments, announcing on 2 September 2020 that VAT will be payable on most early contract termination and settlement payments.

Prior to HMRC's announcement, the guidance was that when customers were charged to withdraw from agreements to receive goods or services, these charges were not generally for a supply and were outside the scope of VAT. This was because compensation for breach of contract was regarded as compensating for loss of profit. Similarly, damages calculated according to provisions in a contract, such as liquidated damages commonly found in construction contracts, were also considered outside the scope of VAT as they were compensation for loss of earnings.

Unfortunately, HMRC has now reversed this guidance and the presumption should now be that most compensation payments are subject to VAT unless an exception applies. Exceptions will only be applicable "where there is no direct link between a payment and a supply of goods or services", or where damages are not envisaged under the contract itself.

HMRC's new position is unhelpful, particularly in the current climate, as it will involve parties needing to come up with an additional 20% of cash to cover the VAT liability at a time when additional cash is difficult to find. In its announcement, HMRC also stated that businesses that have failed to account for VAT on such payments should correct the error. However, the announcement did not state how far back HMRC is expecting businesses to look in order to correct their past payments. HMRC has tended to apply changes such as these prospectively and so it is unclear why these specific changes have been applied retrospectively.

Practitioners are urging HMRC to reconsider the retrospective element of the changes so that they, at least, only apply from the date of HMRC's announcement. In any event, it could be argued that taxpayers had a legitimate expectation that HMRC would follow its published guidance and therefore they should not be required to revisit past treatment in accordance with that guidance.

E-signatures: silos, concerns and top tips

"Can we sign this electronically?" You might be hearing this question more often these days. Here are some basic principles and practical points to help you answer this question

Contracts

LILA GAILLING, KNOWLEDGE AND DEVELOPMENT LAWYER, BURNESS PAULL LLP

Two silos: which one are you in?

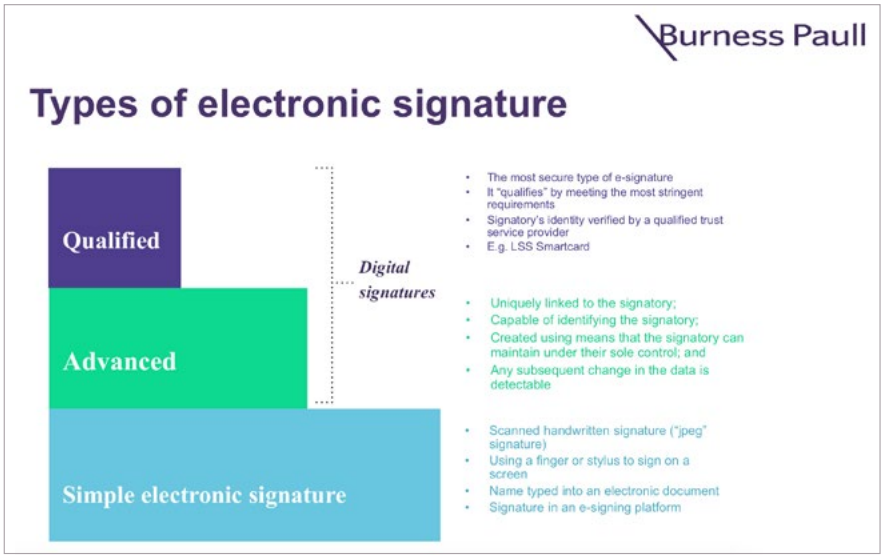
There is a lot of jargon in the area of electronic signatures. Understandably, this may be offputting and lead to a feeling of uncertainty when considering whether to sign documents electronically. But let's start with the most fundamental building blocks. First, what is an electronic document?

In today's world, there are two silos in which to categorise documents: traditional documents and electronic documents.

Traditional documents are signed on paper in wet ink and in hard copy. Electronic documents are created in electronic form (for example, a Word document) and signed electronically. Of course, traditional documents are often also created in electronic form, but the key difference is that electronic documents remain in that form. If electronic documents are printed after being signed electronically, what is produced by the printer is simply a copy of the electronic document. It is important to remember the difference between traditional and electronic documents, as there are different legal rules and considerations for each category.

E-signatures: which one are you using?

An electronic signature can only be applied to an electronic document. There are three types of e-signature: simple, advanced and qualified. Simple electronic signatures are currently the most common, and the most widely used type of e-signature. They are also the least secure, with advanced and qualified signatures benefiting from more integrity. (See image.)



The three types of electronic signature

Three concerns: are you satisfied?

Subject to some exceptions, electronic signatures are valid under Scots law. This is because under the Requirements of Writing (Scotland) Act 1995 only certain categories of document need to be in writing. So most documents do not legally require a signature at all.

An electronic signature may be legally valid, but contract parties also need to be satisfied that they can rely on them. The parties should be comfortable with these three main concerns:

1. Did the person whose name is on the document actually sign it?
2. Was the e-signature or indeed the e-document interfered with after it was signed?
3. How do we prove these two points?

Simple e-signatures can be used in electronic signing platforms (DocuSign is an example of such a platform), and these tend to provide more evidence of the signing process than other types of simple e-signature. The problem is that even when using a simple e-signature in an e-signing platform, it is difficult to prove conclusively that the actual signatory signed the document.

That task is easier with **advanced** and **qualified** signatures. Advanced and qualified signatures are "uniquely linked to the signatory" and "capable of identifying the signatory" (articles 3(11) and 26, Regulation (EU) No 910/2014 (eIDAS)). This means that there is some reliable evidence that the person whose name is on the document actually signed it. Advanced e-signatures (AES) are also "created using means that the signatory can maintain under their sole control", and any change to the signature is detectable. This means that if there is an attempt to tamper with the signature, this will be clear to anyone reviewing the document afterwards.

The qualified e-signature (QES) in addition has had the actual identity of the signatory verified by an independent party, for example a qualified third party has checked the signatory's passport or driver's licence. That is why a QES is the most secure and most reliable type of e-signature. A QES has the equivalent legal standing to a wet ink signature (eIDAS, article 25) and is self-proving (Electronic Documents (Scotland) Regulations 2014, reg 3). It will address the three concerns to the greatest extent.

QESs in e-signing platforms are only just becoming more widely used in Scotland. There can be timing issues in obtaining a QES and they usually involve greater costs. AESs appear to be used

even less often at the moment, although they generally don't suffer from the same timing and cost issues. When evaluating e-signing platforms, it may be worth considering their AES offering, in particular if AES is included in the proposed package at no or little extra cost. Using an AES instead of a simple e-signature offers a higher degree of security.

In using this terminology, take care around the difference between **electronic** signatures and **digital** signatures: digital signatures involve the signature being encrypted and hard-wired to the document itself. QESs and most AESs are digital signatures. Simple signatures are electronic signatures. Digital signatures will provide more evidential weight than electronic signatures because they can satisfy the three concerns: they give greater assurance of the signatory's identity and the document's security, and the evidence to prove it.

Four top tips: have you considered them?

At Burness Paull we have been helping clients to navigate the world of electronic signing amid the challenges of lockdown restrictions. Here are my top tips when using e-signatures.

1. All parties should agree *early on in the transaction* whether electronic signatures will be accepted. Avoid being the lawyer with a completion deadline looming who is asked what to do because one party has signed electronically and the other party does not accept this. It makes life a lot easier if the parties agree on this point as early as possible and well in advance of the signing day. This agreement should be documented, for example in email correspondence.

2. Witnessing the e-signature does not make it self-proving. The 2014 Regulations stipulate in reg 3 that the only way to have a self-proving signature is by using a QES.

Many of us are used to obtaining self-proving signatures on traditional documents as a matter of course. We have our usual signature blocks set up with space for a witness to sign. But using these same signature blocks in an electronic document can be confusing because having a witness sign to attest a signatory's electronic signature might seem to make that signature self-proving – it does not.

However, this issue might open the door to a consideration of whether the document *needs* to be signed in a self-proving way. Many commercial contracts are not required to be self-proving – they can be signed in a valid manner and that may be sufficient for the parties to that particular document.

3. Check the dates. A document may contain a variety of different dates: it could be signed by the parties on different dates, and the date on which the parties wish the terms of the agreement to be legally effective may be an altogether different date. There may also be defined terms in the document such as Effective Date or Completion Date. E-signing platforms can be used to generate a date in an agreement automatically. The significance of each of these dates must be clear in the document so there is no possibility of confusion.

4. Go for it. This is the way the legal world is heading. Law firms in Scotland are using electronic signatures more and more often. The Law Society of Scotland has published a *Guide on the use of Electronic Signatures* (www.lawscot.org.uk/members/business-support/electronic-signatures-guide/) which explains the issues simply and thoroughly. Give it a try!

Lila Gailling is a member of the Law Society of Scotland's Electronic Signatures Working Group, which produces the Society's Guide on the use of Electronic Signatures.

• This article covers electronic signatures under Scots law. The law in England & Wales is quite different and separate advice should be taken when advising on English law documents.

Year of disruption

This round-up of data protection developments covers COVID-19 related information, the impact of the *Schrems II* decision, EU data transfers after Brexit transition, and fines for GDPR breaches

Data Protection

ROSS NICOL, PARTNER, AND MUNEEB GILL, ASSOCIATE, DENTONS UK & MIDDLE EAST LLP

A. COVID-19: the new normal

For most of this year, COVID-19 has dominated and disrupted much of our day-to-day life. Working from home, restrictions on who we can socialise with and where we can spend time in public places are becoming the new normal. Amongst these changes, many businesses are collecting customer details in line with new COVID-19 track and trace requirements. These data fall within the scope of the GDPR, so businesses must ensure they are complying with data protection rules when collecting and processing the data.

In Scotland, it is now mandatory for certain businesses (e.g. hospitality businesses serving food or drink to customers on their premises) to gather minimum contact details from customers. Businesses in other sectors may also wish to collect such details to aid public health efforts, even where it is not a legal requirement.

Whether a business is legally required to collect customer data or not, under the GDPR it will need a "lawful basis" to do so.

If a business is legally required to collect data, the applicable lawful basis is compliance with a "legal obligation". If this is not legally required, "legitimate interest" is likely to be the most appropriate lawful basis. Businesses should not rely on the consent of customers when collecting their details: unless the details collected may reveal health information (e.g. that a customer has COVID-19 symptoms), collection of details is not a legal requirement, and the customer will not be denied service if they refuse to consent.

Additionally, businesses must:

- only collect information that is necessary (which in most cases will include name, telephone number, and date and time of visit);
- not retain data for longer than necessary (Government guidance suggests 21 days);
- hold all data securely (i.e. making sure it's physically safe, in the case of paper records, or digitally safe, in the case of electronic records);
- implement an appropriate way of telling customers how and why their data is being collected (e.g. putting signs up on premises, or directing people to further information online); and
- ensure that they are able to fulfil data subjects' rights requests in relation to collected data (e.g. where a customer asks for access to their data).

Contact tracing data should only be shared with a legitimate public authority when requested. Businesses must not use the data to market to individuals, unless the individuals have specifically and separately consented to this in line with e-privacy regulations.

B. *Schrems II*: demise of the Privacy Shield

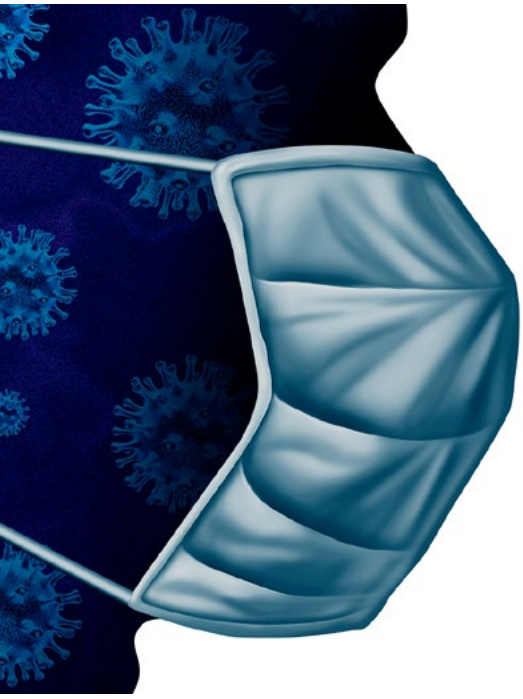
The Court of Justice of the European Union (CJEU) delivered its highly anticipated ruling in the *Schrems II* case – once again, disrupting the international data sharing landscape. The decision invalidates the EU-US Privacy Shield. To the relief of the vast majority of observers, however, the decision confirms that standard contractual clauses (SCCs) – which were also in the firing line – remain a valid method for effecting transfers of personal data to non-EU countries (including the US).

The Privacy Shield enabled the free transfer of personal data from the EU to certified US companies who undertook to comply with additional data protection obligations under the scheme. It was one of the main mechanisms for transferring personal data from the EU to organisations in the US, with over 5,000 US companies registered under it. Notwithstanding this, and the legal and commercial uncertainty any invalidation would cause, the CJEU invalidated the scheme on the basis that the requirements of US national security, public interests and law enforcement retain supremacy over the fundamental rights of persons whose data are transferred to the US (thereby condoning interference with such rights).

Anyone who was relying on Privacy Shield to send personal data to the US must now rely on one of the other transfer mechanisms under GDPR (i.e. SCCs, a derogation under the GDPR for non-systematic/one-off data transfers, or binding corporate rules). In practice, this will most likely be SCCs.

So far as SCCs are concerned, the CJEU confirmed that they remain valid for transferring personal data to non-EU countries, but with certain caveats and conditions, the most important of which are:

- prior to the transfer, EU data exporters seeking to rely on SCCs must assess whether the local law of the importing country provides a level of protection that is essentially equivalent to the EU. This includes assessing that the law of the importing country does not impose obligations



that are contrary to the SCCs (e.g. protection against access to data by public bodies); and
• following the transfer, both the exporter and the importer should ensure that the processing of that data has been, and will continue to be, carried out in accordance with EU data protection law.

In short, the key steps that data exporters need to take now include:
• considering whether personal data are currently being transferred under Privacy Shield, and if so, transitioning to a suitable alternative transfer mechanism – this will most likely be SCCs;
• if transitioning to, or continuing to rely on SCCs, you should assess whether the importing country offers the level of data protection required by EU law, and whether additional accountability measures should be implemented to provide additional safeguards for "at risk" transfers (e.g. data minimisation, pseudonymisation, data protection impact assessments etc).

C. An "inadequate" Brexit?

The *Schrems II* ruling emphasises the urgent need for the UK to obtain an adequacy decision from the EU by the end of the Brexit transition period (currently 31 December 2020). Without it, the free flow of data from the EU to the UK will end.

At the end of the transition period, the changes made by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 will take effect. The regulations will introduce a new UK GDPR, and the GDPR will be known as the "EU GDPR" in the UK.

The UK GDPR will be formed by merging the EU GDPR and the "applied GDPR" (which arises under the Data Protection Act 2018). In practice, this will create a set of UK data protection rules that are, on the whole, the same as those currently set out in the GDPR.

Whilst the core provisions of the UK GDPR will remain the same, some important changes to note are that the Secretary of State will replace the role of the European Commission, and the ICO the role of the European Data Protection Board.

Though the UK has made clear that it will provide UK adequacy decisions for the EEA, Gibraltar, the EU institutions, and for those non-EU countries for whom an EU adequacy decision already exists, it is still unclear whether the EU will provide an EU adequacy decision in favour of the UK. In July the Commission reiterated that the EU will use its best endeavours to provide an answer by the end of 2020, but there is speculation that the decision in *Schrems II* will delay this response. If we do not obtain an EU adequacy decision before

"Before GDPR came into force, much was made of the eyewatering fines that regulators could hand out under it"

31 December 2020, European companies will need to rely on SCCs and possibly additional safeguards in order to export data to the UK. This could have significant implications for the continued flow of EU personal data into the UK, at a time where there is already substantial economic uncertainty due to the lack of a UK/EU trade deal and the challenges presented by the COVID-19 pandemic.

D. A fine too far?

Europe has long led the way in established data protection standards, but there were always grumblings in various quarters that EU regulators did not have adequate enforcement powers, particularly against large multinationals who could financially afford to ignore the rules. This all changed with the GDPR, which arguably gave teeth to European regulators for the first time. Before the GDPR came into force, much was made of the eyewatering fines that regulators could hand out under it. Under GDPR, fines can reach up to €20 million or 4% of annual worldwide revenue (whichever is greater). This was a far cry from the maximum fine of £500,000 that could be levied under the old Data Protection Act 1998.

The question then was, would a regulator actually impose a fine of €20 million on a company for flouting privacy rules? Fines remained within the realms of existing practice for the first few months of the GDPR coming into force. However, in early 2019, first blood was drawn by the French regulator (CNIL), which fined Google €50 million for breaching GDPR in its processing of personal data for the purposes of behavioural advertising. This was the first GDPR fine of this scale, and it was thought this might indicate the new parameters within which European regulators would operate.

This misconception was put to rest almost half a year later, when the ICO (the UK's regulator) announced its intention to fine British Airways a record £183 million for poor security arrangements that compromised the personal information of around 500,000 customers. In its recent financial statements, BA revealed that it now expected to pay a fine of £20 million. Full details of the actual figure are still awaited.

The ICO announced a second major penalty shortly after, fining Marriott over £99 million. The breach resulted from a cyber-attack that exposed personal information of up to half a billion guests. Though the hotel group reported the incident in late 2018, the ICO decided that it had failed to carry out sufficient due diligence in its acquisition of the Starwood hotels group in 2016 (whose IT systems had been compromised).

This summer, low cost airline easyJet revealed it was a target of a sophisticated cyber-attack. An estimated 9 million customers had their personal data exposed, including around 2,200 customers who had their credit card details stolen. The airline could be set back tens of millions of pounds by an ICO fine. However, industry experts suggest that the timely notification of the breach may help to minimise the fine.

Most recently, in October 2020, the Hamburg Commissioner for Data Protection and Freedom of Information fined retailer H&M over €35 million for unjustified surveillance of employees. H&M kept detailed records about the private lives of hundreds who worked at its Nuremberg service centre. Details included information about vacation experiences, illnesses and diagnosis, religious beliefs and family issues. This is the highest GDPR fine by a German regulator, and the highest fine in the EU concerning HR data.

Under GDPR, regulators have shown a willingness to wield their new fining powers to the detriment of those that do not comply with the rules.

What is now clear is that companies with a European presence must ensure compliance with the rules, or risk significant fines and reputational damage.

In practice

Society counters Government slurs

The Law Society of Scotland has condemned the use by the Home Secretary and Prime Minister of dismissive references to the legal profession as "lefty lawyers".

Last month the Home Office withdrew a video that referred to "activist lawyers" acting for migrants, following protests by the Society and other professional bodies. However, further derogatory comments featured in speeches at the Conservative Party conference.

Society President Amanda Millar responded: "It is extremely disappointing and frustrating to continue to hear and read about inflammatory language being used by senior Government figures to describe the legal profession and its vitally important work.

"Lawyers dedicate their skills, experience and professionalism to protect and uphold people's legal and human rights, ensuring those rights apply equally to all. In doing so, they are upholding the rule of law, a cornerstone of our society and democracy. They must be able to carry out this fundamental role without fear of intimidation or restrictions to their independence or impartiality.

"Every person in a position of power should reflect carefully on the language they use and respect the role of the legal profession in maintaining a democratic and civil society."

RBS solicitor is In-house Rising Star

RBS solicitor Marliese Perks has won the Law Society of Scotland In-house Rising Star Award 2020.

At two years' PQE, Perks impressed the judges with her key role in a number of business-critical matters, working on a variety of complex contractual arrangements and navigating regulatory challenges, as well as her work around innovation and improvement.

Lucia Bobkova, a solicitor with Scottish Fire & Rescue Service, was runner-up, for her knowledge of technical and specialist legislation connected to the fire service and her responsibility for bringing key areas of work in-house for the first time.

Highly commended were Lauren Towie, solicitor in the Corporate & Property Law team at Glasgow City Council; Dylan Lynch, legal counsel at Raytheon UK; and Debbie Griffiths, trainee solicitor at Cognizant Worldwide Ltd.

Three returned to Council

Two new faces have won seats on the Society's Council, along with a member returned for a second term, all following contested elections.

Siobhan Kahmann of CMS in Brussels will again represent international members. James Keegan QC, a consultant with Thorley Stephenson, was elected to represent solicitor advocates, succeeding Tom Marshall, who has retired. Charlotte Edgar, an associate with CMS, won the seat representing new lawyers, after Amanda Davey, the outgoing representative, stepped down.

O'Neill is solicitor advocate QC

Christine O'Neill, solicitor advocate and chairman of Brodies LLP, is one of 10 new Queen's Counsel, along with advocates Alasdair Burnet, Ruth Charteris, James Dawson, Amber Galbraith, Lisa Gillespie, John MacGregor, Kevin McCallum, Paul O'Brien and Barry Smith.

Notifications

ENTRANCE CERTIFICATES ISSUED DURING AUGUST/ SEPTEMBER 2020

ALLARDICE, William Robb Anderson
ALLISON, Ruaridh
ARNOTT, Rachel Alex
ASHRAF, Mahreen
BAHIA, Kiran Kaur
BALLANTINE, John Donald
BOYLE, Deborah Anne
BRUCE, Anna Elizabeth
BUCHAN, Abigail
CAMERON, Jack Alexander Millar
CARRUTHERS, India Amanda
CHANEVA, Lili Teodorova
CLARK, Amy Louisa Campbell
COWIE, Stephanie Catherine
CRAWFORD, Rory
CREEVY, Lisa Anne Blake
CUNNINGHAM, Julia Christine
CUNNINGHAM, Ramsay Jack Heron
DANDO, James Alexander
DI CARLO, Sara
DUFF, Ronan Alexander
DUNSMUIR, Hazel
FLYNN, Laura Kathleen
FORREST, Stewart David James
FRASER, Euan Kennedy
GOWAN, Fraser James
GRAHAM, Aaron James Thomas
GRANT, Debbie Louise
GREEN, Clare Louise
GREEN, Megan O'Dowd
GREIG, Adam James Vernal
GRIFFIN, Laoibhse
HAQ, Barry
HARRISON, Joanne Louise Isobel
HENDERSON, Karri-Ann
HUNTER, Craig Peter
JOHNSTON, Beth Carrie Grace
KAUR, Kirndeep
KENNETH DAVID-WEST, Ibinabo Katrina
LEE, Carol Ga Yung
LEES, Kerry
LENAGHAN, Chiara Shona
LEVY, Tamara
McCRACKEN, Craig
McDONALD, Laura Angela Jamieson
MACDONALD, Loris Ellie
McDONALD, Sarah
MACFARLANE, Joe James
McGRATH, Kieran Sean
McINTYRE, Kaye
McKAY, Rachael Holly
MACKIE, Scott Alexander
MACLEOD, Katie Mary Margaret
MACMILLAN, Ceit Louise
MACPHERSON, Katie Rhona
McTAVISH, Eilidh June
MARSHALL, Hannah Felicity Kate
MATHER, Catriona Anne
MORRISON, Rachel Macgregor
MOUAT, Anna Lai-Ming
MUNRO, Clare
MURNIN, Philip Andrew
O'DOCHERTY, Benjamin David James
OSWALD, Mark
OWHONDA, Lucas Chima
PEOPLES, Ruari Daniel
PRESTON, Curtis Robert
REID, Rebecca Allyson
REYNOLDS, Caroline Elaine
RICHARDSON, Sophie Elizabeth
ROCKLIFF, Kate Laura
SHAW, Duncan Reilly
SIMON-ROBERT, Kimberley
SINCLAIR, Kyle Gary
SMITH, Lucy Elizabeth
SMITH, Ryan Jason
STEWART, Claire Anne
STEWART, Reece McKenzie
TAIT, James Fyfe
THOMSON, Ross McIntosh
TIGHE, Lauren Catherine
TURNBULL, Alana Paula
VAN DER SCHEER, Xander
WALKER, Louise Sarah
WARDROPPER, Robert Matthew
WATERS, Marc Anthony
WILSON, Hannah Elizabeth
WILSON, James Gordon
YULE, Jamie

APPLICATIONS FOR ADMISSION AUGUST/ SEPTEMBER 2020

ADAMS, Richard Oliver Frederick
ALI, Qasim Hussain
ALLAN, Kendall Duncan
ANDERSON-WARD, Freya
ANNIS, Stephen David
BAKER, Emma Louise
BARCLAY, Dana
BARR, Greg Robb
BEACH, Nicholas Joseph
BECHER, Katherine Ann
BECK, James Andrew
BELL, Natalia Eve
BENFIELD, Amy Ann
BLACKMAN, Hayley
BOWIE, Connor Kenneth
BRADLEY, Ciara Claire Pia
BRODIE, Nicole April
BRUNTON, Jennifer Margaret
BUXTON, Kieran David Alexander
CHAMBERS, Lucy Mary
CHILMAN, Amy Valerie
CLARKE, Eleanor
CONINGTON, Sam Patrick
CRIGHTON, Rachel Elizabeth
DAVIDSON, Anna
DEANS, Emily Mary
DOHERTY, Carol Knox
DRURY, Lucy Catherine
EADIE, Kristen Lauren
EDWARDS, Matthew William
ELGHEDAFI, Adam Abdulbadeea Yousef
FORRESTER, David James
FRASER, Alasdair William
FRASER, Kerry
FRENCH, Caitlin Margaret
FREW, Rachel Alice
GIZZI, Angela
GOWANS, Rebecca Duncan
GRACE, Hannah Sarah
GRAHAM, Mairi Jessica
GREGORY, Claire Linda
HAGART, Caitlin Rose Anne
HALL, Sara Lisa
HANNAN, Lee-Ann Moira Margaret
HARDY, Alice Elizabeth
HASWELL, Calum Samuel
HAZLIE, Lauren Elizabeth
HEALY, Rebecca
HENRY, Taylor
HOLMES, Kirsten Margaret
HUGHIESON, Niall George
JAMES, Louise Margaret
JAMIESON, Paul Alexander
JAMIESON, William Lewis
JESPERSON, Ross Indergaard
JESSIMAN, Robert Iain
JOHNSTONE, Cameron Alexander
KERR, Amy Elizabeth
LAHATSKAYA, Mariya Alexandrovna
LAVERY, Martin
LAWRIE, Fergus Gordon
LI, Tsz Ching
LLOYD, Abigail Elizabeth
LOVE, Susan Thomson
McALISTER, Ross James Fraser
McALPINE-SCOTT, Timothy David
McARTHUR, Gary
McBRIDE, Blayre
McCARTNEY, Ciara
McGINLAY, Andrew Michael
MACGREGOR, Ashleigh
McGUIGAN, Liam Gerald
McKERNAN, Katie Tolmie
McLAUGHLIN, Lauren Helen
McLEISH, Kirsty Hastings
MACLEOD, Callum Samuel
MACLEOD, Eilidh Anne
McMURTRIE, Thomas Stewart
MATHESON, Sylvia Joyce
MILLAR, Alasdair Preston
MILLER, Samantha Alexandra
MILLIGAN, Stephanie-Lynn
MITREA, Alexandra-Magda
MONTGOMERY, Hayley Gillian
MONTGOMERY, Tay Carmichael
MORRISON, Heather
NANDWANI, Beth Maya Wallace
O'BRIEN, Laura-Kate
O'CONNOR, Scott David
O'HARA, Holly Claire
O'HARE, Caitlin Anne
O'ROURKE, Emma Louise
PHINN, David Phillip
ROBB, Laura
ROBERTSON, Jodie Ashleigh
ROSS, Sean David
RYAN-HUME, Kavin Kyle
SHARPE, Matthew David
SINGH, Daljit
SMITH, Jack Matthew
STUBING, Eliza Augusta
SULLIVAN, Amy Louise
TAYLOR, Christopher James
THOMPSON, Euan Andrew
THOMSON, Katherine Rose
THORNTON, Calum John
TIERNEY, Michael Logan
TOLMIE, Peter Fraser
TØRNES, Daniel MacIntyre
TULLOCH, Aimee Lindsey
VENTISEI, Georgio Allessandro
WALLACE, Susan
WALSH, Rosslyn
WASILEWSKA, Klaudia
WOODGER, Cassandra Maisie
WRIGHT, Maeve Flora Agnes
YOUNG, Brian Alexander
ZAKRZEWSKI, Daniel Julian
ZEYBEK, Victoria Arlene

PUBLIC POLICY HIGHLIGHTS

The Society's policy committees analyse and respond to proposed changes in the law. Key areas are highlighted below. For more information see www.lawscot.org.uk/research-and-policy/

Restoring the courts

The President wrote to the Scottish Parliament's Justice Committee to set out the Society's perspective on the courts and work required to address the current pandemic-related backlog of cases.

The letter states that there is an urgent need for the Scottish Government to provide a clear plan for the justice system post-pandemic and to specify the changes being proposed. It highlights the need for good communication and co-operation by all those involved, to develop solutions for the courts both in the short and longer term.

Creative solutions will be needed to deal with court business in as quick and efficient a manner as possible in our socially distanced environment. A detailed appendix includes the Society's response to the Scottish Courts & Tribunals Service's plan for recovery.

COVID-19 legislation

The Society submitted a response to the Scottish Parliament's COVID-19 Committee's consultation on legislation including the recent SSI extending the operation of parts of the Coronavirus (Scotland) Acts by six months.

Michael Clancy then gave evidence to the committee on 15 September. In response to a question whether the Society had assessed the impact on adults with incapacity for the duration of the emergency legislation so far, the Society submitted a letter in which it called for independent monitoring and review in situations where adults with incapacity may have been discharged from hospital to care homes or other placement during the emergency period.

UK Internal Market Bill

After publication of a white paper in July on plans to legislate for a UK internal market to ensure that cross-border business can continue unimpeded within the UK once the many powers previously exercised at EU level are returned to the UK, the Government published the UK Internal Market Bill on 9 September. It attracted considerable attention because of the provisions which would be inconsistent or incompatible with international or other domestic law.

As well as making extensive comments on the bill as it will affect issues such as sale of goods intra-UK, mutual recognition of professional qualifications (and the exclusion of legal services from the bill), the Constitutional Law Committee expressed the view that the bill should, as a matter of principle, comply with public international law and that the rule *pacta sunt servanda* (agreements are to be kept) should be honoured, not least because adherence to the rule of law underpins our democracy and our society.

Trade Bill

The bill completed committee stage in the House of Lords on 29 September. The Society sent a briefing ahead of the second reading, submitted evidence to the Finance & Constitution Committee and submitted suggested amendments. Across the submissions, concern was expressed about the extensive scope of delegated ministerial powers and further consideration was urged of how trade negotiations will be handled where any proposed trade agreement will affect an area of devolved competence.

Trade negotiations

The UK Government has made agreeing comprehensive free trade agreements with Australia and New Zealand an early priority. Negotiations commenced on 29 June and 13 July 2020 respectively. These trade deals will be two of the earliest major trade agreements pursued by a post-Brexit UK, along with Japan and the US. The House of Lords EU International Agreements Subcommittee is holding inquiries into these deals, focusing on the Government's aims and objectives, the progress of negotiations, and the possible impacts of a final deal for people and businesses across the UK, to which the Society has responded.

The Policy team can be contacted on any of the matters above at policy@lawscot.org.uk
Twitter: @lawscot

OBITUARIES

IAN CHARLES DONALD (retired solicitor), Edinburgh
On 4 December 2019, Ian Charles Donald, one time employee of the firm Dundas & Wilson, Edinburgh.
AGE: 91
ADMITTED: 1954

NOEL JOHN MICHAEL LOY WS (retired solicitor), Dumfries
On 19 February 2020, Noel John Michael Loy WS, formerly partner and latterly consultant of the firm A B & A Matthews, Newton Stewart.
AGE: 80
ADMITTED: 1965

JOHN STUART HALL, Dundee
On 1 September 2020, John Stuart Hall, partner of the firm Hall Norrie Warden LLP, Dundee.
AGE: 52
ADMITTED: 1998

WILLIAM LAMONT BAILLIE, Wishaw
On 5 September 2020, William Lamont Baillie, formerly partner and latterly consultant of the firm Ness Gallagher Solicitors Ltd, Wishaw.
AGE: 71
ADMITTED: 1982

AML and client accounts

The Joint Money Laundering Steering Group (JMLSG), a private sector body made up of leading financial services sector trade associations, has issued new draft guidance for banks and other financial institutions. It relates to the treatment of "pooled client accounts" for anti-money laundering (AML) purposes and, broadly speaking, means that practice units can expect more contact from their client account provider about potential AML risks arising from the operation of that account.

Banks are reviewing and updating their policies and procedures, and legal firms with client accounts should be prepared to hear from their provider – terms of business may be amended or you may be asked to amend your own terms of business for your clients, allowing for GDPR-compliant transfer of information.

Whatever their enquiries or requests, the more robust your AML measures, the better placed your firm will be to respond. Find out more at ***www.lawscot.org.uk/jmlsgguidance/***

Supporting business recovery

The Recovery Advice for Business scheme is a UK-wide effort to help thousands of small business owners to recover from the impact of coronavirus through expert advice. Professional bodies are mobilising their sectors to offer free calls to SMEs who need advice on topics from accounting to advertising, HR and legal affairs. If you can commit to providing one free hour per month of your time and professional expertise, and are keen to build your network of SME contacts, you can find out more on the Society's website: ***www.lawscot.org.uk/enationfreeadvice/***

Sign up for Will Aid 2020

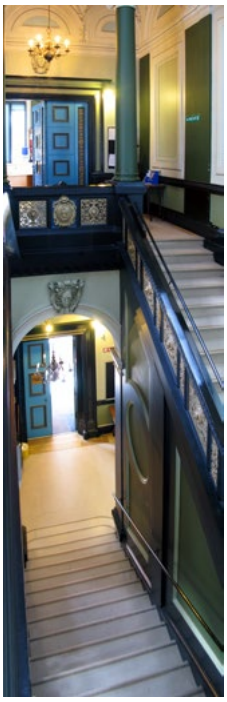
Will Aid is a special partnership between the legal profession and nine of the UK's best-known charities.

Every November, participating solicitors across the UK waive their usual fees and offer a percentage of their time for free, to write basic wills in return for a voluntary donation.

Will Aid raises vital funds for excellent causes, while ensuring that people gain the reassurance of knowing they have a professionally written will, and generating new business for your firm. ***To find out more or sign up, go to www.willaid.co.uk***

Royal Faculty building set for renovation work

Ten year programme of vital repairs begins this month, as Jane Barrie describes



The iconic building of the Royal Faculty of Procurators in Glasgow is about to be given a £200,000 programme of vital repairs.

Beginning this month, the category-A listed building in Nelson Mandela Place will undergo 10 years of maintenance and renovation including work on the roof, masonry, windows, doors and interior.

The Italianate "palazzo" style structure designed by architect Charles Wilson, which dates from 1857, was modelled on Sansovino's Library in Venice and is designed in the style of a Venetian "palazzo" or townhouse. With its richly decorated interior it houses the Royal Faculty's 200 year old law library as well as its many events.

The impressive library dates from 1817 and is one of the oldest libraries in Scotland. Its treasures include both legal and non-legal texts and manuscripts.

The exterior will be fully restored using paint

scrapings and stone sampling to ensure that the renovation is as sympathetic to the historic character of the building as possible.

A £57,344 grant towards the £117,000 external repairs has been awarded by Glasgow City Heritage Trust, funded by Historic Environment Scotland and Glasgow City Council. The remainder will be funded by the Royal Faculty.

To mark the occasion, the Royal Faculty, which is rarely open to the public, has arranged a series of events, which began with a virtual exhibition of the premises during Glasgow Doors Open Day in September, which can still be viewed at **www.rfpg-exhibition.uk/**.

An advice clinic in conjunction with Strathclyde University Law Clinic is also planned, along with a tour of legal architecture in Glasgow and a series of public lectures.

The Dean, Donald Reid, commented: "This is an exciting time for us.

"The renovations have been two years in the planning and are an important milestone in the history of the Royal Faculty.

"We are very proud of our important building and over the years have done our best to maintain it to a standard worthy of its standing in our city. We're delighted to see this stunning building restored and enhanced. It is a jewel in the city's architectural heritage."

Jane Barrie is a solicitor with Austin Lafferty Solicitors and a council member of the Royal Faculty

Shaken and stirred?

A new broom sweeps in. Are lawyers as dusty as it claims? Stephen Gold debates

A new Scottish law firm, Aberdeins, is born. In a press release, managing director Rob Aberdein said the firm aims to "deliver the biggest shakeup to the Scottish legal scene in decades". Perhaps you read this and trembled. Perhaps you didn't.

The firm takes inspiration from Monzo, the emergent bank, which runs on a lean, tech-heavy, people-lite model. If Aberdeins can bring original thinking, deliver a superior service, and carve out a significant share of its chosen markets, all power to it. Having founded a firm that was regarded as a disruptor (one of the more polite descriptions competitors chose), I think one may be better just to get on with the disrupting, rather than broadcasting one's lofty intentions in advance. But it's a free country (though currently, not as free as it used to be).

One comment in the release made my eyebrows twitch. Having castigated working practices in conventional firms, Rob Aberdein says: "That's before you even talk about the clients, who feel almost constant resentment at the perceived arrogance, lack of responsiveness and value for money they get from their legal firms. Many sectors of the profession have an image problem."

Well, as Sir Kenneth Dalglish is fond of remarking, "mebbes aye, mebbes naw". This is a view that gives rise to a very old question: where's the evidence?

Bigger problems?

It's hard to come by. In 2018-19, the SLCC received 1,326 complaints, of which 730 were accepted for investigation. Expressed as a percentage of the millions of matters handled annually by Scotland's law firms, it's a very small number. True, there are many more complaints than ever make it to the SLCC. But there is not a scrap of reliable evidence that, in general, clients are seething with "constant resentment". As for arrogance, we can all think of examples, but again there is no evidence that the profession these days is infested with it. Public deference to the professions has gone, and a good thing too. The web and social media have brought a level of pitiless scrutiny that was impossible even

20 years ago. If you want to be arrogant in this environment, good luck.

Does the public disdain lawyers? Over the last few years, I've been asked by various firms to interview their key clients, tease out their candid opinions on the service they receive, and help the firms act on the feedback. When I started, I half expected clients would be queuing up to rant, but the result could not have been more different. Satisfaction was extraordinarily high.

We shouldn't be complacent. When I served on the Law Society of Scotland's Council, I chaired one of its complaints committees, and was involved in complaints work for a further 10 years. In that time, I saw my fair share of inefficiency, stupidity and sloth. For as long as the law is populated by human beings, there will always be those who set a low bar and fail to get over it. But they are not typical. The professional cringe of "nobody loves us" is a lazy stereotype that does no one any favours. Lack of confidence and diffidence in asserting our value are bigger problems than arrogance.

More than tech

There is evidence that many corporate clients feel their lawyers take a purely transactional view, and are not interested in them except when there are fees on offer. That's a serious criticism, best met not by an app, but by empathy, warmth, curiosity, patience and a willingness to give as well as take.

The artisan model of delivering legal services is under threat, and Monzo's experience is instructive. Monzo is a brave attempt to innovate in a market crying out for change, and has loyal devotees, but in 2019, it was heavily criticised by the BBC's *Watchdog*, for blocking accounts where its software had wrongly detected suspicious activity. Customers locked out of their funds were left searching furiously for that rarest of creatures, a human being to talk to. This July, it said disruption resulting from COVID-19 has led to "significant doubt" about its ability to continue as a going concern.

It is a fair criticism of the legal profession that many firms have been slow to embrace technology, but this challenger's trajectory is a timely lesson that sexy technology is never enough on its own.

In contrast to Monzo, lawyers have enhanced their reputation lately. They have been there for their clients in extraordinarily difficult moments. They have handled their own massive challenges with decency, dedication and resilience. In the process, they have done their "image problem" no harm. The profession is far from perfect, but it doesn't deserve to be rubbished. Aberdeins is chaired by a logistics expert. I will watch with interest to see if it delivers.

Stephen Gold was the founder and senior partner of Golds, a multi-award-winning law firm which grew from a sole practice to become a UK leader in its sectors. He is now a consultant, non-exec and trusted adviser to leading firms nationwide and internationally. e: stephen@stephengold.co.uk; t: 0044 7968 484232; w: www.stephengold.co.uk; twitter: @thewordofgold

A matter of opinion

Recently called advocate Jon Kiddie relates the journey that took him to the bar after 20 years as a solicitor, and what intrants can expect before and during devilling

As a 17 year old, I first met the late, great, and sadly missed David Lessels (1949-2018) at a law school information day. I brashly declared I would become an advocate. He smiled wryly.

Fast forward several penniless years to my traineeship. At last I was earning. Two years later, I even had some modest savings. As I moved firms, I remembered my goal. I sent for Faculty's application form. The day it arrived, it was snowing. I pondered. By now, I had a girlfriend. We wanted to buy a house. I reflected on my penniless years of pasta and condensed soup, and long nights in the law library. Feeling glad for my fire, I put the form in a drawer.

Spouse and house, salary that pays the mortgage, then, before you know it, scampering little feet and children's laughter. And I enjoyed being a solicitor, it has to be said: meeting clients, hearing their woes, and helping to overcome them. I enjoyed the occasional thank you note, perhaps with bottle of wine, for changing someone's life for the better.

Life goes on. You're closer to 45 than 17, approaching midway in your career. It was winter again. I reached for the phone. The woman at the other end wasn't sure there was enough time. Matriculating with Faculty required public notice, at least 21 days before 31 December. Today was the last competent day to display mine. And, she needed it by close of business... with a wet signature. It was after lunch, and I was in Bearsden.

I hoped it wouldn't take an eon to park near Parliament House. Luckily, in the Grassmarket, another car pulled out of a space. I abandoned mine and hurried up towards High Street. I got there on time. Just.

David Lessels passed away on 28 December 2018. My notice was on display outside Parliament House until 31st. I had matriculated.

"When I went to the bar a few years later, I felt as though I was arriving with some wisdom"

I felt as though I had just taken my first step into a larger world.

Not everyone does it my way. An aspiring advocate may undertake a bar traineeship. This is designed to dovetail into Faculty's own training programme. My year of call was very large: 26 devils from diverse backgrounds, civil and criminal, east and west coast. Most had some years' experience as a solicitor. A few even had more than my 20. Some had little or none. Yet, each was there on the basis that it was right for them to embark on the journey at that time.

Matriculation and bar exams

Although devilling itself lasts nine months, the entire timeframe encompasses some 21 months, from date of applying to matriculate, which Faculty recommends be done by mid-October in year 0, until date of call, usually the end of June in year +2. Betwixt these dates, there's a fair amount of "downtime" during which an intrant may continue to work as a solicitor and/or self-study for the bar exams, or await results.

Once matriculated, an intrant may put off the exams (sometimes for years). However, they must usually pass in the same year as devilling commences.

Exams are held in February of year +1. Two are mandatory: Practice & Procedure; and Evidence. These require considerable self-study. Each sounds out your knowledge, civil and criminal, particularly (but not exclusively) as relates to the Court of Session and High Court. Candidates may have considerable solicitor experience but not in both procedures, or no experience of our supreme courts. Faculty issues past papers. Familiarisation with the types of questions asked is advisable.

Held at the weekend (for reasons obvious to employed solicitors), each exam takes two hours. Both are on the same day (with an hour between for reflection in St Giles). I had to write by hand. This can be tough for someone unaccustomed to pen and paper after half a lifetime of IT. In cases of medical condition or injury, I understand Faculty may permit a laptop. Candidates may also use Greens Annotated Rules of the Court of Session and Sheriff Court, and other statutes (unannotated), including the Criminal Procedure Act 1995.

Given the exams' challenging nature, failure on first sitting should not necessarily be taken as a cue to abandon the idea. There is a resit diet.

Candidates who have not yet passed certain other LLB subjects essential only for the bar, e.g. Roman law and private international law,

also require to pass these before devilling. This can be through Faculty, or as an external university student.

Devilling and classroom tuition

Assuming exam success, there follows a fairly lengthy wait before devilling commences in early October of year +1. If an intrant wishes to defer devilling, again I understand Faculty may permit this.

Devilling lasts until the following June, in year +2. It includes eight weeks of full time intensive classroom tuition in three segments, interspersed with actual devilling, i.e. shadowing your devilmaster(s).

The current Director of Education leads the tuition. His passion, commitment and indefatigability for legal education are obvious. I'm sure he'll leave an indelible mark on the minds of an entire generation of counsel.

Assuming no particular knowledge of substantive law (devils come from diverse backgrounds), the training programme is wide ranging, comprehensive, and intense: case analysis; written pleadings; case analysis; negotiation; case analysis; procedure for a variety of types of action/petition/trial; oral advocacy; appellate advocacy; criminal and civil; and rather a lot of homework.

Did I mention case analysis? It's important.

The method is "tell, show, do". There are numerous exercises in written and oral advocacy, including videorecording. For each, Faculty lays on detailed and extremely helpful one-on-one feedback courtesy of an existing advocate.

Devilmasters

Each devil requires a principal DM, being a senior junior (7+ years post-call) with a mainly civil practice, and allowed one devil per training year. Choose your principal DM with care. Faculty provides a list. You will spend a lot of time with this individual, working alongside them, dining, travelling, and even overnight stays. I recommend asking around, making inquiries, and meeting your prospective DM beforehand.

You also require a criminal DM to shadow for four weeks (in a block or segments). They may have several devils per training year, so you might need to co-ordinate with classmates. Subsidiary DMs may be useful where you have an interest in an area that your principal DM doesn't undertake.

Collegiality

The bar has a strong sense of collegiality, or as I prefer to think of it, fellowship. This might appear surprising in a profession where everyone is self-employed and in direct economic competition with everyone else.

A FEW PRACTICAL TIPS

Books

For the bar exams, the most up-to-date versions of Greens Annotated Rules of the Court of Session, Sheriff Court Rules and Criminal Procedure Act 1995 are indispensable (plus an unannotated version of the Act). When I studied, Hennessy's *Civil Procedure & Practice* (5th ed) and Raitt on *Evidence* (3rd ed) had just been published, both excellent resources. I suggest supplementing such textbooks, e.g. by reference to *Court of Session Practice*, as edited by the Lord President and others. Criminal is trickier for those lacking practical experience. The principal text, *Renton & Brown*, is extremely pricy. However, the annotations to the 1995 Act provide a decent framework for further reading.

Before committing to book study, I strongly suggest familiarising yourself with past papers to identify areas in your knowledge that need updating, or where you draw a complete blank.

Clothing

Besides a new laptop, probably your wig will be your single most expensive purchase. Legal outfitters sell these for around £500, or you may find one second hand – check its quality and fit. Don't necessarily buy the rest of the gear from legal outfitters. Many other retailers sell the traditional evening tailcoat and stripy morning trousers, some at extremely competitive prices (especially online). And, if you register for VAT pre-call, you may be able to reclaim one sixth as a business setup expense.

However, Scotland's bar is small: considerably smaller, overall and per head of citizenry, than the English & Welsh. Thus, it's crucial for counsel to maintain amicable relations among colleagues who might become opponents time and again.

The value of fellowship became clear in my training: the number of devils required all hands on deck from members of Faculty for one-on-one feedback. It was also evident in the large number of excellent talks given by bar and bench alike.

A mind recast

I undertook solicitor advocate training a few years before. That was very useful. It made me a better lawyer, and probably made it easier for me to transition to advocate. However, a solicitor advocate is still a solicitor, and that training is more in the nature of an advanced practitioner's course. By contrast, advocate training essentially deconstructs then reconstructs you as a different type of lawyer altogether. Of course, in our still split profession, it is natural and necessary that formation and approach have their own particular character.

Costs

Solicitor advocate training costs roughly £3,300 (excluding travel and occasional overnights). Most of this consists of the training fee. There is no training fee *per se* at Faculty. However, there are numerous incidental costs, including books, IT, and of course the traditional attire. Conservatively, I would put the cost at about £5,000-£6,000, minimum. Also, most solicitor advocate training takes place at weekends, while candidates continue to practise. By contrast, devils must give up legal practice. Therefore, it's almost inevitable that devils set aside nine months with little or no income, while having to meet living costs.

Undoubtedly, going to the bar remains the more costly option. This raises the question of when is best to undertake the adventure. Some approaching the end of university might decide that, after years of undergraduate impecuniosity, what's another 21 months? Others might prefer to gain some practical experience, and build up a nest egg.

Final thoughts

In retrospect, I'm glad I didn't go straight to the bar. However, it's very much a personal choice. When I undertook solicitor advocate training, then went to the bar a few years later, I felt as though I was arriving with some wisdom – comforting when many classmates are conspicuously younger and bristling with natural smarts.

The bar is much more diverse these days. True, it still has some way to go, as it knows. To this end, scholarships are available. That said, qualifying as an advocate in Scotland is much more accessible than qualifying as a barrister south of the border.

Ultimately, whether someone goes to the bar at all, and if so, when, depends very much on personal aspirations and circumstances. If you possess that zeal, however, and a reasonably sound head; if you're willing to put in enough hours of study, and to squirrel away sufficient savings, then it's an experience that has much to offer. Whatever its outcome for you, it'll change the way you look at the law and think about it... forever.

Jon Kiddie is an advocate with Terra Firma Chambers

Corporate and commercial risks: drafting and dabbling

In this second of two articles looking at risk management issues for solicitors dealing with corporate and commercial work, Matthew Thomson discusses the risks of drafting errors and dabbling

Drafting errors

It is easy to classify drafting errors as "mistakes" which are part and parcel of legal practice. It would be wrong to think that all drafting errors are unavoidable. A great number of safeguards can be put in place to reduce the likelihood of such errors occurring. Because these tend to be seen as administrative tasks, their value can often be overlooked. All areas of practice rely on style documents, and corporate/commercial work is no different. Given the reliance which is placed on style documentation, it is important that sufficient time and resources are devoted to creating, managing and maintaining those styles. This can be seen as a fairly mundane task, and one which can consume resources, because styles require peer review and approval from fee earners.

There are many ways in which risk can manifest itself in relation to styles, for example:

- **Using the style as a definitive document.** Without fully understanding the specifics of the transaction and the potential risks which the document should try to address on behalf of the client, blindly using a style may not actually give the client all the protection required. This, of course, somewhat depends on how comprehensive the style might be.
- **Using the wrong style.** This can happen where the explanatory notes to the style are inadequate and the user simply creates a document based on a style which is inappropriate to the transaction at hand.
- **Using a style which is out of date.** While the style might be appropriate for the transaction, care still has to be taken that the style is maintained and that developments in law and practice have been incorporated.
- **Using a style from a previous transaction.** This runs the risk of inappropriate terms being incorporated into the first draft document, which are then never corrected.

Case study

When dealing with an asset purchase on behalf of a buyer, a solicitor utilised a style from a previous transaction without appreciating that this document had been heavily negotiated. The resulting first draft was lacking a number of buyer protections and this was not picked up by the solicitor in subsequent drafts. The client had a post-transaction issue which was not covered by warranty protection. This could have been avoided by having at least one "buyer friendly" style asset purchase agreement available for use. Utilising a past agreement without understanding the version history of that document can lead to gaps and risk exposure.

Competencies

As with any other practice area, there is a risk of dabbling. The vast majority of solicitors are, without doubt, alive to that issue. However, it still manifests itself in the claims history. There is the potential for an increase in dabbling where macroeconomic circumstances may push solicitors to increase turnover or explore different opportunities for generating income.

The economic impact of the coronavirus pandemic will likely evolve over months and years to come. It may well be tempting to take on some pieces of work which would otherwise have been referred elsewhere. Always remember that the additional fees generated may be eclipsed by payments of the self-insured amount and subsequent premium increases in the event of a claim. For a more detailed explanation of competency risks, see the risk management column at Journal, December 2018, 44: "Into uncharted waters".

The lack of core competencies/dabbling risk itself could be said to encompass three related but different risk bearing activities.

- The first is undertaking a piece of work which is simply outside the core competencies of the firm.
- The second is undertaking a piece of work which is within the core competencies of the firm, but reserving that work to an individual lacking the competency.
- The third is commencing a piece of work which is (initially) within the firm's competencies but which then expands to encompass matters on which the firm does not have sufficient expertise to advise.

"No two commercial transactions or deals are the same... while delivering for their clients, solicitors and law firms should always bear in mind their own risk management requirements too"

1. Work outside of core competencies

This is the easiest type of dabbling risk to understand, define and manage. All firms should be fully aware of what their key service lines and competencies are. Engagements should be sufficiently well researched and clear that fee earners are never in a position to take on work which is outside scope.

Risk management practices which can prevent this issue arising include:

- keeping the firm's core competencies under review;
- making fee earners aware of what services the firm will not undertake, and perhaps what types of work require partner signoff before acceptance; and
- emphasising the need for properly scoping the engagement in relation to all matters.

Case study

A firm of solicitors with a general practice background was asked to advise on the acquisition of a business by way of a business transfer agreement. One of the assets of the business was the premises from which it traded. The firm had been involved in asset purchases before but had limited experience of corporate matters. Although not comfortable with business transfer agreements, the firm did understand commercial property missives. The approach taken was to develop the agreement based on commercial property missives with some additional warranties. For various reasons, that drafting failed to account for a number of matters, not least of which was an absence of any warranties as to the accounts or financial position of the business.

2. Silos

The second area which can result in risk exposure is where, notwithstanding that the firm has an acknowledged competency in a particular area, the work in that area is not properly delegated. In other words, there is a silo mentality in the firm. This can be for any number of reasons, including a desire not to share fees internally or a belief that there is a client expectation that the work will be handled by a particular solicitor. Regardless of the underlying cause, this is a cultural issue and if this arrangement exists in a practice, it is likely to take more than the writing of policies and procedures to effectively eliminate the risk.

Case study

A commercial property lawyer who had undertaken a number of corporate transactions years ago when an assistant, decided not to refer a small corporate transaction from one of his clients to his corporate colleagues. This was as a result of a perception that the transaction would be more straightforward without involving corporate colleagues. In the event, the transaction – though small in value – had a number of complexities, some of which were not adequately addressed, causing an adverse outcome. This would undoubtedly have been avoided had the matter been dealt with by the appropriate individual within the firm. The commercial property lawyer in question had simply ignored the firm's procedures, based on both personal prejudice and a desire to bolster their monthly fee target.

3. Scope creep

Scope creep can result in inadvertent dabbling. This can often be far harder to recognise and address than the position where the firm simply does not have the competency to undertake the work at all. When a firm is already committed to a transaction, related matters may have to be addressed that were not within the scope of the initial engagement. If that happens, the prudent approach would be to identify which additional elements might be outside the firm's competency and address how this is to be managed. Sometimes, through pressure of time or client pressure, that approach is not followed.

Case study

A firm was engaged initially to review articles of association and a shareholders' agreement. The solicitor in question was then asked to review the client's contracts of employment and director service arrangements as part of the same review. The client then made a request for an incentivisation scheme, which included a share option plan. At that point, the firm ought to have reviewed its position as the creation of share option schemes was not something with which it had much experience. However, drafting was duly undertaken and the scheme was prepared. Unfortunately, due to an oversight on the part of the solicitor involved, there was an adverse tax consequence resulting from the implementation of the scheme. That outcome could have been avoided had the firm either referred that part of the work to another specialist firm or taken advice from a specialist on a subcontracting basis.

Risk management begins at home

In the commercial law sphere, no two commercial transactions or deals are the same. Commercial solicitors need to have superb analytical skills, attention to detail and expert knowledge of business and corporate law. For many commercial solicitors, risk management will be nothing new. Solicitors may, for example, have had experience in advising client companies on good corporate governance and how those companies manage their regulatory requirements and their legal and financial risks. However, while delivering for their clients, solicitors and law firms should always bear in mind their own risk management requirements too.

Matthew Thomson is a client executive in the Master Policy team at Lockton. He deals with all aspects of client service and risk management for solicitor firms in Scotland.

FROM THE ARCHIVES

50 years ago

From *"'House Style' for a Law Office", October 1970:* "**'Esq.' or 'Mr.** It often makes one wish we followed the universal American 'Mr.' There is really no rule, although a pedant would probably point out that the Scots Lyon Office or the English Heralds' College probably deprecate its wide use. 'Esq.', I think it can be said, is a kind of status symbol, and its appropriate use is really more of an art than a rule. I was taught, when young, that in sending a stamped addressed envelope to oneself you must address yourself as 'Mr.' We think there is a lot to be said for that."

25 years ago

From *"Certificate of Title: Legal Context", October 1995:* "There may be some in the profession who feel that the introduction of certificates of title is a contrivance whereby a lending institution can have the best of both worlds, namely the benefit of separate representation and the benefit of a direct contractual link with the purchaser's solicitor... No matter what anyone in the profession may think, certificates of title are here to stay and as such the profession will require to come to terms with them."

DIVERSITY

Black history: Scottish history

To mark Black History Month, Tatora Mukushi highlights Scotland's underplayed colonial and slave trading history, and argues that lawyers have an educational role to help bring about meaningful social changes today

I count myself lucky to have been a guest of HM Inspector of Prisons for Scotland on a few occasions, one in January this year when we spent a few days inspecting HMP Dumfries. The night before we started, I was unpacking my bag with the hotel TV on in the background. I missed the beginning of the programme but caught the narrator still explaining the premise that Scots had been responsible for founding the Ku Klux Klan, through the heritage of the six Confederate officers who had founded it, named it and given it its philosophy and accompanying branding. I admit to not remembering every blessed detail, and also to being shocked – both at the fact of the matter and also that this was the first I had heard of it.

There were probably many people experiencing that same feeling this summer, as Scotland's colonial and slave trading history became headline news in the wake of the brutal killing of George Floyd in Minnesota and the ensuing global reckoning. Facts about street names, building ownerships, wealth legacies were spotlighted; politicians gave their views on the Black Lives Matter movement; people marched.

The invasion of the news agenda was remarkable, and fairly uncontroversial. Barely anyone in Scotland argued that there had been no injustice against blacks, historically or recently. However, there was some difficulty describing local examples. Historically, we were not the site of the graphic atrocities of slavery. At present, blacks are few in number – just above 50,000 at the 2011 census, or 1% of the population – and not the subject of much scandal. On paper, it looks as if things, both good and bad, are in their right proportions.

Learning curve

When I moved to Scotland from England in late autumn of 2014, Scotland had just rejected independence from the UK. The country had been through a period of rigorous scrutiny and was contemplating a future in which it hoped to prosper with increased devolution and a contrast to the austerity agenda. The labour market was just picking up from the 2007 financial crisis, and for me, finding work was hard. I explored other fields while I studied to cross-qualify as a Scottish solicitor, but nothing yielded.

I won't say that my ethnicity was a factor in me not being hired. I have no reason for believing it was. The lawyers I knew were welcoming and generous with their advice and insight. The learning curve was steep, but there were rungs on it. It wasn't until I finally got back into court that I realised I was a remarkable rarity. An experienced solicitor with an English accent and dark skin. There was no danger here of me being mistaken for my clients. At the Asylum & Immigration Tribunal I only had to attend once before the staff knew my face and could spell my name properly. At the Mental Health Tribunal and sheriff court

> *"This month, in this of all years, the lawyer's role is to educate and advocate"*

I only attended with a black client twice over two and a half years. I'll admit to being elated at working alongside a black colleague at the Scottish Human Rights Commission – not for her skin tone but because she was incredibly effective. Had we ever travelled anywhere together I might have insisted on separate cars, as an incapacitating accident would have, to my knowledge, halved the number of black solicitors in the Central Belt, and probably all of Scotland.

My skin colour has been neither a bonus nor a hindrance to my professional progression in Scotland. The advantage in joining this multi-millennial profession is that it predates every ethno-cultural model in existence. Its existence is almost a divine necessity (and I include both elevations of deities in that), and therefore makes a mockery of mortal machinations. Its language punishes bias and prejudice, and its practitioners are tethered to an exacting ethical code. When we lawyers are at our best we have devastating potential. However we ply our trade in the spaces between other trades, places and people, and as people ourselves some of us still house the worst prejudices, without Lady Justice's luxury of blindness.

Faces of injustice

So while we see that representation of blacks may be numerically proportionate to the population, we cannot ignore the multiple longitudinal dimensions of injustice that go alongside that. Scotland's disproportionate participation in the Atlantic slave trade and its associated industries; the disproportionate presence of Scots in the slave colonies; the wealth extracted from colonies and ploughed into Scottish institutions eclipse any contemporary injustices innumerable times over.

When we lawyers apply legal principles to addressing an enduring injustice, a "continuing wrong", we cannot be satisfied with political arguments about expedience and continuing efforts. In the ongoing public inquiry into the death of Sheku Bayoh in police custody over five years ago, police attitudes towards other ethnicities are an issue. Add in three bizarre asylum seeker deaths in Glasgow over the past few months and questions are legitimately raised about how these worrying trends grind on.

Selective history

I do not often participate in Black History Month, mostly because I believe it to be a token gesture lacking in meaning. What has become clear to more people, in light of recent news coverage

and analysis, is that Scotland's history is far more intertwined with Africa and the Caribbean than has been institutionally acknowledged. It is not outrageous to say that Scottish history is Black history. For at least 300 years it was, and at times during that period it is arguable that it almost entirely was.

The absence of black faces on the Clockwork Orange, in Holyrood seats and in the cast of *The Cheviot and the Stag*, belies a complex and revelatory narrative. If Scotland were considered a middle aged country, its adolescence and roaring 20s are missing from the family photo album. Or at least they are very selectively curated. The Scots' international reputation for wit and charm, industry and integrity would not pass scrutiny. We are only as good as what we do.

The lawyer's role now

Prior to the 2014 referendum, Scotland hosted the Commonwealth Games. I was a grateful intern at the time in Glasgow and Edinburgh. Though no one could have mistaken me for an athlete, I was probably less conspicuous then and I could eavesdrop easily on pub conversations almost entirely centred on the referendum. I cannot blame people for not talking about Scotland's troubled international past at that ideal time. For one, there was already plenty to talk about, but also, hardly anybody knew many of the details, myself included. I count in this, Scotland's enlightened approach to abolition and bold moves against injustice over the years.

This month, in this of all years, the lawyer's role is to educate and advocate. Educate ourselves first and advocate for the education of others. The shackles of ignorance chafe relentlessly, and keep us from seeing and choosing to do what is necessary. The reason for better education about Scotland's "Black" history is not to force shame on anyone, living or dead, but to empower everyone of every ethnicity to participate in recognising, deciding and implementing meaningful changes. There is a great deal of work to be done in engineering remedies to the problems of some enduring catastrophes. As some of the most intelligent and eloquent people in public life in this country, lawyers can make a profound impact on this activity. I, for one, would be grateful if we did so.

Tatora Mukushi
is a dual qualified human rights solicitor currently leading Shelter Scotland's Migrant Destitution Project

ASK ASH

What bullying can look like

My colleague can be pleasant to managers – but not to me

Dear Ash,

A relatively new colleague at work seems to have two separate sides to his character. Although he normally acts fairly pleasantly in front of management, he can be quite the opposite when it is just him and I, and has a tendency to lose his temper and behave quite erratically. He also speaks quite obnoxiously towards his domestic partner when she phones the office; unfortunately I can't help but overhear as he is not very quiet about it! Because he is quite charming in front of senior managers, they obviously don't see any issues; however, I feel constantly on edge about his behaviour. He also tends to snap frequently at the support staff, as he clearly doesn't think they are important enough to treat with respect either. I'm unsure how to deal with the situation, as I don't feel comfortable speaking to him directly because he is so unpredictable and I'm not sure how he would react.

Ash replies:

You are effectively describing a bully! As in the school playground, certain bullies can be quite manipulative by bullying their peers while putting on the charm offensive for anyone in authority. Your colleague has therefore clearly not grown up.

Such behaviour is not acceptable and you are perfectly within your rights to raise concerns with your manager. I appreciate that you may be concerned about not being believed, but if your colleague is treating other peers in a similar fashion, you will not be alone in how you are feeling; and it is probably only a matter of time before someone else also looks to complain about such behaviour.

The recent COVID crisis has at least resulted in one silver lining, by helping to emphasise the importance of everyone's mental wellbeing; you therefore should not feel reluctant about raising concerns about your colleague's behaviour. He seems to have the ability to act appropriately where *he* considers it necessary, and therefore there is no excuse for his poor conduct.

Hopefully by you raising such concerns, he will be sufficiently embarrassed to at least control his behaviour in future. He is foolish for only treating senior managers with any degree of respect, as such behaviour is not easily forgotten and those peers he is insulting today are likely to be the management of tomorrow...

Send your queries to Ash

"Ash" is a solicitor who is willing to answer work-related queries from solicitors and other legal professionals, which can be put to her via the editor: **peter@connectmedia.cc**. Confidence will be respected and any advice published will be anonymised.

Please note that letters to Ash are not received at the Law Society of Scotland. The Society offers a support service for trainees through its Education, Training & Qualifications team. Email **legaleduc@lawscot.org.uk** or phone **0131 226 7411** (select option 3).

VICTIM SUPPORT

Crime at an uncertain time

Although solemn trials are restarting, all in the justice sector must work together to counter the significant harm to victims and witnesses – and accused – already caused by lengthy delays in hearing cases, Victim Support Scotland warns

No sector in Scotland is left untouched by the adverse impact of COVID-19. The ripple effects of the pandemic can be seen in every aspect of our lives.

Scotland's criminal justice sector is no exception. It has had to adapt to attempt the restart of court business and, with the strain it is under, it is teetering on the brink of collapse.

According to a recent report by HM Inspectorate of Prosecution in Scotland, by August 2020 the backlog of High Court and sheriff and jury solemn cases was 750 and 1,800 respectively, and 26,000 for summary cases.

Despite the restarting of High Court trials, the buildup of court cases continues to grow, and even when business returns to normal levels, the backlog will remain almost untouched. According to the Scottish Parliament's Justice Committee, it could be up to a decade until it returns to "normal".

Human cost

The real life and human impact of such delays to victims, witnesses and accused awaiting trial should not be underestimated. It is both devastating and disruptive.

Earlier this year, our support team recorded a staggering 400% increase in the number of safeguarding reports where our teams took action due to concerns about victims and witnesses describing suicidal thoughts. This statistic alone should present a stark reminder for those in the criminal justice sector as to just how vulnerable some of Scotland's victims and witnesses are.

It is not just victims that are impacted: people accused of crime are also being left in limbo, with delays compounding an already difficult situation for them and their support network.

It is an unfortunate reality that many of Scotland's most vulnerable victims find themselves in financial destitution. We hear numerous accounts of people living with their partners under coercive control.

Looking cumulatively across April to August 2020, the number of domestic abuse incidents was 8% higher than the equivalent period in 2019, according to a report from the Justice Analytics team at the Scottish Government.

Financial assistance

The pandemic has only exacerbated the harsh reality for many living in these situations. It is no surprise therefore that the £100,000 funding that Victim Support Scotland has received from the Scottish Government towards the Victims' Fund has already dried up. During the outbreak, many victims have received urgent financial assistance towards, for example, food vouchers, access to mobiles and laptops, rent for those escaping domestic abuse situations, and funeral costs for bereaved families.

Through our Support for Families Bereaved by Crime service, we provided financial aid to a family who had entered into an exploitative media agreement. The family had sold their story into one media outlet, but did not fully understand the exclusive agreement in place. The media outlet breached the contract as they did not provide the family with payment, or prior notice about subsequent media coverage, and photographs appeared without consent. The money was used to pay for legal support enabling them to come out of the contract. Victim Support Scotland is committed to increasing the amount it invests into the Victims' Fund so that we can reach more victims at a time when they need us the most.

Call for collaboration

Following a recommendation from Lady Dorrian's Restarting Solemn Trials Working Group, we see the first High Court trials using remote juries taking place in Odeon cinemas in Edinburgh and Glasgow this month; and the Scottish Courts & Tribunals Service recently announced that remote jury centres are to be extended across Scotland.

Worryingly, there are still only a limited number of trials going ahead. For many victims, their families, and also the accused, significant damage has already been done.

The justice and legal sectors need to work together at this time to prioritise reinvigorating Scotland's justice system and getting trials going again. Otherwise, we risk seeing the predicted catastrophic impact of delays for years to come.

Domestic abuse cases are usually prioritised within the criminal justice system. However, we fully expect a high number of adjournments and an increase in cases being postponed until spring of next year. This is hugely concerning when it comes to safeguarding these victims.

Victim Support Scotland believes the impact of crime on any individual victim is often more significant than the type of crime that has been committed. The criminal justice system must not lose sight of this, if it is to serve victims properly in the future.

Recent developments about restarting trials are encouraging, but this is just one small step on a long road ahead. Everyone involved in the justice system – from legal to support services – has a role to play in making sure we do all we can to get trials progressing.

Kate Wallace
Chief executive,
Victim Support Scotland
www.victimsupport.scot

Law Society of Scotland

Expert Witness Index 2020

Law Society of Scotland

Expert Witness Index 2020

I am very pleased to introduce the 2020 published Expert Witness Index. This year our listings have expanded to include a number of new specialist areas of work and locations. I hope you will find it useful for finding experienced experts that will provide essential technical analysis and opinion evidence in court and reports.

All our listed individuals and companies have demonstrated experience and ability in providing expert witness services through an application process and professional references and have agreed to our code of practice. Many also have specific training in report writing and giving evidence in court.

If you need more in-depth information about any of the experts, you will be able to find their full profile detailing qualifications and experience in the online directory www.lawscot.org.uk/members/expert-witness-directory

We welcome any suggestions you may have for areas of expertise that you would like to see represented in the directory or indeed recommendations of experts that you have worked with that may benefit from joining it. My contact details are listed below.

Charlotta Cederqvist
Head of Business Development
Law Society of Scotland

If you are an expert witness and would like to find out more about how to be listed in the Law Society of Scotland Expert Witness Directory, please phone **0131 476 8166** or email **CharlottaCederqvist@lawscot.org.uk**

WHO RATES OUR EXPERTS

Reference system underpins entries for all those listed in this index

The directory is comprised of expert witnesses who live and work in Scotland, and expert witnesses who are based in other areas but are willing to travel to Scotland to work. New experts applying to be listed are required to demonstrate experience and ability in providing expert witness services, normally by providing references from two solicitors holding practising certificates who have instructed them within the last three years.

The reference form asks the referee to rate from "very good" to "very poor" several aspects of the expert witness's report: accuracy; understanding and analysis of the expert subject area; presentation; and adherence to timescale. Where the expert has presented evidence in court, referees are asked to rate their understanding of the court's requirements, and the preparation, content and delivery of the expert's evidence.

Referees are asked whether they have received any adverse comment from the judge or others which gives them cause to doubt the expert's expertise and whether the referee would use the expert again or recommend the expert to other solicitors.

Where any of the ratings fall below "good", the references are carefully scrutinised. Other than in very exceptional cases, low ratings lead to the expert's exclusion from the listing of checked experts. It is always the responsibility of the instructing practitioner to ensure any expert witness possesses the knowledge and experience required for each individual case.

Individual expert witnesses and corporate expert firms

All experts listed in a corporate entry must provide satisfactory references for their individual work as expert witnesses. In addition, all firms must supply the name of a main contact person.

Other referees

One reference must be from a solicitor from the same jurisdiction as the expert witness, who has instructed him/her within the last three years. The other reference, also pertaining to instruction as an expert within the last three years, may be given by:

- practising solicitors/lawyers from Scotland, England or Wales
- a lawyer from another jurisdiction
- an advocate in Scotland or barrister in England, Wales, Ireland or Northern Ireland
- a judge, sheriff or holder of other judicial office.

Cases where references have not been required

There are certain cases where our reference requirements have been superfluous because the expert has already passed through a rigorous accreditation process, which has included proven experience and understanding of expert witness work. In these cases, the Law Society of Scotland may accept experts who have worked for or been vetted by other organisations. The Law Society of Scotland will verify the procedures employed by other organisations to ensure that their procedures meet or exceed our requirements and will verify membership/employment where appropriate.

CODE OF PRACTICE IS EXPERT SUPPORT

Law Society of Scotland Code published to assist expert witnesses engaged by solicitors

The Law Society of Scotland has published a Code of Practice to assist expert witnesses engaged by solicitors in effectively meeting their needs, so those solicitors can better serve their clients and the interests of justice.

The Code applies generally, but there may be additional requirements relating to cases in specialised areas of law. Experts must also comply with the code of conduct of any professional body to which they belong.

At the outset, experts should ensure they receive clear instructions, in writing. In addition to basic information such as names, contact details, dates of incidents, etc, these should cover the type of expertise called for, the questions to be addressed, history of the matter and details of any relevant documents. Experts should also be advised if proceedings have been commenced or if they may be required to give evidence.

When medical reports are involved, it must be highlighted whether the consent of the client or patient has been given, and in cases concerning children, that the paramountcy of the child's welfare may override the legal professional privilege attached to the report and that disclosure might be required.

Instructions should only be accepted when the expert is fully qualified to speak on the matter and has the resources to complete the matter within an agreed timeframe.

Experts should provide terms of business for agreement prior to accepting instructions, including rates of payment or the agreed project fee, and travelling expenses, etc.

Solicitors must be notified, and their agreement obtained, if any part of the assignment will be undertaken by anyone other than the individual instructed.

Client confidentiality must be observed.

Guidance is also given as to the content of the report prepared, which should be in plain English with any technical terms explained.

Independence and complaints

Once they have accepted instructions from a solicitor, experts are under a duty to provide an objective and independent opinion relating to the case.

The key to being an expert is maintaining independence. When giving evidence at court, the role is to assist the court. Any and all personal or professional relationships, business dealings and competing interests that might influence the expert's work must be fully advised to the solicitors at the start of each project. Experts should immediately withdraw if a conflict of interest arises.

Site visits or client meetings should first be discussed with the solicitor.

Experts should also provide a procedure for resolving any complaints, and respond quickly and appropriately if any complaint arises.

The Law Society of Scotland reserves the right to exclude any expert who has failed to adhere to the Code of Practice from any future edition of the Directory of Expert Witnesses.

This article provides only an overview of the Code of Practice. For a complete and comprehensive guide, please visit: **www.lawscot.org.uk/members/business-support/expert-witness**

TRAINED TO DELIVER

A new training programme for expert witnesses is the first of its kind in Scotland. Mark Solon explains the thinking behind it

September saw the launch of the first university certified training programme for expert witnesses giving evidence in the Scottish courts.

Why should expert witnesses be trained? As well as having the relevant qualifications and expertise in their professional field, it is now regarded as essential that experts, however experienced in their field, undertake recognised expert witness training. Lawyers look for experts who can demonstrate that they are able to meet deadlines, produce reliable and effective reports, if necessary present those reports in court and other legal fora, and that they have an understanding of the relevant law and procedure.

Training, not coaching

The new training covers all these aspects. It enables the expert to comply with their legal obligations, assuring the instructing parties and the courts of the individual's ability as an expert witness. A trained expert will save the instructing solicitor considerable time, as the expert does not need to be hand held through the litigation process and any suggestion of "coaching" on the evidence itself is avoided.

Attending training is not sufficient. The new certificate is in two parts: Bond Solon delivers the training and the University of Aberdeen independently assesses the work of the expert. If an expert completes the training programme and university assessment, they are awarded the University of Aberdeen Bond Solon Expert Witness Certificate, the first university certificated expert witness training programme in Scotland.

The training is held in major centres around Scotland, not just at Aberdeen University, and can be held in-house if there is a group of experts. Currently the training is delivered remotely.

Mark Solon

Becoming court-ready

An expert's report is an essential element in litigation. It must be clear, succinct, independent and well presented. Many experts create their own report writing style, or adopt other experts' formats and styles, having rarely received constructive feedback from lawyers on what is required from their written report. The new course explores what lawyers and the courts expect and require from an expert's report. Working with our model format and using techniques explained during the training, experts can produce reports that are appropriate for use in litigation and can withstand cross-examination.

The witness box is a lonely place. Many experts feel they are on trial, rather than giving independent testimony to assist the court. Often they are unfamiliar with this environment, and a poor performance can undermine their confidence and credibility. The training examines the theory, practice and procedure of giving evidence to demystify the process. The experts are cross-examined on a case study based on their individual field of expertise. One of our trained Scottish lawyers gives constructive feedback on the witness box presentation.

Experts involved in proceedings in Scotland need to understand the basics of law and legal procedure, in order to work effectively and confidently and comply with various mandatory requirements. The practical implications of the Law Society of Scotland Expert Witness Code of Practice, guidance and judicial comment on the roles and responsibilities of experts are studied, so experts understand what is best practice.

Triple assessment

The expert's work is assessed in three parts, all of which must be submitted to the University of Aberdeen within a one-year period.

Part 1 – assessment of the expert witness report. The expert submits their witness report after taking the report writing training. This must be in court-ready condition including any photographs, plans, etc.

Part 2 – review of performance under cross-examination. A video of the expert's performance will be made during the cross-examination training day.

Part 3 – multiple choice examination on the law and procedure course.

Provided a pass standard is reached in all three assessments, the expert will be awarded the University of Aberdeen Bond Solon Expert Witness Certificate.

Lawyers who have experts are free to call Bond Solon to discuss training for those experts. Full details are on the Bond Solon website: www.bondsolon.com/expert-witness/certificate-scotland/

Mark Solon, chairman, Wilmington Legal and founder, Bond Solon

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Accountants

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Forensic Accountants
Edinburgh
Email: info@adamsonforensics.co.uk
Tel: 07914 070741
Web: www.adamsonforensicaccounting.com
Specialisms: accounting services, forensic accounting, business valuation and loss

Christie Griffith Corporate Ltd
Chartered Accountant
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Specialisms: accountancy disputes, forensic accounting, business valuation and loss

Mr Jeffrey Meek
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Architects

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Specialisms: architectural design, building and construction problems, construction works, town and country planning

Mr Gordon Gibb
Architect
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The Hurd Rolland Partnership
Architects
Dunfermline
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Tel: 01592 873535
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Specialisms: architectural design, building and construction problems, building details, professional liability, surveying and valuation, town and country planning, built heritage and design issues

Banking and insurance

Expert Evidence International Ltd
Bankers, Property Financing Advisors, Investment Advisors and Regulators and Tax Advisors
London
Email: thomas.walford@expert-evidence.com
Tel: 020 7884 1000
Web: www.expert-evidence.com
Specialisms: banking, commodity markets, property development, fraud, insider trading, money laundering, taxation

Mr Charles Brewer
Management Consultant
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Specialisms: consultancy services, computer technology, system design and implementation, commodity markets, insurance and intellectual property software, national and international payments

GBRW Expert Witness Ltd
Financial Sector Expert Witnesses
London
Email: experts@gbrwexpertwitness.com
Tel: 020 7562 8390
Web: www.gbrwexpertwitness.com
Specialisms: banking, financial services, business conduct, forensic accounting, business valuation and loss, employment, commodity markets, insurance

Building and construction

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Carmichael
Chartered Surveyors
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Specialisms: building and construction problems, construction works, surveying and valuation

Mr David Roberts
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Dentistry and odontology

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Digital forensics

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Specialisms: video analysis, CCTV, evidence recovery

Disability

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Drugs and toxicology

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Employment

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Keith Careers Ltd
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METTEK Ltd
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Mr Angus Maclean
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Specialisms: orthopaedics, accidents, personal injury, sports injury, trauma

Medico Legal Scotland Ltd
Medicolegal Specialists
Glasgow
Email: ent@glasgow.org
Tel: 0141 354 7663
Specialisms: surgical primary care, oncology, psychology, accidents, medical negligence

Dr Katharine Morrison
Clinical Forensic/General Medical Practitioner
Mauchline
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Specialisms: general medical practice, health care management, family and child issues, illegal drugs and prescription medicines, sexual assault, accidents

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Dr Usman Qureshi
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Specialisms: general medical practice, health care management, accidents, musculo-skeletal injury or disease, soft tissue injuries, trauma, whiplash

Mr Gavin Tait
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Specialisms: orthopaedics, accidents, knee and shoulder injury, clinical negligence

Dr Norman Wallace
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Specialisms: general medical practice, health care management, records and disputes, medical negligence, accidents

Meteorology

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Specialisms: weather services, accidents, offence investigation, event reconstruction, road traffic accidents, flooding, insurance

Occupational therapy

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Pharmaceuticals

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Psychiatry

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Specialisms: psychiatry, stress related problems, anxiety disorders, severe mental illness, workplace difficulties, occupational health, pension reports

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Psychology

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Specialisms: psychology, disability, family and child issues, educational issues, criminal issues, learning difficulties, ethnic and religious minorities

City Clinics
Clinical and Forensic Psychologists
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Tel: 0333 800 2909
Web: www.cityclinics.org
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Violet Elizabeth Lily Ross (Deceased)
Would any firm holding or knowing of a Will by Mrs Violet Elizabeth Lily Ross, sometime of The Woodside Hotel, Stirling Road, Doune, FK16 6AB, sometime of Leapark Hotel, Grangemouth, FK3 9BX and late of 15 Ivy Bank Court, Polmont, FK2 0GH please contact Andrew J Ion, Solicitor, Kerr Stirling LLP, 10 Albert Place, Stirling, FK8 2QL, telephone number 01786 463414 or email ajion@kerrstirling.co.uk.

Barbara Thomsen
Would any person holding or having knowledge of a Will of the above named who resided at Avalon, Clochan, Buckie, AB56 5EQ and who died on 15 June 2020 please contact Stewart & Watson, Solicitors, 17-19 Duke Street, Huntly, AB54 8DL – mpartridge@stewartwatson.co.uk

Sheila Brown (deceased) –
Would anyone holding or having knowledge of a Will by the late **Sheila Brown** of 1/53-55 Hammers Road, Northmead, New South Wales, 2152 Australia, please contact Mrs Patricia King at J D Clark & Allan, Tolbooth House, Market Square, Duns, Berwickshire, TD11 3DR (telephone number 01361 882501 or pat.king@jdca.co.uk).

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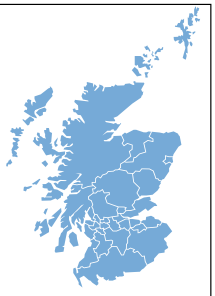

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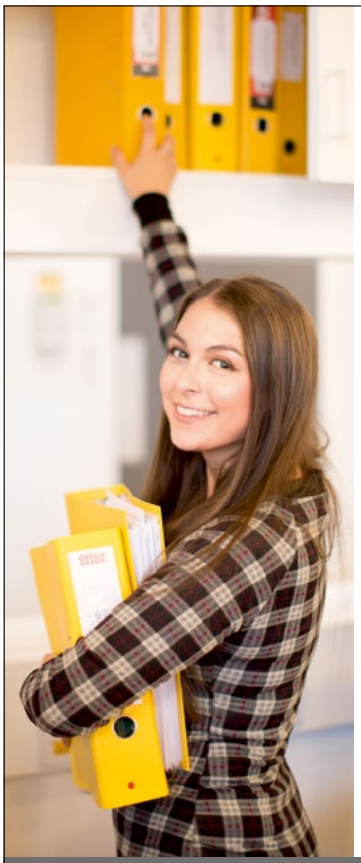

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Our Top Interview Tips

We are delighted to share with you specific interview guidance based on information that we have gathered over the years from interviewees, interviewers and the HR profession – we hope you find it helpful on your journey.

Frasia Wright, Managing Director

Adding value to the interview

- Preparation – know the firm/organisation, get informed on the specific area of law, on general market issues etc.
- Empathy with the interviewer – thorough preparation will allow for some level of this.
- Focus – you have to demonstrate this at all levels – personal and professional – show that you are focussed, give examples
- Responsiveness – be proactive – get as much information as possible, be interested don't just 'react'.
- Strategy – demonstrates a strategic mind when articulating your decisions about what industries in which to compete and how to compete in them.

STAR Approach

How do I prepare for competency based questions?

You will need to think of strong, specific examples for potential competency based questions, which best demonstrates your skills and abilities. For each experience that you will be describing to the interviewer, it is helpful to consider following the STAR method:

- Situation - What was the situation? What was the background and context?
- Task - What specific task did you need to accomplish?
- Action - What specifically did you say and do? What were the actions you took?
- Result - What were the results of your actions? What was the impact? What did you learn?

CBI Example Questions

The target level of the 'ideal' candidate is noted within each competency. Using the STAR method, prepare some examples that you can use during the interview. We have provided you with some examples of competency based questions which are commonly used in an interview situation.

- Describe a situation in which you were able to use persuasion to successfully convince someone to see things your way.
- Give me a specific example of a time when you used good judgment and logic in solving a problem.
- Tell me about a time when you had to use your presentation skills to influence someone's opinion.

Do you have any questions?

A good question. Almost always, this is a sign that the interview is drawing to a close, and that you have one more chance to make an impression. Create questions from any of the following:

- Find out why the job is open.
- What type of training is required/provided if any?
- Who will be the firm's major competitor over the next few years?

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