Satisfied clients? The health check approach
P.18

When trans issues meet family law
P.22

Medical advice: reasonable alternatives
P.24

Journal

Journal of the Law Society of Scotland

Volume 68 Number 9 – September 2023

Making rights matter

Human rights are set to expand, but how will that be achieved in practical terms? We explore the Government's approach, and how to underpin it

finders® INTERNATIONAL

TRACING HEIRS TO ESTATES, PROPERTY & ASSETS

MISSING HEIRS, WILLS, DOCUMENTS & ASSETS FOUND WORLDWIDE

Assisting Solicitors since 1997

IAPPR

Regulated by the IAPPR - the Probate Research regulator

Scan the QR code for a quote

T: +44 (0) 131 278 0552

E: quotes@findersinternational.co.uk

W: www.findersinternational.co.uk

A: 83 Princes Street, Edinburgh, EH2 2ER

We also have offices in London, Dublin and Sydney

GBC Good Business Charter Accredited

AVIVA

Insurance by AVIVA

Law Society of Scotland

Publishers
The Law Society of Scotland
Atria One, 144 Morrison Street,
Edinburgh EH3 8EX
t: 0131 226 7411 f: 0131 225 2934
e: lawscot@lawscot.org.uk

President: Sheila Webster
Vice President: Susan Murray
Chief Executive: Diane McGiffen

Online resources
www.lawscot.org.uk (home page)
www.lawscot.org.uk/members/journal/
www.lawscotjobs.co.uk

Subscriptions
Practising Certificate (inclusive cost) £700; Non-Practising Members (UK and Overseas, inclusive cost) £330; Annual subscription UK £84; Overseas £108; Trainees Free

Editorial
Connect Publications (Scotland) Ltd

Editor: Peter Nicholson: 07785 460743
e: peter@connectcommunications.co.uk

Advertising: Elliot Whitehead: +44 7795 977708
e: journalsales@connectcommunications.co.uk

Review editor: David J Dickson

Online legal news:
e: news@connectcommunications.co.uk

Other Connect Publications contacts, telephone 0141 561 0300

Head of design: James Cargill (0141 561 3030)
james@connectcommunications.co.uk

ISSN: 0458-8711

The Journal of the Law Society of Scotland is distributed each month to more than 12,000 practising and non-practising Scottish solicitors, along with trainee solicitors, registered paralegals and non-lawyer subscribers.

Editor

Email > peter@connectcommunications.co.uk
Read > www.lawscot.org.uk/news-and-events/blogs-opinions
Follow > twitter.com/jlsed

Perceptions and practice

Holyrood's Equalities, Human Rights & Civil Justice Committee has quite a job on its hands now. With all stage 1 submissions in on the Regulation of Legal Services (Scotland) Bill, deep divisions remain over the fundamentals of professional independence and regulatory conflicts of interest.

As respects the latter, the argument is made by some seeking more radical (Roberton-type) reform that the perception of conflict of interest is as important as the reality. In other words, even if in reality conflict does not arise, if it is still perceived to exist by those for whose benefit the regulatory powers are intended to operate, the conflict still exists.

It is interesting, curious even, that the Law Society of Scotland and Faculty of Advocates each make a case that there is coincidence rather than conflict of interest in the way they exercise their regulatory functions having regard to the interests of both their members and the public, without setting that exercise in any wider context. Only in the paper from the Senators of the College of Justice do we see the alternative view that it is the court (in the person of the Lord President) that is the true regulator, with "limited self regulation by the professional bodies" under his oversight. Roberton's failure to understand this, the paper states, means that the review's main recommendation was "never viable".

It would serve the public debate if Roberton's supporters were to address this aspect of the present regulatory regime. The judges are correct that professional rules have to meet the Lord President's approval; the court has little say, however, in their day-to-day operation by the professional bodies. If perception is the touchstone of public confidence, perhaps what is needed is a more visible supervisory role for the court, say in the form of a judicial tribunal – less formal and expensive than the court itself – hearing appeals by dissatisfied members of both the public and the professions.

Their Lordships do not pull their punches about the "fundamentally flawed premise" of the Roberton review, though its recommendation for a single regulator continues to attract the support of most non-lawyers, and some lawyers, who offered views. Equally they set out the clear conflict of interest in ministers having the power to control the activities of lawyers acting for and against them – and the risk of differing views on regulation between ministers and the Lord President.

The First Minister has said he "fundamentally disagrees" with the concerns raised, and widely shared, over ministerial powers. He would do well to rethink, not just from a domestic perspective but if he is serious about promoting Scotland's standing internationally, given the alarm also expressed by those viewing the bill from outside Scotland. It might well be said that perceptions as opposed to practice are even more crucial on this aspect than on the nature of the regulatory body. J

Contributors

If you would like to contribute to Scotland's most widely read and respected legal publication please email: **peter@connectcommunications.co.uk**

Luis Felipe Yanes
is policy officer at the Scottish Human Rights Commission

Barbara Bolton
is partner and legal director with JustRight Scotland LLP

Catherine Brys
is a consultant helping firms improve their client experience

Garry Sturrock
is a senior associate with Brodies LLP

John Stirling
is a partner and solicitor advocate with Gillespie Macandrew

THE JOURNAL OF THE LAW SOCIETY OF SCOTLAND
VOL.68 NO.9 – SEPTEMBER 2023

Perspectives

Regulars

Features

Briefings

Qualified Lawyers Assessment: Page 26

In practice

ONLINE INSIGHT

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

Hearing without the decision maker – a fair dismissal?
A recent Employment Appeal Tribunal case has found no unfairness in a dismissal by a manager not present at the disciplinary hearing. Laura Auld considers how far this can be taken.

Directors' duties and climate change
The courts of England & Wales have recently refused two different attempts to challenge decisions made by company directors in relation to climate change risks. Alec Fair considers the implications.

Good news for pursuers on prescription
An Outer House decision on the pre-2022 prescription law offers some comfort to pursuers seeking to rely on the provisions postponing the running of the five year period, as Louise McDaid and Meriel Miller explain.

How RARE is delivering fairer trainee recruitment
Newly qualified Ryan Mitchell tells of how he benefited from Morton Fraser piloting the RARE Contextualised Recruitment System, its impact on the firm's recruitment of legal talent, and the firm's further work to increase social mobility.

OPINION

Conflict, but where?

Stage 1 submissions on the Regulation of Legal Services (Scotland) Bill reflect the sharp continuing differences of view, particularly in relation to where conflicts of interest lie. The Journal highlights some points made

Chris Kenny, first chief executive of the Legal Services Board (E&W)

"I speak from bitter experience that the structure in England can be almost impossible to explain to a layperson... it follows from this that the more authority-claiming bodies there are in the field, the less confident the vulnerable consumer or confused citizen will feel in knowing who is protecting his and her interest – and the more cynical market participant will look with glee at the scope for gameplaying to delay action being taken promptly...

"especially in such a small jurisdiction as Scotland, the scope for the reality and – almost as important when it comes to maintaining confidence – the potential appearance of conflicts of interest is also significantly heightened. Avoidance of this, I would assert, is as important in public policy terms as the cost efficiency and effectiveness analysis which the Roberton report quite rightly highlights..."

Law Society of Scotland (a number of individuals and firms expressly adopted its views)

"Far from there being a conflict of interest in a single professional body approach, there is a coincidence of interest. This is why the professional body model is used by so many other professions at home and the world over."

Scottish Legal Complaints Commission

"We understand that this model [in the bill] is the product of a search for consensus... We would note, however, that in building on the existing framework, the proposed model retains much of the complexity, cost and potential conflicts of interest of the current system."

Competition & Markets Authority

"the lack of true separation of functions retains an inherent conflict of interest that is likely to undermine this ambition [of independence for regulatory functions]. The CMA is concerned that, regardless of composition, regulatory committees do not deliver the required independence where they sit within a body that also carries out representative functions, and as such, cannot alone resolve the intrinsic conflict of interest.... This is supported by the experience of England & Wales".

Professor Stephen Mayson (individual submission)

"There is an inherent conflict of interest where the same body is responsible for both representing and regulating its members... the perception of this conflict is as important as the reality... the conflict might not arise, but if it is still perceived to exist by those for whose benefit and protection regulation is intended to operate, the conflict remains...

"In my view, the true purpose of regulation is to set and enforce the minimum standards below which any provider of legal services may not fall... In this context, securing high ethical standards and excellent services should not be the role of a regulator – though it can remain as the aspiration of a professional body – and therefore the representative and regulatory positions are in conflict... consumers do not, in every situation and at all times, need excellence (or need to bear the costs associated with it)."

Faculty of Advocates

"The Faculty of Advocates has a number of roles, encompassing admissions and training, complaints handling and discipline as well as providing support to its membership in various ways... All members have an interest in the institution maintaining high standards of professionalism and behaviour and in there being public confidence in Faculty and its processes. Understood in that way, there is no conflict at all."

Brian Inkster (individual submission)

"The Law Society of Scotland and the Faculty of Advocates are already completely conflicted in being both representative and regulatory bodies... However bad [the Society's] regulatory oversight is (and there are clear and unambiguous failings that do exist), they will defend that to the hilt to the detriment of their members. This is the conflict that exists... It is a conflict that could and should be immediately removed by adoption of the principal recommendation of the Roberton Review."

Senators of the College of Justice

"The Roberton review proceeded on the fundamentally flawed premise that the legal profession in Scotland regulates itself. This is incorrect. The regulator of the legal profession is the Court of Session in the form of the Lord President... a regulator who is independent from government and parliament and independent from those whom he regulates. Limited self-regulation by the professional bodies is controlled by the Lord President, as the ultimate regulator. The principal recommendation of the Roberton Review... would have created an unwarranted and unacceptable interference by the government and parliament with the judiciary... Its lack of understanding surrounding the Lord President and the court's role, and the fundamental democratic principles which underpin them, mean that the Roberton recommendation was never viable...

"The Scottish ministers have been directly involved in 4,121 cases in the Scottish courts between 2018-19 and 2022-23... High profile litigations involving the Scottish Government are routinely heard... If the bill is enacted in its current form there will be a clear conflict of interest for the Scottish Government; the Scottish ministers will have the power to control the activities of lawyers acting for and against them.

"Further complications would arise because of the possibility of disagreement between the Lord President, acting as independent regulator, and the Scottish ministers acting as a regulator lacking independence due to their conflict of interest."

VIEWPOINTS

Appliances should work!

Can I issue a general plea to the profession to immediately stop qualifying standard clause 4 to exclude appliances? It creates no end of argument and delay in concluding missives. It is my very firm view that given that in most cases sellers will be receiving hundreds of thousands of pounds for the properties they sell, in these circumstances they should expect to warrant that items such as washing machines, cookers etc should be working on the date of entry. That, after all, is all that is being asked of them in terms of standard clause 4.

Can I encourage members of the profession who are acting for sellers simply to tell their clients that they must ensure that any of their appliances are working on the date of entry (subject always to provisions of standard clause 4), and that if they are not they will require to pay for the repair or replacement or disclose at the outset that a particular appliance is not working. If everyone accepted this, the already difficult path towards concluding missives might be smoothed somewhat.

Neil Cavers, Cavers & Co, Kirkcudbright

Regulating in-house lawyers

Little has been said publicly about the Regulation of Legal Services Bill as it impacts in-house lawyers. However a stage 1 submission from East Dunbartonshire Council provides some perspective.

First, the council notes that the Roberton review, with its focus on solicitors and "consumers" of legal services (not defined), made no distinction between solicitors working in private practice and those in-house. "This is unfortunate given that approximately 30% of the legal profession in Scotland works in-house across the public and private sectors".

Roberton did not address costs and funding, and the council raises a concern that the cost of any changes "will likely require to be borne by the profession and, in turn, be passed to consumers of legal services, including the already financially stretched public sector".

Another matter which should be considered is the regulation of in-house service provision. Local authority in-house legal teams looking at how best to support front line service delivery in a cost-effective manner have considered shared service models. "One local authority engaged with the Law Society in 2019 in an attempt to obtain its approval, within the parameters of the 1980 and 2010 Acts and the Practice Rules, to permit the use of a corporate entity wholly owned by public sector bodies to deliver legal services to those public sector bodies as a shared service. The Society was unable to consent to its request.

"The council views the current regulatory landscape as being unnecessarily complex and restrictive in relation to the provision of shared legal services for public sector bodies... The council believes that the bill needs to be amended to exclude in-house/public sector shared service arrangements from what constitutes a legal service provider, or a legal business as defined by the bill. This would prevent the shared service entity being subject to rules and safeguards which are otherwise necessary for the protection of the public and other consumers of legal services and is appropriate bearing in mind that in-house legal teams do not provide legal services to the public."

The full response is on the Parliament's website

BLOG OF THE MONTH

legalfutures.co.uk

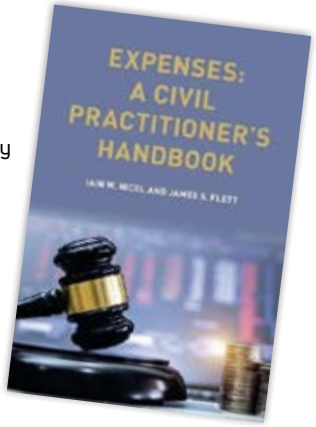
With the increasing focus on work-life balance, what role should billable hours targets for fee earners play? John Wallace, managing director of a boutique law firm in London and Bristol, argues for a different focus.

He believes that value pricing, or if that is too big a step for a firm, refocusing towards revenue and profit, "will empower fee earners to achieve revenue in the most efficient way possible", lowering demands and reducing the risk of burnout in attempting to meet targets. Tips are offered on targets and appraisals.

BOOK REVIEWS

Expenses – A Civil Practitioner's Handbook

IAIN NICOL AND JAMES FLETT
PUBLISHER: EDINBURGH UNIVERSITY PRESS
ISBN 978-1474477390;
£85 (E-BOOK £85)



Written by two people who know more about the subject than probably many judges, this is an absolute "must have" for every practising civil solicitor and advocate in Scotland.

The handbook covers in detail the applicable Law Society rules and guidance on fees, before exploring in detail issues such as tendering, interim awards of expenses, additional fees and charges, and the oft thorny issue of sanction for counsel. In short, there is nothing which is not covered in this remarkably versatile and comprehensive book. It is also blessed with an excellent index and, helpfully, a number of styles for drafting pursuers' offers and tenders for use in both the sheriff court and Court of Session.

Of particular interest will be the section on success fee agreements and damages based agreements; the chapter "Practical Example of Judicial Account" is also very helpful: one of the authors is the chairman of law accountants Alex Quinn. A helpful miscellaneous section includes curator *ad litem* charges, and protective expenses orders. Useful relevant case law commentaries are never far away throughout the book. A comprehensive appendix reproduces the key legislation and protocols, and the Faculty of Advocates Fee Scheme.

If ever there was a book deserving the byline "written by practitioners for practitioners", this is it.

William Frain-Bell, advocate.
For a fuller review see bit.ly/3PadDv7

The Man That Got Away

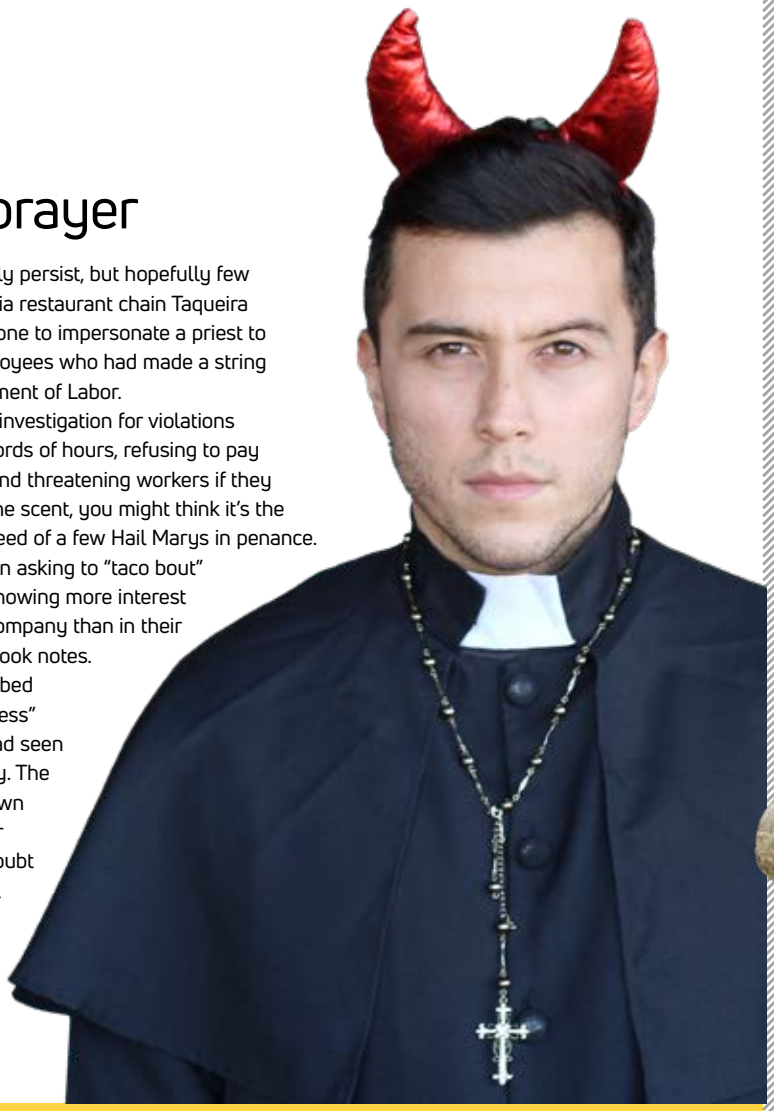
LYNNE TRUSS (RAVEN BOOKS: £8.99; E-BOOK £4.53)

"The only reason you'll want to put this book down is because your sides are sore with laughter."

This month's leisure selection is at bit.ly/3PadDv7

The book review editor is David J Dickson

Without a prayer



Bad employer practices sadly persist, but hopefully few match the tactics of California restaurant chain Taqueira Garibaldi, which hired someone to impersonate a priest to "take confession" from employees who had made a string of complaints to the Department of Labor.

With the company under investigation for violations including failing to keep records of hours, refusing to pay overtime, withholding tips, and threatening workers if they didn't put investigators off the scent, you might think it's the bosses who were in more need of a few Hail Marys in penance. But the bogus pastor came in asking to "taco bout" employees' sins – though showing more interest in any malice towards the company than in their private peccadillos. And he took notes.

What the authority described as "among the most shameless" attempts at intimidation it had seen did not escape judgment day. The chain now has to make its own contrition to the tune of over $140,000, being left in no doubt that its future behaviour will be under scrutiny, whether or not divine.

PROFILE

Laura Irvine

Laura Irvine is convener of the Privacy Law Subcommittee and head of the Regulatory team at Davidson Chalmers Stewart

1 Could you tell us about your career so far?

I trained in a criminal defence firm, then worked in the public sector for the SCCRC and COPFS, with a secondment to the Scottish Government on devolution issues, also completing a master's in human rights law. I then moved into private practice, mainly regulatory with some public law, including data protection. In 2013 I was involved in a high profile appeal to the Information Rights Tribunal over a data breach. I have not looked back.

2 What are the main current concerns of the Privacy Law Subcommittee?

Some of the main items we are looking at are the Data Protection and Digital Information (No 2) Bill; automated decision-making and AI technologies that use personal data; and the proposed extension of freedom of information in Scotland, including to the Law Society of Scotland.

3 What has been a highlight for you as convener?

Giving evidence to the Westminster Public Bills Committee on the Data Protection Bill was a highlight, a privilege, and terrifying. I gave evidence on the same day as the Information Commissioner, esteemed academics, and experienced lawyers in this field. The hearing was also televised and is available to watch. However, the questions were based on our submission so I was able to respond effectively on the day.

4 AI is a hot topic: is it something you see impacting the legal sector drastically?

The use of AI has so much potential to benefit society, but when it impacts individuals' lives, and often it uses personal data to do that, its implementation has to be thought about very carefully, and the GDPR safeguards must be adhered to. Tools such as ChatGPT have stolen attention this year, but are really just a small part of the changes AI is bringing to society.

Go to bit.ly/3PadDv7 for the full interview

WORLD WIDE WEIRD

1 Paradise lost

An Australian nursery owner baffled by the theft of thousands of plants being grown to boost koala habitats, discovered the culprit one day on finding a koala sitting there, dazed and too stuffed to move.

bit.ly/3sNP1Rb

2 Chinese walls

Police in China have detained two construction workers suspected of digging through a section of the Great Wall with an excavator, to create a shortcut.

bit.ly/3LbpZBY

3 Holistic treatment

A new law in the state of Oregon will finally make it legal for hospitals to return the amputated limbs of patients after surgery – a matter important to the spiritual beliefs of various First Nation peoples.

bit.ly/44FF4QK

TECH OF THE MONTH

Under My Roof Home Inventory

Apple: free for first 10 items

If you find it hard to keep track of receipts and guarantees for domestic items, or when routine maintenance is due, this app can store all the important information about your home and contents. It even claims to help manage your move.

PRESIDENT

Sheila Webster

Thinking of my class at university and where they are now, I am reminded of how many openings can arise from the Scottish law degree and qualification, and the high regard in which Scottish solicitors are held

August. Where did summer go? September beckons, and while I love the colours of autumn, I'm not sure I'm ready for it yet.

The presidential diary is undoubtedly a little quieter than usual in August, but there's still plenty to do. I joined a panel early in August at the Scottish Parliament Festival of Politics, chaired by the Deputy Presiding Officer, to discuss "How to Disagree Agreeably". I've talked before of my hope that we can be kinder to each other, for the sake of all of our wellbeing, but I was a little apprehensive about what this event would be like. I surprised myself when I really enjoyed it – a virtually full room, no unpleasantness, and an altogether positive experience. My involvement brought the Society lots of profile, which was good too.

Lunch, twice, with representatives from our larger firms, meetings with the Cabinet Secretary for Justice, with SLAB, with the chief executive of the Scottish Arbitration Centre and, most excitingly, my first trip to meet our members, this time in Jedburgh. And, of course, our response to the call for evidence on the Regulation of Legal Services Bill. Lots to keep me busy.

But August means more than that. It marks for me a time of beginnings. I realised recently that, perhaps more than January, my year feels like it starts at the end of summer. My home life follows an academic year more than the calendar one. My children have long since left school, yet we continue to view the end of the summer holidays as the start of the "year". For our law students starting their degrees, for those starting training contracts, and for those finally qualifying, August and the months around it really are beginnings.

Where are they now?

That got me thinking about law degrees. We've been talking recently at the Society of the options which a law degree opens. It offers so many career paths, and our members are spread not only around the world, but across all sectors of business. I thought back to my own university class and where my contemporaries are, and what they are or have been doing.

It's an impressive list. Sir Iain Livingstone, very recently retired Chief Constable of Police Scotland, is probably the one most will recognise. But another gave up a City career to run an olive farm in Puglia (watch the first of the *Clive Myrie's Italian Road Trip* series if you don't believe me); several of our country's top KCs were in that class; two are senators in the Court of Session; another a former deputy chair of the Scottish Land Court; one lives and works in Bermuda (still a Scottish solicitor); another has spent much of his career in the private equity world.

One is the executive chairman of one of the country's best known makers of ice cream. Another is a professional artist and owns a lovely gallery on the east coast of Scotland. Broadcasting, estate management, HR, and academia have seen others make their careers, and that of course does not account for many of you practising in private practice or in-house, in criminal and civil practice across Scotland and the world. And our own member and regulatory body, the Law Society of Scotland, has more than one of the class. For this year, that includes me, but our very own Director of Professional Practice is also a member of the group.

Recognition

I mention all of these not because I'm delighted to be in touch with most of these people so many years after we started at the University of Aberdeen. Instead I do so because it really does demonstrate how far and in how many different directions a Scottish law degree can take you. Be proud of your Scottish law degree and qualifications. I've talked before of my pride in being a Scottish solicitor. In our responses to the bills we're dealing with, we've talked a lot about the international recognition our Scottish legal system and profession have. Our profession is held in high regard. It is important we uphold the values which we solicitors recognise as important. For all of you starting a new beginning at this point in the year, all the very best wishes for your future whatever you do. I'm speaking at the University of Glasgow Diploma Ceremony next month. One of those in my year has a daughter who will be present at that ceremony. Now I feel old!

I started our series of Meet the Members' meetings in August, and September/October hold lots more. I am looking forward to them all. Please, if you can, come to meet us – I'd love to meet as many of you as possible.

And this month's Presidential Playlist entries: *A Million Dreams*, Hugh Jackman, Michelle Williams, Zif Zaifman – for those starting their careers with a Scottish legal degree, dream big! *Far Side of the World*, Tide Lines – simply because the Royal Edinburgh Military Tattoo was one of my favourite nights of festival season in Edinburgh.

Sheila Webster is President of the Law Society of Scotland – President@lawscot.org.uk

Seeing is believing

Financial compliance made easy

lawware
software for the legal profession

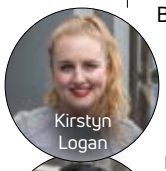
lawware.co.uk

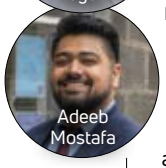
innovate@lawware.co.uk

0345 2020 578

People on the move

ANDERSON STRATHERN, Edinburgh, Glasgow and Haddington, has appointed as partners **Dawn Dickson**, who joins the Employment Law team from EVERSHEDS SUTHERLAND, and **Sheila Tulloch**, previously with ORKNEY ISLANDS COUNCIL; and promoted to partner **Chris Devlin**, an accredited specialist in planning; **Danielle Edgar**, an accredited specialist in family and child law; property lawyer **Neil Fraser**; **Musab Hemsi**, an accredited employment law specialist; litigators **Gillian Murray** and **Sarah Phillips**; and **Caroline Pringle** of the Private Client team.


Kirstyn Logan


Adeeb Mostafa

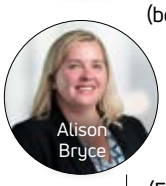
BALFOUR+MANSON, Edinburgh and Aberdeen, has appointed **Kirstyn Logan**, previously with DRUMMOND MILLER, as an associate, and **Adeeb Mostafa**, previously with McEWAN FRASER, as a solicitor, both in the Property team.


Mirren Hamilton

BELL + CRAIG, Stirling and Falkirk, announce that **Mirren Hamilton** was appointed as an associate with effect from 1 August 2023. She will continue to deal with private client work, residential and commercial conveyancing.


Fiona Muirs

BLACKADDERS LLP, Dundee and elsewhere, has appointed **Fiona Muirs** as a partner and head of the Dispute Resolution team, based in the firm's Edinburgh office. She was previously a partner at BALFOUR+MANSON.


Alison Bryce

BRODIES LLP, Edinburgh, Glasgow, Aberdeen, Inverness and London, has appointed **Alison Bryce** as a partner, based in Glasgow; **Rebecca Ronney** as an associate based in Glasgow, and **Ally Burr** as an associate based in Inverness, all in its Commercial Services practice. All join the firm from DENTONS.


Burness Paull's new partners (l-r): Chambers, Farrell, Manning, Young

BURNESS PAULL, Edinburgh, Glasgow and Aberdeen, has elevated four lawyers to partner at the head of a promotions round effective from 1 August 2023: **Louise Chambers** (Real Estate), **Stephen Farrell** (Dispute Resolution), **Karen Manning** (Construction & Projects), and **Liam Young** (Pensions).

Nine newly promoted directors are **Cathy Lau** (English Real Estate), **Emma Maxwell** (Public Law & Regulatory), **Erica Dickson** (Construction & Projects), **Fiona MacLellan** (Employment), **Kirsten Leckie** (Private Client), **Kirsty Maciver** (Banking & Funds), **Lorna McKay** and **Stuart Gardiner** (both Real Estate), and **Pauline McCulloch** (Dispute Resolution).

There are 13 new senior associates: **Amanda Armstrong** (Private Client), **Anna Kandris** and **Grant Wallace** (both Corporate Finance), **Conor McLaren** and **Dominique Jamieson** (both Banking & Funds), **Grant McGregor** and **Leigh McDonald** (both Employment), **Jamie Wilson** and **Rebecca Ablett** (both Dispute Resolution), **Rebecca Roberts** (Public Law & Regulatory), **Riccardo Alonzi** (Restructuring & Insolvency), **Sophia Munro** (Real Estate), and **Vincent Chung** (Employment (Immigration)).

The 18 promoted to associate are **Callum Donald** and **Gill Middleton** (both English Real Estate), **Claire Bruce** (Private Client), **Ilaria Moretti**, **Laura Fitzpatrick** and **Victoria Nicholson** (all Employment), **James McMahon**, **Martin Balfour** and **Rory Henretty** (all Corporate Finance), **Lewis Clark** (Dispute Resolution), **Lorna Stephen** (Corporate Finance/ Financial Services Regulatory), **Louise McErlean** (Public Law & Regulatory), **Morven Hopper**, **Shannan Wilkie** and **Victoria MacDonald** (all Construction & Projects), and **Olivia Smith**, **Ross Jamieson** and **Victoria Sangster** (all Real Estate).

Seventeen become senior solicitors: **Ailsa Thomson** and **Sophie Ainslie** (both Corporate Finance), **Cara Low** and **Laura Kyne** (both Employment), **Claire Hawthorne** and **Meriel Miller** (both Dispute Resolution), **Colin Dalgarno**, **Fergus McColm**, **Marcus McLaren** and **Stuart Dickie** (all Real Estate), **David Sharkey** and **Douglas Morton** (both Construction & Projects), **Jamie Dickson** (Public Law & Regulatory), **Laura Donohoe** (Banking & Funds), **Liam White** (Technology & Commercial), and **Marianne Murnin** and **Sylvia Matheson** (Corporate Finance/ Financial Services Regulatory).


Joanna Waddell

CMS CAMERON McKENNA NABARRO OLSWANG, Edinburgh, Glasgow, Aberdeen and globally, has promoted Edinburgh-based **Joanna Waddell**, the firm's sustainability lead for Scotland, to of counsel; and Glasgow-based **Louise Brymer**, **Alastair McNaughton** and **Calum McSporran**, Edinburgh-based **Amina Mahmood**, **Kayleigh Purves** and **Laura Sefton**, and Aberdeen-based **Cameron Milne**, to senior associate.


Andy Tyler

DAVIDSON CHALMERS STEWART, Edinburgh and Glasgow, has appointed specialist real estate lawyer **Andy Tyler** as a partner. He joins from BURNESS PAULL.

DICKSON MINTO WS, Edinburgh, has reopened in London at Dashwood House, Old Broad Street, London EC2M 1QS (t: 0207 628 4455; f: 0207 628 0027).

EDEN LEGAL LTD, Perth, have announced that, effective from 1 August 2023, they have acquired the business of Perth-based private client firm McKEAN GARDNER LTD. The combined firm will operate under the name of EDEN LEGAL LTD and will be based in Eden Legal's existing offices in Perth.


Gary Georgeson

FREETHS, Glasgow and UK wide, has appointed **Gary Georgeson** as a legal director in its Real Estate team. He joins the Glasgow office from CMS.

GILSON GRAY, Glasgow, Edinburgh, Dundee, Aberdeen and North Berwick, has appointed **Tracy McAlpine** as a director in its Residential Property division to lead a new dedicated team for newbuild conveyancing. She joins from MOV8 REAL ESTATE.

HASTINGS LEGAL, Selkirk, Kelso, Duns, Jedburgh and Eyemouth, has promoted **Tim Taylor** to director, based in Duns, and appointed newly qualified **Abby Taylor** as a solicitor, based in Kelso. The firm has also opened an office at 51 High Street, Coldstream TD12 4DL (t: 01890 230999).

KEE SOLICITORS, Glasgow, has appointed **Dean Gallacher** as a family and civil solicitor. He joins from A C O'NEILL & CO.

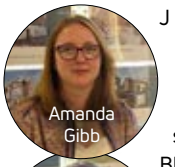
Intimations for the People section should be sent to peter@connectcommunications.co.uk

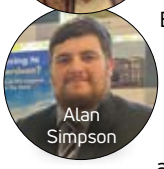
To advertise here, contact
Elliot Whitehead on +44 7795 977708;
journalsales@connectcommunications.co.uk

KEOGHS SCOTLAND LLP, Glasgow, have made the following recent appointments and promotions. **Joanne Farrell**, previously of WEIGHTMANS and BTO SOLICITORS, joined as a partner and now leads the Scottish arm of Keoghs' specialist healthcare team. **Laura Baxendale**, solicitor advocate, was promoted to partner and head of the firm's Abuse team in Scotland. **David McLeod** has been promoted to associate and **Michelle Thorburn** as team leader, both in the Motor team; and associates **Rachel Walker** (Casualty team) and **Liz Heaney** (Risk & Recovery team) have joined from DIGBY BROWN LLP and DWF respectively.

LINDSAYS LLP, Edinburgh, Dundee, Glasgow, Perth and Crieff is delighted to announce that **Nicholas Howie** joins the firm on 11 September 2023 as a partner in the Corporate team. He will be based in the firm's Glasgow office.

John D McGonagle has left DENTONS to join BARCLAYS BANK in Glasgow as legal counsel (commercial innovation and technology).





MACKINNONS SOLICITORS LLP, Aberdeen, Aboyne and Ballater, has appointed **Amanda Gibb**, previously with RAEBURN CHRISTIE CLARK & WALLACE, as a senior associate in the Property team, and **Alan Simpson**, previously with GRAY & GRAY, as an associate in Private Client.

MACROBERTS LLP, Glasgow and Edinburgh, has promoted **Amie Brown**, **Graeme Harrison**, **Hannah Ward** and **Laura Gilbert** to senior associate, **Richard Taylor** to associate, and **Camilla Horneman**, **Carys Magee**, **Douglas Leslie**, **Emma Bruce**, **Nicola Kelly**, **Nikita Sandhu** and **Sarah Milne** to senior solicitor.

J & H MITCHELL WS, Pitlochry, Aberfeldy and Dunkeld, announce the appointment of **Jamie Reid** as an associate solicitor, joining from BURGES SALMON.

MUNRO & NOBLE, Inverness, Dingwall and Wick, has promoted conveyancing associate **Susan Bird** to partner.

MURRAY BEITH MURRAY, Edinburgh, has appointed **Alec Stewart** as a partner in the firm's Asset Protection group. Dual qualified in England & Wales, he was latterly a consultant with MACROBERTS.

RAEBURN CHRISTIE CLARK & WALLACE LLP, Aberdeen, Ellon, Inverurie, Banchory and Stonehaven, has promoted associate **Jane Merson** to branch principal at its Banchory branch.

SCULLION LAW, Glasgow and Hamilton, has promoted **Ailidh Ballantyne** to senior associate director in the Private Client team.

TC YOUNG, Glasgow and Edinburgh, announces that **Karen Fulton** has joined the firm from BLACKADDERS as a partner in the Residential Property team from 1 September 2023.

The Scottish Government's proposed Human Rights Bill will significantly increase the range of rights brought directly into Scots law. Luis Felipe Yanes explains the approach to making these rights effective

Transforming Scotland's human rights obligations

The Scottish Government launched a consultation on a new Human Rights Bill for Scotland in June this year, marking a milestone moment for human rights in Scotland.

The proposed Human Rights Bill will incorporate four international human rights treaties directly into Scots law: those covering economic, social, and cultural rights, disabled people's rights, rights of black and ethnic minority people, and women's rights. It will include a right to a healthy environment, and an equality clause to ensure equal access to the rights contained within the bill. The Scottish Government has indicated that it will also include specific rights for older people and LGBT+ people.

For more than a decade the Scottish Human Rights Commission has called for the incorporation of international human rights treaties directly into Scots law. In dualist legal regimens like ours, where international treaties have no legal force domestically without an Act of Parliament, incorporation is key to ensure there is no mismatch between what a state has committed to internationally and how public authorities act locally.

The bill will incorporate into Scots law the International Covenant on Economic, Social and Cultural Rights ("ICESCR"); the Convention on the Elimination of Racial Discrimination ("CERD"); the Convention on the Elimination of Discrimination Against Women ("CEDAW"); and the Convention on the Rights of Persons with Disabilities ("CRPD").

It would take a longer article than space allows here to look at the potentially transformative impact this could all have in Scotland. This analysis focuses on the incorporation of economic, social and cultural ("ESC") rights.

Economic, social and cultural rights

ESC rights are protected under certain international treaties. The UK has ratified various binding instruments that contain such rights, including the ICESCR and the European Social Charter. Economic rights are also protected under binding instruments from the International Labour Organisation (ILO Conventions). Treaties such as CERD, CRDP, CEDAW and UNCRC (the UN Convention on the Rights of the Child) also contain ESC rights, focused on specific groups (ethnic minorities, disabled people, women, and children respectively).

Economic, social and cultural rights are not directly protected in the Human Rights Act, with the exception of the right to education, and they are yet to be incorporated into UK or Scots law as fundamental rights. Some limited protections are afforded through the interpretation of rights found in the European Convention on Human Rights.

ESC rights are human rights that are necessary to live a dignified life free from fear and want. Those such as social security and workers' rights; social rights including health, education, housing and food; and cultural rights, such as the right to take part in cultural life and to benefit from scientific progress, have specific obligations that differ from civil and political rights.

What are these duties?

The Scottish Government proposes the bill should mirror the obligations inherent to ESC rights. This is a good approach which ensures there is no mismatch between national and domestic human rights obligations, creating an overall coherent legal framework. There are four key obligations, all interconnected, and one cannot be achieved without respecting the others.

Progressive realisation

ESC rights are to be "progressively realised", which means the legal and factual enjoyment of rights needs to improve over time.

This legal obligation requires duty bearers to move as effectively as possible to ensure realisation of ESC rights, to the maximum of the state's available resources.

The steps they take need to be as deliberate, concrete, and targeted as possible. They must also demonstrate

action which results in rights being better or more widely enjoyed by people, rather than things improving by chance or naturally over time.

Maximum available resources

This is an obligation of immediate effect, which means a duty bearer needs to comply with it once a bill becomes law.

Duty bearers need to do three things. First, mobilise resources effectively – for example, through taxation.

Secondly, allocate resources in a way that allows for rights to be realised. For example, people living in poverty must be prioritised in all resource allocation decisions, and cost effective considerations need to take place to ensure resources are used correctly.

Thirdly, expenditure needs to ensure allocated funds are not wasted, and that policies, goods and services ensure value for money, realising rights as far as possible.

Minimum core obligations

Minimum core obligations ("MCOs") are the most basic obligations a duty bearer has that can allow people to survive and live in dignity. For example, they include duties such as the requirement to provide temporary shelter for homeless people, and basic food for those in need.

MCOs are not subject to progressive realisation, and therefore need to be complied with immediately. They are so basic they are non-negotiable, and duty bearers should always meet them, regardless of resources.

The Scottish Government's proposal recommends a process to ensure that MCOs are defined in Scots law, through the participation of people with lived experience, technical experts, policy makers, lawyers, and others. If this were to happen, Scotland would be the first country in the world to do it. Previously, most countries have relied on judicial interpretation to define these obligations.

Non-retrogression

Inherent to the obligation of progressive realisation, countries are obliged not to take deliberate retrogressive steps. In other words, governments have an overall obligation to ensure existing rights-enjoyment levels don't deteriorate.

Retrogressive measures might include cuts to rights-related programmes, the withdrawal of funding for services linked to human rights, or legislation that reduces rights protections. In principle, retrogressive measures are not allowed. If they happen, a duty bearer is required to demonstrate, among other things, that all the alternatives were carefully considered first.

"Economic, social and cultural rights are not protected in the Human Rights Act and they are yet to be incorporated into UK or Scots law as fundamental rights"

Radical transformation for Scotland?

Here are some examples of the potentially transformative changes the proposed legislation could achieve:

Planning

Housing, education, health, food services and cultural services will require appropriate, careful and coherent planning as a result of progressive realisation. Duty bearers will need to ensure any plans constitute a deliberate, concrete and targeted way of improving people's rights. Planning also means monitoring; public bodies, including the Commission, will play a pivotal role in this.

Budgeting

To ensure effective planning, human rights budgeting will also play a significant role. Duty bearers will need to budget correctly to ensure they are allocating the necessary resources to fulfil and progress rights. Plans which aim at progressing one service, but where the budget doesn't demonstrate resources correctly allocated to deliver it, will result in a breach of the obligation. Audit Scotland, the Commission and others will have a key role in scrutinising those budgets to ensure duty bearers are complying with their obligations.

Prioritising

Key to the legal framework of the bill, and part of the core ESC rights protections, is how efforts and resources are prioritised to protect vulnerable people. If correctly implemented, the bill could ensure that duty bearers prioritise meeting the critical needs of the most marginalised and vulnerable before anything else.

Budget cuts

A natural consequence of no retrogressive measures is that budget cuts to essential services, or austerity measures, are not allowed. Such measures are only permissible if careful consideration is made, including a participatory process to hear the views of rights holders. Therefore, stronger scrutiny will be in place.

A proportionality analysis is also required, ensuring the duty bearer takes the available option with the least negative impact on human rights. Any measures taken must not be directly or indirectly discriminatory; and those most at risk or most marginalised must be prioritised.

Access to justice

While beyond the scope of this analysis, it's important to note that a key feature of this legislation will be to make sure the obligations laid out above are justiciable. A lack of adequate and effective routes to remedy for ESC rights at the domestic level creates the perception that social policy is an "added value" element of public body service provision, rather than part of an obligation to ensure the enjoyment of international human rights obligations.

Incorporating ESC rights into domestic legislation necessarily requires that adequate and effective routes to remedy exist within the national legal system. However, questions still remain on how this bill will ensure that routes to remedy in Scotland are fully accessible, affordable, timely and effective, as required by international human rights law. The Commission will be publishing further analysis on this topic soon.

One step forward

The consultation is the next step on a journey that will transform human rights in Scotland. It is often called a framework bill, which is key, as it will become the framework that should guide many positive changes in the next few years and decades.

Further consideration is needed to provide definition and guidance on what constitutes an adequate policy or delivery of a service under human rights terms. This is called "the normative content of human rights", explained by United Nations committees in their general comments.

Making sure that this is in statutory guidance, or even better, in secondary legislation, will be at the heart of the true improvement of policies and services to create a positive and transformative effect in people's lives.

Luis Felipe Yanes is policy officer at the Scottish Human Rights Commission

You can read more about the Commission's work on the new Human Rights Bill for Scotland at its website www.scottishhumanrights.com

Follow the Commission on X, formerly Twitter (@ScotHumanRights) and LinkedIn, where it will post up-to-date news and information about its work this year.

Contact the Commission at: hello@scottishhumanrights.com

Human rights and effective remedies

Incorporating additional human rights into Scots law adds urgency to required reforms to Scotland's civil justice system. They are achievable, Barbara Bolton maintains

For people experiencing breaches of their human rights, it is essential that they are able to challenge these and secure an effective remedy, holding those in breach to account. Absent that, incorporated rights are illusory; they may appear on paper, but do not deliver. A key right under international human rights law is therefore the right to an effective remedy.

The Scottish Parliament has the power to ensure that the right to an effective remedy is included in the Scottish Human Rights Bill, and it is essential that it does so. However, much needed reforms should not await the bill.

Making remedies effective

Remedies for human rights breaches must be accessible, affordable, timely, and effective. To what extent can we say that our existing system meets these requirements?

Accessible

Scotland's administrative and civil justice system is a complex landscape of regulators, ombuds, tribunals and courts, each with very particular remits, deadlines and powers, and its own set of procedural rules. There is a general lack of interconnectivity between them, such that pursuing one avenue could leave someone time barred from another. Navigating the right entry point for a claim, in time and in accordance with the particular rules, while keeping an eye on deadlines for alternative routes, can be challenging even for the legally qualified. For someone without legal representation, experiencing a breach of their human rights, it will often be impossible. Adding powers of remittal and appeal could improve connectivity, relieving some of the burden on individuals.

Once in court, procedural rules vary markedly depending on the court and type of claim. Even for a solicitor, it can be challenging to comply with the latest rules and practices, which are often buried in practice directions and annotations. Our system would benefit from a wholesale review of court rules to improve accessibility, simplify language and ensure clarity.

What about time bar? Judicial review is one of the few routes available to secure a remedy for breach of human rights. However, since the Courts Reform (Scotland) Act 2014 this critical

route is closed only three months after a breach of rights begins. We know from our casework that this time limit is unreasonable, often passing before someone becomes aware they may have a legal remedy, locates a solicitor and applies for legal aid. There seems to be little justification for such an extreme time limit, particularly when people have three years to raise a personal injury claim and five years for breach of contract.

Strict statutory interpretation compounds the unfairness – a claim is time barred three months after the *first day* of the breach, *even if the breach is continuing*. Can it be right that someone denied their liberty in breach of their rights loses the possibility of accessing justice through judicial review because the breach has persisted for more than three months? Judges' discretionary power to allow claims "late" if they consider it equitable to do so is inadequate: a discretionary power does not confer a right.

Affordable

An overall system of administrative and judicial civil justice should include simple, fully accessible, free processes offering a route to an effective remedy. Necessary reform of Scotland's civil legal aid system has been anticipated for some years, but there is still no sign of a consultation on a bill. Urgent reform is required to increase payment rates and reduce administrative burden on practitioners, to stem the departure of solicitors from civil legal aid and address advice deserts across the country.

Many people who do not qualify for legal aid are not wealthy enough to fund a court action with the risk of losing and having to pay the other side's expenses. Significant improvement could be made by expanding the availability of protective expenses orders in human rights claims, including considering a default no expenses position for those with human rights claims or defences, and by waiving court fees for such claims.

Timely

The system must provide accessible and affordable routes to effective emergency remedies, including for breach of economic, social, cultural and environmental rights. Our current system of interim court orders is not likely to be adequate, at least without significant reform ensuring easy access to immediate, free legal representation across the country.

Effective

An effective remedy provides appropriate reparation, in the form of restitution, rehabilitation or compensation, with guarantees of non-repetition. While the Scottish civil courts have a range of possible remedies at their disposal, court orders are generally limited to a specific pursuer, rather than addressing a structural or systemic issue that led to the claim. Wider orders providing a remedy addressing the root issue would avoid the need for many individual claims. The introduction of group proceedings in the Court of Session raises the potential for such remedies, which should be encouraged.

Many more examples could be given of aspects of our system that require careful review in light of the international human right to an effective remedy. Some changes could be made through court rules; some will require legislation. All are achievable.

Barbara Bolton is partner and legal director with JustRight Scotland LLP

A more detailed discussion is available on justrightscotland.org.uk/2023/09/access-to-justice-and-the-new-scottish-human-rights-bill/

Registers of Scotland

Do you advise clients on land and property?

Your clients may have to submit an entry on the RCI register.

Help them to act now to avoid a fine of up to £5,000 for non-compliance.

Check their legal duty at ros.gov.uk/rci

If your client is a registered owner of land or property in Scotland, or a registered tenant with a lease of more than 20 years, and someone else has a controlling interest in that property - **they're legally obliged to register in the RCI by 1 April 2024**, or risk being fined up to £5,000.

denovo

Do I have your attention?

What does it really mean to say that case management software will free up your time?

Time management is a total misnomer. You can't manage time. Time will pass. It's what you do with the time you have that matters.

Where you place your attention is what really matters and that's what I want talk to you about today.

So, do I have your attention?

The analogous journey: from timekeepers to business navigators

Imagine you're a captain of a vast ship, navigating through treacherous waters toward uncharted territories. The ship's precious cargo represents your expertise, skills, and valuable insights, while the unpredictable sea symbolises the complex and often overwhelming administrative responsibilities that come with legal practice.

Traditionally, you found yourself burdened by mundane yet essential tasks, akin to sailors spending endless hours repairing and maintaining the ship. These duties, such as onboarding clients, document management, reporting on business performance, billing, and accounting, consumed an excessive amount of your time and attention, leaving you with little room to focus on strategic planning, client interactions, and revenue generation – the true sails that drive your legal voyage.

Enter Denovo's Legal Case Management and Accounts Software as the wind that fills those sails. By automating and streamlining administrative processes, the software lightens your load, allowing you to steer the ship with precision and purpose. In this context, time saved is not just a mere commodity: it's the fuel that propels you and your team towards uncharted business-critical territories.

Redefining time management: a strategic pivot

Our software doesn't really free up time in the traditional sense: it bestows a strategic

pivot that empowers lawyers, like you, to allocate your revitalised time and attention where it truly matters. Consider the scenario of a seasoned solicitor, like yourself, who previously spent countless hours managing case files, tracking billable hours, and generating invoices. With our software at your side, you now find yourself not merely saving time, but fundamentally reshaping your approach to time management.

With the burden of administrative tasks lifted, you can redirect your energy towards cultivating stronger client relationships. You're now able to communicate more effectively, listen attentively to your clients' concerns, and provide tailored legal solutions that reflect your deep expertise. As a result, your reputation soars, client retention rates surge, and word-of-mouth referrals pour in – an invaluable return on the investment of your newfound time.

Furthermore, our software also paves the way for you to explore uncharted territories of legal innovation. No longer confined to the minutiae of paperwork, you begin dedicating time to devising new service offerings, exploring alternative fee structures, and identifying emerging trends in your field. This shift from working in your business to working on your business amplifies your capacity to generate profit, adapt to changing industry dynamics, and stay one step ahead of the competition.

Unlocking the profit potential: a paradigm shift in legal practice

Our software acts as a catalyst for a broader shift in the legal profession – a transformation from being reactive to proactive, from transactional to strategic, from time-bound to opportunity-driven. This software doesn't merely save time: it shatters the conventional mould and releases you from the chains of administrative tedium.

In this paradigm, your time is not so much freed up, as you will always allocate your time to other tasks: think of it as your attention being redistributed.

Elevating legal practice beyond boundaries

Denovo's Whole Practice Management Software redefines the very essence of time management in the legal profession. This revolutionary software transcends the superficial notion of time saved and extends an invitation to lawyers – a chance to unshackle themselves from the burdens of administrative minutiae and embark on a transformative journey towards strategic excellence.

As a legal professional yourself it's time to embrace this paradigm shift and unlock the true profit potential of your practice. This isn't a matter of saving time – it's an evolution of attention allocation, a reimagining of business priorities, and a roadmap to greater profitability and prosperity in the modern legal landscape.

Just to be clear, this is not some swashbuckling fairytale – it's reality for the hundreds of law firms in Scotland that we partner with. So, if you want to jump aboard the good ship Denovo and make your life a whole lot easier, email info@denovobi.com, call us on 0141 331 5290 or visit our website – denovobi.com.

To find out more about Denovo you can visit denovobi.com

Place your attention where it matters most.

We can't help you save time. But, we can help you place your attention where it really matters. With the burden of admin tasks lifted, you can redirect your energy towards cultivating stronger client relationships, communicating effectively, listening to your clients' concerns, and providing tailored legal solutions.

As a result, your reputation soars, client retention rates surge, and word-of-mouth referrals pour in.

Sound good? Let's chat...

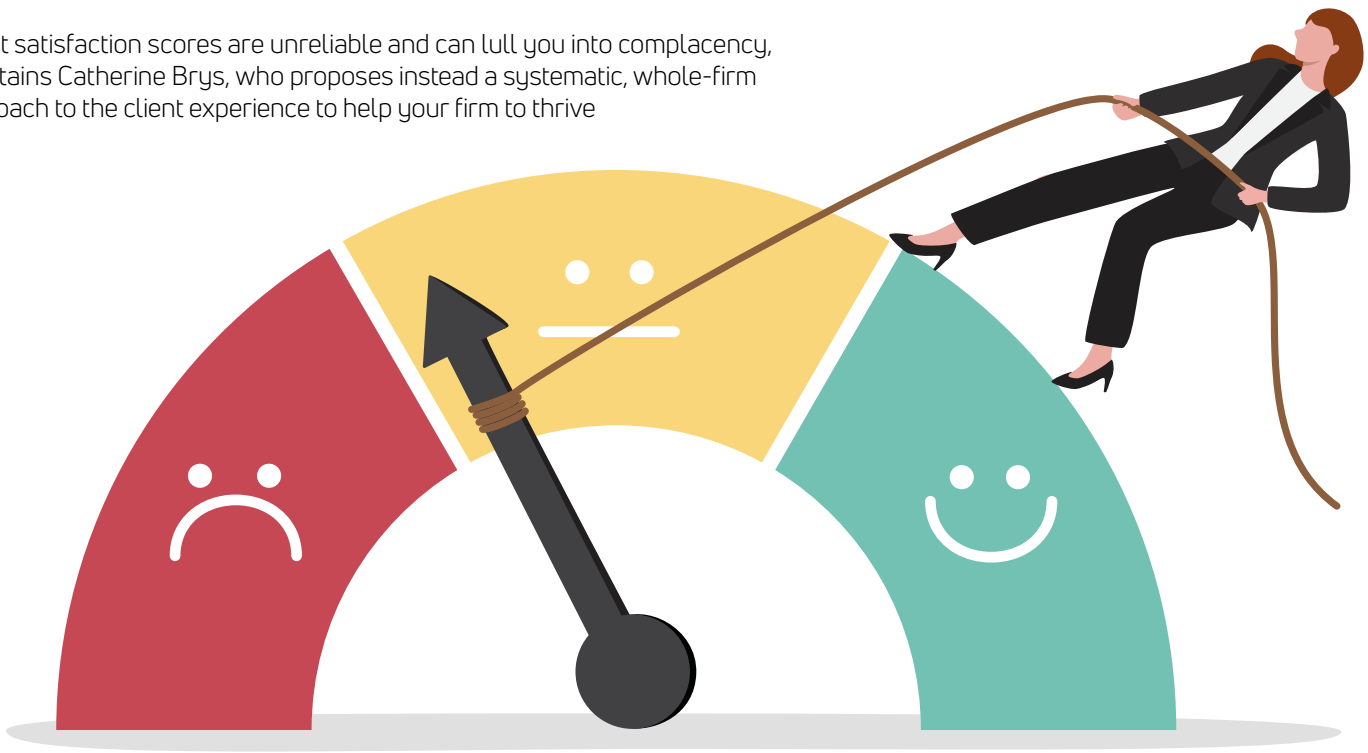
Approved Supplier
Law Society of Scotland
2023

info@denovobi.com
0141 331 5290
denovobi.com

Powered by denovo

Blinded by client satisfaction?

Client satisfaction scores are unreliable and can lull you into complacency, maintains Catherine Brys, who proposes instead a systematic, whole-firm approach to the client experience to help your firm to thrive



As a law firm your challenge is to stand out from the competition and get positive word of mouth to secure new clients. Clients aren't able to judge your legal advice – they base their opinion on their experience with your firm.

Client satisfaction score: an unreliable indicator

Many firms rely on a client satisfaction score to gauge how satisfied their clients are with the legal services they have received. This is a flawed approach for a number of reasons. First, a single score (such as an overall customer satisfaction score or a net promoter score) does not reliably capture the different facets of a client's experience. Secondly, overall satisfaction scores tend to be biased by extreme opinions – clients who are raving about you and those who hold very negative opinions; there is little incentive for clients with a "middle-of-the-road" view to take part in a survey. Thirdly, in almost all cases clients are asked to rate the service at the end of the client journey – at that point they may see no reason to give you feedback and may simply have decided not to use your firm again in future.

In short, client satisfaction scores don't give you an accurate picture of the quality of your client experience. Good scores can lull you into a false sense of comfort and into complacency.

What ultimately matters for your firm to thrive is whether clients are recommending you to their family, friends and professional contacts. Recommendations from a trusted source are up to 50 times more powerful than reviews by strangers on sites such as Google reviews or Trustpilot. Since personal recommendations are a risk for your client – their reputation and relationship of trust is at stake – positive word of mouth is very impactful.

Client experiences that fall short of expectations, however, lead to negative word of mouth, and unfortunately negative word of mouth gets amplified, both in real life and through social media. Many more people will hear about a negative client experience than about a positive one.

Do you track whether new clients come to you based on personal recommendations? Do clients return to you for new or related matters? And are you yourself comfortable recommending your firm to friends and family?

The client experience: more than just interaction

The client experience is often seen as the interaction with the client. While this is an important component, the core elements of a client's experience go much deeper:

- **Value for the client – not only legal advice:** To create value for your client, you need to understand what is most valuable in their life. Time and convenience are more valuable commodities than ever – convenience means spending the minimum physical and mental effort. Worry is a form of mental effort especially relevant to legal services – whether a client comes to you for a court case, the purchase of property, a business matter or a power of attorney, they are seeking peace of mind.

"Real value to client" = "Value of legal value" minus "legal fee" minus "client time" minus "client mental and physical effort"

- **Emotions:** Emotions are an integral part of the client experience. A client's case may be fairly routine from your perspective, but for the client, especially a private client or a small business owner, it is likely to be a major or emotional moment in their life. The emotions they experience when dealing with your firm will be an important part of what they remember: memories contain emotions, and negative emotions are more

intense and lingering. Client loyalty, on the other hand, is based on positive emotions.

"When we have an experience, we will later remember how we felt at the time"

• **The weakest link:** Your client experience is the sum total of everything you do. This has two implications. First, all aspects of a client's experience count, tangible and intangible. Secondly, every person in your firm – both client-facing staff and support staff – contributes to that experience, directly or indirectly. What goes on behind the scenes ripples through to the client experience. For an excellent client experience, your support teams need to feel valued for how they contribute to the client experience, and your back-office systems, technology and processes need to help your staff to be at their most productive.

"Your client experience is only as good as your weakest link"

Measuring and improving: a systematic approach

Client experience excellence is rooted in thinking from the client's perspective in every action of every person in your firm. This may mean quite a change. However, you can start reaping the rewards quickly by using a simple three-step approach:

1. Knowing how you are currently performing: assessing your client experience reliably
2. Setting your goal: developing your client experience vision
3. Making the transition manageable and effective: prioritising actions using a structured approach.

1. Assessment: the wheel of client experience

To assess your firm's client experience reliably, you can do a 360° "health check" against nine factors that best practice has shown to determine the client experience.

These factors include "value to clients" and "client focus", but also, importantly, strategic and operations factors such as "strategy and values", "firm organisation", "operational management", "processes and systems", and "your people". The nine factors are summarised in the wheel of client experience (CX) – see image. To do this assessment, it's important to use a variety of rich information sources such as qualitative feedback from clients gathered throughout the client journey and input from everyone in the firm. Involving staff across the firm is essential both to tap into their insights and to make them part of the change journey – change without genuine staff involvement is likely to fail (as discussed in my article "Three reasons why change fails – and antidotes", at strategic-consulting.scot/articles).

The wheel of client experience (CX): a tool for a whole-firm assessment of the client experience

2. Goal setting: start with the ideal

Before you make any changes, it is worth considering what you are aiming for: what is your firm's vision of success with regard to client experience? Thinking ambitiously, what would excellent client experiences look like from the perspective of your clients, partners and management team, legal and support staff, and yourself? Starting from an ambitious, ideal vision helps to open the mind to new possibilities. These new possibilities will spark ideas for action. At this stage it is also important that you involve your teams so that you are collectively building your destination vision – this will make sure that people are enthused and motivated to achieve the vision.

3. The transition: prioritise actions

When you assess your current client experience, you may become aware of issues that were not previously on your radar. It can be daunting to know where to start taking action. The key to keeping it manageable is to focus where you can make the most impact. Which of the nine factors that determine the client experience is your firm weakest on? For the three factors that require most improvement, identify the root causes of the issues and brainstorm actions that will resolve these issues as a collective exercise with staff from across the firm. Then prioritise the actions that will make the highest impact and require least effort. Finally, phase actions over time: which actions can you take this week, later this month, later this quarter, and further out? Using this structured approach will make the task of excellent client experiences manageable and effective.

In conclusion

Client satisfaction scores are not a reliable measure of your clients' satisfaction. Instead, a 360° "health check" gives you a much more accurate picture of your firm's client experience performance. This approach also recognises that client experience issues go far beyond the interaction with the client. They are rooted in your strategy, values, culture and operations and the role of every person in your firm – both client-facing staff and support staff.

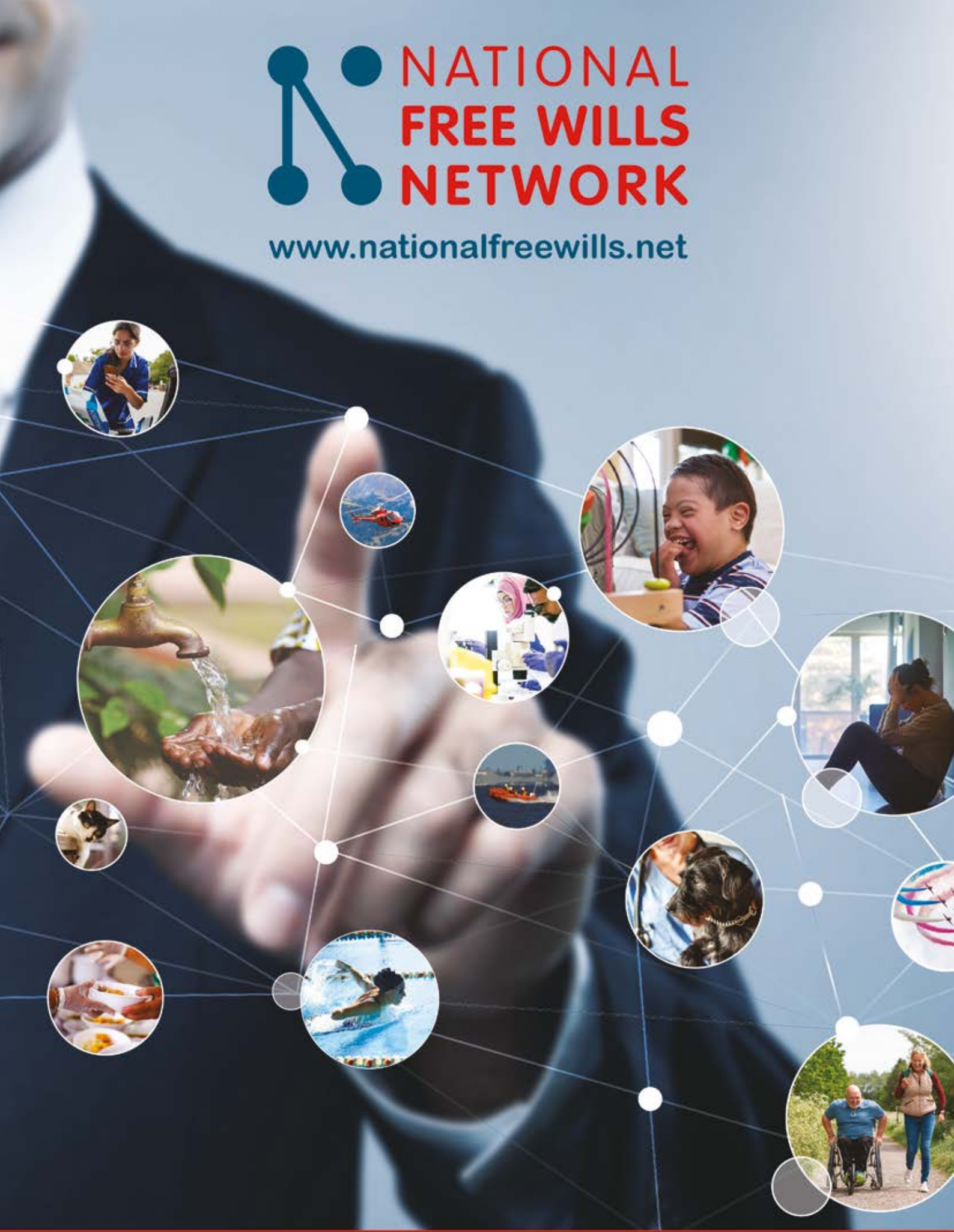
To create positive word of mouth – and indeed prevent poisonous negative word of mouth – use a simple three-step process: (1) assess your client experience using a whole-firm perspective; (2) set your vision of success; and (3) prioritise the most impactful actions. Your firm will thrive like never before.

Download your journey map to client experience excellence at strategic-consulting.scot/lawfirms.

Catherine Brys, PhD MBA is a consultant helping firms improve their client experience. She is the author of *The Most Rewarding Way to Improve Profitability – How to create excellent customer experiences*, and companion *Action Planner* and *Success Monitor* workbooks. She is a member of the Law Society of Scotland's Consumer Law Subcommittee.
w: strategic-consulting.scot

NATIONAL FREE WILLS NETWORK

www.nationalfreewills.net



Help over 200 charities with one point of contact

Your opportunity to be part of something special.

The methods of promotion used by the Network help to increase your firm's visibility amongst an audience of the local community who are reaching the years where they will inevitably require further legal work.

It does not cost you anything to be part of the Network, in fact despite its name the National Free Wills Network is a paid-for Wills programme. Each referring charity pays for the client's simple Will to be written.

As a matter of principle, we work only with solicitors, avoiding Will-writers and alternative providers. We agree with Martin Lewis (MoneySavingExpert) who says that seeing a solicitor is the 'gold standard' of writing one's Will.

Don't just take our word, MHD Law LLP and MacRoberts LLP share their reasons to why they continue to be part of the National Free Wills Network:

MHD joined the network as a good way to identify individuals who wanted to get a Will in place but did not have a connection with a solicitor already. The fact that people have approached the Network means they are interested in ensuring things are the way they wish, and this is helpful in us being able to do our jobs effectively and efficiently.

We hope that almost everyone we see through the Network will need additional assistance in the future either themselves or through recommending us to family and colleagues. The timescale can be immediate or a few years later. We aim to provide a high service level in a relaxed environment and if we do that the right people will remember us.

It is a bit of a no brainer really!

Kieran Fitzpatrick,
Partner at MHD Law LLP

The ability to add new clients to the firm whilst giving something back.
20-25% put in place a power of attorney as well but as with many new Will instructions the benefit of the new client may not be seen for some years to come- when the clients then return to make changes and perhaps ask for additional services at that time.

No business development time is required from you to acquire the new client and in amongst those with little in the way of assets is usually one diamond – a high net worth client where the business reward makes all of the other work done at a short-term financial loss worthwhile. I would also advise that the back-up provided by the Free Wills Network is excellent and they are very helpful with any queries.

Carole McAlpine-Scott,
Partner at MacRoberts LLP

By signing up to the Free Wills Network, you will be helping fantastic charities raise vital future funding.

Get in touch today for more information!
info@nationalfreewills.net

Trans rights and family duties

Trans issues are gaining recognition in law, but much has still to be worked out, especially in family law. Garry Sturrock highlights some key issues, including those which have have already been considered by English courts

Our understanding of trans issues in Scotland is evolving, in particular within the context of family law. However, is our legal system keeping pace, and is it capable of adapting to this more modern understanding of a family?

"Trans" is an umbrella term which encapsulates a diverse spectrum of gender identity. Broadly, it describes a person whose gender identity does not conform to the sex assigned to them at birth ("sex" being the traditional view of binary biological/anatomical/chromosomal attributes of male and female, and "gender" being the socially constructed roles, behaviours, expressions and identities of individuals).

Legal change to an individual's gender

Domestically, our response to trans related family law matters has evolved over time.

On 4 April 2005, the Gender Recognition Act 2004 came into force. It allowed, for the first time, individuals over the age of 18 in the UK with gender dysphoria to change their legal gender.

The Scottish Government has committed to legislative reform which will alter radically the process for an adult to apply to change their legal gender. Currently, an adult requires to provide medical evidence confirming a diagnosis of gender dysphoria and evidence that they have been living in their acquired gender for (in most situations) at least two years in order to apply to the Gender Recognition Panel for a gender recognition certificate. The Gender Recognition Reform (Scotland) Bill seeks to reduce the time period applicants are required to live in their acquired gender from two years to three months (with an additional three month reflection period). It also proposes to abolish the requirement for a medical diagnosis or medical information in support of an application.

However, the legislation remains confined by a traditional binary approach to legal status of gender, thus not allowing individuals to identify as non-binary. Those who were assigned as biological males at birth can change their legal gender to female, and vice versa. The Scottish Government has no current plans to seek reform of the law as regards the legal status of those who identify as non-binary. Whether this bill, passed by the Scottish Parliament, will be enacted is a contentious issue, given the Scottish Secretary's decision to make an order under s 35 of the Scotland Act 1998 preventing the bill from proceeding to Royal Assent, claiming adverse impact on Great Britain-wide equalities legislation – a decision currently subject to legal challenge.

Impact on trans families

The approach to legal gender in Scotland can impact on trans families.

When a person's legal gender changes, their legal status as parent of their child does not change. The legislative intention is stated as protecting the existing legal rights of parents of children and to ensure consistency in the birth registration scheme.

Persons whose legal sex was assigned female at birth but who do not identify as such in terms of their gender, may nevertheless be able to conceive and give birth to children. In the English case of *R (McConnell) v Registrar General* [2020] EWCA Civ 559, the court confirmed that a person whose legal gender was male who gave birth to a child must still be registered as the mother on the child's birth certificate. If a similar approach were to be adopted in Scotland, which seems likely, it would reaffirm the approach of the birth registration system as recording the gender of a child's parents based on the gestational parent.

However, this approach can be contrasted with the approach in decisions affecting a child's welfare and upbringing, in which the concept of parenthood is far more flexible. There is no exclusive focus on genetics, nor is there a binary approach to parenthood. As Baroness Hale observed in *Re G (Children)* [2006] UKHL 43, there are different concepts of parenthood, which she defined as genetic, gestational and social/psychological parenthood, each having a rather different legal status.

Internationally, there is growing support for the protection of trans parents. In 2021, the European Court of Human Rights held unanimously in *AM v Russia* (Application no 47220/19) that there was a violation of ECHR articles 8 and 14 in the restriction by the domestic court of the parental rights of a trans woman and deprivation of contact with her children on the grounds of her gender identity.

Trans issues in relation to children: overview

The Scottish Children and Young Person's Commissioner supports a child's right to gender identification. Indeed, they were in favour of reform to the 2004 Act to allow children to change their legal gender on a case-by-case basis, but this approach was ultimately rejected by the Scottish Government.

The issue of gender dysphoria among children remains contentious in Scotland and elsewhere.

Last year NHS England issued guidance following a review into child gender care, which concludes that most children identifying as transgender are going through a "transient phase". It recommends that social transitioning should only be pursued in severe cases.

This is in contrast to guidance issued to schools by the Scottish Government in 2021, which advises that children should be supported to socially transition and condemns challenging or trivialising gender self-identification for children. It provides guidance, for primary and secondary schools, on how children can change their name on their school record, and circumstances where this can be withheld from a parent, as well as dealing with the use of pronouns, uniform policies, toilet provision and plans for residential trips, when dealing with transgender children.

For family lawyers, an interesting element of the Scottish guidance is the extent to which, if

any, it may conflict with the responsibilities and rights of parents, who have duties to direct and guide their children and make decisions which they consider to be in their best interests. This guidance, on one view, deprives parents of input on gender identity if a child elects to identify at school as a different gender and requests that their parent not be informed.

In her article "The rights of LGBTI children under the convention of the rights of the child", *Nordic Journal of Human Rights*, 33(4) (2015), 337, Kirsten Sandberg argues that while gender identity is not explicitly mentioned in the UN Convention on the Rights of the Child, it is part of the child's identity and self-determination. Children, therefore, have a right to participate in decisions by expressing views, and once a child is old enough to understand the consequences of a decision, they should have the final say.

Medical intervention for trans children

Equally controversial is a recent English decision around medical intervention for children experiencing gender dysphoria. *Bell v Tavistock & Portman NHS Foundation Trust* [2020] EWHC 2374 concerns the referral of children under 16 and young persons aged 16 and 17 with gender dysphoria to NHS trusts for the prescription of puberty blockers. The court had to consider whether children involved were capable of providing consent to such treatment. The court concluded that it was highly unlikely that a child aged 13 or under would be able to provide consent, and doubted whether a child aged 14 to 16 would be able sufficiently to comprehend the long-term risks and consequences of treatment. Even for children aged 16 and 17, it questioned whether judicial authorisation should be sought before starting treatment. The court declined to comment on whether parents could consent to treatment if a child could not lawfully do so, as the defendant conceded that the general law would permit parents to consent on behalf of their child, but stated that it could not conceive a situation where it would be appropriate to administer blockers to a patient without their consent.

Parental disputes over trans issues

Difficulties can arise when parents disagree on what is right for their child, including whether to support gender-affirming medical care (for example seeking the prescription of puberty blockers), the gender identity in which the child ought to be raised, or whether a child's forename should be changed. Ultimately, if parents do not agree about such matters with one another and/or with the child, the court can be asked to consider the best interests of the child and make a specific issue order in terms of s 11(2)(e) of the Children (Scotland) Act 1995. However, there are no known reported cases in Scotland which have considered such issues.

These issues were at the heart of the English case of *Re J (A Minor)* [2016] EWHC 2430 (Fam). The mother of a four-year-old child reported that the child, who was assigned male at birth, wanted to live as a girl. The mother had opposed the father, who did not support this, having any contact with the child. Investigations by social work and later a clinical psychologist revealed that there was no independent evidence supporting the child's gender dysphoria, as claimed by the child's mother. The court ultimately decided that significant emotional harm stemmed from the mother's relentless insistence on her child's perceived gender dysphoria and her lack of engagement with professionals. The child was placed in the care of his father and affirmed a desire to identify as male.

The judge's comments are interesting. While acknowledging that there are children who are transgender, some doubt was expressed about whether a child as young as four would be capable of making an informed choice as regards their gender identity. The judge referenced a psychologist's report which repeatedly referred to the child using the pronoun "she". Explaining why the psychologist might not have been immediately alert to the situation, given her limited role, the judge stated that it was "entirely counterintuitive to suspect that a boy who is consistently presenting as a girl may not truly wish to do so and may have been forced or induced into performing such a role by his mother", before going on to describe his assessment of the child's mother as displaying "highly manipulative behaviour."

Conclusion

In summary, there appears to have been significant progress in the UK for recognition of trans family issues. However, the law is continuing to develop and there are some clear inconsistencies in aspects of the law. Indeed, there appears to be different guidance being issued by public sector organisations and government as regards how trans issues should be treated, which is unsurprising given the divergence of public opinion on the topic.

As the judge in *Lancashire County Council v TP* [2019] EWFC 30 stated, when dealing with issues concerning child gender identity, "the medical understanding of such issues is complex and developing... inevitably there is some lag between those professionals at the cutting edge.., and others (in which I include myself) which might have played some role in how these proceedings came about". What seems clear is that there will continue to be a spotlight on trans family law issues in the coming years.

Garry Sturrock is a senior associate with Brodies LLP

Reasonable to whom?

The recent Supreme Court decision on advice regarding medical treatments is helpful clarification, but questions remain over the current direction of the law, John Stirling believes

In the landmark 2015 case of *Montgomery v Lanarkshire Health Board* [2015] UKSC 11; 2015 SCLR 315 the Supreme Court identified a new duty for doctors to perform: a duty to advise of reasonable alternative treatments. At a stroke, a new and demanding task was added to professional lives and, if it could be proved that a patient's outcome would have been altered by the information, a new liability.

The law remains that the burden of an act of God rests where it falls. The new duty was to advise of reasonable alternatives to planned treatment. But who judges what a reasonable alternative is – doctors or judges? That was the question which faced the Supreme Court this spring in *McCulloch v Forth Valley Health Board* [2023] UKSC 26; 2023 SLT 725.

Such cases are a reminder of human tragedy – in this case a man dead at the age of 39 after cardiac arrest. The suggestion was that the simple prescription of NSAIDs (e.g. ibuprofen) might have avoided his death. In this case the doctor did not prescribe them; crucially neither did they advise that they were an alternative treatment, because the doctor did not consider them a *reasonable* alternative. The evidence was that in the circumstances some doctors would have considered them an alternative and some would not. This doctor did not. The Supreme Court's view was that because the doctor's decision, that it wasn't an alternative, was backed by a reasonable body of medical opinion, there was no negligence.

John Stirling is a partner and solicitor advocate with Gillespie Macandrew

Challenges for the NHS model

The Supreme Court's decision clarifies that a doctor now only need advise of what, in that doctor's view, the reasonable alternative treatments are, including taking no action, and the risk attached to each of those and to his or her own preferred treatment. They need not advise of any other possible treatments even if another reasonable group within the profession would consider them – provided their decision not to do so is supported by a body of medical opinion. In other words, if a body of opinion within the profession would agree with the doctor's conclusion on reasonable alternatives there is no negligence.

There are a number of difficulties with this approach in the NHS model of care, particularly for GPs. It assumes that patients have the right to choose between the alternatives. Let's assume that there are seven, ranging in cost (as one measure; time taken to treat, availability of equipment and skill might be others) from a few pennies for a pill to a treatment regime costing £10,000 a day. At the expensive end of the continuum some central control on spending must be imposed, so the premise is false.

If reasonable treatments are more than those available on the NHS, it adds much work to the doctor. They might well have knowledge of the risks attached to what the NHS provides, but what of those attached to the other treatments?

If those other treatments are discussed and the NHS refuses them on cost (or supply/lack of skill to deliver) grounds, the patient may feel shortchanged. If the refusal is because experts disagree on which treatment is most appropriate, they are caught between experts. Even if that dispute is resolved by second opinion, an unhelpful seed of doubt is planted.

Whatever the basis of refusal, the patient is pitted against the doctor denying a treatment option. All of this in a consultation of 10 minutes?

What do patients want?

Beyond the false assumption and the difficulties injected into consultations, the new law assumes that a patient, by definition ill, will want to actively exercise judgment. The desire for transparency is understood but, as the Supreme Court said in *McCulloch*, too much information is as blinding as too little. Patients often want to be told what to do when they are ill. They want to be told of the risks attached, surely, but not the risk profiles of the six reasonable alternatives. That's as likely to erode trust as build it. Most will be much more concerned that having chosen a treatment appropriately, the doctor treats them competently.

What advice may be appropriate for the 1% buying an investment product may not be appropriate to the 100% of us who will be seriously ill at some point. The decision in *McCulloch* was helpful clarification of *Montgomery*, but doubts remain about whether *Montgomery* is a helpful development. In time the courts may well seek to restrict the duty to advise beyond the treatment proposed.

EDINBURGH LAW SEMINARS

in association with

REGISTER ONLINE
www.edinburghlawseminars.co.uk/seminars

THE UNIVERSITY of EDINBURGH
Edinburgh Law School

CONTRACT LAW UPDATE *...starts soon - early October*

Our popular Contract Law Update seminar provides a comprehensive overview of all important developments in the law of contract over the last year. The University of Edinburgh's **Professor Laura Macgregor and Lorna Richardson** combine academic depth with practical insight and cover all major decisions in Scotland and significant cases from England as well as important statutory developments and upcoming reforms to be aware of.

"..this seminar, and especially the very detailed notes, are the best value learning that I have ever encountered!"

• Thur 5 Oct - Edinburgh 12-2pm
• Tues 10 Oct - Zoom Webinar 12-2pm
Plus, included for all, a supplementary Q&A session via Zoom on Thur 12 Oct from 1-2pm.
FEE: £162 per person, three hours CPD plus substantial accompanying materials.

LEGAL RIGHTS UNRAVELLED: CASE STUDY WORKSHOP ON PRIVATE CLIENT DISPUTES

Are you a private client practitioner grappling with disputes alongside your litigation peers? Maybe you're a litigator intrigued by the intricacies of private client matters. Or you could be an all-encompassing general practitioner managing a bit of everything. Whatever your role, our workshop is finely tuned to cater for your, and your clients' needs.

Join Brodies' **Alan Barr, Jamie Reekie and Susie Mountain** for an insightful journey into the world of contentious trusts and estates. Through an immersive exploration of a real-life case study, we'll traverse a landscape that encompasses legal rights, cohabitant claims on death, court remedies, solicitor's duties, and the intricate dance that is conflicts of interest. Your active participation is encouraged but rest assured, solutions will be provided and other Brodies' team members as required to facilitate discussion! This workshop isn't just theoretical; it's a practical toolkit crafted to empower both you and your clients. Elevate your professional expertise with high-quality CPD at an affordable price.

• Thur 26 Oct - Edinburgh 9.00-11.30am
FEE: £25 per person, includes a light breakfast.

CONVEYANCING - WHAT HAPPENED IN 2023?

For the thirty-third successive year, this seminar will provide a comprehensive and indispensable review of the cases and statutory developments during the past 12 months which affect conveyancing law and practice. Covering cases on servitudes, real burdens, missives, commercial and residential leases, standard securities, prescription, and much else besides, this seminar is unmissable for anyone working in conveyancing.

Speakers: **Kenneth Reid, George Gretton and Andrew Steven,** University of Edinburgh. Chaired by Alan Barr, Brodies LLP.

• Mon 22 Jan - Inverness 6-8pm
• Tues 23 Jan - Perth 6-8pm
• Mon 29 Jan - Dumfries 11.30am-1.30pm
• Tues 30 Jan - Zoom Webinar 12-2pm
• Tues 23 Jan - Aberdeen 12.30-2pm
• Wed 24 Jan - Zoom Webinar 5-7pm
• Mon 29 Jan - Glasgow 6-8pm
• Tues 30 Jan - Edinburgh 6-8pm

PLUS included for everyone the Q&A via Zoom on Thur 1 Feb -12-2pm

FEE: £186 per person (discounts available for multiple bookings, please see our website). Four hours CPD, includes seminar materials plus a copy of the published book.

t: 0131 2151858 ***e: admin@edinburghlawseminars.co.uk***
w: edinburghlawseminars.co.uk

Scotland's QLA: empowering legal mobility

Having undertaken the process herself, Şimal Efsane Erdoğan hails the Qualified Lawyers Assessment as a means for international lawyers to requalify as a Scottish solicitor

The legal landscape, once seen as a realm confined to local practices, is today proving globally accessible. Notable jurisdictions like the New York, California and Ontario Bars set the precedent. Scotland, a relatively fresh contender, now also welcomes international legal practitioners. The mechanism facilitating this openness is the Qualified Lawyers Assessment ("QLA").

With its mixed legal system which blends elements of civil law and common law cultures, Scotland stands as a unique legal landscape for those who want to grow their career. It was the allure of Scotland's mixed system that propelled my decision to requalify there, where my civil law foundation could meld with common law principles to enrich my legal practice and understanding. The QLA presents a compelling avenue for practitioners who aspire to contribute and practise within Scotland.

Deciphering the QLA

The path to becoming a Scottish solicitor offers three distinct routes for individuals not yet qualified. While the standard route caters to those entering university for the first time, the accelerated LLB route accommodates those with degrees in other disciplines or law degrees from other jurisdictions. Additionally, the pre-PEAT traineeship offers an alternative to the LLB, welcoming a select number of trainees annually. Amid these routes, the QLA extends its arms to lawyers already qualified in other jurisdictions.

The process is straightforward. The Law Society of Scotland invites applications from lawyers across the globe who wish to requalify as a Scottish solicitor. Requalification is a comprehensive journey,

spanning 11 subject areas such as legal system and legal method, criminal law and more. These topics offer a holistic understanding of Scottish law, and candidates need to pass all modules. Exemptions based on prior qualifications and experience can be granted.

To embark into the QLA journey, one must prove status as a "fit and proper person to be a solicitor". This entails providing various documents, including a certificate of good standing from one's home bar association. It is a meticulous process, recommended by the Society to be initiated months ahead of the intended first examination. Official English translations should be obtained when necessary. I initiated my application four months prior to my intended first examination date.

QLA assessments are conducted biannually in May and November, spread across four days. This offers candidates the flexibility to stagger their modules across multiple sittings, adapting to their schedules – a boon for individuals like me, who occasionally face intensive working periods. I opted to take fewer modules and compensated by taking more during subsequent exam periods. Resits are allowed, but the number of retakes is finite.

Strategies for QLA preparation

Preparing for QLA is rather different than for other bar exams. Unlike England's SQE or New York's Bar Exam, I know of no preparatory courses. The Society offers a syllabus, recommended reading lists, and previously posed questions without model answers. This scarcity of resources may appear daunting, but it encourages rigorous study and mastery of the material.

Depending on the module, questions can be problem-based or essay-style, assessing candidates' ability to present legal arguments coherently. While challenging, this assessment method proves rewarding as it cultivates in-depth understanding. Personally, I adhered to recommended reading lists for each module, delving into relevant sections before tackling past questions. This method, fortified with notes from my readings, enabled me to answer exam questions. Also, it is a good idea to work on writing techniques for Scottish law exams if you are coming from a civil law culture and educational background, like me, as the style of answering differs greatly. For mastering the fundamentals of Scots law, *The Scottish Legal System* by Megan Dewart, and contracts, which I personally found the most demanding area, MacQueen and Thomson on *Contract Law in Scotland* were my invaluable companions among others.

Final words

The QLA's recognition by the Law Society of Scotland and its alignment with global legal trends give international lawyers the confidence that their requalification efforts will be acknowledged and respected in Scotland. Undertaking the QLA exposes them to a comprehensive curriculum covering various legal subjects, enhancing their understanding of Scottish law while also contributing to overall professional development, making them better rounded legal practitioners.

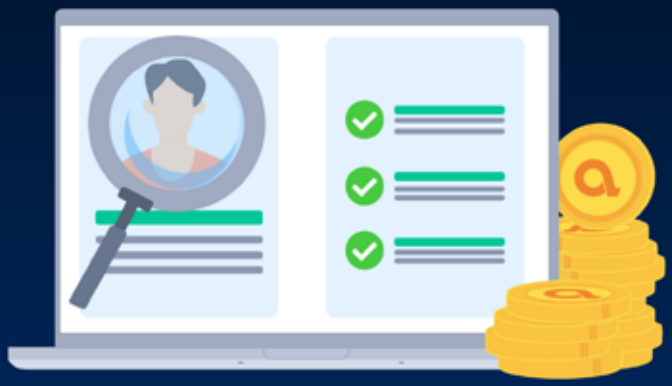
From the other side of the coin, the QLA promotes diversity within Scotland's legal community by encouraging practitioners from various backgrounds to bring their unique insights and experiences. This exchange enriches legal discourse and innovation in Scotland.

In conclusion, the Qualified Lawyers Assessment is more than a qualification – it is an enabler of legal mobility, an embodiment of legal diversity, and a catalyst for innovation. Scotland's embrace of international legal practitioners through the QLA stands as an inspiring model for inclusivity, inviting legal minds from around the globe to embark on a transformative odyssey within its dynamic legal landscape. Personally, I am looking forward to engaging with the Scottish legal community and practising law as a Scottish solicitor.

Şimal Efsane Yalçın-Erdoğan is a newly qualified Scottish solicitor and notary public. She is also a licensed lawyer admitted to the Istanbul Bar Association, a PhD in law candidate and a visiting lecturer at King's College London.
e: simal.erdogan@kcl.ac.uk

amiqus

Simplify AML and Onboard Clients Faster



- Time is your most valuable asset, and we're here to help you reclaim it. Amiqus empowers your clients to autonomously complete their information, drastically reducing your administrative load.
- Say goodbye to juggling multiple tools and databases. Our comprehensive platform centralises all necessary checks, giving you a panoramic view of your AML process.
- Feel at ease during audits and inspections. Enable watertight compliance with our comprehensive audit trails of activity on each and every client.

Strategic Partner
Law Society of Scotland

Trusted by:

Anderson Strathern · Aberdein Considine · Burness Paull · GILSONGRAY LAW · PROPERTY · FINANCE

amiqus.co

IN ASSOCIATION WITH

Future property auctions

Property auctions: the tide is right

Market conditions are changing, and it could be time to look again at selling by auction

About us

Marketplace position is very important to us here at Future Auctions – we have been market leader specifically in volume of listing and sales numbers in Scotland for more than a decade.

But we only maintain that position by offering the best selection of stock to our clients. We offer the highest spread of pound value, from £5,000 to £1.5 million, with the most attractively priced selection of properties from the residential, commercial, and land base. We are careful in listing only the most saleable properties – our auction offers the buyer most bang for their buck, and the seller the most secure sale with a fall through rate of under 5%.

We have a low staff turnover – the account manager you dealt with in 2009 is more than likely the one you will deal with now. This continuity makes us a return prospect for almost every bulk vendor we deal with. Our staff have over 100 years of experience between them – across letting, secondhand residential sales, commercial and auction property. Our buyers receive a straightforward and easy process in purchasing from us, and we challenge anyone to have a more transparent service.

We were the preferred auction choice for the ESPC and GSPC in the past, offering split commission and invaluable experience and advice in the years after the housing market crash. Recent times have seen most solicitors prefer the open market for achieving the highest prices for clients, but there will always be applicable properties where auction is the only choice. With the market changing, a great partnership with an auction house will be an invaluable customer service to your end client.

Market changes

Our business model provides a stable proposition – we don't experience the peaks and troughs that most estate agents work through. This means that our stock levels have neither reduced nor increased during the post-Covid feeding frenzy. However, the high open market sale prices achieved in the last three years are now coming to an end, as we see house prices reduce by nearly 4% on 2022 in the last quarter. This reduction is related to demand shrinking due to the cost-of-living crisis, and along with unaffordable stock could create a perfect storm in the coming months.

With the moratoriums ending on sequestrations, repossessions and tenant evictions, we should see large levels of stock flooding the marketplace also. Consumer confidence will drop if this happens, and we will find ourselves in a changed market again. When I started in this business in the mid-90s, we had one buyer for one property – this hasn't been the case since then with closing dates and multiple buyers. We had boom and then bust in 2009; we have the bust likely coming again in 2024 – though more like the mid-90s bust than 2009.

For buyers (specifically foreign investors) this is simply an opportunity to buy at a low level in the UK with a view to a long-term capital gain. Our service is designed to offer a quick, secure sale – but with the caveat that the buyer will have a reason to buy under those terms. The marketplace of 2024 will give many sellers a reason to use stable sales terms with quick turnarounds, and access to buyers not available through traditional estate agents.

Our buyers

Our buyers come from disparate backgrounds – from first time buyers to bulk investors. We are also not limited to UK based buyers, with a large percentage of our interest coming from abroad. The advantage of this to our (and your) selling clients is that these buyers do not register with estate agents. We have a database of up to 75,000 registered bidders and a mailing list of over 100,000 investors/landlords/developers who receive regular contact. We have found that these types of buyers are more likely to be registered with us and property sourcers than with traditional estate agents. This means that a property listed with us at auction is opened to a higher level of buyers, with very different buying criteria. This allows for a quicker and higher volume of offers for any lot listed with us, and our size elevates this above our nearest competition.

Properties

There will always be properties that should only be listed at auction. These include derelict, water or fire damaged, properties with title issues, unusual builds, planning issues, non-standard construction, or tenanted properties, to name a few. These would all have a better chance of sale at auction, as the norm is that a conveyancer coming across these during standard exchange will advise a buyer not to go ahead. In a lower market, there will be more choice and buyers are king. Some types of property are simply too much hassle for an agent to sell – high levels of contact, high levels of viewing and high potential for buyers not proceeding. The vendors of these will always be better served at auction.

Summary

Auction has a place in the Scottish property market – it is here to stay, as evidenced by our longevity. All selling agents should have an auction option as either a string to their bow, or a credible, more applicable selling option for their clients. If you have never dealt with us, or haven't spoken to us in a while, get in touch!

Future
property auctions

Flats | Houses | Land | Commercial

REAL SELLING POWER

FAST SALE - FAIR PRICE

Contact us now for a FREE Auction appraisal

rightmove
find your happy

Zoopla
Smarter property search

s1homes.com

NAVA
National Association of Valuers and Auctioneers

T: 0141 632 6599 | www.FuturePropertyAuctions.co.uk

mctear's 1842

Why McTear's?

Full range of services offered by an auction house with a dedicated point of contact for executry work

Formal and informal advice

McTear's offers a comprehensive valuation and auction service tailored to the needs of executors, estate trustees and legal professionals.

Valuations are prepared for formal estate matters and for inheritance tax throughout Scotland at, in most instances, a fixed fee of £240 + VAT.

We understand that a certified valuation is not always required and, in circumstances where informal advice is sufficient, advice at a client's home or office can be provided free of charge.

Dedicated point of contact

McTear's is proud to be Scotland's only auction house to have a dedicated point of contact for executry work.

Commenting on the service, Valuations Director Magda Ketterer said: "Our valuations span the breadth of the country, catering to clients' needs expertly, sensitively, and efficiently. Our team of specialists covers all fields of traditional and modern art and antiques as well as jewellery, watches, coins and whisky, resulting in a comprehensive valuation service that offers expert advice on every item."

Auction and property contents services

Beyond the provision of estate valuation documents, McTear's handles complete property contents, where all saleable items are brought to auction and non-saleable items are removed.

"Unlike many auction houses, we pride ourselves on embracing the entirety of an estate's offerings. We don't cherrypick or disregard items based on value but, instead, provide a global audience for all items, be it a hammer price of £100,000 or £100."

This ensures all estate property is dealt with by one firm with one point of contact, with updates to executors and solicitors throughout the selling process.

Accounting is prepared in one package when the final item is sold, ensuring a smooth process.

Estate sales

McTear's hosts a calendar of specialist auctions in all major categories of art and antiques, with single-owner auctions regularly featuring throughout the year, reinforcing McTear's' position as a leader in the field. One such sale was the estate collection of the late William Mowat-Thomson, a luminary in the Scottish dance scene, whose wonderful Edinburgh townhouse collection saw outstanding results. Further private collections of Asian art, Lalique glass, jewellery, gold coins and Scottish paintings have been curated in recent years, achieving global interest and impressive hammer prices.

Commenting on the auctions, Magda noted: "Our extensive international database of bidders, coupled with strategic and extensive promotion through channels including print advertising, television and social media, ensures that all consigned lots achieve their maximum potential."

EXECUTRIES AND ESTATE SALES

THE SPECIALIST AUCTIONEERS

McTear's experts sensitively and efficiently handle estate valuations and sales.

Please contact Magda Ketterer to discuss our executry and property contents services.

0141 810 2880 | magda@mctears.co.uk

31 Meiklewood Rd, Glasgow G51 4GB | mctears.co.uk

Scotpulse surveys for STV rate McTear's as **Scotland's Best Known** and **Favourite Auction House**

mctear's 1842

Briefings

Civil Court

CHARLES HENNESSY, RETIRED SOLICITOR ADVOCATE, PROFESSOR AND CIVIL PROCEDURE EXPERT

My last roundup bemoaned the absence of any real progress in the development of new rules for ordinary actions but, since then, the Scottish Civil Justice Council has issued a targeted consultation on the proposed rules which will apply to proceedings in both the sheriff court and the Court of Session. The papers can be accessed via its website, and the deadline for responses is 10 October 2023.

The core of the proposals is the introduction of active case management by the judge. I doubt if that principle will be challenged by anyone, but one question which has always intrigued me, and to which I have never obtained a satisfactory answer, is how many defended ordinary actions are likely to require case management every year? Our court system must have the resources to administer the new regime. Our judges must have the time and the expertise to manage cases effectively. Does anyone know what that workload is likely to be, and what judicial time will be allocated to it ?

Many of this month's cases are about practice rather than court procedure. It so happens that most of them involve PI claims, but I have tried to steer away from analysis of the substantive law on negligence, which I will leave to others more expert than me. After six months of this year with only four reported decisions from ASSPIC, four emerged in July all at once. I am sorry to say that three of them are about expenses.

Supreme Court

When a Scottish case is decided in the Supreme Court, I think that is always worth a mention. In *McCulloch v Forth Valley Health Board* [2023] UKSC 26 the court refused an appeal against the rejection by the Lord Ordinary and the Inner House of the claim by a deceased's family for damages arising out of his medical treatment. The argument centred on the nature and extent of any advice that should have been given to the deceased about possible treatment options. You can still watch the whole hearing and a 10 minute summary of the judgment given by one of the Justices on the truly excellent Supreme Court website.

Judicial expenses

When the Inner House rules on expenses in a case which, in its words, "involves a wider issue concerning solicitors from another jurisdiction conducting litigation in Scotland", that combination is irresistible. In my article at Journal, November 2022, 40 I commented on the Outer House decision, and the subsequent appeal has led to the opinion in *Kirkwood v Thelem Assurances* [2023] CSIH 30, which probably had many law accountants reaching for their calculators and smelling salts very quickly.

The Inner House discussed the minutiae of the judicial account, but the real crux of the decision lay in a point which is fairly well established. That is explained simply by the court: "The fees for solicitors in relation to the Court of Session are regulated by Act of Sederunt... The reference to solicitors in this context is to those agents who are duly authorised to conduct litigation before the court... This generally means a solicitor who is qualified in Scotland... The rules regarding taxation of expenses... [provide] that: 'Only such expenses as are reasonable for conducting the cause in a proper manner shall be allowed'... When the rule refers to reasonable expenses for conducting the cause, it is to the conduct of the cause by a person who is entitled to do so; i.e. a Scottish agent."

About half of the work involved, for which the full judicial account was around £250,000, was disallowed as having been carried out by the English solicitors who "conducted" the litigation, although Edinburgh solicitors had attended to the formal procedural work.

Jurisdiction and *forum non conveniens*

As anticipated, the group proceedings by the Kenyan tea pickers have spawned many contentious issues. The latest matter for procedural enthusiasts concerned the pleas of lack of jurisdiction and *forum non conveniens*.

In *Campbell v James Finlay (Kenya) Ltd* [2023] CSOH 45, there was a six day proof on these preliminary pleas and the pursuer was successful in having them both repelled. On jurisdiction generally, it was argued that a Kenyan statute and the terms of the employment contracts gave the Kenyan courts exclusive jurisdiction. The court heard expert evidence from Kenyan lawyers and rejected the argument. Of wider application was the debate on the plea of *forum non conveniens*.

Putting it very briefly, the court concluded that while Kenya would be the appropriate forum for disposal of the group members' claims, that was not enough to decide the point. Lord Weir said: "I still require to consider whether there is cogent evidence of a material risk that the group members may not obtain justice if they are obliged to litigate their claims in Kenya... the combination of poverty and lack of representation justify [Kenyan counsel] Mr Nderitu's conclusion that should the group proceedings be dismissed the group members would not be able to access the Kenyan courts and secure substantial justice for their claims... [There is] no suggestion that the Kenyan courts cannot come to a proper and considered decision on the group members' claims. But that is not the issue. The issue is one of accessibility, and what I conceive to be the insuperable difficulties dictated by circumstances which face the group members in litigating their claims to a conclusion in court."

Both pleas were repelled. Do I sense an appeal?

Evidence at proof

The attribution of vicarious liability in abuse cases depends very much on the precise background facts and circumstances which encompass the whole context in which the alleged conduct took place. Often, that can be a matter of admission, especially when there is a criminal conviction, but that may not be enough in some cases. In *C and S v Shaw* [2023] CSOH 11, it is interesting to note the way in which the evidence about these matters was presented. A caretaker employed by the second defender in a sports centre had admittedly abused two boys, and the issue was whether his employers were vicariously responsible.

The circumstances cannot be easily summarised. There was a proof on (vicarious) liability only, and the two pursuers and the perpetrator of the abuse were called as witnesses for the pursuers. The "foundation of the evidence in chief of both pursuers", as it was described by the court, was the terms of their earlier statements to the police in connection with the criminal proceedings against the perpetrator. Both pursuers gave oral evidence, as did the first defender, who did not defend the action but admitted his criminal convictions. It does not appear that there was any significant cross examination of any of the witnesses. Lord Brailsford concluded that, in the particular circumstances, there was no vicarious liability.

QOCS

In *Love v NHS Fife Health Board* [2023] SC EDIN 18 Sheriff Fife in ASSPIC was asked again to grant a motion by the defenders to disapply the QOCS provisions. The pursuer had claimed damages for alleged medical negligence in relation to the death of her mother in October 2018. The defenders agreed to extend the time bar applicable to the claim and in November 2022 solicitors were instructed to raise proceedings. A writ was eventually served on 12 December 2022. There was no motion to sist the action and the defenders lodged a motion seeking absolvitor on 12 January 2023. This was revised into a motion for summary decree; the pursuer's solicitors withdrew from acting before the motion was heard. The pursuer was given opportunities to obtain fresh representation and apply for legal aid, but neither was forthcoming. It emerged that the pursuer had no title to sue, no supportive expert report on clinical negligence, no legal aid, and no prospect of success with any claim.

Sheriff Fife dismissed the action but refused the motions (1) to disapply the QOCS provisions in relation to the pursuer personally; and (2) to find the solicitors liable for expenses during

their involvement in the action. He considered that the pursuer's actings were unreasonable but not "manifestly or obviously unreasonable". The pursuer was not a party litigant and the only substantive procedure had been the motion for absolvitor/summary decree. There had been no abuse of process. If the solicitors had continued in the action for a time with no, or substantially no, prospect of success, the circumstances might well have been exceptional and merited an adverse finding of expenses, but while the case was unusual it was not considered exceptional and QOCS applied.

For completeness, I should say that I have learned of a very recent decision – not yet published on the SCTS website – *Manley v McLeese*, Edinburgh Sheriff Court, 16 August 2023 – in which the sheriff granted a motion to disapply QOCS in an RTA case. More about this in due course.

Pre-action protocol

The Personal Injury Pre-Action Protocol was introduced to the Ordinary Cause Rules for PI actions in 2016. Among other things, the sheriff can modify expenses in a PI action on the basis of the parties' conduct. The terms of the protocol are set out in OCR, appendix 4. It aims to assist parties in a PI case to "avoid the need for or mitigate the length and complexity of... [PI]... proceedings". Its application was recently considered in *McInnes v EUI* [2023] SC EDIN 19 and *Napier v AXA Insurance* [2023] SC EDIN 20, both decisions of Sheriff Campbell in ASSPIC. I am afraid I find the finer details of these squabbles about what passed between lawyers pre- and post-litigation and who said what to whom and why, to be rather tedious – I suspect the court does too – and they rarely reflect well on our profession. In both cases the court modified the award of expenses to a successful pursuer. I doubt if any general principle can be taken from the decisions other than perhaps an encouragement to parties to "screw the nut" – a Glasgow term which failed to find its way into the protocol.

Pleadings

A perfect illustration of the difference between defences that simply and reasonably put a pursuer to a proof of their averments and those that are just obstructive delaying tactics – "Scottish litigation at its worst" – presents itself in the Sheriff Appeal Court case of *Crerar Hotel Group v Oban Regent Management* [2023] SAC (Civ) 22. The pursuers sought interdict against another hotel passing itself off as theirs. At debate the sheriff granted decree *de plano* on the grounds that the defences were lacking in candour, irrelevant and lacking in specification. The defenders appealed, the SAC overturned that decision and remitted the case to the sheriff to assign a proof.

There are a number of very useful observations in the judgment about pleading practice. For example, "a defence is not irrelevant by reason of lack of candour unless there is a *prima facie* case by the pursuer which requires specific averments in defence". The court carried out a detailed analysis of the parties' respective pleadings, and it is well worth reading the decision carefully to understand, among other things, the crucial distinction between denials of matters outwith a party's knowledge and denials of matters which a party can reasonably be expected to know.

One matter worth highlighting is the observation about the inappropriate but not uncommon practice of adopting the terms of productions into pleadings. "Pleadings should not simply incorporate productions *brevitatis causa*. It is for the pleader to abstract and summarise the relevant parts of any productions and present them as building blocks of the case. The pleadings should not plead evidence, but rather the principles to be abstracted from that evidence (see Macphail, *Sheriff Court Practice* (4th ed), at para 9-16). The sheriff was invited to treat the terms of a newspaper article, incorporated *brevitatis causa*, as if they were pleadings, and thereby inadvertently embarked on the very 'trial by pleading' that Macphail (above) warns against."

Dismissal at debate

Despite what appears to be a rapidly diminishing success rate, defenders continue to try and have PI actions dismissed at debate, but the reality seems to be that unless, on the most charitable reading of the pursuer's averments possible, the action could not possibly succeed, a proof is always going to be fixed. I recall a very eminent and highly respected sheriff likening the test of relevancy to "not having a snowball's chance in hell", a vivid summary of what all the cases say about the test to be applied. It seems to me that the pleadings in chapter 43 cases in the RCS and chapter 36 cases in the OCR make it even more difficult to knock cases out without a hearing of evidence.

In *Rose v WNL Investments* [2023] CSOH 49, a chapter 43 case, the deceased was killed while working on the defender's roof. The principal question was whether the defenders owed any duty of care to him. He appears to have been a self employed contractor who worked on various premises owned by the defenders throughout Scotland. As Lord Sandison rather delicately put it, "many of the admitted features of Mr Rose's engagement are, to put it mildly, not inherently supportive of the suggestion that he should properly be regarded as having been the defender's employee for the purposes of this action". The court was referred to a total of about 30 authorities, but had little difficulty in concluding that it was not possible to say that the claim was "bound to fail" and allowed a proof.

For PI enthusiasts, the decision also includes observations about the relevance of pleading breaches of safety regulations in the light of s 69 of the Enterprise and Regulatory Reform Act 2013. I think the point has still to be authoritatively decided in Scotland.

Actio iniuriarum

For readers who have missed the Latin references of late, the case of *McCallum v Morrison* [2023] SAC (Civ) 23 may cheer you up. This was a claim against a dentist who had practices in Cumnock and Drongan. One of the grounds of action was a claim based on the *actio iniuriarum*, but, although it has been historically demonstrated that the Romans made it into Ayrshire in the first century, the court considered that this ancient remedy was not available in the circumstances. J

Corporate

EMMA ARCARI, SENIOR ASSOCIATE, WRIGHT JOHNSTON & MACKENZIE LLP

A new "failure to prevent fraud" criminal offence is to form part of the Economic Crime and Transparency Bill, which is part of the range of measures designed to prevent the abuse of UK corporate structures and battle economic crime.

The new offence

The new offence will make an organisation liable where a specific fraud offence is committed by an employee or agent for the organisation's benefit, and the organisation did not have reasonable fraud prevention procedures in place. Organisations could face an unlimited fine if convicted in England & Wales; in Scotland this would be limited to the statutory maximum.

This new offence was added via an amendment to the bill and forms part of a range of "failure to prevent" crimes, such as in relation to bribery and tax evasion. Although there are existing powers to fine and prosecute organisations and their employees for fraud (and related offences), the UK Government is keen to close loopholes which have hindered previous prosecutions.

Identification doctrine

The use of "failure to prevent" within the new offence follows on from comments as to the difficulty in using the "identification" doctrine in holding organisations liable. This doctrine at present requires an organisation to be held liable for a criminal offence only where the person concerned at the material time was the "directing mind and will" of the company. This has caused difficulties in prosecutions especially in relation to larger and more complex organisations – see *Serious Fraud Office v Barclays plc* [2018] EWHC 3055 (QB). Proposals have been made to reform the identification doctrine and include

senior managers within the scope of who can be considered as the "directing mind and will" of an organisation.

Types of fraud caught

The Government aims to capture the fraud and false accounting offences that are most likely to be relevant to organisations, in all sectors. At present this includes both common law offences (such as "cheating the public revenue", conspiracy to defraud, fraud, uttering, embezzlement and theft) and numerous statutory offences (examples include fraud, fraudulent trading, prohibited financial assistance, failing to disclose knowledge or suspicion of money laundering, fraudulent evasion of VAT, and misleading the FCA or PRA).

There is therefore an extensive list of behaviour that could fall foul of this new offence, including in relation to transactions and warranties, dishonest sales practices etc. The offence is also stated to have extraterritorial effect: if fraud is committed under UK law or targets UK victims, the organisation could be prosecuted, even if the organisation (or its employee/agent) is based overseas.

How to avoid liability

There is a defence if the organisation can demonstrate that there are reasonable procedures in place to prevent fraud. This is a change in approach from organisations being viewed as fraud victims, and is intended to drive change without duplicating existing legislation or policy. The Government has advised it will publish guidance as to what prevention procedures will be considered to be enough.

What next?

At the moment the legislation is expected to be in force by the end of next year. Further amendments that have been proposed include an offence of failure to prevent money laundering, though it is not yet clear if this will form part of the legislation. Another aspect to keep an eye on is whether the offence will only target large organisations (i.e. one that meets two out of three of the following criteria: more than 250 employees, more than £36 million in turnover and more than £18 million in assets). This limitation was in the original draft but has been criticised in some circles, given that bribery and tax evasion have no such exemption. However the Government stated (in its factsheet dated 20 June 2023) that this will be kept under review, and the threshold at which organisations can be excluded could be amended in the future if thought necessary. At the last Lords consideration of the bill (10 July 2023), an amendment was suggested to remove the "large organisation" size threshold.

Although we are still waiting for guidance on what constitutes a "reasonable" procedure to prevent fraud, organisations should carry out a risk assessment and be proactive in relation to reviewing their systems, procedures and controls in order to focus on red flag areas. Training, policies and procedures should be updated to manage the risk in relation to all aspects of the organisation.

Intellectual Property

ALISON BRYCE,
PARTNER, BRODIES LLP

The recent case of *Lifestyle Equities v Royal County of Berkshire Polo Club* [2023] EWHC 1839 (Ch) highlighted several challenges brand owners face with trade mark protection. Specifically, the case considered the impact a "crowded market" has on proving the distinctiveness of brand marks.

The claims

The case dealt with a trade mark dispute between two polo-themed clothing companies. The claimants, owner of Beverly Hills Polo Club, brought an infringement action under s 10(2) and (3) of the Trade Marks Act 1994, alongside claims of passing off and unlawful means conspiracy. They argued that there was a "likelihood of confusion" in various countries between their mark and the Berkshire Club's sign.

Both parties used various logos consisting of their respective names, containing the phrase "Polo Club", accompanied by a depiction of a polo rider on a horse. The defendants argued that the claimant's marks had existed alongside their branding and other polo brands worldwide for many years. It is important to highlight that this case was the most recent in a number of actions by the claimants against competing polo brands.

Mellor J dismissed all the claims, as the claimants were unable to effectively evidence any infringement. Two elements were considered in the judgment: (i) how the distinctiveness of a mark is assessed in a crowded marketplace; and (ii) the relevance of previous co-existence agreements with third parties. In this case, it is worth noting that although the claimed infringements occurred across multiple countries, both parties agreed that the UK/EU law would apply.

Crowded market/distinctiveness

The defendants argued that for contextual purposes, it was necessary to review other polo-themed brand marks, as these would impact how consumers viewed the claimants' mark. The claimants argued this would broaden the context too widely. The judge sided with the defendants (citing *Specsavers v Asda* [2012] FSR 19), stating it was important to review brands involved in a "crowded market" and consider the impact on the distinctiveness of the claimants' marks.

Assessing the market, Mellor J noted that several clothing brands are polo club themed. Most featured a depiction of a horse and rider, making it hard to view the claimants' mark as distinctive. He assessed the global likelihood of confusion between the brands, analysing their popularity, presence and sales in the relevant countries, and found that confusion was unlikely.

Following this analysis, he considered that the horse and rider logo did not dominate in either of the parties' branding. The claimant's motif was not unique and had co-existed alongside similar branding previously. Therefore, it was unlikely that the consumer would make a link between the respective marks; even if they did, it would not give rise to damage. In a crowded market, actual confusion between the marks would need to be evidenced; the claimants had failed to do so.

Co-existence agreements

Co-existence agreements between the respective parties and Ralph Lauren Polo were submitted in evidence. The claimants maintained that these agreements were irrelevant to the assessment of brand confusion; their existence pointed to brands being in conflict. The court rejected this, advising that such agreements do not necessarily indicate brand conflict but rather that these brands are willing to accept the use of similar marks to a certain extent.

Looking specifically at the co-existence agreements, Mellor J considered them to be a "practical insight into the market for 'polo' brands and especially those which feature a polo horse and rider motif". He held that these agreements implied that Ralph Lauren Polo considered that the differences between the respective marks were substantial enough to avoid confusion between the brands, meaning they could co-exist peacefully. Several other co-existence agreements were also in place between the respective parties and other similar brands.

Unsatisfactory evidence

A further point to note was that Mellor J took issue with the evidence provided by both parties' solicitors: marginal annotations left within a witness statement were "inaccurate and potentially misleading"; other documents were described as vague, lacking detail, incomplete; and ultimately, the claimants' witness evidence was unpersuasive. The judge was undoubtedly unimpressed by the presentations before parties even had the opportunity to argue their respective cases. The case is a salutary lesson that advisers should be mindful of how they present evidence to avoid this adverse reaction and put themselves in the best position before the hearing.

In summary, this case makes clear that when a business is part of a crowded marketplace, it will have a substantially harder time establishing the distinctiveness of its trade marks. Businesses should make efforts to be aware of how others in the same market are branding themselves, and if infringement proceedings are raised,

actual confusion between brands will need to be clearly evidenced. It also shows the importance of considering brand strategy before entering into co-existence agreements. If businesses enter into such an agreement with a third party, it could work against any future infringement claims if the same topics are covered. Businesses should be mindful of the issues discussed in this matter when considering actioning a trade mark infringement claim.

Agriculture

ADÈLE NICOL,
PARTNER, ANDERSON STRATHERN LLP

At Journal, December 2020, 24 I considered *Sweeney, Noters* [2020] CSIH 65, one of the rare situations where part 2 of the Agricultural Holdings (Scotland) Act 2003 (tenant's right to buy land) has been invoked. Although there will have been many instances of farms being sold to or deals being done to buy out the sitting tenant, in practice there have been few situations where the statutory provisions have been used.

There has been a history of litigation between the parties since 2001. In 2006, Amanda and Deanna Urquhart, as agricultural tenants, registered a notice of interest in acquiring the land, in terms of the 2003 Act. The notice was renewed in 2011, 2016 and 2021. In February 2019 the liquidator of the landlord, West Larkin Ltd, gave notice under the Act of a proposal to transfer the land. That was met by a timeous counternotice of the Urquharts' intention to purchase. On the face of it, that obliged the liquidator to sell to the tenants at a valuation which might be substantially below the price available by open market sale with vacant possession. Matters were further complicated by a change of liquidator.

In the 2020 decision the court held the liquidator entitled not to challenge the Urquharts' right to buy. The Urquharts then lodged a note asking the court to direct the liquidator to transfer the land in accordance with the statute. The Sweeneys, who previously owned the company, contested the Urquharts' interest in buying, claiming title and interest as creditors likely to suffer prejudice if the land was sold at a reduced value. They sought a proof to establish that any agricultural tenancy ended by at latest 2015, prior to the 2016 registration on which the former liquidator's notice and tenant's counternotice were based. It was claimed that since 2006 the land had been abandoned by the Urquharts and left derelict. It had not been used for agricultural purposes and there was no agricultural holding within the Agricultural Holdings (Scotland) Act 1991. Although no notice to quit was served, the lease had expired at its term. The Urquharts' position was that the agricultural tenancy had remained throughout and continued by tacit relocation; the notices under the 2003 Act created an enforceable right to buy.

After a debate the Lord Ordinary granted the order sought, holding that the statutory scheme created a discrete set of provisions introducing a right to buy for the benefit of a tenant. A claim that the tenancy had ended had to be raised as a challenge to registration under s 25(8), or if after registration by notice under s 25(13), failing which an extant registration and the exchange of appropriate notices crystallised an enforceable right to buy which could not be usurped by another process to prove that there

IN FOCUS

...the point is to change it

Brian Dempsey's monthly survey of legal-related consultations

Heritable and other securities

The Scottish Law Commission seeks views on the efficacy of the law on heritable securities, "non-monetary obligations" and sub-security arrangements. See www.scotlawcom.gov.uk/news/major-review-of-mortgage-law-discussion-paper-on-heritable-securities-non-monetary-securities-and-sub-securities/ **Respond by 29 September.**

Local wellbeing

The Scottish Parliament's Economy & Fair Work Committee seeks views to inform its review of the Procurement Reform (Scotland) Act 2014, with its duty on public bodies to consider how their procurement decisions could improve economic, social and environmental health and wellbeing. See www.parliament.scot/about/news/news-listing/procurement-reform **Respond by 2 October.**

Trade union regulation

The Department for Business & Trade seeks views on its draft code of practice setting out steps a trade union should take to comply with the Strikes (Minimum Service Levels) Act 2023. See www.gov.uk/government/consultations/minimum-service-levels-code-of-practice-on-reasonable-steps **Respond by 6 October.**

Railway accessibility

The UK Office of Rail & Road seeks views on its draft access guidance for railway services in preparation for the revocation of retained EU law. The intention is to take the opportunity not to change anything. See www.gov.uk/government/consultations/draft-railway-access-guidance-update **Respond by 6 October.**

Accessibility in housing

The Scottish Government is committed to introducing an all-tenure Scottish Accessible Homes Standard. Views are sought on enhancing the accessibility, adaptability and usability of homes in Scotland. See consult.gov.scot/housing-and-social-justice/accessiblehousingconsultation/ **Respond by 19 October.**

Building warrant fees

Views are sought on reforming and increasing building warrant fees which the majority of local authorities say are insufficient to cover the cost of delivering necessary verification services. See consult.gov.scot/local-government-and-communities/building-warrant-fees/ **Respond by 24 October.**

Councillors' planning knowledge

Should councillors be required to undergo training on the planning system? See consult.gov.scot/local-government-and-communities/mandatory-training-for-elected-members/ **Respond by 26 October.**

Bus regulation

The Scottish Government seeks views on draft regulations allocating bus service appeals to the Upper Tribunal for Scotland. See consult.gov.scot/tribunals-and-administrative-justice/tribunals-scotland-act-2014-draft-regulations/ **Respond by 27 October.**

... and finally

As noted last month, the Scottish Government seeks views on its proposal to embed the rights currently contained in several UN treaties (ICESCR, ICERD, CEDAW and CRPD) into devolved areas of Scots law (see consult.gov.scot/equality-and-human-rights/a-human-rights-bill-for-scotland-consultation/, and **respond by 5 October**).

was no agricultural holding. In any event, the Sweeneys were third parties and could not invoke s 25(12). On their position they should have sought reduction of the ss 26 and 28 notices.

Appeal

On appeal, the Sweeneys contended that the Lord Ordinary should have held that s 25(12)(a) and/or (b) applied, with the result that by operation of law the registration automatically had no effect. No further procedure was required. Without a lease, the exchange of notices could not create a right to buy. The Sweeneys relied heavily on the proposition that only a tenant of a 1991 Act tenancy could register an interest to buy. Section 25(15), placing a requirement on the Keeper, presupposed that a registration could lose effect before it was removed from the register. There was no policy reason why, once the lease was terminated, the owner should be unable to transfer the property as they pleased merely because the termination was disputed. The tenant should not receive a windfall simply because the owner forgot to notify the Keeper. If the registration was ineffective the same must apply to notices served in reliance on it. Challenges to registration could not be exclusive to the owner of the land, as others might have an interest.

Decision

The court agreed with the Lord Ordinary that part 2 of the 2003 Act provides a coherent, self-contained statutory scheme: [2023] CSIH 16. If the Sweeneys' submissions were correct, that structure would be wholly undermined. There having been no challenge under s 25(8) to the timeous, repeated registration of the Urquharts' interest, and no notice of termination under s 25(13), the Urquharts enjoyed an enforceable right to buy in terms of the Act. It was too late for the owner to raise a challenge under s 25(8).

If the registration was unchallenged, the court added, it might subsequently cease to have effect if the tenanted land was reduced, or the registration was rescinded, or the lease terminated, or five years passed without renewal of the registration. None of these had happened. Section 25(12) addressed post-registration changes of circumstances: if a notice of tenant's interest in acquiring the land was inaccurate, for example by claiming an agricultural tenancy when this had already ended, the owner's remedy was to challenge it in terms of s 25(8).

There was nothing inherently wrong or nonsensical in the proposition that an owner or third party might be able to prove there was no tenancy, or any tenancy had ended, but an extant registered interest plus operation of the notice provisions nonetheless created an enforceable right to purchase. In other words, a tenant's right to buy was a statutory right wholly dependent on the part 2 scheme. If an owner neglected their own interests, they had to take the consequences.

Commentary

While writing this article, it occurred to me to wonder if there is always compliance with s 25(13), notifying the Keeper when a tenancy is terminated. It is not impossible to imagine a situation, particularly if the termination was amicable, where the landlord assumes the registration is defunct. Registration in such circumstances will expire after five years. However if the owner wants to sell before its expiry, the landlord must take steps to have it removed otherwise there would, on the face of the register, be an existing registration requiring intimation in terms of s 26. It is perhaps unfortunate that the online RCIL, including agricultural tenant's right to buy, is no longer available except by contacting customer services at Registers of Scotland, as I think it might be prudent, if acting for a landlord, just to check that there are no registrations sitting there which should be removed.

Succession

YVONNE EVANS,
SENIOR LECTURER,
UNIVERSITY OF DUNDEE

The Charities (Regulation and Administration) (Scotland) Act 2023 received Royal Assent on 9 August 2023. The legislation modernises and tidies up some aspects of regulation of charities in Scotland. It will enhance accountability, for example, by requiring charity trustees to be named in the Scottish Charity Register, and publication of charity accounts. The new legislation is important not only to charities specialists, but to all who draft charitable legacies in wills.

Charitable legacies are very common in wills. Under the current law, when a charity changes its legal form, or merges with another charity, the original beneficiary no longer exists, and therefore cannot receive a legacy. Well drafted wills prevent the potential loss of such a legacy by incorporating a standard additional clause giving discretion to executors to redirect the legacy to a successor charity. Such drafting can be useful, but cases such as *Vindex Trustees Ltd* [2021] CSIH 46 demonstrate that these clauses do not guarantee that the distribution will be trouble-free.

From the charity's perspective, the risk of losing valuable legacies has meant that it is not sensible to wind up the original charity, even where all the assets have been transferred to a new legal entity or another charity. Trustees have opted to keep the original charity in existence to receive any legacies, necessitating extra administration and compliance, as well as cluttering the Scottish Charity Register with "shell" charities.

Default position reversed

The new provisions, which come into force on a day to be appointed but will apply to wills made before that date, seek to resolve these practical issues. Section 13 of the Act creates a new record of charity mergers, which allows for the automatic transfer of legacies to a successor charity. A "charity merger" covers the situation where assets of one or more charities are transferred to another, or where the charity changes its legal form (commonly to a SCIO). This shift is in line with the law in England & Wales. It is in effect a reversal of the current default position.

These provisions mean that, where a merger is on the record, the successor charity will automatically be entitled to a legacy bequeathed to the original charity, *unless it is clear from the terms of the will that the testator intended otherwise*. The testator still has control, but must now opt out of the transfer, rather than opting in to the transfer of the legacy. The provision makes it clear that the inclusion of a destination-over would not of itself be evidence of an alternative intention. When instructions are taken, testators should be asked what they would like to happen if the charity merges or changes form. If they have a strong attachment to that specific charity, and not to similar or successor charities, they might choose not to have the legacy transfer automatically. In such a case, the will or codicil should clearly state that the legacy is not to be paid to a transferee under a charity merger.

Sport

BRUCE CALDOW,
PARTNER, HARPER
MACLEOD LLP

Caster Semenya's latest challenge against her treatment in athletics has nearly reached its final lap. The latest decision, on appeal to the European Court of Human Rights from the Swiss courts, has the potential to cause widespread reassessment of how sports are organised.

Under World Athletics regulations concerning differences of sex development ("DSD Regulations"), female athletes cannot compete (in certain elite competitions) where their testosterone levels are elevated above a set level. This rule would thus require the affected individual to take hormone suppression medication or treatment and reduce their testosterone to the permitted level.

The DSD Regulations essentially seek to provide a contribution to the protection and regulation of natal-female-only sport, in eight events in elite athletics. The regulations, on being brought in in 2019, were challenged by Semenya in the Court of Arbitration for Sport, unsuccessfully. Semenya rejected the notion that she should consume oral contraceptives which would bring her testosterone into the accepted

level. The CAS declared the regulations to be discriminatory in effect, but necessary.

An appeal to the Swiss Federal Tribunal then failed, as the decision was declared consistent with Swiss public policy (which is the avenue of challenge to a CAS decision). Noting that the DSD Regulations did impact on Semenya, the impact was justified. However, in the latest lap of litigation and by a majority of four to three, the ECtHR favoured Semenya. In the majority view, the Swiss Federal Tribunal had not sufficiently scrutinised the decision of the private, non-state, Court of Arbitration for Sport. It had exercised limited supervision of the decision-making, by not requiring better reasoning for the intrusion to the rights impacted by the regulations. The decision-making was insufficient to protect people within its jurisdiction from discrimination.

Key considerations

To begin with, the curiosity of the ECtHR ruling over a Swiss court in relation to a governing body (World Athletics) based in Monaco, over Semenya, a South African citizen and resident, was overcome, with the arbitration to CAS and submission to CAS's decision-making in Switzerland. The ECtHR was thus a permissible avenue of challenge. This was the subject of significant argument, including as to whether the effect of the judgment would result in the CAS relocating out of Switzerland to a country outwith the reach of the Council of Europe and so the ECtHR.

In the substance of the debate, key was whether, accepting that Semenya's sexual characteristics related to her private life and that the DSD Regulations impacted on both her sexual characteristics and (in the majority view) her sex, in a detrimental way, the Swiss Federal Tribunal had applied the positive obligation on Switzerland to protect against discriminatory treatment arising out of the application of the regulations. Case law (*IM v Switzerland*, App 23887/16) holds that where inadequate reasons are given, an interference with article 8 rights will be unjustified. The ECtHR thus looked at whether there had been sufficient "institutional and procedural guarantees" in the Swiss system.

The court opined that there would be the need for strong justification, and found areas where the protection offered was inadequate, including the absence of express reference to human rights in the CAS decision; that the Swiss public policy test did not accord with the positive obligations imposed under ECHR; and that the Swiss Federal Tribunal ought to have considered whether the DSD Regulations treated intersex athletes in the same way as transgender athletes, when there were arguably good reasons not to do so. In conclusion, the court felt that there were not sufficient institutional and procedural protections afforded to Semenya to have her complaint of discrimination determined. Violations of articles 14 (not to be discriminated against), 8 (private life) and 13 (effective remedy) were thus pronounced.

Implications

An appeal to the Grand Chamber may well be pursued, particularly given the narrow majority and concern that this will cascade ECHR across sports regulation globally, presenting an unreasonable burden on sports regulation, complaints and disputes mechanisms. One key message to sports is that at a time when policy advocates and rulemakers are under an increasing obligation in sport to have regard to and balance the preservation of safety, fairness and single sex sports, in particular natal-female sport, while opening avenues for inclusivity and participation, very careful and documented decisions are required, with detailed reasoning.

IN ASSOCIATION WITH

My Executor Box

Executry assets: a modern solution for solicitors and clients

Introducing My Executor Box, a simple, safe and secure digital platform to help executors and beneficiaries record and recover all financial assets

Sadly, when a client dies, often the solicitor and executor are left with an almost impossible task of finding and securing all the assets for the beneficiaries.

That can mean long, costly delays and difficult conversations with bereaved families and friends who don't fully understand the complexities and obstacles in the financial and legal process.

Now there is a simple, safe and secure digital vault solution where your clients can store their information by asset type, including bank accounts, investments and property.

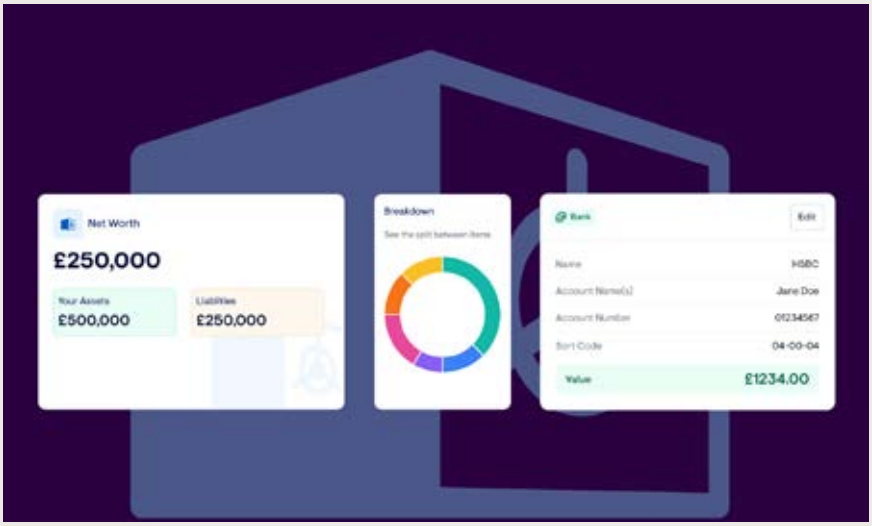
Scottish entrepreneur Alan Wardrop has set up My Executor Box, which allows people to collect details of their assets in one place, so when they die they are readily available.

Why the need?

The financial services expert and My Executor Box founder first got the idea when he was reviewing services for a legal firm. "I set up their financial services division and helped out in every department," said Mr Wardrop. "I saw people walking into the executry department with a plastic bag full of bank books and life insurance. It was a shambles and a shame at such a difficult time. It always stuck with me – there had to be a better way for both executors and solicitors."

A special seminar for solicitors explaining the service was held in the Blythswood Hotel in Glasgow on 14 September. Glasgow-based Archibald Sharp is the first firm of solicitors on board following the launch. James W Craig, a solicitor at Archibald Sharp, said: "My Executor Box is an innovation which is overdue in our modern online world. It will really help clients, executors and solicitors and deliver a quicker, more efficient executry service when required."

Affiliated solicitors' clients receive a 10% discount on subscription fees, and solicitors an income share. There is also a referral scheme to introduce new legal business to participating legal firms.

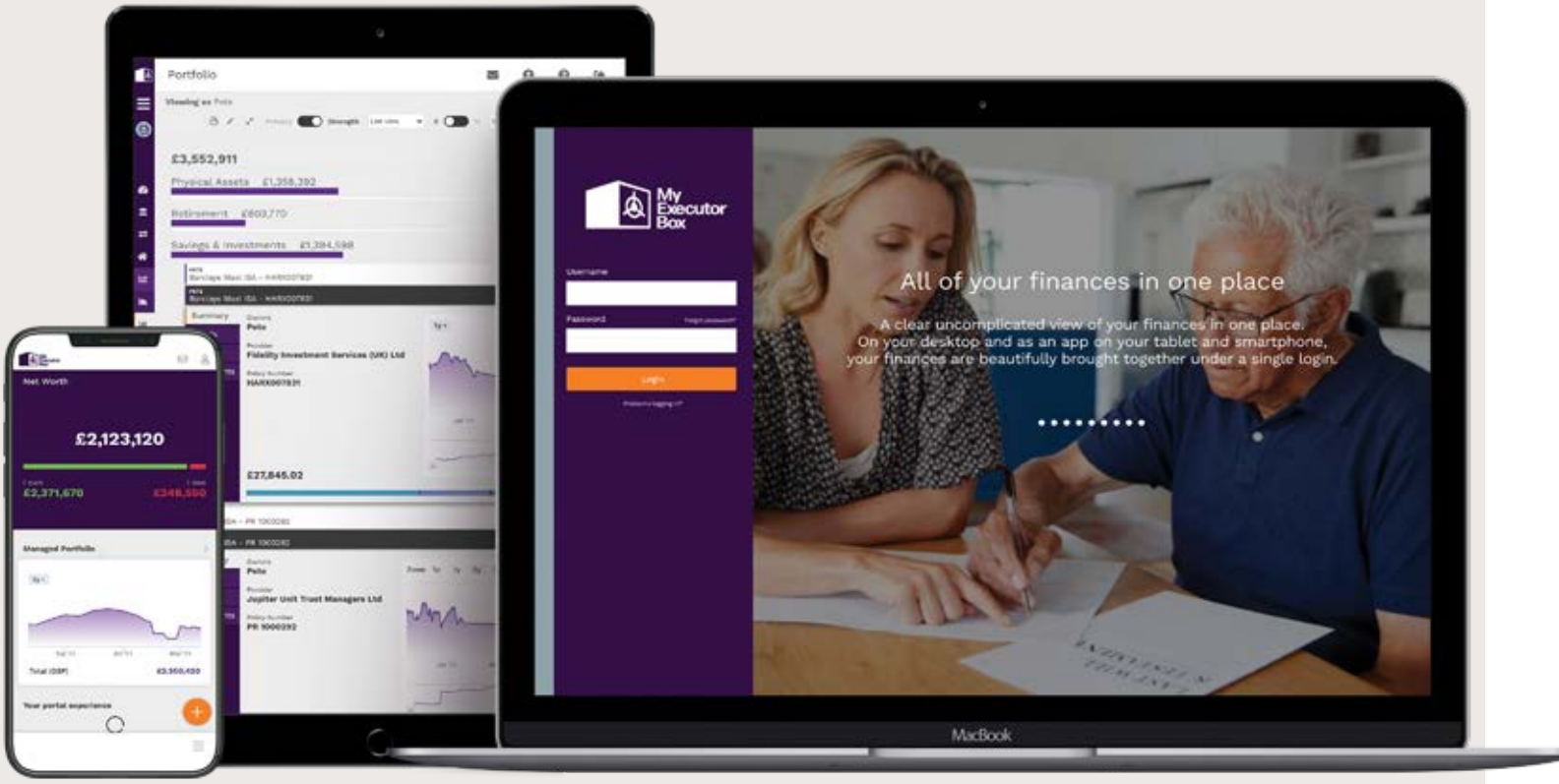


Digital vault

Mr Wardrop has bankrolled the business himself after the multi-million pound sale of his financial services company. He said: "When I sold up I had the time and money to revisit this. For me, the idea is, you make a will, and the next thing you do is you make an Executor Box."

The digital vault, which can be set up through affiliated solicitors or individually online, allows people to store their information by asset type. It also records mortgages and loans to provide a picture of the person's net worth.

Mr Wardrop said: "I want to develop a network of affiliated solicitors, and firmly believe that together we can revolutionise the executry market with a really simple and easy to use online platform where people can control who can view their assets and when. And obviously, and importantly,



it uses robust technologies and best practices to meet online security standards."

Beware the Government grab

Sadly, since 2008, the failure to trace assets has meant the UK Government has seized £1.6 billion lying in dormant bank accounts from the Dormant Bank and Building Society Accounts Act. And last year that financial grab was extended to include pensions, investments, shares and property.

The days of old paperwork and bank books in drawers are gone, and organisations now correspond electronically. That can often mean it's harder for non-digital natives to keep on top of their affairs, making it near impossible for executors to find all the assets without details and proof.

"The executry area was where the vast majority of seized assets were coming from, and in a digital online age, no family member or executor should have the additional trauma of trying to find those records in the event of a loved one dying," said Mr Wardrop.

"My Executor Box is a safe, simple and secure solution to ensure that money is not lost, and the estate affairs are not needlessly delayed with the additional stress and costs for the bereaved.

"I'm also catering for people that are not technology savvy, and have a team in Glasgow who will help, advise and even visit people in their homes to help them get started."

Support at a difficult time

As an executor, there is a heavy legal responsibility at a difficult and emotional time. Making that role easier was one of the driving forces behind the launch of My Executor Box. Mr Wardrop explained: "It was becoming very clear in my conversations with my clients, family and friends that dealing with the financial side of a bereavement was particularly stressful and difficult when there were incomplete financial details of the assets.

"With my own financial background and having sold a multi-million pound business, I then invested in creating an online solution which would help families, executors and solicitors with the process. My Executor Box is incredibly easy to use, meets robust online security standards and makes executing your will and wishes a straightforward process."

Not only does it record your assets in an easy to use format by asset type, including bank accounts, investments and property, but you can control who can view and assist you by inviting your executors to access your Executor Box as and when you wish. It allows for up to five people to be executors and you can control when they get access.

In addition, you can easily upload documents including your will or power of attorney, as well as record your wishes and messages for family members in the future.

Testimonials

The platform solution has been widely praised. Retired banker Ian Reid OBE said: "As I have grown older my thoughts have turned to the question, would my family really know where my money is if anything happened to me? It's been a real concern. As a former banker I can see the need for a solution and I believe My Executor Box could be the answer."

Professor Jeffrey Aronson added: "Our executor is a retired financial adviser and has recommended My Executor Box to ensure both we and him know what savings we have and where to find them."

Mr Wardrop said: "Often people leave these crucial planning decisions till too late. We would encourage people to ensure they have a will and that they appoint an executor who, in the event of a death, will have secure access to all financial records through My Executor Box.

"Planning for the future can prevent so much additional heartache and we are actively working in partnership with law firms to get that important message across."

The Executor Box platform is affordable, with monthly subscription from £5.99 or annual fees discounted to £59.99. Alternatively, you can pay a one off lifetime subscription of £499.

For a free trial of the service (without the need for card or bank details), scan the QR code or go to myexecutorbox.co.uk for further details.

SLCC has moved!

The SLCC has moved office from 4 September 2023. Its new address is Scottish Legal Complaints Commission, Capital Building, 12-13 St Andrew Square, Edinburgh EH2 2AF. Email addresses, phone numbers and DX number are unchanged.

The organisation is downsizing its office space, following a substantive programme of work to develop new ways of working, investment in upgraded IT infrastructure and a drive to digital to improve efficiency and reduce the need for physical storage. The move will achieve £500,000 in cost savings over the next five years. The SLCC urges firms to continue to use digital means of contact wherever possible, but to use the above address for any necessary postal correspondence.

Firms are also reminded that rule B4.2.f requires them to signpost clients to the SLCC in their letters of engagement/terms of business letters, with its current contact details, so these should also be updated.

Global opposition to bill's ministerial powers

Lawyers globally have joined the Scottish legal profession in opposing the proposed ministerial powers in the Regulation of Legal Services (Scotland) Bill.

In a stage 1 submission to the Scottish Parliament, the International Bar Association said it was "worrying to see the Scottish Government proposing a course of action which would undermine the constitutional principle of legal independence". Highlighting how the principle of an independent profession is being tested and challenged across the world, "often, but not exclusively, in autocratic and dictatorial regimes", it said it was "disturbing" to see the Government attempting to secure powers of control, and "shocking" that it sought the power to appoint itself as regulator.

Likewise the Commonwealth Lawyers Association emphasised that "the most likely opponent any lawyer's client will encounter... is the government or its personnel or agencies. For this reason, there is no other profession which has such a significant concern if its most likely opponent is also its regulator".

Published responses to the bill can be found on the Parliament's website.

Edinburgh sheriffs' Autumn Talks

Edinburgh Sheriff Court has announced its Autumn Talks for 2023, following the successful spring series.

Three presentations aimed at criminal practitioners in particular will provide an opportunity to learn or refresh court presentation skills. Each comprising one or two talks delivered by a sheriff, the aim is to enhance oral presentation skills, covering topics such as conduct and presentation in court and best practice. Taking place within the court at 27 Chambers Street, Edinburgh, from 4.30-5.30pm, the talks are:

Thursday 21 September: Asking better questions (Sheriff Auchincloss and Sheriff S Fraser), covering how to ask both open and closed questions to build a narrative; effective cross-examination and re-examination.

Thursday 28 September: Introduction to summary criminal advocacy (Sheriff S McCormack), focusing on the custody court and trials court, including motions for/against bail and general advocacy "dos and don'ts".

Thursday 5 October: Introduction to solemn criminal advocacy (Sheriff Stirling and Sheriff Keir), covering key rules relating to first diets and the sheriff's expectations, and effective conduct of a trial.

CPD points can be claimed. Attendance is free, but registration is required by 12 noon on the day. Please register with Margaret McCrimmon at MMcCrimmon@scotcourts.gov.uk

Feedback didn't go down well

ASK ASH

When your manager doesn't appreciate your honesty

Dear Ash,

During a recent review, I was asked for feedback regarding management, and although I was encouraged to be honest to allow a frank discussion, it now seems that my line manager is not happy with the "tone" of my feedback. She has made clear that she was surprised and frustrated by my comments, particularly my feelings of being unsupported and lacking direction by management at times. I have tried to explain that this was not just directed towards her but to senior management as a whole, but she still feels betrayed; and I am now regretting saying anything.

Ash replies:

You seem to have been caught between a rock and a hard place: you were asked for feedback and tried to be honest, but this has clearly backfired.

You may have been talking about management as a whole, but whether you meant it or not, this does still include your direct line manager too.

However, it may be worth trying to provide more context to your manager to allow her to understand your position better. I suggest letting things calm down a little first, then perhaps in a week or two suggesting a coffee with her to talk things through.

In advance, I suggest you prepare a couple of examples where you felt unsupported but explain the context of broader management issues. Perhaps also make clear how you understand the pressures that your manager is under, and that you had not been directing criticism at her directly; and appreciate that she too is bound by wider restrictions and pressures from senior management.

Dealing with management can be like walking a challenging tightrope, and there are clearly many sensitivities involved. In future, for your own peace of mind, I suggest that you focus on the context of any feedback more closely before embarking into the minefield of constructive criticism.

PUBLIC POLICY HIGHLIGHTS

The Society's policy committees analyse and respond to proposed changes in the law. Key areas from the last few weeks are highlighted here.

Charities Bill

The Society's Charity Law Subcommittee was pleased to note that the Charities (Regulation and Administration) (Scotland) Bill received Royal Assent on 9 August. The Society issued a briefing ahead of the stage 3 debate on the bill. As in previous engagement, the briefing highlighted that the bill's reforms are generally sensible and proportionate. It welcomed changes made during parliamentary scrutiny, particularly in relation to endowments and the removal of the 42 day rule.

However, the briefing re-emphasised that a more comprehensive overhaul of charity law is still required. The Scottish Government has committed to a wider review of charity law, and the subcommittee will continue to press for further clarification of the scope and timescales for this in early course.

Find out more at the Society's page on the bill

Circular Economy Bill

The Society's Environmental Law Committee responded to the call for views on the Circular Economy (Scotland) Bill. It welcomed the introduction of the bill, which aims to develop Scotland's circular economy – a model guided by the principles of reducing the use of goods and materials, creating less waste, and increasing the reuse and recycling of items and products.

The response considered the range of proposals under the bill, which include provisions for Scottish ministers to publish a circular economy strategy and set related targets; powers to set a minimum charge for single-use items; powers to limit the disposal of unsold consumer goods; increased penalties for littering from vehicles; and measures aimed at reducing and monitoring waste in Scotland, as well as ensuring householders and businesses dispose of waste in the correct manner.

As many of the proposals provide ministers with powers to make regulations, the response noted relevant considerations and points where further detail would be welcomed in the secondary legislation. For example, in relation to the disposal of unsold consumer goods, the response considered the categories of products which may be excluded or prioritised. It noted that it would be appropriate to prioritise products with a high raw material or energy input, e.g. where rare minerals have been used in production or there is likely to be high product turnover due to trends rather than functionality of the product itself (such as clothing and electrical items).

The response also noted that greater clarity and consideration on the operation of the UK Internal Market Act 2020 would be welcomed, given that this will be relevant to how many of the bill's proposals would operate.

Find out more at the Society's page on the bill

Welfare of Dogs Bill

The Rural Affairs Subcommittee responded to the call for views on the Welfare of Dogs (Scotland) Bill, a member's bill introduced by Christine Grahame MSP.

The bill aims to improve the health and wellbeing of dogs by establishing a more responsible and informed approach to acquiring and owning a dog. Its proposals include a new code of practice that should be followed by someone considering acquiring a dog as a pet or selling or giving away a dog to someone else. The bill also aims to regulate the sale or gifting of puppies from unlicensed litters.

From a legal policy perspective the response welcomed measures to increase animal welfare standards in Scotland – although it highlighted concerns about the drafting of the bill and whether it meets its intended objectives.

It acknowledged that the proposed questions for inclusion in the code of practice – e.g. whether the breed of dog is suitable for the owner, and whether there would be suitable arrangements for walking, exercising and playing with the dog – are important considerations for people intending to own a dog. It noted, however, that such questions and accompanying examples are more appropriately included within statutory guidance or codes of practice, rather than primary legislation.

It further highlighted that as the code of practice does not have any enforcement mechanisms or consequences for breach, this may lead to challenges in ensuring compliance. It also expressed concern at the proposals to consider whether the code of practice was complied with, as evidence when establishing liability for a relevant offence under the Animal Health and Welfare (Scotland) Act 2006.

Find out more at the Society's page on the bill

Find out more about the Society's work at www.lawscot.org.uk/research-and-policy/influencing-the-law-and-policy/

ACCREDITED SPECIALISTS

Charity law
Re-accredited: ALAN GILFILLAN, Gillespie Macandrew (accredited 28 August 2018).

Employment law
CAROLINE MAHER, Morton Fraser (accredited 21 August 2023).
Re-accredited: NOELE McCLELLAND, Thorntons Law (accredited 24 June 2013).

Family law
Re-accredited: MARIKA FRANCESCHI, Franceschi Family Law (accredited 23 August 2013).

Intellectual property law
Re-accredited: NEERAJ THOMAS, CMS Cameron McKenna Nabarro Olswang (accredited 30 October 2018).

Liquor licensing law
NIALL HASSARD, TLT (accredited 21 August 2023).

Personal injury law
Re-accredited: CRAIG BROWN, Digby Brown (accredited 19 April 2018).

Trusts law
LINDSAY MACEWEN, Harper Macleod (accredited 22 August 2023).

Over 600 solicitors are accredited as specialists across 33 diverse legal areas. If you are interested in developing your career as an accredited specialist, see www.lawscot.org.uk/specialisms to find out more. To contact the Specialist Accreditation team, email specialistaccreditation@lawscot.org.uk

ACCREDITED PARALEGALS

Civil litigation – family law
JAYNE STEWART, Balfour + Manson LLP.

Civil litigation – reparation law
LUKE McNAUGHTAN, Morton Fraser LLP.

Commercial conveyancing
JENNIFER CALLAGHAN, Wright, Johnston & Mackenzie LLP

Immigration law
REBECCA GRAY, Innes Johnston LLP

Residential conveyancing
CHLOE MATTHEWS, Brodies LLP; GAIL ROBERTSON, BBM Solicitors Ltd; SHARON SANDISON, Jardine Phillips (Scotland) Ltd; LISA SMITH, Blair & Bryden; CAROLINE STEWART, Aberdein Considine & Co.

OBITUARIES

IAIN JAMES ROSS FLETT WS (retired solicitor), Stirling
On 12 July 2023, Iain James Ross Flett WS, one time employee with Stirlingshire Educational Trust, Stirling.
AGE: 76 ADMITTED: 1971

A full appreciation of David Preston is on p 48

MONEY LAUNDERING

PSC: a pain, but don't ignore it

Q. How does the register of Persons with Significant Control fit into the AML regime?
A. Somewhat awkwardly, but it can't be disregarded.

Q. Is a PSC register helpful for AML?
A. Kind of. The register of "Persons with Significant Control" was brought into UK law in 2016 in an effort to make ownership of UK companies more publicly accessible and transparent. It requires UK companies to identify certain individuals who have significant control over them, most often by way of holding more than 25% of shares in the company, holding more than 25% of voting rights in the company, or having the right to appoint or remove the majority of the board of directors.

Q. Ah, like a register of "beneficial owners"?
A. Kind of, but no. A PSC listing, generally governed by the Companies Act, might not be a beneficial owner ("BO") per the UK Money Laundering Regulations.

Q. But they have the same meaning?
A. Kind of, for the most part, but the mechanics of choosing who must be listed in the PSC register are different. The most obvious example of this is that having a UK parent company that is also subject to the requirements means you may only have to list that parent, instead of looking all the way through to a beneficial owner. As long as the parent above has its own reporting requirements (called a relevant legal entity or "RLE"), the ultimate beneficial owner may not be shown on the PSC register. In the image shown here, each company need only list the parent above until visiting company C's register would yield the beneficial owner.

Q. So, if the company goes offshore, the ultimate beneficial owner/PSC will be on there?
A. Kind of, but not always. Where a person holds an indirect interest in a UK company, through layers which go offshore, that person must generally hold a *majority* stake in order to be listed. If you followed an ownership structure through UK shareholdings and arrived at a company on some far-flung beach, and the owners were deadlocked as 50-50 shareholders, they may not (depending on certain other particulars) actually appear on the PSC register at all.

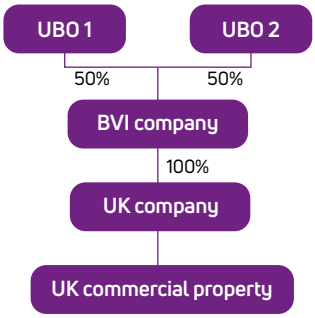


Figure 2: The "Beneficial Owners" Register of UK Companies: A Consideration of Problem Areas Arising from the Legislation. Mondaq Online.

Q. That doesn't sound as useful as we'd probably hoped for. I think I'll just ignore the PSC register for AML purposes.
A. Not allowed. The Money Laundering Regulations (reg 30A) create an obligation on firms to check the register for discrepancies between the PSCs listed and what you find in your beneficial ownership checks.

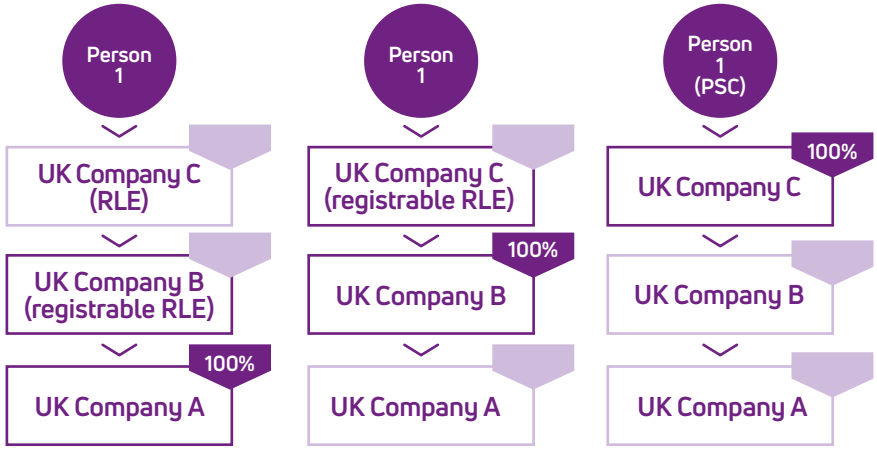


Figure 1: From the Department of BEIS Non-Statutory Guidance

Q. That can't be right? Since the PSC regime under the Companies Act is different from the beneficial ownership regime under the Money Laundering Regulations, there may well be differences which are entirely legitimate.
A. It's true that they are different. Your compliance with that area of the Money Laundering Regulations now obliges a review of the nuanced differences at play between those regulations and Companies Act legislation and guidance.

Q. Ouch: a sort of AML stealth tax on resource, using the Money Laundering Regulations to prop up the Companies Act. Anything else?
A. Yep – you must also file a report to Companies House if you find a true discrepancy.

Q. Terrific! Is there more, or is that it, having to report all of these true discrepancies?
A. Not all of them...

Q. But you just said...
A. I know, but there's a whole other thing about "material discrepancies".

Q. What's a mat–
A. Don't. I only get 800 words for this. (Guidance is available from Companies House.)

Q. So, hang on. There are BOs and there are PSCs. BOs are probably PSCs, but PSCs aren't always BOs because the PSC register might show RLEs as PSCs; and even going offshore, which would ordinarily mean a true BO should be listed, doesn't actually guarantee transparent listing as a PSC since they might not meet the requirements, but we have to check the PSC register and see if it aligns with our understanding of BOs even though it might legitimately not, and if it doesn't align we have to report that?
A. Yes.

Q. Well, there's a lot going on there. But at least the PSC register is something we can now rely on, with all the work put into it?
A. Actually, the Money Laundering Regulations make clear (reg 28) that you cannot rely on the information in the PSC register– not solely anyway.

There are several nuances and twists in the PSC/RLE regime, and I have obviously not covered everything that could have been covered above – no letters, please. The UK is working its way towards a place of greater safety, and all good solicitors and compliance staff will be on board with that while the framework remains reasonable. If you could use a hand understanding things, drop me a line or check out the Law Society of Scotland's own AML course for legal professionals.

Fraser Sinclair is head of AML for MacRoberts LLP and runs the AML consultancy brand AMLify

Creative lawyers?

Creativity and excellence in legal practice go hand in hand, believes Stephen Vallance, who offers some tips on how to stimulate that ability

I am always amazed at the breadth and depth of creative talents within our profession. Everywhere I go, I meet great practitioners who are also skilled in art, music or a myriad other creative pastimes. I have often pondered the link between creativity and great legal practice, and whether creativity is a skill that is too often overlooked.

Navigating the complexities of the legal world, solicitors require sharp analytical minds and a profound understanding of the law. However, I believe creativity is another ally in the pursuit of legal excellence. While the law may seem primarily governed by logic, nurturing and stimulating creative activities can significantly enhance our problem-solving abilities, strategic thinking, and overall effectiveness in practice and business. Here I'd like to explore what I believe are the links between creativity and the law, along with some practical suggestions on how we can include creative practices in our professional lives.

The power of creativity

Creativity is often associated with art, but it extends far beyond the realm of painters and writers. In the legal field, creativity involves thinking outside the box, finding innovative solutions to complex problems, and effectively communicating arguments. All skills I am sure you would agree are key to good practice, but could we be better at them? Here are a few key ways in which creativity benefits practitioners:

1. Problem-solving: We often require to navigate intricate scenarios to find viable solutions to a dispute. Creative thinking allows us to consider alternative perspectives and devise novel strategies to tackle both legal and practical challenges.

2. Strategic thinking: In almost every aspect of the profession we must anticipate and counter opposing agents' moves. Creativity empowers us to foresee potential outcomes, plan contingency measures, and adapt to evolving situations.

3. Effective communication: Crafting compelling arguments and persuasive speeches requires more than a touch of creativity. So does communicating complex legal issues in simple and understandable ways to clients. Those of us who can express complex legal concepts in clear and engaging ways can sway courts and clients alike.

4. Empathy and client relations: Understanding the human element in legal matters is crucial. Creative thinking can help empathise with clients, grasp their unique circumstances, and address their specific needs more effectively.

Creativity and right-brain thinking

The human brain is divided into two hemispheres. The left hemisphere is associated with logical thinking, analysis, and language processing, while the right is linked to creativity, intuition, and emotional intelligence.

Legal education and practice tend to heavily emphasise left-brain thinking, often overlooking the significance of right-brain engagement. However, research has shown that integrating creative activities that stimulate right-brain thinking can enhance overall cognitive abilities and create a well rounded approach to the legal profession and to life generally. Like any muscle within our bodies, if we only ever exercise one and not others we will in time begin to look and feel imbalanced. Similarly, Albert Einstein, a mathematical genius, was also an excellent self-taught violinist, and many attribute this to his mathematical creativity.

What can you do to help?

1. Embrace the arts: If you don't already, engage in artistic pursuits. It can be painting, writing, playing a musical instrument – or any activity that encourages creativity, imaginative thinking and emotional expression.

2. Mindfulness and meditation: Mindfulness practices can calm the mind and allow ideas to flow more freely. Meditation enhances focus, clarity, and creativity, enabling us to approach legal challenges with a fresh perspective.

3. Brainstorming: Organise regular brainstorming sessions with colleagues to explore innovative solutions to problems. Encourage an open and judgment-free environment to facilitate creative thinking or, as I like to say, "There are no stupid ideas here."

4. Creative writing: Write short stories or legal-themed fictional narratives to sharpen your ability to craft compelling arguments.

5. Visual thinking: Utilise mind maps, flowcharts, and other visual aids to organise complex legal concepts to facilitate better understanding. Visual thinking can help you grasp connections between different aspects of a matter and identify new approaches. Our brains often work better with images than words.

6. Games and puzzles: Puzzles, crosswords and strategy games stimulate cognitive agility and creative problem-solving skills. My personal favourite is chess, with its requirement to be always considering my opponent's next moves.

7. Creative workshops: Attend workshops outside the legal field, such as improv classes or design thinking workshops, to experience new ways of problem-solving and thinking on your feet.

Conclusion

The integration of creativity alongside traditional left-brain thinking can yield remarkable benefits. Within our profession we are already problem-solvers; perhaps though we could develop into even better ones. By embracing creative activities and stimulating right-brain thinking, we can enhance our problem-solving abilities, strategic thinking, and communication skills, and become more effective practitioners. More importantly, we need to encourage a culture of creativity within our practice and more generally to foster innovative solutions to some of the complex client issues that face us.

Stephen Vallance works with HM Connect, the referral and support network operated by Harper Macleod

The RFPG in Glasgow will be running a Creativity in the Law showcase in the spring of 2024 to highlight practitioners' creative skills. If you'd be interested in becoming involved, see www.rfpg.org/post/creativity-in-the-law-exhibition-2024

RISK MANAGEMENT

Conveyancing: avoiding the pitfalls

Solicitors on the Master Policy legal panel flag matters that continue to give rise to claims against conveyancers, residential and commercial, and how best to avoid them

In December 2022 the Scottish Legal Complaints Commission published its Annual Report for the year to 30 June 2022. It highlighted the top five areas of the law for service and standards complaints. Perhaps unsurprisingly, the most complained about sector was residential conveyancing, at 24% of the total.

However, it is not just residential conveyancers who are exposed to complaints or claims. In our role on the legal panel for the Master Policy, we are also seeing an increasing number of claims associated with commercial transactions.

Drawing on the conveyancing claims the professional negligence team at Brodies has dealt with, we outline below five common pitfalls for conveyancing solicitors and how best to avoid them.

Be clear about your instructions

This sounds simple, but one of the most common issues we see is where practitioners are claimed to have failed to understand or check their client's instructions precisely.

As a starting point, conveyancers should have a clear understanding of who their client is, yet this is not always as simple as it seems. Take for instance scenarios involving trusts or pension funds, where the individual providing you with instructions will often not be the named client. It is crucial to be clear about who precisely is relying on the advice you are providing, as those are the people/entities to whom you most obviously may owe a duty of care.

Another complex area is who is to own the property on completion of the transaction. For instance, if there are multiple sources of funds, conveyancers need to ensure they have clear instructions on how ownership should be taken. In some circumstances the property may need to be held by a trust or owned by a company, and there are often very specific instructions to take into account pertaining to what happens to the property on the owner's death.

Conveyancers must also be clear about the scope of their instructions. For instance, they must be clear if they are not providing advice in relation to what they may regard as specialist areas like tax planning or environmental law, not only at the start of the transaction but on an ongoing basis, to avoid accidentally straying beyond intended scope in an effort to be helpful.

Strong communication with the client from the outset is key: and make use of file notes, checklists and forms to ensure the client's instructions are clearly documented.

Much of this ought to be confirmed clearly in your letter of engagement at the outset. This should also make clear to the client who their point of contact is, how you intend to communicate with them and who you will take instructions from. If there is more than one client, all of them ought to be in no doubt as to who is regarded as the main point of contact.

This article was authored for Lockton by **Stephanie Barratt, Alisdair Matheson** and **Alan Calvert** of Brodies LLP

Check the title

Complaints frequently arise because clients purchase a property, only to find out later that it is not quite what they understood they were buying. This can be for a number of reasons including:

- an assumption they have access rights the title doesn't provide;
- a belief the property goes beyond that specified in the title; or
- the title contains a number of burdens and/or maintenance obligations they were not expecting.

Unfortunately, these issues can arise due to lack of care by the conveyancer when examining the title or explaining the extent of the client's title and/or any onerous conditions or obligations it may contain.

There are several effective steps which can be taken to reduce the risk of that happening. Check with the client that the title and any relevant plans match their understanding of the property as they have viewed it and the home report describes it, and confirm that they understand them and their implications.

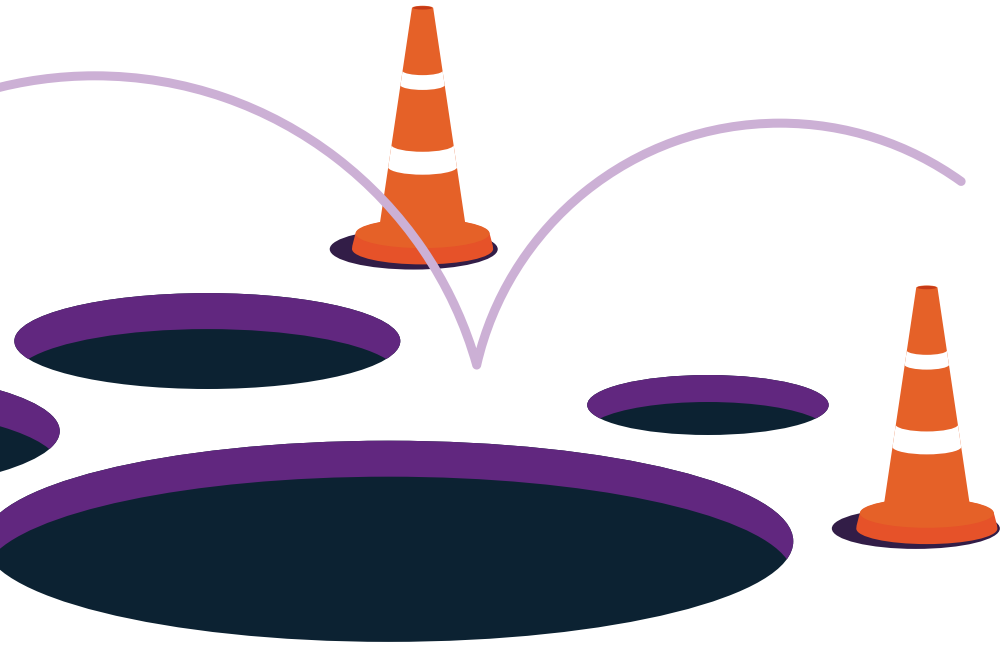
Drafting a report on title for the client, even if it is time consuming, helps to lay out any relevant title conditions, servitudes and findings from legal searches, while also giving them the opportunity to consider the information and raise any concerns they might have.

Keeping detailed records and file notes of information provided to the client, and their response confirming they understood, is of utmost importance and can be invaluable at a later date if a client decides to raise a claim or complaint, disputing the information or advice given.

Register deeds timeously

One of a conveyancer's crucial responsibilities is to ensure that any registrable interest or rights over land are accurately registered in the Land Register within a specified period. Likewise, when a property is sold, it is their responsibility to ensure that any registered charges are discharged. Failure to fulfil either of these tasks could result in a claim or complaint. We have seen many claims arising from a purely administrative failure to register a deed leading to significant consequences, including buyers discovering some time later that they don't actually have title to the property they have paid for and are living in, or that a prior security has not been discharged and a lender has an ongoing interest.

One effective method to manage the signing and registration of deeds is to use checklists and reminders as you move through a transaction. These checklists could include referencing which documents need to be drafted and when, helping the conveyancer keep on top of deadlines to ensure deeds are signed and returned, while



keeping stress levels as low as possible. It also makes sense to have a post-settlement checklist or reminder system in place to ensure that deeds requiring registration are submitted to the Land Register and an updated title sheet obtained showing the correct details of the new proprietors and the removal or addition of charges.

Pay attention to searches

Several aspects of conveyancing have been standardised over recent years, particularly in residential conveyancing, which can make transactions seem routine. It is important to treat every case independently and consider exactly what legal searches and reports are required in each individual set of circumstances. This will depend on the property's location and its current and future use, all of which should be established. For instance, some commercial properties will require types of environmental reports that would not need to be taken into consideration during a residential transaction.

It is important that care is taken to obtain all necessary searches and reports and that they are reviewed properly. Unfortunately, we have seen many examples where solicitors have been found negligent because, although they have obtained the relevant search, they have not followed up on an area of concern as diligently as they should or advised a client of the potential consequences of an entry.

Remain vigilant against cybercrime

Cybercrime is on the rise, and firms within the conveyancing sector are among the most targeted due to the large number of high value transactions and transfers of funds that they carry out daily.

The Law Society of Scotland has noted that fraud committed through the interception of solicitor/client emails is a particular area of concern and very much on the rise. There are a few steps which can be taken, however, to help to reduce your firm's susceptibility to fraud committed in this manner.

Perhaps the most important is to ensure that you make your client aware of the risks presented by this type of fraud and ask them from the outset to be vigilant when communicating with you via email. Your client should be reminded to check any emails received from your firm carefully and should know who to contact should they have any concerns. The differences between genuine emails and scam emails can be small and nuanced, such as one letter differences in an email address or near facsimiles of branding or logos.

You can also look at installing a third-party secure email messaging system to minimise the risk of communications being intercepted or impersonated.

Another way to help minimise risk is to inform your client of your client account details via hard copy at the outset of the transaction and make them aware that these details will not change throughout its course. Likewise, if you require your client's account details, you should consider taking these details in hard copy at the beginning of the transaction and make them aware that these are the details you will use should any funds have to be transferred to them, with any changes having to be agreed in advance by means other than email.

Conveyancing firms, like any others, should seriously consider obtaining specific cover for cyber risk while at the same time ensuring their systems are fully protected by all the required updates and patches for any software they use and that they have suitable firewalls and cyber protection in place.

What if things go wrong?

The key message for conveyancing solicitors is: take due time and care with each and every transaction and do not assume anything! Remember to discuss every aspect of the transaction with your client and record those discussions in writing.

The good news is that all firms in Scotland are indemnified under the Master Policy for professional indemnity insurance, organised by the Law Society of Scotland with Lockton appointed as its broker.

It is important that all solicitors notify claims, complaints, or circumstances which could give rise to claims or complaints as soon as possible. The maxim to follow is: "When in doubt, notify".

FROM THE ARCHIVES

50 years ago

From "Aspect", September 1973: "Watergate is an American Scandal – a politician's scandal – is it also a lawyers' scandal? Testifying before the Senate Committee, John W. Dean calculated that of fifteen persons implicated in Watergate who might be indictable, ten – including himself – were lawyers. In all, one hundred and twenty-five lawyers are involved in the perpetration and the cover-up on the one hand, and the prosecution of the perpetrators and those who covered up on the other."

25 years ago

From "Mild inconvenience or global catastrophe?", September 1998: "You know the situation must be serious when the Government resorts to black and yellow billboards in an attempt to draw public attention to the impending disaster. 'The Millennium Bug will affect every business in the UK. Act now!' So reads the message trumpeted in adverts by Action 2000, the Government body campaigning to raise awareness of what may be the biggest crisis ever to hit business."

DISABILITY

Looking to punch above their weight

Tom McGovern appeals for support for the Disabling Barriers Scotland group that he co-founded

I am a trainee criminal defence solicitor, and due to being dyslexic, an activist for disability and issues surrounding neurodiversity. It is 11 months since I wrote an article for this magazine about this issue and being a criminal defence trainee (Journal, October 2022, 46). Following from that, and an interview with BBC Scotland, I and another trainee, Fraser Mackay, created a group called Disabling Barriers Scotland.

This is the first group for disabled lawyers in Scotland, and one the two of us are extremely proud to be a part of. In six months our membership has grown from 20 to 80 interested parties, and we have monthly Zoom meetings with guests including a current sheriff, and representatives from Narcolepsy UK, LawCare, WS Society and Trauma Law. One of our early impacts was after months of lobbying about the lack of technology in Glasgow Sheriff Court: Scottish Courts & Tribunals Service would later release a press statement promising sweeping changes to Scottish courts. We aim to support students and lawyers with learning or physical differences, to make working in and towards a career in law easier for those who wish to do so.

My difficulties were compounded by the extremities of studying law at Glasgow University while juggling a learning difficulty. It would be fair to say I didn't thrive there: a feeling of constant and hectoring anxiety was supported by a plethora of resit diets due to my struggles with written work. I never entirely understood the lectures in real time, so would study into the early hours to try and compensate. Without any substantive internal support from a university that seemed more preoccupied with growing infrastructure than servicing struggling students, my mental health took a severe hit and I sought help. That was when I realised I needed an outlet to deal with my not so insubstantial issues... so I took up boxing.

Relief in the ring

Being from Bearsden, my experience of boxing prior to walking into the gym was nil. I later learned my late grandfather would discreetly listen to great fights of the past on the radio. After a recommendation I started going regularly to Kynoch boxing gym based in Govan, managed by Sam Kynoch, himself a Glasgow University law graduate and corporate lawyer before he pivoted to become Scotland's premier boxing promoter. Personally, it felt like going from Bel Air to Beirut.

Cardio exercises would entail our coach Mo, a former Iranian fighter, screaming that anyone who stopped punching the bag for the next half hour would never be allowed back in the gym. He was a proponent of equality of outcome: a person would be berated whether a fellow coach or an amateur with zero fights. Micro aggressions would be dispensed with: he headed straight for the macro ones. The gym's equivalent of HR was hit and roll with punches.

I recall one spar with a boy slightly more experienced than myself. Being of an analytical persuasion, I asked Mo what the strategy would be. Startled at my suggestion, Mo replied: "There is no game plan... just punch, just punch." The world of group tasks, peer interaction and essay review meetings felt a million miles from this moment. It was a powder keg environment where the only way to relieve pressure was to train harder. The exercise was so intense that you would lose your thoughts, yourself, and by extension the problems and anxieties in your life. I gradually improved: in one incident my sparring partner reprimanded me for ruining his niece's communion, as his black eye was in the family photos. Glad to hear the one shot I landed had some impact.

Becoming familiar and at ease with discomfort was mandatory. One boy was so afraid of being hit he jumped out of the ring entirely. We would later reacquaint outside Glasgow Sheriff Court with me representing my client and him in court for assaulting someone. I was never a contender, but I felt I acquitted myself well in the contests I did partake in. I had thought I would thrive at university, enjoying the intellectual spars and vibrant nightlife, while looking down on boxing as an arena for the ignorant and brutish. The opposite turned out to be the case: pushing myself continuously beyond my preconceived limits in boxing, I found meaning in myself, and therefore life.

Thomas McGovern is a trainee solicitor. Anyone interested in sponsoring/donating or finding to his group please email **disablingbarriersscotland@gmail.com**

Sponsorship, anyone?

Which brings me back to Disabling Barriers Scotland. We are rapidly progressing as a non-profit organisation and hope to soon gain charitable status. My engagement with boxing has given me the drive to explore and lobby for a more equitable and inclusive legal system. Recently, however, Disabling Barriers' growth has slowed through a lack of funds... and with this backdrop I'll be stepping back in the ring in November with the hope of garnering sponsorship/donations. Being able to train and perform a sport I love for a cause close to me is an enormous honour.

The only strategy that is guaranteed to fail is not taking risks.

Mark Zuckerberg, Facebook

Graeme McKinstry

Exit Strategy Consultancy

If your business is not growing, it is shrinking.

One of the easiest ways to expand your business and increase your market share is by acquisition.

However, it is also the riskiest.

We guide you through the acquisition journey, identifying opportunities that will help your business grow and facilitating the process.

- Acquisition strategy
- Risk Mitigation
- Growth Strategy
- Financing Strategy

Talking is free and we are here to help.
So call us and see how we can help your company thrive.

07980 833 160

www.mckinstrypm.co.uk

APPRECIATION

David Michael Preston

26 August 1952-30 July 2023

Former Law Society of Scotland President David Michael Preston passed away on 30 July after a short battle with an aggressive illness, which he bore with his usual fortitude, positivity and humour.

David spent his entire private practice career with Hosack & Sutherland in Oban. He was enrolled as a solicitor in 1976 and made a partner only two years later in 1978 – testament to his diligence, ability and "rightness" for the role. Both through and in addition to his practice, David was a prominent figure in the Oban community, was engaged in many facets of community life and was routinely sought out by many as a source of wise counsel on any number of issues, legal or otherwise. Focused resolutely on his clients' needs, the trust, confidence and affection in which he was held by so many was very clear.

Among these was as treasurer of Oban Rugby Club and as either a regular competitor or steward in the Round Mull sailing week. Of wider community impact was his central role in the creation of the Atlantis leisure centre. A remarkable team effort centred around having the right people involved, doing the right things, in pursuit of a common vision. It was very much ahead of its time for such a community venture and was in many ways the blueprint for community development. Suffice it to say that if the Atlantis leisure centre was being undertaken now, it would be approached in just the same manner but with the availability of far more in the way of public and third sector support. It is a shining example of an enduring, fundamentally important resource for the community that aligns to many of today's aspirations around health, wellbeing and community activity and is an excellent legacy.

There was however significantly more to David's career than a 30+ year term with Hosack & Sutherland. He served as President of the Society in 2002-03 at the end of a term on Council that began in 1991, after which he joined Registers of Scotland as a key interface with the profession during the development of the Automated Registration of Title project; he was joined in that by Tom Drysdale, recently retired as a partner of Shepherd & Wedderburn (with whom he became good friends), and their combined perspectives ensured the entire profession's interests were fully brought to bear.

This was a focus also of his presidential term, where he strived to ensure that the key interests, challenges and differences in the profession – especially for rural practice – were properly acknowledged. Returning to sit on Council from 2012-16, he again raised this issue, and would have been pleased to note that the current President, Sheila Webster, has also recognised the discrete challenges faced by that sector.

David, along with Martin McAllister and Joe Platt, operated a triumvirate approach over that presidential period, the effectiveness of which has yet to be surpassed, demonstrating the importance and value of following such a model.

David remained forward-looking throughout; he was interested in the potential for the profession that technology afforded and considered it important for the profession to be fully aware of that and engage as soon as sufficiently mature solutions evolved. In a similar vein, he qualified as a mediator and was firmly of the view that many disputes were far better resolved through that medium than litigation. A supporter of the Scottish mediation network, it would be fair to say that he remained disappointed at the extent of resistance to embracing mediation more systemically.

In the latter part of his career David joined both the Mental Health Tribunal and the Housing & Property Chamber as a legal member when these were created, and served on them until his passing; on each he was keen to encourage the use of technology to support members' conduct of tribunal business.

Over the same period he also supported the General Teaching Council for Scotland's disciplinary and regulatory work, and provided wise (and much valued) counsel to Brian Inkster on a range of regulatory and management matters.

He remained on the roll of solicitors continuously from his admittance in 1976. His engaged support for the Society endured for 30 years and, even when he did not agree with aspects of the direction of travel (which he did not shy away from raising), he would always provide support whenever requested.

David's wisdom, thoughtfulness and wit will be very much missed by a great many (as will his at times gleeful inclination to spark "lively" debate). Though so much has evolved over the past 40+ years since his enrolment as a solicitor, the underpinning principles and approach that infused his whole approach to his practice, clients, community and wider work remain as relevant today as they were then and serve as a beacon for those operating a rural (or indeed any general) practice.

Bruce Beveridge

Notifications

APPLICATIONS FOR ADMISSION 26 JULY-29 AUGUST 2023

ADAM, Sarah Jane
ADAMS, Leah
ADAMSON, Declan James David
AHMED, Haleemah
ALLAN, Damon Henry
ANDERSON, Rae Elizabeth
ATHERTON, Rian Thomas
ATIQ, Salma
BARNES, Connor Simon
BRADY, Eve
BRIGGS, Harry Robert
BROOKS, Heather Linda
BROOKS, Scott Michael
BROWN, Olivia
CHENERY, Elle Kari
CHISHOLM, Tiffany Ann
CHRISTISON, Denny
CLARK, Alanna Mairi
CLARK, Iona Beth
CORR, Eliza Hope
CROCKER, Laura Mary
CURRAN, Fintan James
DAY, Jacqueline Sarah Maureen
DE-TORE, Hugh Costantino
ELEMO, Demilade Isioma
EMMERSON, Amy Louise
ERDOGAN, Simal Efsane
FERRY, Stephen John
FINGLAND, Jodie Elizabeth
FLETCHER, Rebecca
FOSTER, Chiara Italia
FOWLIE, Catriona Frances
GALLACHER, Katrina Margaret Alice
GEDDES, George Ewan
GILMARTIN, Simone Georgina
GIUSTI, Roberta
GORDON, Campbell Alastair
GREIG, Madeleine Anne
GRIEVESON, Joshua James
HAMLETT, Jordan Cowan
HARKNESS, Kirstin Amy
HARRISON, James Stephen
HERD, Chloe
HOLLIGAN, Antonia Rose
HOYLE, Christopher Gordon
HUSSAIN, Imran
INNES, Alexander Henry
JANUS, Daria Magdalena
KAPTELLI, Paula
KEOWN, Jemma
KIRK, Stephen
LANIGAN, Leanne
LITTLE, Molly Ellis
LUTWYCHE, Jared Guy
McALLISTER, Caitlin Rae
MACBRAYNE, Sophie Catherine
McCORMICK, Kara Charlotte
McCOSH, Lindsay Killin
McDONALD, Alex Ruth
MACDONALD, Christina Mary
MACGREGOR, James Albert
McINTYRE, Lauren Elizabeth
MACIVER, Kirsty
MACKENZIE, Erin
McLEAN-BUECHEL, Peter
McLONEY, Megan Kimberley
McMAHON, Anna
McNEILL, Rebekah Dorcas
MALCOLM, Rhona Kate
MARTIN, Laura
MARTIN, Ross James
MATHESON, Shelley Anthea
MATTHEW, Gillian Martha
MILLAR, David Ramsey
MILLAR, Lara Alexandra Luke
MILNE, Matthew John
MINIO-PALUELLO, Kelly
MOFFAT, Brogan Mary
MULHOLLAND, Sarah Isabel
MUNRO, Nina Ishbel
MURDOCH, Cassie Elliot
MURRAY, Maria Rose
NARDINI-TIDY, Sofia
NAYSMITH, Georgina Elizabeth
NEBIOLINI, Kelly Finley
NICHOLSON, Ewan
NUGENT, Zoe Elizabeth
O'HARA, Mollie Elizabeth
O'SHEA, Christopher John
PAREKH, Zackery
PATON, Hannah Claire
PETO, Vanessza Kinga
QUINN, Erin
QUINN, Erin Morena
RAMSAY, Chloe Anne
RAYNER, Rachel Claire
REID, Charlotte Maya
REILLY, Geena
ROBERTSON, Heather Jayne
ROSS, Erin
ROSS, Giulia Maria
SCARBOROUGH, Kate
SEEDHOUSE, James MacNaughtan
SHAHID, Yasmeen Ashia Rowatt
SHAHZAD, Zainab
SIMMERS, Steven Brian
SPENCE, Orla Watt
STEWART, Kirsty Fiona
STIRTON, Clair Ashleigh
STOKOE, Nathan James
STRAIN, Ruth Sarah
TALAT, Waleed
TEDEN, Lillie Louise
THOMSON, Kerry Elizabeth
WALKER, Emma
WALKER, Natasha Jade
WELSH, Erin
WHYTE, Sarah Tong
WILLIAMS, Elinor Kristin
WILLIAMS, Kirsty Martina
ZAJDA, Jessica

ENTRANCE CERTIFICATES ISSUED 28 JULY-30 AUGUST 2023

ABRAMSON, Philip Edmund
ADAMS, Jaimie Michaela
ADAMS, Kirsty Louise
ADAMS, Mairi Kirstine Reid
ALI, Umar Faruq
ALIREZAEE, Zahra
ALLAN, Melissa
ALLAN, Sophie
ANWAR, Fatimah
AUSTIN-HARTWELL, Elaine Angela
BAIGRIE, Hannah Marie
BARR, Christopher Joseph
BASHIR AHMAD, Shabnam
BAUR, Hannah Jacqui Carolyn
BELL, Amy Margaret
BELL, Kelsey Neve
BLACK, Robyn Elaine
BOWIE, Lachlan Malcolm
BOYD, Erin Graham Mcdonald
BOYLE, Adam
BRETT, Niamh Mairi
BROWN, Chloe
BROWN, Emma Kathryn
BROWN, Michael Robert
BUCHAN, Sarah Katie
BURT, Victoria Tamara Amandine
CAIN, Catherine Elizabeth
CAMERON, Jodie Alexandra Barnes
CAMERON, Niall Iain Calum
CAMERON-PERRY, Eden Hannah
CAMPBELL, Finlay Sinclair
CARLIN, Mark
CARTWRIGHT, Rachael Ethel
CATHRO, Scott Robert
CHAMBERS, Orla Marie
CHRISTIE, Michaela Catherine
CORNEAN, Costina Mihaela
COSSLETT, Sarah Jane
COUSIN, Kirsty Macleod
COWAN, Fraser Garry
CRAIG, John Stephen
CREWS, Matthew Gordon Argyle
CUMMINGS, Douglas
CUSACK, Francis George
DALE, Ruth Lindsay
DALZIEL, Alex William
DAY, Rachael Charlotte
DE KLERK, Pip
DICKINSON, Jasmine
DOHERTY, Dominic Gerard
DOLAN, Sian
DONALD, Katie Elizabeth
DONALD, Leanne Corrie
DONALDSON, Lauren Ann
DONNELLY, Morgan
DONNELLY, Roisin Roberta
ELDER, Jay
FAWL, Olivia Jane
FENTON, Liam James O'Kane
FERGUSON, Matthew Robert
FRASER, Caitlin
GALLAGHER, Lucy Kate
GALLOWAY, Jennifer Fiona
GIBB, Euan Sean
GILCHRIST, Ruairidh Shaw
GILLESPIE, Pierre Alphonse
GOODMAN, Aaron David Ewen
GRANT, Amy
GREIG, Rebecca
GRIFFIN, Abigail Laura
GRUBB, Harry Royston
GULFRAZ, Tabinda
GWYNNE, Corrie Elisabeth
HAMILL, Shannon Maureen
HAMPSON, Nicole
HANNAN, Lauren Baker
HARRIS, Jennifer
HARRIS, Sarah Georgia
HART, Arran David
HARVEY, Olivia Catherine
HENDERSON, Annie Gordon
HEPBURN, Struan Robertson
HOFFIE, Nicole Jean
HUGHES, Ami-Jayne
HYNES, Orlaith-Mairead
INNES, Mhairi Elizabeth
IRONS, Cameron Michael
IRVINE, Cameron James
IRVINE, John James
ISLES, Rebecca Flora
JACOB, Jeffrey Paul Thomas
JEYNES, Megan
JOHNSTON, Catherine Elizabeth
KEARNS, Tara-Mae
KENNEDY, Robbie Thomas
KHALID, Rana Faizan
KIDIATA, Richi
KNAGGS, Cameron Thomas
KOSTOVA, Simeona Georgieva
KSINANOVA, Xenia
LEAKER, Samantha
LEAN, Shona
LEESON-PAYNE, Helena Mary Rose
LINDSAY, Christa
LISOWSKA, Julia Maria
MACARTHUR, Ben James
McCALL, Robert Alexander Hugh
McCLURE, Timothy Jack
MACDONALD, Adam Ferguson
McDONALD, Anna Louise
MACDONALD, Mairead Paris Hamilton
MACFADYEN, Anna Catherine
McGEE, Alexandra Louise
McGEE, Paige Nicole
McGREGOR, Rebecca Neve
McHARDY, Gregor James
McKAY, Caitlin Margaret
McKENZIE, Kirsty Sheila
MACKIE, Amy Catherine
McKILLEN, Melissa Anne
McLACHLAN, Katie Reilly
McLAUGHLIN, Steven Robert
MACLEAN, Elke
MACLENNAN, Rheanna Margaret
MACLEOD, Matthew Alasdair Francis
McNICOLL, Megan Frances Jean
McPHAIL, Gary
McPHERSON, Mhari Heather
McVEIGH, Freyja Veronique
MAGUIRE, Nicola Janet
MAHONEY, Zara Anne
MARSHALL-PRATT, Helen Amy
MASON, Laura
MEEKISON, Rebecca
MEYER, Michele Desiree
MILARVIE, Ciaran Antony
MILLAR, Ryan James
MILLER, Heather Catherine
MILNE, Paige Elizabeth
MOFFAT, Anastarsia
MONTGOMERY, Hamish Free
MORGAN, Paul Richard
MORRIS, Sara Elizabeth
MORRISON, Zoe Grace
MULLEN, Jack William
MURPHY, Eve Mhairi Lauren
MURRAY, Calum Angus Iain
MURRAY, Katherine Margaret
NABI, Annsia Almay Mohammad
NAJAFIAN, Carissa
NELSON, Madelaine Ruth Kean
NICOL, Caitlin Beth
NILESAN, Melisa Alegra
OGDEN, Kyle William
O'NEILL, Niamh
O'NEILL, Sophie Charlotte
PATERSON, Isla Jane
PELKA, Mateusz Daniel
PHILLIPS, Hope
PHILP, Jennifer Yvonne
PIRIE, Suzanne
POLASKI, Michal
POLLAIO, Emanuela
POLLOCK, Taylor Patricia
PROCTOR, Katrina Elizabeth
PROVAN, Heather Claire
PUCHALLA, Amanda Ruth
QUINN, Rebecca Christina
RABEY, Ruth Margaret
RAFFERTY, Brendan McCulloch
RATHBONE, Hilary McPhail
RAUF, Zainab
REID, Calum Alan
REJI, Reveen
RHYND, Leanne
ROBERTSON, Erica Elizabeth
ROBERTSON, Holly Elizabeth
RUNCIE, Alysia Jade
SAMPSON, Heidi Charlotte
SANGRAY, Emma Ram
SARGISON, Ian David
SASSARINI, Daria Vittoria
SCORFIELD, Demi
SCOTT, Alastair Neil
SCOTT, Bethany Clara
SEVOVA, Yoana Stefanova
SHAW, Julia Louise
SIDDIQ, Anmol
SIMPSON, Elizabeth Sarah Dorothy
SINCLAIR, Mhairi
SITKO, Barbara Magdalena
SMITH, Greg Alexander
SPOWART, Fergus Tamayo
STEBBINGS, Laura Kay
STEVENSON, Lucie Jayne
STODDART, Lauren Mary
SUTHERLAND, Eleanor Clare
SWANSON, Mhairi Janet
TAIT, Cameron James
TAYLOR, Emma
THIRROUEZ, Sarah Anne
THOMSON, Louise
TONER, Daniel James
UPPAL, Amanjit
VALENTE, Natalie Isabella
WALKER, Duncan Fraser
WALKER, Lewis Alexander
WALLACE, Morgan Ellen
WATT, Megan Elizabeth
WESTLAKE, Christopher James
WHITE, Claudia
WILSON, Charley-Marie O'Neill
WILSON, Helena Elizabeth
YESIPOVA, Tatiana
YOUNG, Murray Scott

Classifieds

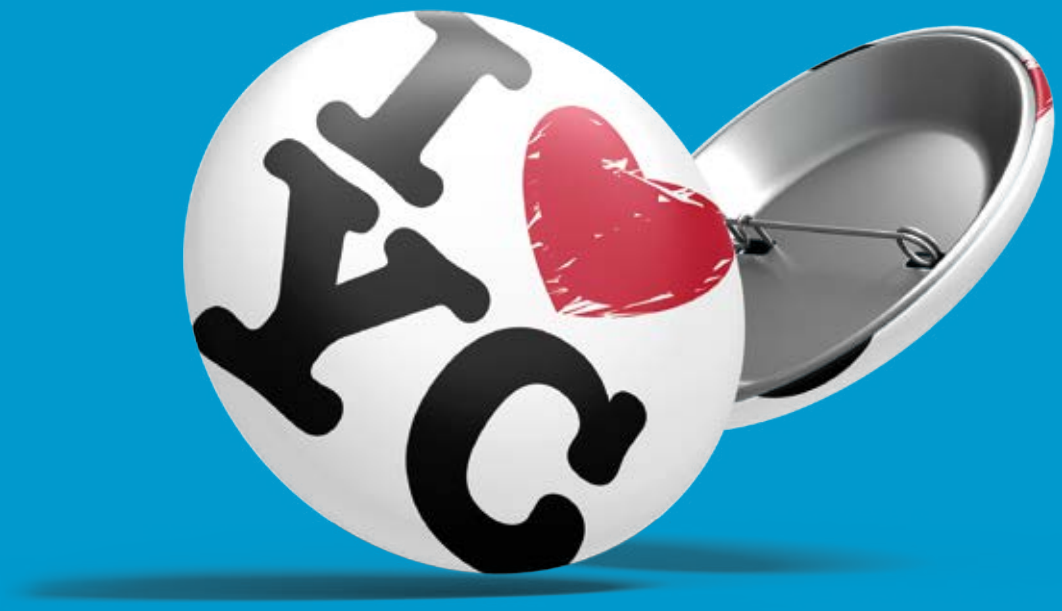
Mrs Margaret Clark (Deceased)
Would any firm holding a Will of the late Mrs Margaret Clark (also known as Mrs Margaret Murray) who resided sometime at 46 Sclattie Crescent, Bucksburn, Aberdeen, thereafter at 28 Station Road, Findochty, Buckie and latterly at Colinton Villa, Portknockie, Buckie please contact Hugh Cumming, Stewart & Watson, 42/44 East Church Street, Buckie, AB56 1AB or email hcumming@stewartwatson.co.uk

Allan (formerly Allen) Johnston (Deceased)
Would anyone holding or knowing of a Will by the late Allan Johnston, latterly of 1 Hogarth Crescent Glasgow, G32 6JZ, please contact Lesley Mathieson at Macnairs and Wilson Ltd, 662 Alexandra Parade, Glasgow, G31 3BU (Tel No 0141 551 9400 or email lesley.mathieson@macnairswilson.co.uk).

Folkert Nanne Boermans – (Deceased)
Would anyone holding or knowing of a Will for the above, formerly of Stirling, lately of Auckland NZ. DoD: 15/6/23 contact Alastair Kirkby of Hoffmann Law, Auckland NZ (Email: alastair@hoffmannlaw.co.nz)

James Cameron Aitken (Deceased)
Would any person with knowledge of a Will of JAMES CAMERON AITKEN, late of 249 Aros Drive, Glasgow G52 1TH please contact Susie Cowan, Monteith Solicitors, 9 George Square, Glasgow G2 1QQ (susie@monteithsolicitors.com)

Wear the Local Badge!



Our SOLAS certified local experts enhance your firm's financial management, aligning it with the Law Society of Scotland's rules.

0345 2020577
innovate@yourcashier.co.uk
yourcashier.co.uk

Approved Supplier
Member Benefits
Law Society of Scotland
2023

yourcashier
legal cashiering for solicitors

Leave dated and expensive legal software behind.

It’s time to switch to Clio.

Discover Clio today at **clio.com/uk/lawscot**
or call **+44-800-433-2546.**

Clio