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Journal

Journal of the Law Society of Scotland

Volume 68 Number 2 – February 2023

First contact

The lawyer who uses her life experience to reach out to others who start alone in the legal world

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Editor

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Open to all?

Widening access to the legal profession is a cause that has rightly been espoused by the Society, many employers in the profession, and others in recent years. Awareness has been growing both of the rightness of reaching out to sectors of society with little knowledge of the possibilities from a legal career, and of the potential benefits from tapping into a hidden pool of talent.

This month's lead interview highlights how lack of knowledge of how the system works, to put it broadly, combined with lack of means, can continue to handicap at every stage those striving for a legal career, to the extent that some simply give up through feeling they are alone and isolated. On the knowledge side it surely indicates a need for a comprehensive mentoring programme, particularly at undergraduate level.

In one respect at least, however, the pendulum appears to have swung completely the other way. Last month it was revealed that in 2022, Edinburgh University accepted only students from disadvantaged backgrounds to study certain subjects, including law. Of 1,205 applicants for law, it offered its 170 places for Scottish students across the 650 from less advantaged areas, and none to those hopefuls deemed to be more privileged.

That is only a partial picture. It is not clear how the balance worked out across the country, and which, and how many (sufficiently qualified) applicants, and from where, were unable to achieve any offers. But however much one may support diversity and positive discrimination, it cannot be healthy – or fair – if any such exclusionary rule is applied over a sustained period.

Questions have been asked whether the Scottish Government's funding policy for higher education, which limits the number of students the universities can accept for free tuition – a totem for the Government – is a contributing factor. Ministers defend the no fees policy on the ground that it keeps student debt down, but if the net result is exclusion via a different mechanism, does it strike the right balance?

Alternative routes to qualification are also being taken more seriously these days. Against that background, they are likely to be needed. There are those for whom they work better than the standard degree-based route, for example if they need to fit study in as an extra side to their lives rather than as their main focus, but more could be done to develop and promote them, including to those who miss out on a university place through no fault of their own.

At the end of the day, a system that is fair to all is only likely to be achieved through a coherent and joined-up approach from the first stage at which prospective students are considering their options.

Contributors

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

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Jenny Dickson is a partner and solicitor advocate with Morton Fraser LLP

Lynsey Walker is a partner in the Dispute Resolution team at Addleshaw Goddard

Nicola Williams is a member of the Law Society of Scotland's Tax Law Committee

Andrew Todd is group director – general counsel with Springfield Properties plc

THE JOURNAL OF THE LAW SOCIETY OF SCOTLAND
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Sheriff Fraser's first criminal court briefing: Page 28

In practice

ONLINE INSIGHT

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

The cybercriminal ecosystem: evolution and extortion
Law Society of Scotland strategic partner Mitigo explains the sophisticated network within which cybercriminals support each other, and why favoured targets such as law firms need the best defences.

Common good: ancient status and modern law
Mark Lazarowicz surveys the current law relating to property held by local authorities as common good, and the powers and procedures regarding its disposal, in light of the most recent case law.

Asperger's and incapacity
Claire Gillan highlights a recent sheriff court decision which considers a number of provisions of the Adults with Incapacity Act in relation to an adult with a variant of Asperger's syndrome.

Greening competition law
Promoting sustainability alongside competition policy is a core objective of the Competition & Markets Authority. Joanna Rae explains its priorities and its work to align the legal frameworks.

Journal Index 2022
The annual index for 2022, covering published articles in the paper and digital issues of the Journal magazine, is annexed to the digital versions of this issue and also via **www.lawscot.org.uk/members/journal**

OPINION

Edward Gratwick

Aggressive behaviours by some litigators towards opponents and their representatives cause unnecessary additional stress and seldom help their client's cause. Let's be mindful and not make a war out of disputes

Not so long ago, in a Scottish court not too far away, I was involved in a case which prompted me to think about way litigation solicitors act towards one another across the front lines of a dispute. For the clients involved on both sides of the case, all the usual things could be said. It was high stakes, high value, and needed to be progressed as fast as humanly possible. The case was perhaps different from some others because those things were actually true, given its particular circumstances.

The impact on the solicitors involved in the case is worth some thought, and a challenge to the idea that litigation lawyers need to behave in a particular way, or simply and silently absorb the pressure and disruption caused by that behaviour, saying it's just part of the game. It doesn't need to be like that.

When dealing with cases such as this, litigation solicitors can come under pressure from their clients and from themselves. We're all competitive, and we all want to win. We want to get the best possible result for our clients. We also want to avoid the difficult conversations about costs, and choices made during the case with the benefit of hindsight of the kind only available once the judge's written opinion has been issued.

Working closely with a client team under these pressures can make you closely empathise with the client and feel the ups and downs of the case personally. This obviously has the potential to pull against the duties we owe to the court and to professional colleagues.

Everyone will have their own examples of opponent solicitors' "bad" behaviour in the conduct of their cases. Things that you can sense are done a certain way in order to present an image or narrative to their clients, or apply pressure to the other professionals involved in the case. It's unusual that this helps the substantive presentation of the case.

I have in mind things such as the exaggerated and incredulous language of some litigation letters; the aggressive voicemails (often in stark contrast to actual telephone or face-to-face manner); or the refusal to answer the phone or to return a call. I have had my share of the letters received at 5.30 on a Friday afternoon, seemingly sent to wreck the client's (and solicitors') weekend and family plans. Or worse, attempts to impose artificial and short deadlines for their own sake, or accelerate procedure in the court causing maximum disruption to the opponent and inflating the "litigation cost" in the hope of forcing a compromise.

Zealous advocacy doesn't require this sort of behaviour. Zealous advocacy does not require the solicitors or counsel on a case to try to hurt their professional colleagues in the hope of securing some tactical advantage in the case. It doesn't require deliberately adding to the mental and emotional load of an already stressful and high-pressure profession, or the collateral impact on personal lives and children.

My firm (along with Barclays and Pinsent Masons) founded the Mindful Business Charter ("MBC") some years ago, and many firms are now signatories to it. To quote Richard Martin, executive officer of the MBC, on why it matters: "Stress impacts our health, it costs lives, and it makes us and our businesses less productive. We know this. Much of our stress is caused by the way we work and interact with each other; the unconscious, unnecessary and often unnoticed impact we have."

I doubt any of the bad litigation behaviours I mention in the earlier paragraphs have ever swung a marginal outcome in favour of the aggressor. I therefore wonder why they are even attempted. I believe we can be better than that and that litigation solicitors should be mindful of the way we work, the way we conduct our cases, and the (un)intended impact on opponents.

This may sometimes mean hard conversations with clients demanding aggression. If that's what's necessary to remove some of the needless impact on the lives of litigation solicitors and encourage greater diversity, then it's the right thing to do and will benefit us all.

It's certainly my intention to think about how I do my job and the impact it has on my professional colleagues across the front lines of my cases.

Edward Gratwick is a legal director and solicitor advocate at Addleshaw Goddard

Respect professional witnesses

Professional witnesses play a vital role in the administration of justice. They offer acknowledged expertise in their particular discipline to supplement and illuminate the deliberations of counsel, solicitors and judges.

They operate under strict obligations and responsibilities to ensure the strictest impartiality, defer to the authority of the courts and provide a service which would be impossible to replicate in any other way.

It might be expected, therefore, that their unique insights, and depth and breadth of experience, would be highly valued and respected. This, I am afraid to say, is very much *not* the case.

In reality professional witnesses, unlike "expert witnesses" who are treated far more courteously, are often cited – that is, ordered – to appear at very short notice, given no indication of what time of day they might be required, and expected to sit in a waiting room from the start of proceedings until summoned.

Apart from a fixed fee, there is no recompense for loss of earnings, disruption to practice or other detriment. Invoices sent are routinely ignored.

What is particularly dispiriting for people who are putting themselves at the courts' disposal is the total lack of information once cited – for instance, they might find after travelling to Inverness Sheriff Court that the case had gone off before they arrived.

Inevitably, they are left with the sour feeling that they are well down the list when it comes to any kind of professional courtesy.

Our medical director was co-opted during lockdown to the Scottish police, to act as a forensic consultant in cases of extreme criminal violence. Cases on which he reported are still coming to trial, and he is required at sometimes untenably short notice to prepare for a court appearance, speak to solicitors, speak about his reports and be cross-examined.

As an example, he recently was cited on a Saturday to be in Glasgow Sheriff Court on the Tuesday. He phoned in the morning to find out what was happening and, bizarrely, was put on to a cashier who, understandably, could not help. He was assured he would be informed in good time, but went to the court in person only to be told – by someone in the waiting room – that a guilty plea had been entered.

This is not unusual. He had asked to be put on a two-hour standby, or to offer his evidence by Zoom. But most courts still refuse to allow remote evidence, despite the Lord President saying of virtual courts at the start of lockdown that "we have to seize... the opportunity to respond to the particular challenge".

I fully appreciate that the courts are wilting under the backlog of cases. I know that Glasgow is said to be the busiest court in Europe. I am aware that court staff perform stoically and cheerfully despite the pressures they are under.

But it's difficult not to feel that nobody in the system is talking to anyone else and that simple courtesies such as letting people know they are no longer required are being forgotten.

We really have to bring this situation into the digital age, with allowing remote submissions as the obvious first step. Surely current tech can also make it possible for a court official to press a single button to alert everyone cited that they are no longer required.

It's quite archaic to expect professionals to sit twiddling their iPhones in a court waiting room for days at a time. It has to end.

Jonathan Toye, co-founder and managing director, Ever Clinic

BLOG OF THE MONTH

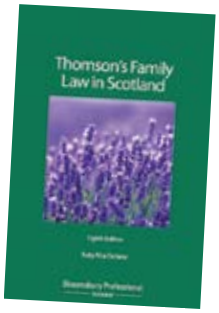
lawyerwatch.wordpress.com

"It is really important I think for lawyers and others to understand that relying on instructions to do X or Y is not always a get out of jail free card".

Richard Moorhead, Professor of Law and Professional Ethics, offers some thoughts on the Nadim Zahawi affair, in which his lawyers issued threats against the person making allegations which subsequently turned out to be true. We await with interest the outcome of the complaint to the SRA, which issued a warning notice on such matters.

BOOK REVIEWS

Thomson's Family Law in Scotland



8TH EDITION
KATY MACFARLANE
PUBLISHER: BLOOMSBURY PROFESSIONAL
ISBN: 978-1526513878; £47
(E-BOOK £38.07)

The late Professor Thomson's *Family Law in Scotland* was consulted by generations of students and practitioners. The last edition was in 2014. This eighth edition, by Katy Macfarlane, has taken into account the many significant legislative changes since. It has also sought to reflect the shift in the landscape of child and family law that has occurred.

Macfarlane and her team of young researchers have produced a clear and comprehensive work, providing us with a practical textbook which will be used by the next generation of lawyers just as surely as those who reached for previous editions.

The strength of this work lies in its accessibility, clarity and brevity. Child and family law in Scotland is complex. Disputes within this specialism frequently require consideration of other aspects of Scottish private and public law. The logical, incremental approach adopted does not allow itself to be distracted from the law as it is in practice rather than as it might ideally be. This all means the book is likely to become a first stop for research.

This focus and brevity might also be considered the book's only shortcoming. This is not a criticism. It would be impossible to write an up-to-date work which was relevant and useful but which exhaustively discussed the many complexities arising before the courts today. It will be an invaluable textbook for law students and should be on the shelves of everyone with an interest in child and family law in Scotland.

Isabella Ennis KC. For a fuller review see bit.ly/3x9g2hd

The English Führer

RORY CLEMENTS (ZAFFRE: £16.99; E-BOOK £8.09)

"Clements is on sparkling form in his latest outing with his Cambridge history professor, Tom Wilde."

This month's leisure selection is at bit.ly/3x9g2hd

The book review editor is David J Dickson

Lawyers going viral

Texas attorney Jason Binford reckons he has an all-time winner of the Bankruptcy Lawyers Behaving Badly award. Or any other lawyers, perhaps.

He tweeted a link to a Colorado case where one Devon Barclay and his firm have been suspended for three years from appearing before the court in which he practises, with further sanctions, for an "egregious pattern of misbehavior" culminating in advising his clients to try and infect their trustee's counsel with "Covid or some highly infectious disease". They could do this if they knew someone thus afflicted, who could lick and handle "as much as possible" an envelope destined for the trustee.

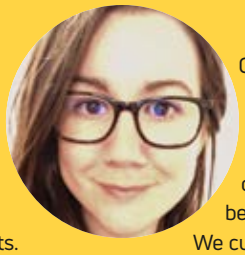
This came on top of filing a knowingly false application, repeated lying at a creditors' meeting, filing multiple motions to dismiss based on false assertions, and ignoring discovery proceedings. (And there was more.)

"To characterise such advice as outrageous is a gross understatement", said Judge Thomas McNamara, who however chose a suspension that would still permit Barclay to return to practice in the court if he could do so in compliance with the Bankruptcy Code and professional conduct rules.

PROFILE

Ester Aracil

Ester Aracil is the Society's volunteer recruitment adviser and secretary to the Nominations Committee



1 Tell us about your career so far?

I studied a bachelor's degree (Hons) in human resources because, among other things, I like working with people and it offers the possibility to work on a variety of tasks and projects. I came to Edinburgh to develop my career, starting in hospitality while I took a master's and a CIPD foundation course, both in HR. With four years of experience as an HR executive, I joined the Society in January 2021. My current role is in the Governance team, whose aim is to ensure good governance structures and processes.

2 What inspired you to get involved with recruitment?

My interest started during my studies with an internship at a temp agency. I like to meet new people from different backgrounds, and feel fulfilled by helping others develop in their careers.

3 Can you tell us what being on a Society committee is like and the commitment it involves?

Committee members play a vital role in the running of the Society. Being on a committee is about being part of the decision-making process, being part of the change and improvements, and being able to influence law and policy.

We currently have 57 committees; each involves a different time commitment, depending on the nature of the work. Together they make an extraordinary impact on our work.

4 What sort of person do you look for?

Individuals from a wide variety of backgrounds, who have a passion and commitment to promote all of the Society's work to our members and the public. You may never have considered a committee position before, but your experience may be invaluable, so I encourage anyone who fits our code of conduct and principles to get involved and apply.

Go to bit.ly/3x9g2hd for the full interview, and see the Society's website for the current applications round, which closes on 28 February

WORLD WIDE WEIRD

① Rumours of my death...

A woman aged 82 was pronounced dead at a nursing home in New York – only to be found still alive and breathing after she'd been moved to a funeral parlour.
bit.ly/3JVKhzA

② Crime waves

A massive haul of cocaine found drifting in the Pacific Ocean north west of New Zealand was in packages attached to buoys – some labelled with a Batman symbol.
bit.ly/3DRrf9S

③ Santa maybe

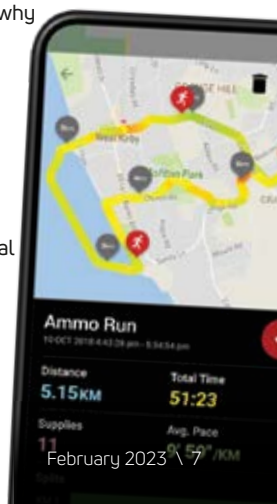
A young budding detective in Rhode Island has asked police to take DNA samples from a half-eaten cookie that she left out on Christmas Eve, in a bid to find out if Santa is real.
bit.ly/4yyQQRX

TECH OF THE MONTH

Zombies, Run!

Apple and Google Play: free

If you're struggling to get back into a fitness regime, why not try turning your workout into a game? This app gives you missions to complete and you'll be chased by virtual zombies along the way, which should make you run faster. Hopefully!



PRESIDENT

Murray Etherington

A round table convened by the Society, and focusing on wellbeing initiatives across the justice sector, should provide the basis for collaboration in order to make the sector more inclusive and supportive

Welfare and wellbeing has been a key consideration during my term as President. It has been a particular focus of my first few weeks of the new year.

I had the pleasure of speaking to Dundee University Law Society on welfare issues as part of their Wellness week. It is always a joy to speak to prospective members of the profession and I left the evening buoyed that we have such enthusiastic, hardworking and talented individuals looking to join our ranks.

But speaking about wellbeing on to mental health is not just for the new generation of lawyers. One of the highlights of my year so far has been convening my first presidential round table on wellbeing.

Special focus

At that round table were senior members of the justice sector, including the Dean of Faculty, Lord Woolman, SCTS, COPFS, the Judicial Institute and representatives from the Society. The round table was to focus on issues and to understand what we, as a group, are doing about it in our individual areas and learn from those experiences. It was heartening to hear that so much is happening across the justice sector and that wellbeing and mental health issues are no longer a stigma that is to be brushed under the carpet and not spoken about; indeed everybody round the table said they know that wellbeing is an issue in their particular organisation.

The purpose of the meeting was to work more closely with our colleagues across the whole justice sector to deliver a more rounded approach to wellbeing, to make use of all of our experiences, and to exchange knowledge. It was a fascinating discussion and could have lasted much longer than the three hours allocated. We are hoping to meet again to develop some proposals as to what we can do jointly as organisations. Only by working collaboratively can we help all of our members and hopefully make the justice sector more inviting, inclusive and collegiate. I am looking forward to our next session and to announcing some joint proposals that can be rolled out to enhance our Lawscot Wellbeing initiative.

Have you had your visit?

Having visited the north of Scotland and the south west last year, we will be completing the west coast, the south east and my home areas of Dundee, Perth and Fife. I am looking forward to making sure that all the Society's constituencies have a visit from me this year. Our visits – our chief executive Diane McGiffen joins me on the road – so far have been lively, interesting, and show that we need to do more to listen to our members to provide you with the support and services that you require to help you, your colleagues and your businesses thrive no matter the area of law or your geographical location. Please look out for future events and come along to share your views.

Lastly, a thank you to the Society of Scottish Solicitors in London for a wonderful Burns Supper. It was an excellent evening with some fine speeches, beautiful singing and a fabulous celebration of Burns. It never ceases to amaze me, the number of Scottish solicitors in London and the positions which they hold. Ours truly is an amazing profession!

Murray Etherington is President of the Law Society of Scotland – President@lawscot.org.uk

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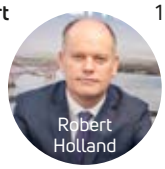
People on the move

ABERDEIN CONSIDINE, Aberdeen and elsewhere, has appointed **Christopher Richardson**, who joins from ANDERSON STRATHERN, as head of Commercial Real Estate for England & Wales, based in Edinburgh; **Zarvin Vandrewala**, who joins from ASCENT LEGAL, as a partner in the Banking Litigation team, based in Leeds; and solicitor advocate **Robert Holland**, who joins from BALFOUR+MANSON, as a partner and head of Employment Law, based in Edinburgh.


Zarvin Vandrewala


Robert Holland

BALFOUR+MANSON, Edinburgh and Aberdeen, has appointed **Stephanie Nichol**, a freelance consultant specialising in commercial property, as a partner.


Stephanie Nichol

BLACKADDERS, Dundee and elsewhere, has made the following appointments to its Private Client team: in the Edinburgh office, **James Hyams** (previously with BALFOUR+MANSON) as legal director, **Rona Burns** (who joins from BOYD LEGAL) as senior solicitor, and newly qualified solicitor **Claire Metcalfe**; and in the Glasgow office, **Taylor Henry** (previously with BALFOUR+MANSON) as senior solicitor.

Blackadders has also appointed **Annie Fleming** to the newly created role of chief financial officer.

CONNELL & CONNELL WS, Edinburgh announce the retirement of **Anne McKenzie** as a partner and latterly consultant, and the promotion of **Jennifer Boyle** to partner, both with effect from 1 January 2023.

COULTERS, Edinburgh and North Berwick, has announced the appointment of **Jill Andrew** as a partner from August 2022, and **Louisa Raistrick** as Head of Estate Agency from December 2022. Both were previously with SIMPSON & MARWICK.

CURLE STEWART LTD, Glasgow, has appointed **James McMillan** as a director. He joins from ANDERSON STRATHERN.

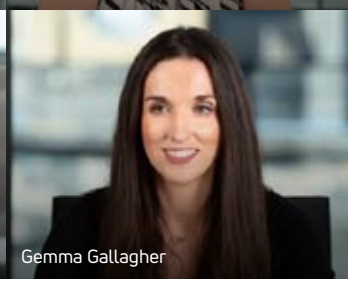
DWF, Edinburgh, Glasgow and internationally, has announced 15 promotions across its Scottish offices. Promoted to the Scottish Leadership group are commercial litigator **Lauren Rae** in Edinburgh and personal injury expert **Lynne Macfarlane** in Glasgow, both solicitor advocates, who also become partners.


Coulters: Jill Andrew and Louisa Raistrick


DWF: Lynne McFarlane


Lauren Rae


Ursula Currie


Gemma Gallagher

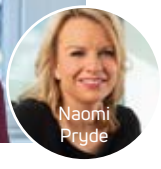
Commercial litigator **Ursula Currie** in Edinburgh and corporate specialist **Gemma Gallagher** in Glasgow become directors.

Also promoted are: **Mikela Rochford**, **Siobhan Cameron**, **Graham Tait**, **Daniel McClymont** and **Stephanie Seidel**, all to senior associate in Glasgow; **Nicole McQuilken**, to associate in Glasgow; **Arlene Cook**, **Victoria Anderson** and **Ashley Macdonald**, all to senior paralegal in Glasgow; and **Clare McCraith-Smith** and **Grant Barbour**, to lead paralegal in Edinburgh and Glasgow respectively.


Richard Andrew

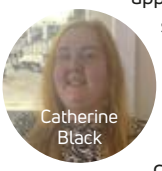
DALLAS McMILLAN, Glasgow, are pleased to announce that **Richard Andrew**, who heads the firm's Residential Property team, has been assumed as a partner of the firm as of 1 February 2023.

DAVIDSON CHALMERS STEWART, Edinburgh and Glasgow, has appointed **Sharon Somerville** as an associate in the Corporate team. She joins from MILLER HENDRY.

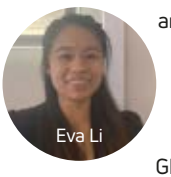

Naomi Pryde

DLA PIPER, Edinburgh and globally, has appointed **Naomi Pryde** as partner in its Edinburgh Litigation & Regulatory team from 1 January 2023. Qualified in Scotland, England & Wales, the Republic of Ireland and Northern Ireland, she joins from DWF.

FAMILY LAW MATTERS SCOTLAND LLP, Glasgow is delighted to announce the appointment of family law specialist and mediator, **Morven Douglas**, as a legal director from 4 January 2023.


Catherine Black

GEBBIE & WILSON LLP, Strathaven is delighted to announce the promotion of **Catherine Black** and **Eva Li** to associate with effect from 1 January 2023.


Eva Li

GILSON GRAY, Glasgow, Edinburgh, Dundee, Aberdeen and North Berwick, has combined its Dundee offices in new premises at 2 West Marketgait, Dundee DD1 1QN (t: 01382 549321; f: 01382 549322).


Katherine Paulin

INKSTERS SOLICITORS, Glasgow and elsewhere, has appointed **Adam Johnson** as their chief operating officer, based in Glasgow, and **Katherine Paulin** (who joins from J & H

MITCHELL) as a consultant solicitor based at Dunkeld & Birnam Community Co-Working Space, Lagmhor, Dunkeld PH8 0AD (t: 01350 699170; e: dunkeld@inksters.com).

JUSTRIGHT SCOTLAND, Glasgow and Edinburgh, has appointed **Barbara Bolton** as legal director and partner. She joins from the SCOTTISH HUMAN RIGHTS COMMISSION where she was head of Legal and Policy.

LEDINGHAM CHALMERS, Aberdeen, Inverness, Stirling and Edinburgh, has appointed private client lawyer **Lisa Law**, an accredited specialist in incapacity and mental disability law, as a partner in Inverness. She joins from BRODIES.

LINDSAYS LLP, Edinburgh, Dundee and Glasgow, announces that **Douglas Roberts** has resigned from the partnership with effect from 17 February 2023.

Lindsays has appointed **Omar Mohammed** (who joins from RALPH HENDRIE LEGAL) as a senior solicitor in Residential Property, based in Edinburgh, and **Lauren McGhie** (who joins from BTO) as a solicitor in the Private Client team in Glasgow.

Dylan Lynch has been promoted to head of Legal Operations at RAYTHEON UK.

ALLAN McDOUGALL SOLICITORS, Edinburgh, announces the retirement from the firm of consultant and former partner **David Nicol**, with effect from 31 December 2022.

McDOUGALL McQUEEN, Edinburgh, Dalkeith, Penicuik and Gorebridge, announces the promotion of **Noele Harraghy** to partner in the Private Client team, and the appointment of **Bobby Fife**, previously with SIMPSON & MARWICK, as a partner in Residential Conveyancing.

McGOVERN REID, Wishaw and Hamilton, has opened a new office at 128 Kirkintilloch Road, Bishopbriggs.

MACKINNONS SOLICITORS, Aberdeen, has promoted three new partners: **Angus Easton**, in the Marine Commercial Team; and **Gregor Sim** and **Pamela Bursill**, in the Property department.

David McNaughtan KC has returned to practice at COMPASS CHAMBERS after a period as a full time advocate depute in Crown Office.

MBM COMMERCIAL, Edinburgh and London, has promoted Edinburgh-based litigator **Iain McDougall** and London-based corporate lawyer **Caroline Urban** to partner in the firm.


JustRight Scotland: Barbara Bolton


Shepherd and Wedderburn: Paul Young

MURRAY BEITH MURRAY, Edinburgh, has promoted **Sophie Napier** and **Fraser Scott** to partner in the firm from 1 February 2023. Both specialise in private client advice within the firm's Asset Protection group. **Nicola Roberts** has been promoted to associate in the Property group, specialising in rural property and agricultural affairs.


Shanna McDiarmid

Shanna McDiarmid to Director of Operations and Performance from 1 January 2023.


Pamela Rodgers

PBW LAW, Glasgow, has promoted civil and criminal litigator **Pamela Rodgers** to partner.

PINSENT MASONS, Edinburgh, Glasgow, Aberdeen and globally, has appointed Edinburgh-based partner and solicitor advocate **Jim Cormack KC** as head of its international Risk Advisory Services group. Glasgow-based partner and solicitor advocate **Joanne Gillies** has taken over his previous role as head of Litigation, Regulatory & Tax, and along with **Sibylle Schumacher** has been appointed as Joint Global Team Leader.


Jim Cormack KC

PLEXUS LAW, Edinburgh, has appointed **Bobby Murray** as an associate partner in the Casualty & Personal Injury team. He joins from CLYDE & CO.

SCULLION LAW, Hamilton and Glasgow, has promoted

SHEPHERD AND WEDDERBURN, Edinburgh, Glasgow, Aberdeen and London, has appointed **Paul Young** as a partner in the Infrastructure team. He rejoins the firm from DENTONS.

TLT LLP, Glasgow, Edinburgh and UK wide, has appointed **Dr Julie Nixon** (previously with MORTON FRASER) as managing associate, and **Nimarta Cheema** (previously with LINDSAYS) as a senior associate, both in its Commercial Services group in Edinburgh.

TURCAN CONNELL, Edinburgh, Glasgow and London, has appointed rural property specialist **Murray Soutar** (who joins from GILLESPIE MACANDREW) as a partner, and renewables expert **Lesley Roarty** (who joins from MACROBERTS) as a legal director, both in its Land & Property team.


Murray Soutar Lesley Roarty

Helping hand

Nadia Cook faced an uphill struggle to qualify as a Scottish solicitor. Now she is building a resource to provide others of similar background with the knowledge she lacked. She tells the Journal how she has packed a lot into a still early career

Much attention is paid these days to broadening access to the legal profession to people from non-professional backgrounds. Concerted efforts are made by some employers, and by the professional bodies, to offer opportunities from work experience through to supported degrees and training contracts.

But what is the level of awareness among the pool of potential candidates? What barriers, visible or otherwise, do they still face that others may not? And what support is there for them in moments of crisis?

One person who has made it into the profession the hard way, and who now wants to provide others with the vital information she lacked at the time, is Nadia Cook, whose social media channels, particularly thescottishlawyer.info website, she created with the avowed goal of improving social mobility and making a legal career more accessible to all. Qualified in 2020, her story is a classic one of not giving up in the face of adversity.

Raised by her mother after her father's early death, Cook's first experience of university came when her mother began a degree course as Cook was taking her Highers. She liked the look of it; her desire to do law was born from "wanting to do something for society in general and I thought that law was probably the best way I can do that".

She had to find her own way. Her North Ayrshire school was one from which few people went on to university, and teachers couldn't offer much in the way of advice; nor was there any awareness of mock court competitions and the like. A combination of caring roles and a debilitating sleep disorder affected her grades; she made it on to a law degree course through UCAS clearing.

"But the main barrier was not having any contacts", she relates. "It was such a struggle if you don't have even one, because one contact leads to another so you have to have that network initially, and at that time there really wasn't the kind of online presence of law influencers for students that you have now."

Funding was always an issue as well. Studying at Abertay meant using her child bank account for the student halls deposit, and taking one or more part time jobs towards her support. Timewise, that reduced her chances of building connections – and in due course her capacity to apply for work experience places and traineeships. When it came to the Diploma, Cook almost left it for a year, due to the need to fund part of the fees, but with some additional "side hustling", as she puts it, she got the money together just in time, though had to move back home and take the course at Strathclyde to economise.

"I have people reach out to me on a weekly basis on Instagram. They message me because they are facing so many barriers"

At every turn she felt disadvantaged compared to those with contacts able to help, and a financial cushion: when offered a summer scheme place with a London firm she had to turn it down because she couldn't afford to go.

Shared knowledge

All of this explains the motivation for thescottishlawyer. "I set it up because it's essentially what I was looking for, and what I didn't have: the knowledge that is there but wasn't shared, essentially. It's the resource that I was looking for and hoped to find, the knowledge I needed to be successful and route my way through university and get a traineeship. Especially knowledge from a Scottish angle."

Probably the core feature of the site is the blog section, with its personal stories of people setting out in the profession: LLB and Diploma students, alternative routes to qualifying, those at trainee or devil stage, plus contributions on networking, wellbeing, recruitment and more. It's what Cook thinks is the most vital: "Storytelling is such an important way for knowledge to be shared, because no matter what journey someone's had, there's always going to be someone who reads that and thinks, that's the sort of barrier I'm facing, or that's the route I want to take, and if they can see how someone's done that already, that gives them hope for the future. Because at a lot of stages I did feel like giving up, when I couldn't just go online and read it. You had to have a contact to gain that information."

There is more. As well as her own story, she has posted various resources – from a basic template for a case note (another thing she didn't know how to tackle as a new undergraduate), to how to conduct and structure client interviews (a big part of the Diploma). It's all done with the aim of providing free information to those who need it; Cook intends to add to it as her busy schedule permits, and welcomes further personal experiences.

She is certain there is an audience out there for her material. "I have people reach out to me on a weekly basis privately on Instagram – that's my other main platform. They message me because they are facing so many barriers they feel they can't even voice it. They almost can't believe they can reach out to me and find someone in the profession who is from a similar background. They'll give me a little introduction, and from that I'll set up a chat with them or meet them in my lunchtime.

"I don't leave a message unanswered. It's quite difficult along with running the platform, but I just have so much passion to do it and I just feel it's so needed – it wasn't there, and if someone else isn't going to do it, I will."

Wellbeing impact

Cook sees lack of social mobility also feeding into wellbeing and mental health issues. "Because if you get to the stage where you really feel you're struggling, you don't have the contacts you need, or the network or support, that's going to have a real detriment on your wellbeing and on what you think about yourself as a person. I've had people reach out to me saying, 'I've been rejected so many times I just think I'm not good enough. I might just give up'; 'I don't have anyone I can speak to about this; no one is like me in the profession', etc. To feel like that because of the difficulties they are facing from a social mobility point of view, when they've already done so much, they have a degree, they've worked for years, that has an enormous effect on their mental health."

What can she say to them? "A lot! Obviously it depends on people's individual circumstances, but I want to put it out there that I've faced a lot of barriers and a lot of rejection and I still face it now. But I'm still here and I'll continue to be here; I've qualified as a solicitor despite it all and for people who may be struggling in their position, there's always me or someone else who will listen to their concerns and be able to offer help. I do find that a lot of people in the profession are quite generous with their time, so it's about having the confidence that people need to reach out, to connect."

What sort of barriers does she still face? "Like when I was applying for NQ roles, I realised that a lot of these roles were being accessed and not advertised. Again it was all through contacts and people you knew and the sort of network you build. How on earth can you get into

Words: Peter Nicholson

Photography: Mark Jackson©

"Make as many contacts as you can, as early as you can. And just persevere. There will be barriers ... but it's all part of the learning process"

something if you don't even know it exists? It's different from rejections. It's another barrier on its own."

Getting the message across

Cook does wish there had been more schemes when she set out such as exist today, to bring more people with her sort of background into the profession. But she isn't convinced that it's easier to qualify now. "I don't know if I would say that, because these sort of schemes all depend on people knowing about them. And that they haven't left it too late. And even knowing they are good enough to apply for them. Some people reach out to me, asking are these for me; do you think I'm good enough; are my circumstances something they would consider? They won't even go to the application stage because they feel so disconnected that they can't make that first step. So there's still a lot to do."

She also feels there could be more Scottish based schemes. "A lot of them only apply to England or are only the big firms, the corporates, so if you've decided that corporate isn't for you, and it's not for a lot of people, there really is nothing else out there. Maybe people want to work in a high street firm, a medium sized firm, that suits them better; how are they supposed to access that without any funds and resources?"

Try before goodbye

She is a firm believer that people should experience different sides of the profession before giving up on the law. "I think a lot of people are deciding at a very early stage that law is not for them, even during their traineeship or just after; I know a few people in my close network who have done that because they feel they just don't fit, but they've not really experienced other areas."

She doesn't believe in sticking around in a job where you are unhappy, however. "It's so important because life is so short – I know people say this all the time, but it is – and there's just no point in being in that position."

Though Cook doesn't favour job hopping, her own goal "was to experience as many areas of the profession as I could". During her traineeship she secured a secondment to the UK Law Societies' Brussels office (since then sadly a victim of Brexit), where she learned about the regulatory side. Since qualifying she has spent a year in the travel and tourism section at international firm DAC Beachcroft, taken a short term contract at the UK Government to experience in-house work ("another thing I had never heard of until I was actually in the profession... it's a very different learning experience"), until her perfect role came up, "that I intend to stay in for ever!" – business development solicitor with Harper Macleod.

For Cook, it combines all her previous roles, and positively requires her to make new contacts, both within and outside the profession, while working alongside colleagues in marketing, PR, education and development, graduate recruitment and more. "You don't always feel like you're in a law firm; you're not surrounded by solicitors. I like that because it's quite a refreshing environment".

She adds: "But I don't think I would have found it or known the role was for me if I hadn't experienced all those other areas."

Along the way also, after her traineeship she undertook an LLM in law and economics through Erasmus University, studying in three different countries over a year. Strangely (is an LLM so unusual nowadays?), there were those who advised her against it. "They said things like, 'That will be frowned on when you then apply for NQ roles.' Though I was increasing my skillset. Someone told me that it would look as if I wanted to be an academic and wasn't interested in being a solicitor." It all caused a bit of soul searching and anxious googling, but she silenced the inner voices of doubt and went for it.

"I thought it was right for me; I wanted to make sure I had a broader knowledge. I did it because being a lawyer is not enough now, you also have to be able to lean on a different perspective and see things from a different angle. I did economics for especially that reason. And it shocked me to find how differently economists thought; it was unbelievable how they thought in comparison to lawyers. But again it's helped with what I'm doing now."

Persevere!

It feels like a lot of experiences to have taken up over a short time, but Cook doesn't believe she is unusual. "I know a lot of other people my age who have done a lot. I compare myself to people I've seen on LinkedIn and wonder how they fitted in everything they've done. I think it's almost expected to have all these other things you do, and skillsets, because that's what law firms look for now. It's not enough to be a lawyer: you have to be involved in everything and have these different ideas and perspectives."

What would she highlight from all the advice she has offered to those starting out now? "I think put yourself out there and try not to listen to the voice inside, the self doubts. Make as many contacts as you can, as early as you can. And just persevere. There will be barriers, just know that, and rejections, but it's all part of the learning process. I feel that I wouldn't be the person I am today if it wasn't for the rejections. I've learned a lot from that. It's being able to step back and learn from it that's important and will take you on to a successful journey."

Photography: Mark Jackson©

Nadia Cook: Gain different perspectives – it's not just about law

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Ukraine: a lawyer's part

As the Ukraine war enters its second year, Susannah Pencovich tells how she left her desk job for a mission to secure a food supply to internal refugees in the country

From the outset of the Covid-19 pandemic, the importance of wellbeing and community have been highlighted. People in good health, like me, became acutely aware of our privilege in that respect. Conscious of the level of need, and having an unusually empty diary, I volunteered with a community group delivering food parcels to people who were shielding.

Searching for other roles, I came across residential training courses with a charity called RE:ACT Disaster Response, in Chilmark, Wiltshire. I completed the application form, and forgot about it. A few weeks later, I was surprised to receive an acceptance.

I had to remind myself who RE:ACT are. They "specialise in high tempo, dynamic and complex emergencies and crises – applying military expertise in planning and problem solving, collaborating with humanitarian partners to rapidly develop and share situational awareness, identify critical gaps in the response and fill those gaps in the fastest time possible with the most effective solutions".

I'm a lawyer. I have no emergency services training, certainly no military experience... but I can do problem solving, I can do collaboration and I wanted to do humanitarian.

Wise words from a past mentor came to mind: be careful not to "de-select yourself" from opportunities, especially when you aren't the appropriate decision-maker. The charity had accepted me, so I booked some annual leave and packed my tent and sleeping bag (all volunteers camp during courses). I absolutely loved it.

Invigorating training

Through 2022 I attended numerous courses at RE:ACT's headquarters, a decommissioned military base.

The Domestic Responders course has a focus on Britain and reflects lessons learned from assisting the NHS, including volunteering in morgues, during the pandemic. The International Responders course focuses more on physical fitness and emergency first aid. Volunteers have been deployed following hurricanes in the Caribbean, earthquakes in Nepal and flooding in Mozambique.

We practised first aid, how to secure a broken window or ripped roof with tarpaulins and timber, navigation, communications, contingency planning and organising a helicopter evacuation. Every time I came home, I felt invigorated by the volunteers' energy – I even noticed I was more productive at work.

In the summer, I was thrilled to be invited to attend the Operational Leadership course, my first experience of dedicated leadership training. Our mentor was Elizabeth Stileman MBE, a former Royal Logistics Corps major. The roleplay exercise was the most intense, mentally taxing immersive training I have ever undergone. We spent 48 hours with a map of an imaginary island, sometimes contradictory bits of notes about available resources, the vulnerable inhabitants, the political, criminal and energy situations, restrictions, some phone numbers, one phone and a whiteboard. You are the humanitarian team on the ground immediately post-disaster. Solve it.

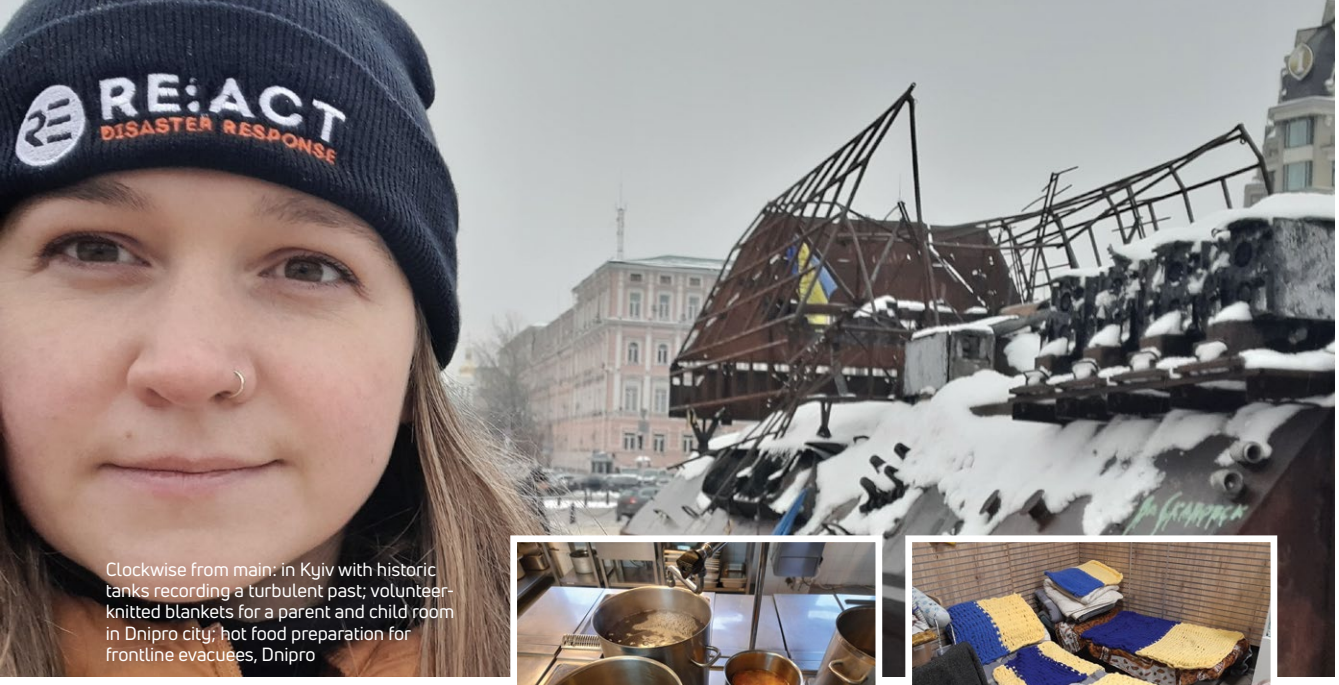
My legal background undoubtedly helped. To gather, hold and manipulate reams of information, sift the relevant from the irrelevant, recall "trivial" but now critical detail, think creatively but logically, and finally to communicate effectively – problem solving repeatedly and calmly – these are all within the trained lawyer's skillset. I passed the course, and still benefit in my professional and personal productivity.

I also volunteered with RE:ACT and their partners on smaller tasks, e.g. loading lorries with donated medical supplies going from Ayrshire to Ukraine. Packing "field" midwifery kits and two newborn incubators, I couldn't shake the images they conjured. Those lorries were organised by Andrea Fraser, another Scottish lawyer, who has demonstrated unbelievable personal stamina to fund and organise humanitarian aid to Ukraine.

Answering the call

When the opportunity arose to be considered for deployments in Ukraine, I put my name forward. RE:ACT organised specially tailored Hostile Environment Awareness Training which drilled us in safety, communications, trauma first aid, even emergency driving skills.

Ticket office repurposed for temporary shelter for frontline evacuees, Dnipro city



Clockwise from main: in Kyiv with historic tanks recording a turbulent past; volunteer-knitted blankets for a parent and child room in Dnipro city; hot food preparation for frontline evacuees, Dnipro

In mid-November, working from home and pondering the office Secret Santa, I find a message on my phone from Paul Taylor MBE, RE:ACT's international operations manager. From yesterday. Yikes. I feel as a responder that I should have been more, well, responsive. He wants to know my availability to join a deployment to assist RE:ACT's Ukrainian hot food distribution work.

I pause. I type a reply ending "I'll let you know as soon as I can", then delete it. Why hesitate at the jump? I request the time off and reply, more usefully, "Hi Paul, I can get it off work."

At 5pm, I start pulling out my passport and my kit, and write a packing list to focus my mind and calm the nerves. I pore over RE:ACT's risk management folders, and with CNN's 24 hour Ukraine coverage as background, I pack my bags.

Into Lviv

Our mission is, first, supply chain due diligence on the hot food distribution that RE:ACT is funding in various locations, and secondly, securing further United Nations funding to continue the programme. On 2 December, we fly to Eastern Poland for the train across the border.

I'm surprised to find a long queue. I had expected only an exodus from Ukraine. But people's lives are more complex than that. I imagine their stories and the ties that keep them inside a country at war. Some appear to be doing supply runs back and forth across the border. Though cold, the queue is amiable. Children distract us, like frayed edges – a recurring theme of war.

Passport control, metal detectors, a man barred from entering who switches to shouting in English when he sees us. Does he think we can help, or is he simply desperate? Either way, we can only nod to him, bow our heads and move on. I feel embarrassed at being able to cross so easily.

We don't speak Ukrainian; we can't even read the Cyrillic alphabet, so we can't communicate with anyone unless they do us the favour of knowing some English.

The tall diesel locomotive is industrial on the outside but comfortable inside, with USB sockets, clean and litter free. It departs and arrives exactly on time, which proves a recurring theme on Ukrainian public transport. A screen alternates between cartoons and safety messages – images of unexploded ordnance and missiles. Curiosity is discouraged. Do not climb onto tanks. This flicker between ordinary and extraordinary continues for our eight days.

I charge my phone and check our itinerary, route and the air raid shelter map for the umpteenth time. Air raid sirens appear as notifications on our phones. The RE:ACT Ops team have mapped the nearest shelters onto an interactive Google map: the modern side of war.

Ukrainian Border Force board the train – armed women in camouflage fatigues. I remember the standard advice, "Never let anyone walk away with your passport." I hand mine to the soldier who motions for it and walks off. She hands it back shortly after, stamped, and I hide my relief.

Lviv feels distinctly normal. Yes, there are many men in camouflage, but otherwise people go about their lives, Christmas shopping.

We meet our partners, the Ukrainian Education Platform, a national charity repurposed for humanitarian purposes. Project manager Mariya speaks excellent English, even understanding our varied accents. RE:ACT's donations fund hot food distribution in multiple locations to evacuees. The partnership makes it happen. We discuss the project structure, supply chain and procurement policies.

After dark, the city gets louder. Mains electricity has switched off so diesel generators rattle and rumble outside pharmacies and food shops. Choral music from an ornate Orthodox church signifies a "rolling mass". People are hurrying in, and walking out. A peaceful transformation by way of prayer. Do people turn to their God in wartime, or lose their faith?

Later, Paul gives us refresher medical training. We practise putting on our own tourniquets one-handed and giving injections to counter blood loss from major trauma. Then we test our communications kit (primary, secondary and tertiary systems). We're in constant contact with RE:ACT's Chilmark Ops team and our insurers who operate an emergency evacuation team, if evacuation is possible.

I sleep terribly that night, my subconscious full of chaotic, cluttered imagery, unused to being inside a country under attack.

Dnipro: life in the Blitz

Dynamic risk assessments from the Ops team allow us to board an overnight train and head 600 miles east to Dnipro city, around 80 miles from the front line to the south in Zaporizhzhia region, and 155 miles from the front line to the east in Donetsk region – familiar names from news reports.

The Dnipro river, now the physical manifestation of the Ukrainian/Russian divide, is a wide, choppy, deep blue mass. Upstream, it separates mountain ranges; downstream, it holds

apart armies. A political power, by natural law. The Clyde back home feels like a muddy burn in comparison.

The food production facility is immaculate, hygienic, organised. The staff are so conscious of the food staying hot: the insulated travel boxes lose just one degree every hour. They serve us borscht (traditional soup) from the menu. It's tasty but most importantly, for Ukrainians fleeing their homes, it's hot, comforting and provided by kind and friendly local helpers as soon as they arrive.

We visit Dnipro Women & Children's shelter – run by Globa22, another Ukrainian charity – where RE:ACT provides the food funding. We learn that Dnipro's population has grown by about 200,000, or 20%. The shelter is respectful and welcoming. The Ukrainians we meet see themselves "as one". Here, people tend to be accommodated with others from the same area – this helps families, provides comfort, and connections that might help people find paid work. Some of the building is derelict, but volunteers have helped renovate the shelter wing and there's a welcome feeling of calmness.

Children sit on windowsills playing games on a shared smartphone. Having already lost years of school due to Covid, there are 8-9 year olds who can hardly read. The internet is their teacher.

Dnipro is a purgatory. People evacuate from near the front line, but then need to choose – stay in Dnipro, return home, or continue west to quieter parts and restart their lives. No electricity means an economic downturn. Inevitably long term socio-economic issues are developing.

A third RE:ACT-supported, charity-run building also offers physiotherapy. Elderly people sit in the dark but are so thankful for the building and service. A woman whose son died on the front line asks to hug Paul, and just holds on to him. When asked what she would like to say, she replies, "Please don't forget the elderly in war."

It's a heavy day. We are seeing good things, that exist because of bad things. The constant duality is emotionally difficult. I can feel it again now, writing this.

Globa22 has repurposed a supermarket into an overnight shelter, including a baby and children's room. There's industrial LED lighting, no privacy, and tinny supermarket music across the sleeping area. A fast food restaurant lets people use their toilets. There are no showers.

Dnipro train station is a very high risk site. Russian attacks have focused on major infrastructure. It's late afternoon but the electricity is out. We don't know if it's scheduled or spontaneous, temporary or permanent. The air is thick with diesel fumes, engine noise and the screech of metal on metal. Conversation is illustrated by clouds of iced breath. There is a "Blitz" feeling.

RE:ACT food is given out in an underground restaurant, sandbags against the window, a few lightbulbs behind the bar, otherwise in darkness. The food is cold and limited, but welcome. It feels somehow illicit but it's the opposite – innocent people just trying to live their lives.

One night, warning comes via the air alert app. We hear the deep hollow noise of missiles overhead. It is surreal. I expected to feel terrified, but instead feel angry that innocent people are being subjected to this erratic terror. Unlike the Ukrainians, I know I can leave and my loved ones are safe back home.

Some people stay in their hotel rooms; others move to the bunker. The reception staff don't leave their desks. This was nearly day 300 of the invasion. Trust in the Ukrainian anti-aircraft protection is high, but it isn't infallible. We had driven by a bombsite that day.

Our phones show fuzzy amateur videos of round, orange fire in a grey sky. Afterwards we hear there were around eight missiles, all shot down. We're also told that Russia is using more low flying drones which are more difficult for air defences to pick up. After we left, Dnipro was not so lucky.

In the morning, we meet Atlas Logistique to strengthen humanitarian partnerships and pick up as much local knowledge as we can; later, we meet UN OCHA: the Office for the Coordination of Humanitarian Affairs. Our goal is to secure funding to enable hot food distribution to continue through winter and for as long as it's needed. We are trying to connect our local partners with the international funds intended for this type of proven scheme. The meetings are all positive and we press hard for target dates for funding to be unlocked. We write reports for RE:ACT and schedule follow-ups.

Kyiv: final stage

Onward to Kyiv. On the train we recharge – ourselves, our contingency plans and our devices.

At the British Embassy in the capital we discuss our work and, crucially, our goals. We arrange a meeting with another UN OCHA rep, ensuring that everyone across the country is up to speed – pressing our message to avoid anything being lost within such a sprawling organisation.

I had hoped to see the revolutionary Maidan Square, scene of the 2013 wave of demonstrations and civil unrest demanding closer Ukraine-European integration, involving up to 800,000 civilians over three months of protest. I hadn't appreciated just how massive the square would be. To stand there, acknowledging the sheer luck that I was born into stability and unity, is sobering.

We catch the train across to Poland and fly home, a full view of rolling, lush, green Britain.

Final thoughts

My scribbled notes from that first RE:ACT course record the seven humanitarian principles: humanity, impartiality, neutrality, independence, voluntary service, unity, and universality. Paul told us from the outset that our personal med kits were fully stocked and if we came across anyone who needed help, we were expected to exhaust our supplies to help them survive.

I don't know enough about history, or politics. In the face of conflict, I do know the common tragedy is that people become victims. It drives home why humanitarianism is necessary. Everyone in need deserves help, free of judgment, if we are able to give it.

Many lawyers may believe that their skillsets rest within documents alone, but an agile legal mind can be applied to a multitude of wider contexts and environments – including war zones. In a world seemingly saturated with bad news, I've found action to be some cure for anxiety, hopelessness and frustration.

I encourage everyone, lawyers and non-lawyers alike, if they are able, to find their own area of special interest and consider how their professional skills might transpose into that sector to help. My own experience has been, professionally and personally, incredibly rewarding.

Susannah Pencovich is a solicitor with Scottish Enterprise and Scottish Development International. She is happy to discuss her experience with anyone considering anything similar or who would like to know more about RE:ACT's work.

finders INTERNATIONAL
TRACING HEIRS TO ESTATES, PROPERTY & ASSETS

No two the same

Louise Levene tells how specialist services can help you clear estate administration hurdles

There has been a development in new complexities due to the rise in multi-family households, and an increase in assets held overseas as people increasingly live, work and invest outside of our borders.

However, we haven't got much better at making wills. Statistics* indicate that two thirds of British people still don't have a valid will, and nearly 60% of parents don't have a valid, up-to-date will in place. This can have a profound effect on estates and the heirs. Private client practitioners are required to have a very broad skillset, so it can be comforting to know that, where needed, professional probate genealogists can step in.

No instructions

On learning of the death, practitioners may have a problem right at the start: no instructions to act, no access to funds, and little or no information about next of kin entitled on intestacy. Probate genealogists can assist to help get the administration process moving, with a variety of flexible fee options.

Due diligence

The subject of wills – or their lack – can be thorny. The family is convinced that a will was written naming them; or that a more recent will exists than the one in your possession. Our thorough Missing Will Search, backed up by missing will indemnity insurance, can remove uncertainty and allow the estate representatives to move on with the process.

Verification

The work of tracing missing beneficiaries utilises many research tools via publicly accessible online records of births, marriages and deaths, census records and social media, as well as electoral roll and other commercial data. It's the training, credentials, special records access and research methodology that set a professional probate genealogist apart from "bedroom" sleuths, ensuring that all parts of the family tree have been carefully researched, and all beneficiaries located.

Estate practitioners can find themselves misinformed about the true extent of the family. Family members don't always know about additional heirs that emerge through research, but genealogists find that some beneficiaries are economical with the truth. Taking the word of the "sole heir" at face value is a potentially costly risk to take, one that can be avoided by engaging a professional probate genealogist to independently verify the family tree.

"There's no one else..."

Finders International was involved in the estate of a man with a £400,000 intestate estate. The man's sister asserted she was the sole beneficiary. Finders verified the tree and found that she had a nephew, entitled to half the estate. She had, it appeared, neglected to mention his existence because she didn't approve of his behaviour. The nephew received his rightful share of the inheritance, and the practitioners saved a great deal of trouble and expense from a potential later claim.

Finding assets

It's easy for a person to acquire assets overseas: perhaps being paid in company stock, combined with an increase in wealth managed overseas, helps us feel that we live in a truly globalised world.

It's when the owner of these assets dies that we tend to find out the world is not so globalised after all. A virtual security gate crashes down, and the estate representatives and legal practitioners must deal with a string of unfamiliar requirements from a foreign-based asset-holding institution, that may create legal, financial or administrative complications – or all three! Outsourcing this to an experienced professional firm of probate genealogists can help with what can be unfamiliar, lengthy and time-consuming work.

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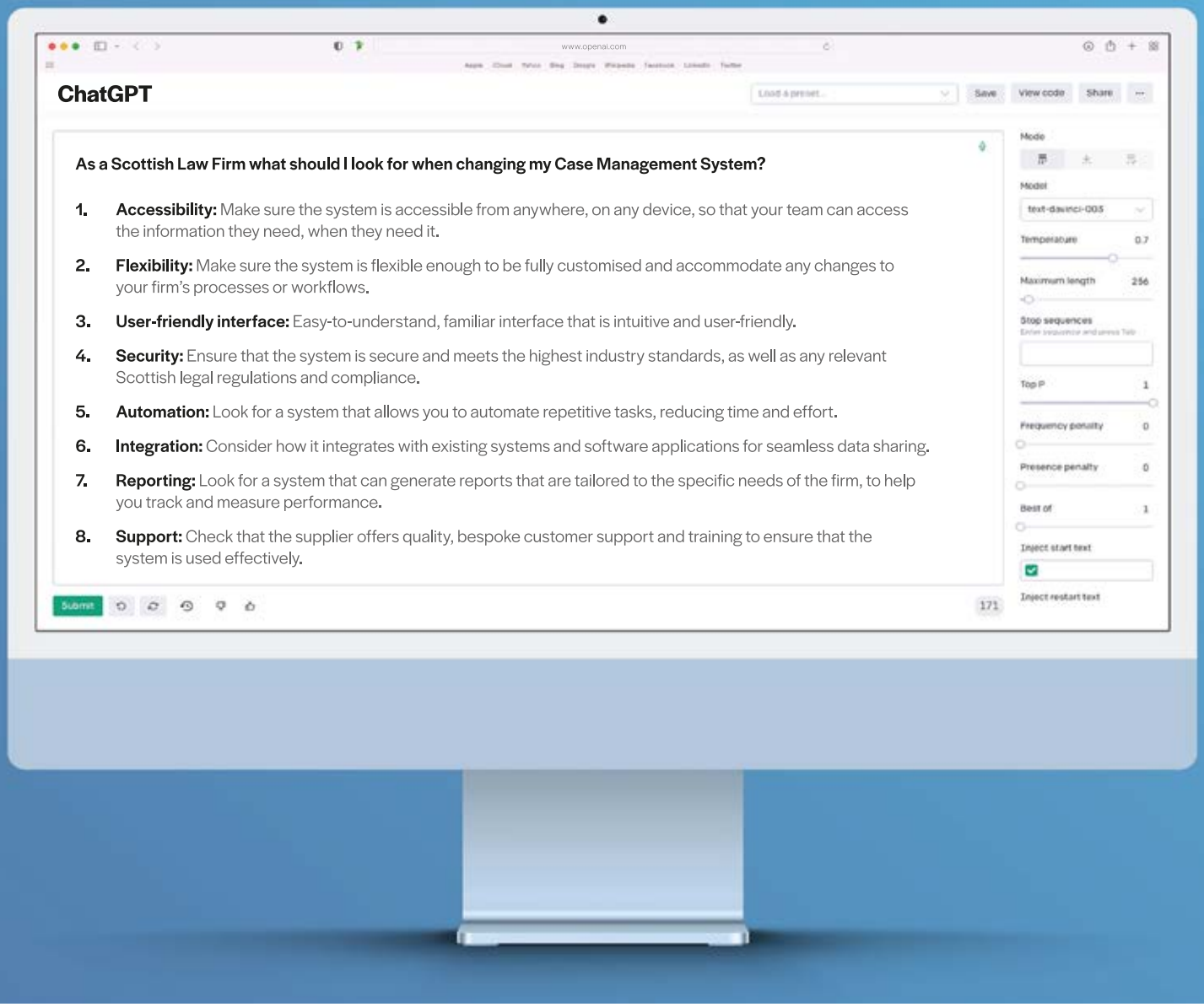
Louise Levene, International Asset Services Manager at Finders International

*** Source: "Perplexed by wills", Royal London press release, December 2018**



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Take the plunge!

... and change your outdated case management software. Resistance is futile!

When it comes to technology, resistance is futile. Whether you're a visionary early adopter or a sceptical laggard, you and your business will change and adapt to new technologies. It's only a matter of when.

Don't believe me? Look at the phone in your pocket.

Is it a Nokia 3310? Launched in September 2000, it was a real classic. Robust, massive battery life, and it did everything you needed – at that time. But I'm guessing the phone in your pocket is not a 3310.

Remember when you switched? It was quite scary. These new phones didn't even have instructions – you learned how to use it by playing around with it.

When you ditched your feature phone for a smartphone, you were probably somewhere between the early adopters and the laggards – but you switched. Resistance is futile.

Lawyers changing

I have two lawyers in my immediate family. I think I can say with some confidence, that they like to think things through and make sure every detail is in order before taking the plunge. They don't like surprises, and they certainly don't like change. So, when somebody proposes that they change their legal software, it's like asking them to jump into an Arctic pool of icy water. Yeah, it took them a while to convert to a smartphone – but they did, of course they did.

OK, you know where I'm going with this... your case management system. Is it more 3310 or more iPhone 14?

New technology allows us to do the things we need to do more efficiently and effectively, with less room for error; but more than that, it allows us to do new things. You could order a pizza or a taxi on a 3310, but watch your favourite TV show, or take a photo and send it to family at no cost? – unthinkable.

Missing opportunities

What is your case management software doing for you and your business right now? Some firms have been using theirs so long that they don't notice how much time they waste and the opportunities they are missing. All this is hidden from them because right now, they're probably too busy to take a step back and look at how technology is changing law firms. So, when someone like me finally tells them what the new software can do, it can come as a bit of a shock. Fortunately, most of the time, once they take the plunge and try it out, they realise how much better it is. They can now work faster and more efficiently with fewer errors, and they don't need to worry about outdated software features, compatibility, or integration issues.

So, the message here is that you will upgrade your legal software; it's just a question of when.

If you are thinking of upgrading your case management software soon, here are some things to consider.

1. The software should have the ability to track and manage all aspects of a case, from enquiries/leads, notes and deadlines to document management and communications. It should also integrate with the key platforms you use every day. Additionally, it should have an intuitive, familiar user interface, fully customisable, allowing you to access quickly the information you need and work the way you want to. It should also generate reports, charts and dashboards to help you better understand the case and your overall business. And please, accept nothing less than full customisation. It exists, and don't let any provider tell you otherwise.

2. Cost is obviously an important factor. Many law firms are reluctant to invest in a new system, but it's important to consider the long-term benefits of better case management. The cost should be weighed against the potential savings in time and money that a new system can offer. And let's be realistic, if you want a better product, sometimes you have to pay more than you do now, particularly if you have been using a low cost, outdated system for years. Think of it not as a cost but an investment. Look for the functionality you want, and tell the provider what you can afford to pay.

3. Finally, ease of implementation is essential. A good legal case management system should be straightforward and easy to use, allowing lawyers to get up to speed with using the software without any real issues. Furthermore, your provider should offer comprehensive in-person training and support. Investing in a new system will be an invaluable tool for any lawyer. With the right software, law firms can customise and streamline their processes, save time, and better manage their cases.

For me though, the best tip when it comes to changing your case management system is all about having the confidence to change your mindset, and in many cases that of your team. So, let's not continue to frustrate ourselves by complaining about it. If you get the opportunity to trial new platforms, be curious – press that button, play around with that document, input that data and just see what happens. You won't break it, I promise!

If you need more advice, drop me a line. You can reach me by emailing grant@denovobi.com, call me on 0141 331 5290 or visit our website denovobi.com

Human rights at the Covid-19 Inquiries

Jenny Dickson considers what a human rights based approach in the Scottish and UK Covid-19 Inquiries may look like

Both the Scottish and the UK Governments have established public inquiries to examine the handling of the Covid-19 pandemic. The inquiries are under way, both considering a wide range of aspects of the pandemic, as set out in their terms of reference.

Last year, the Scottish Government appointed a new chair to the Scottish Covid-19 Inquiry, Lord Brailsford. In doing so, the Government took the opportunity to re-emphasise the importance of the inquiry taking a human rights based approach. The terms of reference were amended, and the Government referred to "reflecting the commitment that the inquiry take a person centred, human rights based approach".

What is meant by a "human rights based approach"? There are two likely aspects to this approach: the what and the how.

What will the Scottish inquiry consider?

The terms of reference are wide. The Scottish inquiry will consider many aspects of the handling of the pandemic, including planning in advance, lockdowns, vaccination strategy, PPE provision, care in nursing homes, education and financial support. It will "consider the impacts of the strategic elements of handling of the pandemic on the exercise of Convention rights (as defined in section 1 of the Human Rights Act 1998)".

What the Scottish inquiry considers within these categories is likely to touch on human rights. Article 2 of the European Convention on Human Rights provides for the right to life. The inquiry will likely wish to consider whether decisions taken by the state and public bodies breached article 2. For example, this may be considered in the context of decisions regarding the discharge of patients with Covid-19 from hospitals to care homes.

How will the Scottish inquiry be run?

A human rights based approach will also impact on how the Scottish inquiry is run. An easy way of understanding how the Scottish inquiry might be impacted is to consider previous inquiries. The Equality & Human Rights Commission ("EHRC") made legal submissions to the Grenfell Inquiry. It has also published a number of papers about that inquiry, which assist with the public's understanding of the inquiry process and its impact on equality and human rights.

The EHRC commented on a number of practical and procedural aspects of the Grenfell Inquiry, raising concerns about some aspects of the handling of the inquiry. As with the Covid-19 Inquiry, at the Grenfell Inquiry there were bereaved families who wished to participate in the process. The EHRC commented that bereaved families should be able to take an active role in any inquiry. This includes having a chance to contribute to the scope of the inquiry, access to the venue in which the evidence is being heard, and an opportunity to question witnesses and participants. It goes further than simply being heard.

This may be an indication of some of the ways in which the Scottish inquiry will deliver a human rights based approach through the

processes it applies. However, ensuring that the bereaved families are involved poses quite different challenges for both Covid-19 Inquiries than it has done for previous public inquiries. The number of families is vast, and they come from a range of groups with different experiences. It will be challenging for both Covid-19 Inquiries to interact effectively with the bereaved relatives, and it will be of vital importance to the success of the inquiries that this is done well.

To the extent that the Scottish inquiry considers the circumstances in which many individuals died during the pandemic, it could be said that the inquiry itself is based on human rights law. Part of the article 2 right to life is the procedural obligation on the state to carry out an effective investigation into alleged breaches of its substantive limb, i.e. to review where actions of the state may have led to lives being lost. This was considered in the case of *Armani da Silva v United Kingdom* [2016] 63 EHRR 12. The judgment set out that: "those responsible for carrying out the investigation must be independent from those implicated in the events; the investigation must be 'adequate'; its conclusions must be based on thorough, objective and impartial analysis of all relevant elements; it must be sufficiently accessible to the victim's family and open to public scrutiny; and it must be carried out promptly and with reasonable expedition".

"It will be challenging for both Covid-19 Inquiries to interact effectively with the bereaved relatives"

When setting out how it will operate, the UK Covid-19 Inquiry does not refer explicitly to taking a human rights based approach, but all indications are that it will do so. It will listen to the experiences of bereaved families, and will produce its reports in a timely manner.

Equality Act 2010

Both Covid-19 inquiries will consider the impact of the pandemic on all of society. Early evidence indicates that it was disproportionately detrimental to the vulnerable, including those in poverty, the elderly and those with disabilities. The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. The inquiries will need to ensure they prioritise non-discrimination and consider the impact on different groups. The terms of reference for the UK Covid-19 Inquiry refer specifically to considering those with protected characteristics under the Equality Act, as well as other categories of people.

Should human rights be considered at all public inquiries?

Public inquiries are convened by a Government body to look into matters of public concern. Given that definition, many public inquiries consider the circumstances of multiple fatalities – the Grenfell fire, the Manchester Arena bombing, the treatment of patients under the Mid Staffordshire NHS Foundation Trust. They consider the treatment of individuals, which by its nature engages consideration of human rights. As can be seen from the EHRC's comments on the Grenfell Inquiry, often more can be done to achieve a true human rights based approach – both in terms of the subject matter considered by public inquiries and the process they follow.

We watch with interest to see how the Scottish Covid-19 Inquiry delivers on its commitment to taking a human rights based approach.

Jenny Dickson is a partner and solicitor advocate in the Litigation & Dispute Resolution team at Morton Fraser LLP

Court clarity and commercial reality

An Inner House decision has brought welcome clarity to the requirements for assignation of standard securities, and to the redaction of commercially sensitive documents, as Lynsey Walker explains

Following a number of years of closely followed litigation, the Inner House of the Court of Session has recently overturned a lengthy 137-page decision of a sheriff at Glasgow Sheriff Court.

Mr Guidi had granted a registered standard security and a personal guarantee in favour of Clydesdale Bank plc in 2011, which was subsequently assigned as part of a bulk assignation to Promontoria (Chestnut) Ltd in 2015. When Promontoria sought to recover the sums due under the personal guarantee by serving a charge for payment, Guidi sought reduction of the charge and declarator that Promontoria had no title to recover the outstanding indebtedness.

The appeal dealt with two key topics: the assignation of standard securities, and the redaction of commercially sensitive documents in litigation. Ultimately, the Inner House concluded ([2023] CSIH 4) that: (i) the standard security had been validly assigned despite parties not adopting the exact wording of the relevant legislation; and (ii) the redaction of a document does not in itself mean it cannot be relied on.

Assignation: flexibility in form

The Inner House ultimately found that the framework which governs assignations, the Conveyancing and Feudal Reform (Scotland) Act 1970, allows for flexibility in its application. A failure to repeat the wording set out in the 1970 Act verbatim does not automatically render the assignation invalid. The court took a pragmatic approach in finding that flexibility in this regard is compatible with the interests of justice, noting that "forms should be servants, not masters".

Furthermore, the Inner House rejected the sheriff's finding that assignations of this nature could not also include instruments such as personal guarantees or floating charges, on the basis that it was more likely than not that, in a transaction such as this one, there would be instruments of this type.

Guidi's argument that the validity of the assignation rested on whether there was evidence that Promontoria had paid the purchase price to the bank also held little weight. The court commented that it "defies belief" that the bank would have treated the assignation as concluded since 2015 in the absence of payment.

Crucially, the court also raised the overarching issue that the underlying debt remains unpaid. If the assignation had not been validly assigned, the debt would still be owed to the original creditor. This was denied as part of the same action. Therefore, the assignation had been validly assigned to Promontoria and Guidi's claim was dismissed.

Redaction: necessary information?

Promontoria had produced a copy of the deed of assignation, which included redactions of commercially sensitive information. Guidi contested this on the basis that Promontoria was obliged to produce the complete version of the principal document.

The Inner House found that, in a commercial action, a party is only under a duty to lodge such parts of a document as are necessary to prove its case. It was noted that Guidi was aware of the appropriate method of document recovery in court proceedings (i.e. commission and diligence), but did not follow this process. Ultimately, it was not contended that the redacted content had a bearing on the case, nor was there a statable basis on which the redactions might render the assignation invalid. The Inner House held that supposition was not sufficient in these circumstances.

The court noted with approval the guidance found in other Promontoria cases heard in the Court of Appeal, noting that it was not being asked to construe an ambiguous provision and could answer the question before it without the redacted content.

Comment

Importantly, this judgment demonstrates that the courts do strive to take a commercial and pragmatic approach, where possible. On the point of the assignation of standard securities, the endorsement of flexibility from the court is welcome. Moreover, the recognition that other financial instruments such as personal guarantees and floating charges will likely be included in a bulk assignation provides helpful recognition of the commercial realities of such transactions.

In terms of redaction, this judgment again takes a pragmatic approach and assists with the protection of commercially sensitive information in the context of commercial litigation. However, this should be handled with care and litigants should not be tempted to take a mile from this inch. It is important that the courts are still able to construe the document on which a party relies to make its case. Parties making redactions should remain prepared to fully justify and explain these to the court, which remains ultimately entitled to rule on the need for them if challenged.

This decision provides helpful guidance, as well as some commercial clarity, on both areas of law from the Inner House. Given the raft of litigation which has taken place on both matters, this clarity is welcome.

Lynsey Walker is a partner in the Dispute Resolution team at Addleshaw Goddard and specialises in banking litigation

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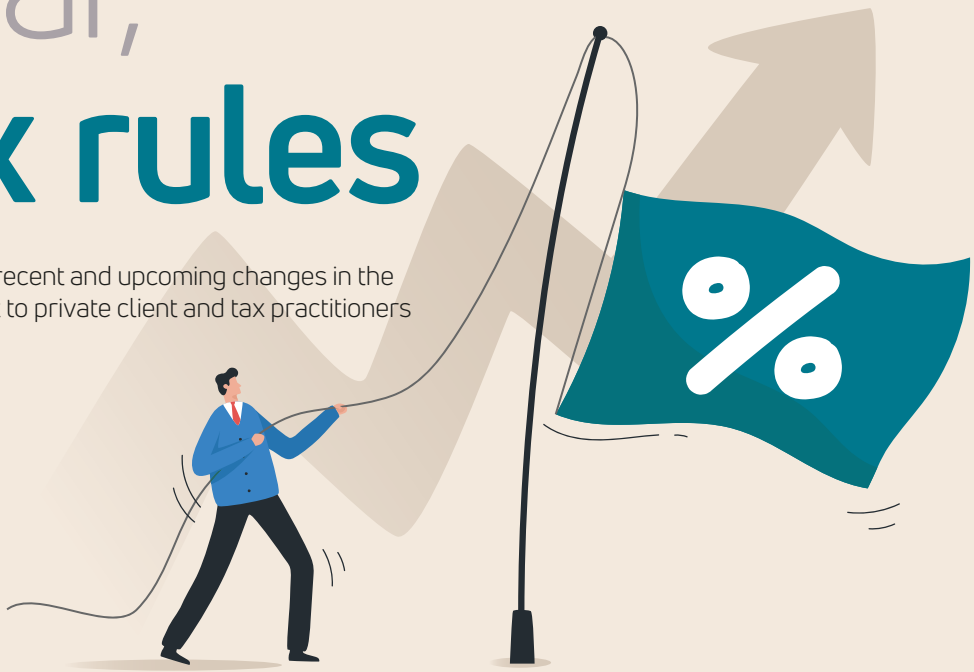
New year, new tax rules

Nicola Williams provides a quick reminder of recent and upcoming changes in the tax world which are most likely to be relevant to private client and tax practitioners



The last few months of 2022 saw a slew of tax changes. The UK Government's Autumn Statement was followed by the Scottish Budget on 15 December. In addition, 2023 will see some previously announced changes in tax law and practice come into operation.

Tax rises from April 2023

Corporation tax

Corporation tax will increase to a standard rate of 25% from April 2023. There is a small profits rate of 19% for companies with profits of £50,000 or less. Companies with profits between £50,000 and £250,000 will be taxed at the main rate but with "marginal relief"; this means tax is paid at a gradually increasing effective rate.

Income tax

In Scotland the top rate of income tax increases from 46% to 47%, which starts to apply at £125,140 (instead of 2022-23's £150,000). The 41% rate becomes 42%. It applies from £43,663 (or, if the standard personal allowance of £12,570 has been lost, from £31,093); the threshold is unchanged from 2022-23.

In the rest of the UK, the 45% rate will start to apply at £125,140 (previously £150,000). The 40% rate applies from £50,271 (or, if the standard personal allowance has been lost, from £37,701). The threshold is unchanged and will remain frozen until 2028.

The divergence in income tax rates, and thresholds, between Scotland and the rest of UK continues to increase. For example, a Scottish taxpayer earning £50,000 will now pay around £1,550 more in income tax than if they were resident in England. The lowering of the top rate threshold will see an increase in the tax chargeable on higher earners in both countries compared with 2022-23; however Scottish residents in this category will also see an increase when compared with England due to the 2% differential in rates. For example, an English taxpayer earning £150,000 in 2023-24 will pay about £1,240 more in income tax than they would have paid on that same sum in 2022-23, whereas a Scottish taxpayer will pay about £2,430 more than the previous year, and about £3,850 more than their English counterpart.

Dividend allowance decrease

The dividend allowance/0% rate (for individuals and trustees) will fall from £2,000 to £1,000 from April 2023, and to £500 from April 2024.

Capital gains tax

The annual exemption/0% rate for CGT for individuals will fall from £12,300 to £6,000 from April 2023, and to £3,000 from April 2024. For trusts it will fall to £3,000 from April 2023, and to £1,500 from April 2024.

This will have implications for residential property 60 day reporting. UK residents are under obligation to report disposals (sales or gifts) of interests in residential properties (excluding those within the principal residence exemption) within 60 days of completion of the transaction if there is tax to pay. (Non-residents must report all sales of UK property or land within 60 days, even if there is no tax to pay.) The lowering of the annual exempt amount will lead to more such disposals being subject to CGT, so in turn to more people being required to file returns, and on failure, to liability to penalties and interest charges (on any shortfall between the payment to account made with the 60 day return and overall CGT liability as calculated in their self assessment return).

For general CGT reporting purposes there is an obligation to report disposals on self assessment returns, even if there is not a gain exceeding the annual exempt amount, if proceeds of the disposal exceed a certain amount. For 2022-23 that amount (£49,200) is more than four times the annual exempt amount; for 2023-24 onwards the limit will be £50,000: it will not be four times the new, lower exempt amounts.

LBTT related changes

Additional dwelling supplement has increased from 4% to 6% for contracts entered into on or after 16 December 2022. Broadly speaking, this charge applies in addition to LBTT at the usual rates, where an individual is buying a second house or when a house is bought by a non-natural person.

Real estate: option to tax

In its continuing efforts to limit taxpayers relying on HMRC, from 1 February 2023 HMRC will:

- stop issuing option to tax ("OTT") notification receipt letters. An automatic email response will still be sent if the option to tax is submitted to optiontotaxnationalunit@hmrc.gov.uk, but not if submitted by post; and
- no longer respond to requests to confirm the existence of an OTT (unless the option was made more than six years ago or the request is from a Law of Property Act receiver or an insolvency practitioner).

Those involved in commercial property deals will need to ask sellers for other evidence of the existence of an OTT, such as proof of email submission to HMRC together with an automated response of around the same date and time.

Nicola Williams is a member of the Law Society of Scotland's Tax Law Committee

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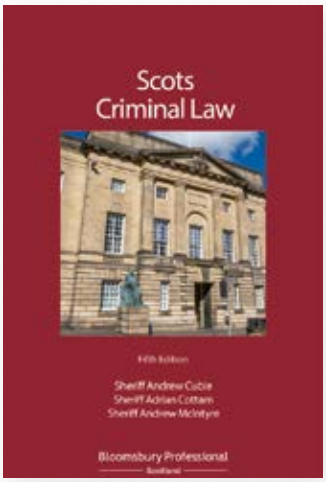

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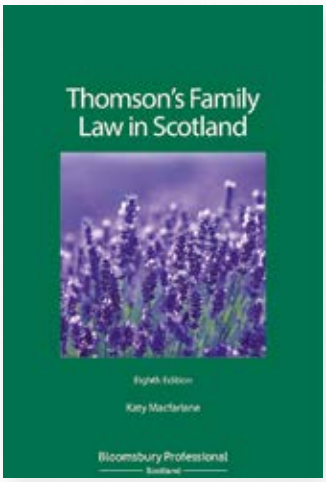

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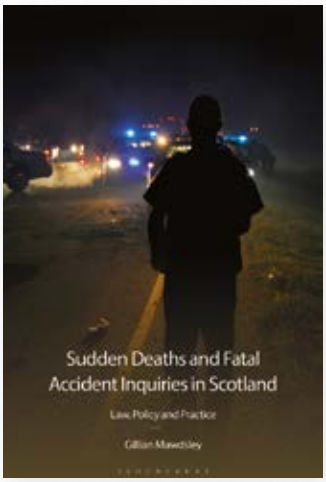

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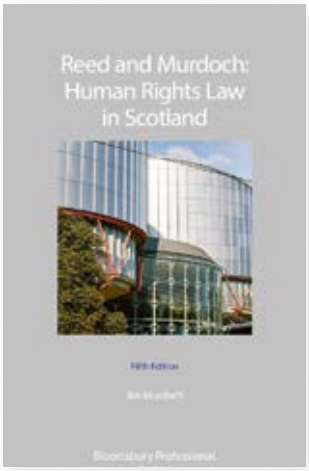

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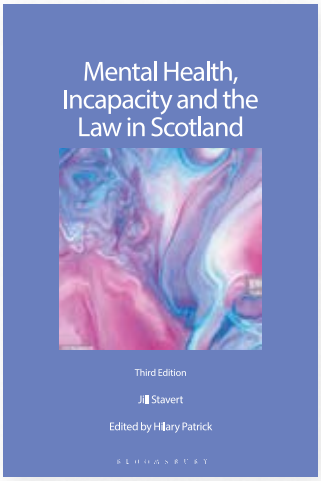

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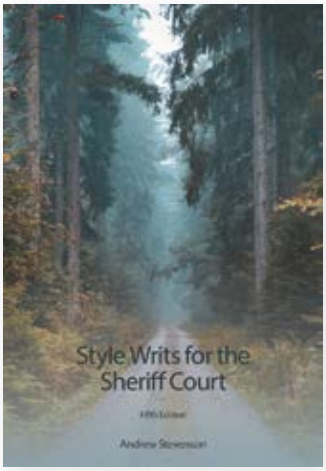

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Court declines rape sentence guidelines

Sheriff Fraser's first briefing article covers the Crown appeals seeking guidelines on sentencing for rape, and against a decision to refuse to adjourn a summary trial

Criminal Court

ADRIAN FRASER, SUMMARY SHERIFF AT EDINBURGH

Sheriff Crowe had his finger on the legal pulse for a decade, charting important developments in criminal law, demystifying the internal workings of the law and providing incisive commentary on important appeal decisions.

He might properly be described as an institution in the Journal. He also took a keen interest in supporting and assisting young lawyers on their career paths. He and those before him, referred to in his final article (Journal, December 2022, 26), will be hard acts to follow.

I am grateful to Sheriff Crowe for introducing me then, and flattered that he saw me as someone who might follow in his footsteps. I don't know about his description of me as having encyclopaedic knowledge, but solicitors appearing before me are occasionally provided with some authorities "they may wish to consider and address me on".

It is perhaps more accurate that over the years I have built up experience in the use of resources for research. What is important is knowing where to find appropriate guidance and the basis for legal argument. One place is Renton & Brown. Other resources, constantly updated, are the *Jury Manual* and *Preliminary Hearings Bench Book*, freely available on the Judiciary of Scotland website; legal search engines such as Linets; and of course for those employed by the Crown, a wealth of information on their intranet.

For my first article, I had a sense of *déjà vu* when reading some recent opinions from the High Court and Sheriff Appeal Court, and so will write about some areas of the law revisited.

Sentencing in rape cases

In *HM Advocate v LB* [2022] HCJAC 48, the Crown took up an invitation issued by the High Court almost 10 years ago in *HM Advocate v Cooperwhite* 2013 SLT 975, to address "in a suitable case in the future" the significance to sentence of a pre-existing, or existing, sexual relationship contrasted with a stranger rape.

In *Cooperwhite*, the High Court had anticipated an opportunity for guidelines to be given in terms of the Criminal Procedure (Scotland) Act 1995, s 118(7). That was denied then, as the possibility of issuing guidelines had not been canvassed with the parties and the court did not hear submissions on the general points of principle involved. The court was looking to be addressed on the position in "the jurisdictions in the Commonwealth and beyond".

Fast forward to 2022, and the Crown in *LB*, over three unduly lenient sentence appeals, endeavoured to convince the High Court that there was an urgent need for a guideline decision in relation to sentencing for rape.

Given that we now have the Scottish Sentencing Council ("SSC"), which has commenced work in this area, the urgent need for a guideline decision from the High Court is not immediately clear, and ultimately was not clear to the court.

At para 117 of its opinion the court, having detailed at a previous hearing what it required to be addressed on, said: "The statistical evidence produced by the Crown here is sparse and the other evidence relied upon largely relates to comparative jurisdictions. The statistical evidence consisted of a table showing the mean sentence for all cases of rape over a 10 year period. There was no attempt to break these statistics down, or to present cases comparatively by means of common features such as number of complainers; rape of domestic partners; a background of abusive and controlling behaviour; the use of physical force; planning; breach of trust; particular vulnerabilities such as age, disability or being asleep; and other aggravating – or mitigating factors (e.g. youth) so that the impact of these factors within the sentencing process might be identified."

Essentially, the Crown's timing was the problem here, having accepted the 2013 invitation just too late. As stated in the opinion at para 123, "Scottish courts have extensive experience and collective knowledge of sentencing" for this offence. No pressing problem in sentencing terms was identified by the Crown.

With the advent of the SSC, there is now a purpose built organisation to "conduct meaningful public consultation so as to provide a proper evidence base for its recommendations". It "is in a far stronger position than the court to engage in a robust comparative analysis drawing on appropriate methodology and scholarship" (para 124).

The Council is of course a separate body from those issuing guidelines in England & Wales. Such guidelines can be looked at, if only to provide "a useful cross-check" (para 122). The court acknowledged that decisions in those jurisdictions "may help specific aspects of sentencing and the impact thereof", confirming the position in a number of previous authorities. The literature review published by the SSC contained nothing to suggest that Scotland was significantly out of sync with England & Wales or the Republic of Ireland.

Undue leniency (1)

However, the Crown did succeed in convincing the court in two of the three appeals that the sentences were unduly lenient, being outwith the range of sentences which the judge at first instance, applying his mind to all the relevant factors, could reasonably have considered appropriate: the test in *Bell v HM Advocate* 1995 SCCR 244.

LB had pled guilty to offences against three former partners over a five year period – three of assault, one to injury; three of rape; two of threatening and abusive behaviour; two of a course of abusive behaviour; and one of sexual assault. Concurrent sentences were imposed resulting in a *cumulo* 45 months. The judge was persuaded that LB's emotional immaturity was "the single underlying cause of his offending". He did not impose an extended sentence, but did impose a sexual offences prevention order.

In finding the sentence unduly lenient, the court described the case as serious, pointing out the lengthy pattern of abusive and controlling behaviour, encompassing both physical and sexual violence. The complainers were vulnerable, and in one case a photograph was taken after an attempted oral rape. Although the judge had correctly considered the SSC's Sentencing of Young People guideline, given that LB was under 25, the criminal justice social work report ("CJSWR") did not identify that lack of maturity was a significant element.

There was a lack of information available to the judge on the impact of diagnoses of ADHD, ADD and ODD. The CJSWR categorised LB as manipulative and controlling.

Accordingly, the judge did not have an evidential basis to come to the conclusion he did. He had indulged in speculation, and given insufficient weight to the CJSWR which highlighted LB's feeling of entitlement to sex because he was in a relationship. The totality of the information before the judge pointed to violent, controlling and abusive behaviour "which was the hallmark of the respondent's attitudes to the complainers" (para 37). The judge had not recognised that LB presented a risk of serious harm to the public. The sentence imposed meant that LB would be treated as a short-term prisoner, entitled to release on licence on serving half of his sentence. The period of licence was insufficient to protect the public from serious harm.

The High Court quashed the sentences and imposed a *cumulo* extended sentence of

eight years, with a custodial part of six years reduced from eight to reflect the guilty pleas. This still recognised a limited opportunity for rehabilitation in terms of the Sentencing of Young People guideline, and was less than might have been imposed on a mature adult.

No SOPO was imposed. The judge did not have or request the detailed information to properly consider such an order. He would have needed the detailed information such as would commonly be supplied when the police make an application for a civil order, including a risk assessment. There was no reference to a SOPO in the CJSWR.

Although not setting out any specific procedure to be followed in considering a SOPO, the court, at para 46, stated that there must be adequate information to justify the making of an order, in particular as to the need for the order, and the suitability, proportionality, and practicality of the conditions. Here an extended sentence with post-release supervision allowing continuation of work carried out while in custody was likely to give the respondent a better prospect of rehabilitation than a SOPO.

Undue leniency (2)

In the second appeal allowed, the respondent (JI) had been convicted of three offences against two former partners; these included indecent assault, common assault and rape. As far as one complainer was concerned, the charge of which the respondent was convicted did not fall within a pattern of abuse; however with the second there was a pattern of violent behaviour, including rape where he had set out to overcome her resistance by force.

The sentencing judge had described the offences as the "product of specific aspects of his relationships with the complainers", in particular the second, "which caused him to act in ways which he was not otherwise generally inclined to behave". The court had difficulty in understanding what that meant; JI alone was responsible for his behaviour, and the judge had given insufficient weight to that complainer's vulnerability.

When selecting the custodial period, the judge "overestimated the element of an ordinary determinate sentence which is normally included for public protection". He took into account the motivation of one complainer in contacting the other and renewing her complaint to the police, but did not say how he did this or the impact on the sentences imposed: he should have focused on JI's actions and the fact that he committed serious offences.

Accordingly, the court found the sentences on two of the charges to be unduly lenient, as well as the effect of sentences being concurrent. The sentences were quashed and eight years *cumulo* imposed.

The sentences which were unduly lenient had been imposed by the same judge; this did not suggest a "systemic" sentencing issue which might support the Crown's argument for a guideline judgment.

"The decision on whether to adjourn a trial or not is always an anxious one. It is fact sensitive"

To adjourn or not to adjourn

The decision on whether to adjourn a trial or not is always an anxious one. It is fact sensitive. It has been considered on appeal many times.

In *PF Glasgow v McIntyre* [2020] SAC (Crim) 007 at para 15, the Sheriff Appeal Court ("SAC") reminded us "that there requires to be a balancing of the various interests involved, these being prejudice to the prosecutor; prejudice to the accused, and prejudice to the public interest in general".

The classic test can be found in *Tudhope v Lawrie* 1979 JC 44 at 49: "There can.... be no doubt that it lies within the power of a sheriff to refuse to grant an adjournment of a diet with the consequences... that an instance may fall and a prosecution brought to an end. But at the same time this is a power which, in view of the possible consequences of its exercise to parties and to the public interest, must be exercised only after the most careful consideration, on weighty grounds and with due and accurate regard to the interests which will be affected or prejudiced by that exercise".

Adjournment on Crown motion was revisited by the SAC in *PF Glasgow v Cooper* [2022] SAC (Crim) 8, a Crown bill of advocation. The charges were (1) sexual assault in terms of s 3 of the Sexual Offences (Scotland) Act 2009, and (2) common law assault.

Confirming that the sheriff was entitled to refuse the motion, and thereafter to desert *simpliciter*, the court set out what is expected of the Crown in the lead up to a trial, and when such a motion is made. Its words should be seen as minimum standards for the Crown, as well as a warning of the potential consequences of failing to meet these.

Against a background of a previous joint motion and a previous Crown motion to adjourn, a further motion was made at trial on 4 August 2022 on the basis that the complainer had intimated that she and other Crown witnesses, all serving soldiers, had been deployed abroad and were unavailable. No further information was provided.

The respondent, also a soldier, had been subject to a special bail condition for a year and could not be deployed until proceedings were concluded.

The Crown submitted that the sheriff had failed to have any regard to the complainer's interests, focusing entirely on the Crown's failures.

A sheriff's decision can only be overturned where the decision is one that no reasonable court could have reached. The decision is primarily for the court at first instance.

The SAC made it clear that the sheriff's reasoning should be tested by reference to what was known to him at the time of his decision, not what the Crown might later disclose in a bill of advocation or submissions on appeal. There were gaps in information in the bill; only some of these could be filled during the hearing.

The Crown is likely to be in difficulty with a motion to adjourn where systemic error can be established. While recognising that it may prove difficult if not impossible to identify systemic error from one case, at para 15 the SAC said that it was possible to identify general themes which, if not systemic, were potentially so, namely:

(1) The Crown should be ready to proceed with a trial at the first trial diet. In the SAC's words, "It is not a dress rehearsal." Having discussed the case at a pre-intermediate diet meeting, there should be a frank disclosure of anticipated problems at intermediate diet. Continuations of that diet should be rare.

Here, the SAC criticised a "lackadaisical approach to providing proper information to the sheriff on the citation of witnesses" which "continued to the second intermediate diet". It was "still in the dark about the true position on... Crown preparations for the second trial diet".

(2) At the third trial diet, the sheriff was presented with a *fait accompli*. Around a month before, the Crown knew there were witness attendance issues, but left it until the trial to move to adjourn, rather than seeking earlier adjournment and potentially freeing up valuable court time.

(3) No explanation was given to the SAC as to why it took until the third trial diet to apply for special measures for the complainer; there was no suggestion that her requirements had changed. The application stated that the complainer had been cited, "which the drafter must have known to be untrue".

At para 16 the SAC commented on pandemic related challenges to the justice system, which resulted in a recovery programme involving use of additional scarce public resources. For these to be used effectively, the Crown had to play its proper part.

The seriousness of the charge or charges is a factor, but as the SAC put it, "should never be treated by the Crown, even if subconsciously, as a useful card to be deployed just to excuse wholesale failures in a prosecution".

Reading between the lines, an adjournment

might well have been considered appropriate if full information "about the attitude of the complainer and the prejudice she has suffered due to the failings by the Crown" had been made available to the sheriff when the motion was made.

I will conclude with the further words which the court had for the Crown at para 18: "It is not in the interests of justice that the Crown makes submissions in a slipshod manner to the court at first instance in the knowledge that it can all be resolved on appeal."

Employment

ELIZABETH BREMNER, SENIOR ASSOCIATE, DENTONS UK & MIDDLE EAST LLP

In the recent case of *Lyfar-Cissé v Western Sussex University Hospitals NHS Foundation Trust* [2022] EAT 193, the Employment Appeal Tribunal held that, while reopening concluded disciplinary proceedings may be "unusual", it is not necessarily unfair for employers to decide to impose a different outcome, including dismissal, on that basis.

Facts

From 1985 until her dismissal in September 2017, the claimant, Dr Lyfar-Cissé was employed by the second respondent, Brighton & Sussex University Hospitals NHS Trust. Since 2005, the claimant had made a number of protected disclosures, which resulted in her raising five employment tribunal claims (including race discrimination, victimisation and harassment) against the second respondent.

In 2014, the claimant was appointed to a position in which she was tasked with improving race equality within the second respondent. Two years later, a total of 19 allegations of bullying, victimisation, racial harassment and discrimination were raised against her. One accusation was that the claimant had told a colleague he was "everything [she] despised in a white manager". The claimant denied any wrongdoing. Disciplinary proceedings were instituted and concluded with a 12-month final written warning for the claimant.

While these proceedings were ongoing, the second respondent was being investigated by the Care Quality Commission ("CQC"). In August 2017, the CQC delivered a report in which it referred to "a culture of fear" within the second respondent, remarking that it had a "fractured and damaged approach to equality and diversity". As a result, the executive team of the first respondent, Western Sussex University Hospitals NHS Foundation Trust, was appointed to manage the second respondent.

Subsequently, the first respondent decided to reopen the allegations against the claimant, worrying that there were "fit and proper person issues" which had not been adequately resolved. Ultimately, it decided to dismiss the claimant with three months' notice.

The claimant raised a claim for unfair dismissal and automatic unfair dismissal. She alleged that the principal reason for her dismissal was her protected disclosures, and that she had been victimised under s 27 of the Equality Act 2010. The ET dismissed the claims and the claimant appealed.

EAT decision

The EAT acknowledged that it will be rare for circumstances to justify the reopening of a disciplinary process and that, in considering whether to do so, employers "will always require a sufficient justification". However, the particular facts were sufficiently unusual to warrant this step. Relevant considerations included the CQC report, the claimant's failure to take any responsibility for her actions, her role in relation to race equality and the first respondent's genuine concerns that, in light of the grievances, she was not the appropriate person for the role.

Accordingly, the EAT found that the ET had correctly applied the crucial question posed by s 98(4) of the Employment Rights Act (whether, in all the circumstances, the dismissal was fair) when deciding that the employer had acted reasonably. It also agreed that the reason for dismissal could be categorised as a conduct issue or "some other substantial reason" but, in any case, had nothing to do with any protected disclosures made by the claimant.

Comment

The case at hand confirms and builds on the ET's judgment 10 years ago in *Christou v London Borough of Haringey* [2013] EWCA Civ 178. While the principle of *res judicata* has full force in the judicial context of the courts, it does not typically apply to internal employee disciplinary proceedings. The employment relationship is far removed from the adjudicatory environment: it is the employer who determines the outcome of proceedings (as opposed to an independent arbiter) and, in so doing, the employer is not acting, nor are they intending to act, like a judge.

However, while this means that employers may instigate second disciplinary hearings on the same facts and may reasonably decide to take a different view, they must have sufficient justification for doing so.

Interestingly, in both *Lyfar-Cissé* and *Christou*, the fact that new management had been appointed and was "entitled to take a different view about the gravity of the conduct" was considered relevant.

Lyfar-Cissé is a reminder that there is no "one-size-fits-all" approach to the assessment of fairness. While the circumstances were sufficiently unusual to justify reintervention, this will always be a highly fact-specific issue. Context is key and, in another recent case, the EAT considered that the employer's reopening of a disciplinary matter was motivated by "a desire to appease regulators by showing that it was cleaning up its act" and, accordingly, ordered the employer to reinstate the employee.

In short, this case does not give free rein for employers to increase the severity of a disciplinary outcome, and employers must proceed with caution when considering whether to reopen disciplinary proceedings and/or to reach a different view or outcome.

Family

KAREN WYLIE, SENIOR ASSOCIATE, MORTON FRASER LLP

Family Mediation week, which is promoted each January by the Family Mediation Council in England & Wales ("E&W"), prompted me to consider how family mediation in Scotland compares with across the border. The process of mediation in family cases is broadly similar; however there are some differences.

Differences

A significant difference from Scotland is that in E&W mediation must be considered before a court action is raised. Section 10 of the Children and Families Act 2014 requires attendance at a mediation information assessment meeting ("MIAM") for any applicant in relevant family proceedings, and attendance is encouraged for all respondents. At the MIAM the mediator will provide information about the process of mediation and other forms of family dispute resolution. The Family Proceedings Rules, rule 3.8(1)-(2) provide for exceptions to the requirement to attend, the main grounds being domestic violence; child protection; bankruptcy; the unavailability of an authorised mediator within a specific geographical area or timescale; and where a MIAM has already been attended in the last four months.

Scotland differs, in that parties can currently apply straight to court without any need to evidence that mediation has been considered. This may change, however, as s 24 of the Children (Scotland) Act 2020 requires the Scottish ministers to arrange a pilot scheme under which a court may only make an order under the Children (Scotland) Act 1995, s 11 where the parties have attended a mandatory alternative dispute resolution meeting at which all the options available to resolve the dispute are explained. While there are questions about the proposed pilot and how it will operate in practice (see Elaine Sutherland, "Avoid lawsuits

beyond all things", Journal, July 2021, 18), it is potentially a huge step forward in ensuring that parties have been able to consider the best way to resolve the issues in dispute. Having heard about the options, the parties are free to litigate if they wish.

Like E&W, there will be exceptions to the need to attend a mandatory alternative dispute resolution meeting. Section 24 of the 2020 Act provides that the pilot scheme must not apply to proceedings in which there is a proven or alleged history of abuse between some or all of the parties. Also, on cause shown the court may decide that it would not be appropriate to require the parties to attend such a meeting.

The cost of family mediation

In Scotland, mediation is either paid for privately by the parties or covered by legal aid where parties are eligible and they can find a mediator who is prepared to offer their services at legal aid rates. Families can also access family mediation with Relationships Scotland in relation to child matters at no or relatively low cost, albeit at times there may be a waiting list for a mediator. For the pilot discussed it is expected that ministers will make funding available via legal aid or a separate scheme.

In E&W legal aid is available for MIAM attendance and for mediation for those who are eligible, again where they can find a mediator offering legal aid. Legal aid will cover the costs for both parties to attend the MIAM if one party is eligible.

In March 2021 the Ministry of Justice launched a time limited mediation voucher scheme designed to assist families with the cost of mediation. The scheme provides up to £500 per case towards the cost. The voucher is available to parties regarding a dispute or application regarding a child, or a dispute or application regarding finances and children. It is not means tested. Initial statistics show some encouraging results: of the first 2,800 completed cases, 65% of participants reached either whole or partial agreement away from court, while a further 3% only attended court to formalise their agreement.

"The voucher is available to parties regarding a dispute or application regarding a child, or a dispute or application regarding finances and children"

In Scotland, we may benefit from a similar scheme. For some parties it would to some extent remove the barrier of cost to using CALM mediators, particularly for parties who do not quite qualify for legal aid and have limited resources to spare; for others it may be the incentive they require to try what is to them an untested, unknown process.

The pilot envisaged by the 2020 Act is a welcome proposal, and many are keen to see it succeed. It would be a significant change to the awareness of mediation, and other forms of appropriate dispute resolution, in family cases if it were eventually rolled out across Scotland, with adequate funding to support parties' participation. However, it is not clear when the pilot will begin. In Scotland it does feel like we are playing catch up to some extent with our neighbouring jurisdiction in family mediation. We await progress.

Human Rights

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In *Reference by the Attorney General for Northern Ireland – Abortion Services (Safe Access Zones) (Northern Ireland Bill)* [2022] UKSC 32 (7 December 2022), seven Justices of the UK Supreme Court ("UKSC") determined whether clause 5(2)(a) in the referred bill was outside the legislative competence of the Northern Ireland Assembly because it would disproportionately interfere with protesters' rights to express opposition to the provision of abortion treatment services.

Background

In February 2018, the United Nations Committee on the Elimination of Discrimination against Women ("CEDAW") published a highly critical report on the provision of abortion services in Northern Ireland. The bill was intended to protect the right for women to access abortion treatment services, and implement

"Many pension schemes are facing, or if not managed, may face a different challenge"

recommendations made by CEDAW. It sought to address the issue of women, accompanying persons and staff being subjected to pressure by anti-abortion protesters when attending protected premises, i.e. premises where treatment for lawful termination is offered. "Safe access zones" adjacent to protected premises would be established, consisting of the premises and the public area lying within 100m from each entrance to, or exit from, those premises.

Clause 5(2)(a) would make it an offence "to do an act in a safe access zone with the intent of, or reckless as to whether it has the effect of – influencing a protected person, whether directly or indirectly".

The Attorney General submitted that this provision was a disproportionate interference with the freedom of conscience, speech and assembly of anti-abortion protesters and demonstrators: rights protected by articles 9-11 of the European Convention on Human Rights. Since clause 5(2)(a) established an offence, unqualified by any defence of lawful or reasonable excuse, it could not be read or applied in a manner to enable an assessment of the proportionality of protesters' Convention rights.

Given the significance of the bill, interveners included the Lord Advocate, the Northern Ireland Human Rights Commission and JUSTICE.

Preliminary questions

The UKSC confirmed, *inter alia*, the applicable test in determining whether a provision is incompatible with Convention rights by reason of disproportionate interference. It was referred to *Christian Institute v Lord Advocate* [2016] UKSC 51, and *In re McLaughlin* [2018] 1 WLR 4250.

The rationale of *Christian Institute* was that the striking down of a provision in advance of its application to particular facts is only justifiable if the court is satisfied that it is incapable of being applied in a way which is compatible with Convention rights, whatever the facts may be (para 14). Following scrutiny of the two authorities, the UKSC confirmed that that remained the test (para 19).

It stated that it is not necessary for an offence that is liable to interfere with an individual's rights under articles 9-11 to include a defence of lawful or reasonable excuse (para 64).

Safe access zones: necessary?

The UKSC followed the expected structure in analysing questions arising in relation to Convention rights. It considered whether clause 5 restricted the exercise of rights protected by articles 9-11. Following analysis of acceptable behaviour that clause 5(2) would restrict, it recognised that it imposed such a restriction (paras 111-112).

All parties accepted that clause 5 imposed a restriction on the exercise of Convention rights that is prescribed by law. It was further accepted that clause 5(2)(a) pursued a legitimate aim, to ensure that women have access to premises at which treatment or advice concerning the lawful termination of privacy is provided, under conditions respecting privacy and dignity (para 114).

The UKSC then determined whether the restriction was "necessary in a democratic society". It was accepted by all parties that the protection of rights of patients and staff is a sufficiently important objective to justify the limitation of rights under articles 9-11. The court analysed the impact that the exclusion of clause 5(2)(a) would have on criminal proceedings, concluding that the clause was not only coherent with the legitimate aim pursued but necessary to achieve its aim. A defence of reasonable excuse would in its view render clause 5(2)(a) less effective (paras 122-123).

Following an analysis of both ECtHR jurisprudence and that emanating from Canada and the United States, the UKSC considered that clause 5(2)(a) struck a fair balance between the competing rights of patients, staff and protesters. In reaching this conclusion, it had regard to the protection of the private lives and autonomy of women being of particular importance (para 125). Women have a reasonable expectation of accessing protected premises without witnessing protesters. These considerations were contrasted against the limited incursion on protesters, whose rights were restricted only within the safe access zones. The UKSC reaffirmed that states have a wide margin of appreciation in striking the balance between competing Convention rights (para 131).

Commentary

The UKSC held that clause 5(2)(a) was compatible with the Convention rights of protesters and within the legislative competence of the Assembly. It affirmed previous authorities that it is not essential to assess whether a criminal conviction is a proportionate interference with an accused's rights under articles 9-11. The UKSC concluded that once a right was established in law through a democratic process, it should not be obstructed by opponents of the legislation relying on liberal values protected by the Convention. It will be interesting to observe how the judgment will be applied in subsequent disputes. J

Pensions

JUNE CROMBIE,
HEAD OF PENSIONS
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Many pension scheme employers are facing, or if not managed, may face a different challenge – a surplus in their defined benefit pension scheme. At the end of November 2022, according to the Pension Protection Fund PPF 7800 Index, 4,385 schemes (out of 5,131) were in surplus.

Funding levels have been improving for many schemes, most recently with the impact of the mini-budget in September 2022. Trustees are also managing risks to maintain and improve the funding position.

Aside from negotiations on surplus in corporate transactions, last seen in volume back in the 1980s, what does this mean for those schemes planning to secure members' benefits with an insurer? Approaching a funding level that means members' benefits can be secured with an insurer, with the scheme then being wound up, surely is good news?

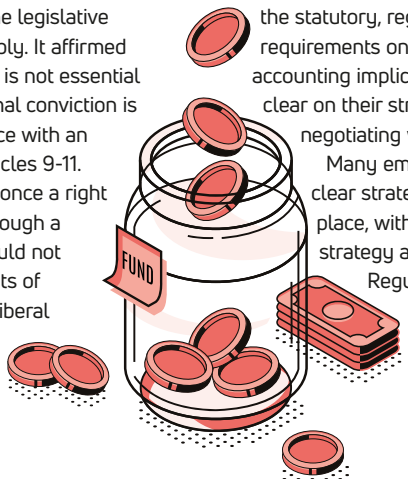
Employers should be thinking about their funding strategy as part of overall financial planning for the business, and the implications of a surplus in the scheme after benefits are secured. Clearly if the strategy for a scheme is to buy out benefits with an insurer, trustees need to be able to do so and to meet the expenses of winding up the scheme. Employers will want to do so in a way that optimises use of funds for their business alongside providing financial support to the scheme, whether running on or aiming to buy out, without risking a trapped surplus.

Allocation of a surplus as part of a winding-up process depends on various factors, including the rules and statutory requirements, but tax currently at 35% is deducted from any payment to an employer.

Mitigating the risk

Crucially, employers need to understand the statutory, regulatory and scheme requirements on funding, tax treatment, and accounting implications of decisions, and be clear on their strategy for the scheme, before negotiating with trustees.

Many employers and trustees have a clear strategy and agreed timetable in place, with a funding and investment strategy aligned to that. The Pensions Regulator ("TPR") is consulting on a new Funding Code that may impact, so that should be monitored.



Employer contributions

What options might be available to manage employer contributions going into the scheme as part of funding plans?

Trustees must apply the scheme rules within a statutory and regulatory framework, always protecting members' benefits, so must assess risks, including the risk of employer insolvency. However, employers can look to agree funding plans so that funds can be paid in only as required, by agreeing triggers and mechanisms that still protect members' benefits.

This could include deferral, suspension or reduction in contributions or payment of additional contributions, if agreed triggers are hit. An escrow agreement and account can allow changes to be made and additional contributions triggered, plus an agreed mechanism to release funds and resolve any disagreements. This still leaves the risk of employer financial difficulty and insolvency. Setting this up using a Pension Protection Fund approved agreement using employer assets as security could mitigate that risk and make it easier for trustees to agree to a framework permitting flexibility for employer contributions. Additional benefit is reduction in the annual PPF levy.

Surplus after benefits bought out

A surplus in the scheme after members' benefits are secured and wind-up is nearly complete, poses a different challenge for employers. Tax is deducted from any surplus before any possible payment to an employer.

The scheme rules will set out triggers for wind-up and powers once wind-up starts. Often, it will be an employer decision to trigger wind-up. Once wind-up is triggered, trustees generally have more powers and must follow the winding-up rules and statutory requirements, as it is their responsibility to complete the wind-up process. It is important that employers understand how the rules of their scheme operate, and in particular the powers trustees will have on wind-up, before wind-up is triggered. The employer may have a veto on some options. Once wind-up has begun, it is irrevocable, so employers should have a dialogue with trustees before that happens.

Statutory conditions also apply before trustees can pay out any surplus, such as informing members of the proposal. Members can then make representations to TPR. TPR then decides whether the requirements have been met.

So, an employer should arm itself with information and advice and have a clear strategy for the scheme, including on funding, which it can then discuss with trustees to be in the optimum position to meet its responsibilities to members while protecting and helping the business that supports the scheme to flourish.

IN FOCUS

...the point is to change it

Brian Dempsey's monthly survey of legal-related consultations

First MOT

The UK Department for Transport seeks views on whether to delay the first date a vehicle should undergo obligatory MOT testing, and other possible changes. See www.gov.uk/government/consultations/changes-to-the-date-of-the-first-mot-test-and-research-into-other-mot-enhancements

Respond by 28 February.

Public services: ID verification

The UK Government is consulting on draft legislation to consolidate and improve the process of identity verification when accessing public services. This will involve significant data sharing. See gov.uk/government/consultations/draft-legislation-to-help-more-people-prove-their-identity-online/consultation-on-draft-legislation-to-support-identity-verification

Respond by 1 March.

Holiday entitlement

The Department for Business, Energy & Industrial Strategy is reviewing pro-rata holiday entitlement for part-year and irregular hours workers following *Harpur Trust v Brazel* [2022] UKSC 21. See gov.uk/government/consultations/calculating-holiday-entitlement-for-part-year-and-irregular-hours-workers

Respond by 9 March.

More freedom of information

Katy Clark MSP, West Scotland, Scottish Labour seeks views on her proposed bill to, *inter alia,* extend FoI coverage to all bodies delivering public or publicly funded services, create a role of FoI officer, increase publication of information and improve both enforcement and compliance. See parliament.scot/bills-and-laws/proposals-for-bills/proposed-freedom-of-information-scotland-bill

Respond by 14 March.

The Parliament's Public Audit & Post-legislative Scrutiny Committee's report on the Freedom of Information (Scotland) Act 2002 recommended a public consultation into the scope and operation of the Act. This is that consultation. See consult.gov.scot/constitution-and-cabinet/access-to-information-rights-in-scotland/

Respond by 14 March.

Electoral reform

The Scottish Government's consultation paper on electoral reform considers possible changes including whether 16 and 17 year olds should be permitted to stand for election. See consult.gov.scot/constitution-and-cabinet/electoral-reform

Respond by 15 March.

Wellbeing and sustainable development

Sarah Boyack MSP, Scottish Labour, seeks views on her proposed Wellbeing and Sustainable Development (Scotland) Bill. It would ensure policy development and implementation by public bodies is in line with principles of sustainable development and wellbeing, including through a Commissioner for sustainable development and wellbeing. See parliament.scot/bills-and-laws/proposals-for-bills/proposed-wellbeing-and-sustainable-development-scotland-bill

Respond by 24 March.

Pensions

The Department for Work & Pensions has issued a call for evidence to support its development of policy options for automated consolidation solutions, to address the growth of deferred small pots in the automatic enrolment workplace pensions market. See gov.uk/government/consultations/addressing-the-challenge-of-deferred-small-pots

Respond by 27 March.

The UK Department for Work and Pensions is consulting on a policy framework for broadening collective defined contribution provision. See gov.uk/government/consultations/extending-opportunities-for-collective-defined-contribution-pension-schemes

Respond by 27 March.

Title conditions: what's in a name?

A recent Lands Tribunal decision provides useful guidance on the validity of purported title conditions in favour of particular commercial interests

Property

ANDREW TODD, GROUP DIRECTOR – GENERAL COUNSEL, SPRINGFIELD PROPERTIES PLC

Are you a fan of Destiny Cyrus? Do you love her new song "Flowers"? How about David MacDonald: are you excited to see him back as Doctor Who?

Names are important. But if everyone used the name on their birth certificate, would you know who they are, or do you only know them as Miley Cyrus and David Tennant? Mistaken identity may not be a problem when you're a famous star, and everyone knows who you are, but it can be a problem for lawyers when you need to describe someone or something. We rely on accuracy – and would it be accurate to call someone by anything other than their given name?

A recent decision of the Lands Tribunal for Scotland, *Castle Street (Dumbarton) Developments Ltd v Lidl Great Britain Ltd* LTS/TC/2021/0031 (9 November 2022) can help us answer that question. The decision involved a challenge to a title condition included in the sale of part of a supermarket by Lidl to a developer. The condition restricted the future use of the land and referred to several competitor companies by their brand names. The developer challenged the condition, arguing that it was invalid because (1) it referred to Lidl rather than to the property; and (2) it referred to brand names rather than corporate names, e.g. "Sainsbury's" rather than "J Sainsbury plc".

The Tribunal's decision sets out a helpful summary of what happens if you fail to distinguish between a person and a property when creating title conditions, and you refer to brands rather than to corporate names.

Background

In 2021, the supermarket retailer Lidl, more formally known as Lidl Great Britain Ltd, sold part of its supermarket in Dumbarton to a developer, Castle Street (Dumbarton) Developments Ltd. The disposition in favour of Castle Street included a title condition to restrict the future use of the land sold. It said:

"So long as the granter of this Disposition (or another member of the same group of companies) is either a proprietor of or occupies the whole or part of the Retained Property, no part of the Conveyed Property shall be occupied by either (a) any of Aldi, Farmfoods, Iceland, Home Bargains, Tesco, Asda, Sainsbury and/or Morrisons or (b) any operator whose convenience (food) offer accounts for 30% or more of the sales areas of their property on the Conveyed Property."

This is a common type of condition on terms that, on the face of it, are easy to understand. The land sold cannot be used by anyone who is intending to sell a significant amount of food (over 30% of any sales area), or by Aldi, Farmfoods, Iceland, Home Bargains, Tesco, Asda, Sainsbury or Morrisons. This condition applies for as long as the granter of the disposition – Lidl (or a group company) – owns or occupies its current site.

What was the challenge?

Castle Street challenged the condition, arguing that it was invalid for two reasons:

The condition referred to Lidl rather than to the property, as required by the Title Conditions (Scotland) Act 2003, and was invalid as the condition was not praedial.

The condition referred to brand names rather than corporate names and was invalid because of the "four corners" rule.

Praedial conditions defined

For a title condition to be valid, it must be praedial: it must confer a benefit on the property, and not just the owner. This can be difficult to judge, but the Tribunal provided a helpful summary. It said: "[A praedial benefit] is (i) that a real burden must confer benefit on the owners, tenants or occupiers of the benefited property from time to time, (ii) that this is so whoever the owners, tenants or occupiers from time to time may be, and (iii) that the benefit must be such as enhances or at least protects the value of the property."

So, key to confirming whether a title condition was praedial was whether the condition benefited not just the current owner but also all future owners.

In this case, the Tribunal believed the burden

"What you don't want is to find your title condition is invalid and that your client is the one calling you names instead"

benefited Lidl more than it benefited all owners. The condition referred to Lidl by name as being able to enforce the condition. And if someone else bought the land, then, on the face of it, they would not be able to enforce it as the burden did not refer to them – only to Lidl. For anyone drafting a title condition, this is critical to how they should approach any drafting. Any title condition should be drafted to be clear that it benefits land and not just the current owner.

Four corners argument rejected

The four corners rule is a simple one. Anyone reading a title document should be able to find all information within the four corners of the page. You can't refer to external documents, legislation, plans or anything else which is not in the title itself. Castle Street argued that this rule extended to the brand names of the competitor companies, and that the description that said the condition covered other companies in "the same group of companies" breached the four corners rule, as the only way to know whether a company was included was to check Companies House or other records to show shareholdings and ownership.

The Tribunal rejected Castle Street's argument. It believed that the use of brand names was clear and that the alternative – referring to companies by name – could be easily circumvented by, for example, a company setting up a new subsidiary after the deed was granted.

Nonetheless, despite the argument failing, it would be wise for lawyers when drafting use restrictions which use brand names to refer to companies "known as" or "trading as", to make it clear that the use is intended to restrict the property being used for a brand rather than a specific company.

What does the decision mean?

Anyone drafting title conditions should be careful that they comply with the requirements of the Title Conditions (Scotland) Act 2003, and especially that any title conditions refer to a benefited property and not just to the owner.

Anyone drafting use restrictions should be aware of how they describe any business. And while the decision helpfully allows the use of brand names to describe those businesses, it would pay to make clear in your drafting that it is the brand you are referring to. What you don't want is to find that your title condition is invalid and that your client is the one calling you names instead.

Scottish Barony Register: 2022 annual report

Alastair K Shepherd WS, custodian of the Scottish Barony Register ("SBR"), has published the second annual report of the SBR, to give interested parties some idea of SBR activity during 2022. (For the annual reports, see www.scottishbaronyregister.org – select "Cases and Opinions".) The following matters are reported on for 2022:

Baronies registered

Last year I published the annual registrations since the SBR opened in 2004. Registrations varied from 26 in 2019 to four in 2006. Last year (2021) there were 10 registrations; this year (2022) there were 13. This total constitutes a "good average" year for the SBR.

The 2022 registrations consisted of eight "new" registrations, and five assignations of already registered dignities.

The SBR now has 184 dignities registered, most being baronies. Many have changed hands at least once since the creation of the register.

Website

The website appears to have worked well in 2022, directing emails to the SBR from third parties, and providing basic information on the arcane world of Scottish baronies and the registration process to both solicitors and members of the public. I have made a few necessary tweaks over the course of the year.

Opinions and queries

I have issued no formal opinions this year, but have answered numerous basic queries from solicitors, and sometimes members of the public. "Crank" queries generated through the website are mercifully few.

Fees

- As mentioned last year, fees have increased from 1 January 2023 to:
- First registration: £800
- Subsequent registration: £400
- Letter of comfort: £75
- Certificates of registration: £150

Bank account

This has worked well over the year, and is now entirely digital and managed from my mobile phone. Historic signatories have been removed.

Concerns

At least two registrations this year involved eiks to confirmation; in other words the barony interest was ignored/forgotten in the initial application for confirmation. As practitioners familiar with the feudal system retire, it is likely that this will become more common. The danger of barony interests being overlooked in this way is probably higher with baronies that have stayed in the same family for a few generations. As more and more land is registered, the barony interest is more and more likely to be overlooked. Given the price of baronies on the open market, my concern is that solicitors are likely to be claimed against. Please think of the barony interest when applying for confirmation of, or registering, a substantial area of land.

QES in a post-Covid world

Qualified electronic signatures, as enabled by the Society's smartcard, are here to stay. There are alternatives to the smartcard, but practitioners should do due diligence before making that choice

Property

JANA BERGER, SMARTCARD CO-ORDINATOR, LAW SOCIETY OF SCOTLAND, AND

PROFESSOR STEWART BRYMER, BRYMER LEGAL LTD AND UNIVERSITY OF DUNDEE

When the Law Society of Scotland started the Smartcard project in 2015, it was, dare we say, ahead of its time. Electronic execution of documents was still an idea for the future; this new "knotty technology" of advanced and qualified electronic signatures ("AES" and "QES") was, for most, as far away from everyday operations as the moon. The uptake for the LSS smartcard was slow, and implementation was left to those who embraced new technology in general. The rest just waited to see how it would all turn out eventually.

Then coronavirus (Covid-19) struck, and nothing stayed the same. The pandemic was a game changer in terms of what the legal profession needed to continue functioning – access to electronic execution of all kinds via AES and QES. The LSS smartcard offered exactly that, a QES recognised worldwide, to those who had been keen enough to keep theirs current. For all others, commercial providers became slowly available.

There is now a market for all levels of electronic signatures, and practitioners can no longer ignore them. We may have learned to live with Covid-19, but the consequences of its peak years are here to stay. This knotty technology is here to stay. Registers of Scotland allowing outside QES for submissions to the Books of Council & Session is only one example of how much the world has moved forward.

Security over convenience

The process for obtaining an LSS smartcard with QES has only slightly changed over the years. Is it as easy as clicking two buttons on a computer? No, it's not. But being competitive in this market is not just a question of pricing and convenience. It is a question of usefulness, trust, and security – which is what the LSS smartcard delivers.

What most smartcard holders remember about getting their Law Society QES is the fact that their ID was checked by an operator in a face-to-face meeting. You obviously cannot do that from your livingroom. But considering recent publications about how easy it is to circumvent video identification, having IDs verified by a real person in a face-to-face meeting is not such a bad idea if you want to be sure who you are doing business with.

What most people immediately forget is that they entered their own PINs onto the chip of their own smartcard. Using this physical token as opposed to an online service is not hindering the normal work process in the slightest. On the contrary, it has the added security that the PINs and token cannot be hacked, cannot be phished or intercepted, and cannot be held to ransom otherwise. The smartcard holder is the only one with access to her or his QES, period.

In our experience, members appreciate that the smartcard with QES is issued by the Law Society of Scotland – their own organisation. It is still done in co-operation with the Spanish National Bar (which first adopted the technology used), but the only organisation they deal with is the Society. The fact that it is also a recognised ID card comes in equally handy.

No turning back

There is more than one provider of digital signatures out there, and practitioners need to decide themselves what is right for them. Not everyone will have use for a QES, of course. But those who do, need to do their research before opting for a commercial provider. That means due diligence and asking questions beyond the convenience of quick and easy startup. Such as: How does this actually work? Where is my original work product ultimately stored? How do I get to it – especially if I change provider? Who has access to the signature creation process? How much is it going to cost to complete the transaction, and what will the cost be at the end of the year? Are there alternatives?

The Society's smartcard with QES answers all these questions, which was the main reason it was decided to align with the Spanish Bar in the first place. It is a tried and tested product which is cheaper to use than many, if not all, commercial offerings.

Whatever solicitors in Scotland decide, AES and QES are here to stay. The pandemic has only accelerated the process across the profession. And not getting on board means getting left behind.

For more information and to arrange an appointment to sign up for or renew your Law Society of Scotland smartcard with QES, contact Jana Berger on 0131 476 8197 or smartcard@lawscot.org.uk

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

Mark Zuckerberg, Facebook

Graeme McKinstry

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SLCC proposes 9% levy rise

The levy paid by solicitors to the Scottish Legal Complaints Commission in 2023-24 will return to just below pre-pandemic levels, on the proposed budget now out for consultation.

A 9% rise will mean the rate for principals and managers rising from £444 to £484, and the employed solicitor's levy by £32 to £393 (£166 during the first three years of practice).

Advocates will pay £186, up from £171 (£156 in their first three years); solicitors practising outwith Scotland £129, up from £118; and in-house lawyers £118, up from £108.

The SLCC said pressures contributing to the rise included "rebounding" complaint numbers (a 5% increase is predicted this year and next) and rising costs, along with the need to invest in cybersecurity, and continued provision for management and enforcement costs where solicitors fail to provide files. "However, efficiencies now embedded in the system have limited this increase, which is below inflation, and keep the levy below the level set in 2020-21."

Consultation is open until noon on Thursday 16 March 2023. Find it through the "About us" section of the SLCC's website.

SLCC: Society's formal advice

The Society has published advice and information for members on the new rule, passed at its SGM last October, which relates to solicitors' duty to co-operate with the Scottish Legal Complaints Commission.

Rule B1.17, which came into effect on 4 January 2023, expressly states a solicitor's duty to co-operate with the SLCC. It does not however add any new or additional obligations on solicitors, and should not be interpreted as overriding any professional duties a solicitor may have to clients or to the court. Its introduction echoes the existing duty for solicitors to cooperate with the Society.

While most solicitors engage promptly and fully with the complaints processes, there has been a reported increase in instances of non-compliance in response to requests from the SLCC for documentation or information. The new practice rule aims to clarify and emphasise that solicitors have duties in relation to the SLCC, including to comply with statutory notices. Co-operation allows the SLCC to exercise its functions properly, assists with a more efficient complaints system and helps to protect the reputation of the profession.

The new advice and information can be found on the Society's website. It also covers the information that solicitors would be expected to provide in the case of third party complaints, following the Court of Session opinions of 11 October 2022 and 9 December 2022 which considered the protection offered by legal professional privilege.

Could you edit the Journal?

Do you have what it takes to help keep Scottish solicitors abreast of law and practice each month?

The Journal is seeking a deputy editor with a view to taking over as Editor later in 2023. Current editor Peter Nicholson is due to retire and we are seeking a suitably qualified successor.

The post is an exciting opportunity for a trainee or qualified solicitor, a career returner, a career changer or an accredited paralegal, preferably with some experience in publishing. An interest in publishing is essential.

You will help plan, write, vet copy for and edit the magazine (paper and digital), ensuring all deadlines are met, and oversee digital and social media output.

This is a full-time role and is hybrid-based with occasional days in Connect's office in Paisley or our co-working space in Edinburgh, and at events. The role could suit job sharers.

An excellent salary and benefits package, including contributory pension, is on offer. ***Applications are invited by Tuesday 28 February and should be sent to Peter Nicholson: peter@connectmedia.cc***

Lex Factor band battle is reborn

David Murdie (Aberdein Considine) and Ryan Macready (Macdonald Henderson) have revived the Lex Factor battle of the bands competition, originally organised by the Law Society of Scotland but cancelled due to Covid. The event takes place on 16 March 2023 at the O2 Academy in Edinburgh.

Aberdein Considine has sponsored the event as part of its ambition to raise £40,000 for charity in its 40th year in business. It is supporting the Archie Foundation, Edinburgh Children's Hospital Charity, Glasgow Children's Hospital Charity, and the Great North Children's Hospital Foundation, all charities providing valuable medical care, mental health and wellbeing services to babies, children, young people and their families. Money raised from Lex Factor will help fund everything from youth work and play initiatives to life-changing equipment and bereavement support.

The event brings six legal profession bands for a night of friendly competition: The Argyll Cycle; Blink 182 + VAT – Aberdein Considine's house band; Bail'her' Swift; BP/DC – Burness Paull's house band; The Paroling Stones – BTO's house band; and The Submissions.

The judging panel includes the Lord President, Lord Carloway; Scottish musician Iona Fyfe; Justice Secretary Keith Brown MSP; and Law Society of Scotland chief executive Diane McGiffen.

Book your ticket before it's too late, at eventbrite.co.uk/e/lexfactor-tickets-421390088097.

Discounts are available for bulk purchases of 10 or more – contact David Murdie at lexfactor@acandco.com with that or any other query.

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 below.

Levelling up

The Society issued a briefing ahead of the Levelling-up and Regeneration Bill's second reading in the House of Lords on 17 January, commenting on the provisions which apply to Scotland. The briefing highlighted that the bill could present an opportunity for the UK's commitments under the UN Aarhus Convention on access to environmental justice, public participation and access to environmental information to be further referenced and integrated into UK law.

Focusing on the provisions in part 6 relating to environmental outcomes reports (EOR), the Society highlighted that a move to EOR represents a very significant change from the current arrangements which are consistent across the UK, and will impact on well understood and established processes that protect our environment. It called for further detail on the proposals and on the process of transition to EOR. It also commented on the legislative consent aspects, noting that the bill provides UK ministers with powers to override existing environmental protections in Scotland.

Retained EU law

The Society issued a briefing in advance of the Retained EU Law (Revocation and Reform) Bill's House of Lords report stage on 6 February. It expressed serious concerns that the proposed end-2023 deadline allows insufficient time to enable the review of an estimated 5,000 pieces of legislation to be completed properly after due consultation with the devolved administrations and relevant stakeholders including parliamentary committees.

It also expressed concern that moving from the "maximum certainty" of REUL to domestic provisions could result in less certainty and more confusion, with consequent adverse impact on individuals and businesses. This is particularly so in Scotland in view of the policy of the Scottish Government and Parliament to keep pace with EU law so far as possible. This is likely to result in considerable divergence between the replacement provisions in Scotland and the rest of the UK, and therefore difficulties in connection with the United Kingdom Internal Market Act 2020.

For more information see the research and policy section of the Society's website.

ACCREDITED SPECIALISTS

Child law
Re-accredited: KAREN GAILEY, Family Law Matters Scotland LLP (accredited 31 August 2012).

Construction law
Re-accredited: SCOTT JOHNSTON, Pinsent Masons LLP (accredited 4 November 2004).

Discrimination law
ELOUISA CRICHTON, Dentons UK & Middle East LLP; MUSAB HEMSI, Anderson Strathern LLP (both accredited 10 January 2023).

Family law
KIRSTY McGUINNESS, BTO Solicitors LLP; CAROLINE SMITH, MTM Family Law LLP (both accredited 10 January 2023).

Re-accredited: LUCIA CLARK, Morton Fraser LLP (accredited 18 October 2012).

Family mediation
Re-accredited: RHONA ANNE ADAMS, Morton Fraser LLP (accredited 20 January 1999); LUCIA CLARK, Morton Fraser LLP (accredited 14 November 2019).

Insolvency law
Re-accredited: ALASDAIR CHARLES FREEMAN, Burness Paull LLP (accredited 8 September 2017).

Personal injury law
CHRISTINA LOUISE WASON, Harper Macleod LLP (accredited 12 January 2023).

Public procurement law
Re-accredited: DOUGLAS WALTER McLACHLAN, Anderson Strathern LLP (accredited 4 December 2012).

OBITUARIES

LESLIE GEORGE DEANS (retired solicitor), Edinburgh
On 15 December 2022, Leslie George Deans, formerly partner of the firm Leslie Deans & Co, Edinburgh and latterly consultant of the firm Deans Solicitors and Estate Agents LLP, Edinburgh.
AGE: 71
ADMITTED: 1975

MARK GERARD CLOUGH KC, Hawick
On 20 December Mark Gerard Clough KC, employee of the firm Dentons Europe LLP, Brussels.
AGE: 69
ADMITTED: 2013

MARK CRAWFORD LAWSON, Edinburgh
On 24 December 2022, Mark Crawford Lawson, consultant to Bunker International Group Ltd, Surrey.
AGE: 67
ADMITTED: 1979

RACHAEL MARIE CHURCH, Glasgow
On 29 December 2022, Rachael Marie Church, employee of the firm Gillespie Macandrew LLP, Glasgow.
AGE: 30
ADMITTED: 2019

WALTER HUME (retired solicitor), Glasgow
On 30 December 2022, Walter Hume, one time employee with Central Government Offices, Hong Kong.
AGE: 97
ADMITTED: 1952

DAVID RAE ANDERSON WS (retired solicitor), Comrie
On 9 January 2023, David Rae Anderson WS, formerly partner of the firm Allan Grant, Alloa and latterly consultant of the firm Russel & Aitken LLP, Falkirk.
AGE: 86
ADMITTED: 1961

Edinburgh sheriffs offer court skills classes

Recently qualified lawyers who have had fewer opportunities to improve their presentation skills in court due to the pandemic, have the chance to learn or refresh their skills through a series of seminars next month at Edinburgh Sheriff Court.

Each presentation will comprise two or three talks, delivered by sheriffs. The series will cover a wide range of hearings, procedures and skills, aiming to enhance practitioners' skills in oral and written presentation, covering topics such as conduct within court, persuasive advocacy and best practice.

Taking place in Edinburgh Sheriff Court, 27 Chambers Street, Edinburgh, on Thursdays from 4.30-5.30pm, seminars will be formatted to enable claiming of CPD points.

The series comprises:

- **2 March**: Presenting a legal argument – effective preparation, structure for legal argument, and use of supporting materials.
- **9 March**: Preparing for a proof – effective preparation, analysis of your case and what you need to prove, and presentation of evidence including productions; the need to agree evidence; outline submissions and authorities.
- **16 March**: Asking better questions – how to ask both open and closed questions to build a narrative; planning your examination; effective cross-examination and re-examination.
- **23 March**: Family actions – key rules; requirements when presenting an initial writ; conduct of child welfare hearings; use of affidavits; ethical issues.

The sheriff's perspective will feature throughout.

Attendance is free, but registration is required by 12 noon on the day: contact Margaret McCrimmon, MMcCrimmon@scotcourts.gov.uk

Accredited paralegal roundup

Membership

The status continues to thrive, with 610 members at the end of 2022. More than 74 new members joined last year, and a further 15 paralegals successfully completed the accredited paralegal traineeship.

The new practice year started on 1 February. Renewal invoices were sent to all members in January. If you are yet to receive your invoice, please contact accreditedparalegals@lawscot.org.uk.

New accreditation

At the start of the year, the Society launched a new area of accreditation for paralegals, with immigration law becoming the 14th recognised practice area.

Accredited Paralegal Committee convener Karen Leslie said: "Adding immigration law as a new paralegal specialism recognises the importance of this work in serving the community, while rewarding accredited paralegals for their expertise and the quality of their work."

Demand for immigration legal services continues to grow, driven by increasing immigration levels and issues such as Brexit and Russia's invasion of Ukraine.

For more information on the accreditation and details on how to apply, please visit the Society's website or email us as above.

Committee

Kirsty Dutch from Anderson Beaton Lamond has joined the Accredited Paralegal Committee. Having joined the status as a trainee, she now has full accreditation in wills and executries. She said: "Having gone through the process myself, I understand what the requirements and standards are to become an accredited paralegal. I am really looking forward to working with the committee."

We are currently looking for new committee members from both solicitors and paralegals. Applications close on 28 February; further information is available on the committee recruitment section of our website. If you have any questions, please email us as above.

Laura McBain is secretary to the Accredited Paralegal Committee

Bloomsbury Professional titles

From 31 March 2023, Bloomsbury Professional Scots law titles will no longer be available on the LexisNexis platform. This affects key titles including *Conveyancing Practice in Scotland*, *Drafting Wills in Scotland*, *Employment Law in Scotland*, MacQueen and Thomson on *Contract Law*, *Mental Health, Incapacity and the Law*, *Property Trusts and Succession*, *Scots Criminal Law*, *Scottish Older Client Law Service*, *Style Writs for the Sheriff Court* and Walker and Walker, *Evidence*.

Please contact Karen Reid at Bloomsbury Professional (karen.reid@bloomsbury.com) for details about how to arrange continuation of content with their replacement service.

Career concerns surge in LawCare calls

A "huge leap" in the number of legal professionals seeking help over career concerns has been reported by LawCare in its contact figures for 2022.

Nearly a quarter (22%) of people who contacted LawCare for support were primarily concerned about their career in law, compared with 8% in 2021. The number equalled those seeking help because of stress, the leading issue in previous years. Anxiety accounted for a further 12% of contacts, and depression 8%; 7.5% mentioned lack of supervision as a problem in addition to their main issue.

While 60% of contacts were trainees/pupils or less than five years qualified, 25% were aged 46-60, and 9% 61+. Career concerns ranged from struggles with training, to people thinking of leaving the law, to those wanting to retire early.

Overall, LawCare's support service was contacted 849 times in 2022 (up 18 from 2021), by 583 individuals. Despite a 3% rise in male callers, women still outnumbered men by nearly two to one.

www.lawcare.org.uk

Notifications

APPLICATIONS FOR ADMISSION 16 DEC 2022-16 JAN 2023

ADDISON, Hannah Josephine
BARLOW, Kirsten Hazel
BUCHAN, Andrew George
CONNELLY, Natasha Ellen
CONNOLLY, Robyn Christiaan
CRAIG, Leighton
FAIRBAIRN, Calum John
FOWLER, Lisa
GARCIA-FERRES ORELLANA, Juan Carlos
GILLESPIE, Anna Stewart
GRAY, Alice Helen
HAMMOND, Amy Marie
HENDERSON, Kate Frances
HETHERINGTON, Alison
IQBAL, Adina Sapina
JOHNSON, Alexander Adam
KANE, Megan
KEDDIE, Sian
MACDONALD, Amy Elizabeth
McDOUGALL, Sandy John
McFADDEN, Hope Alice
McNEILL, Melissa
MAH, Amelia Sze Jia
MANSON, Andrew Duncan
MURCHISON, Murdo Alasdair
MURPHY, Molly Charlotte
O'TOOLE, Clare Siobhan
PATERSON, Amanda Bruce
PATON, Kathryn Elizabeth
PAUL, Abigail Sara
PECK, Nadine Vivienne
RUDDY, Erin
THRALL, Kieran Alexander
TURNER, Cameron Wallace
VALENTINE, Briege
WALKER, Michael George
WEBSTER, Stacey

ENTRANCE CERTIFICATES ISSUED 16 DEC 2022-27 JAN 2023

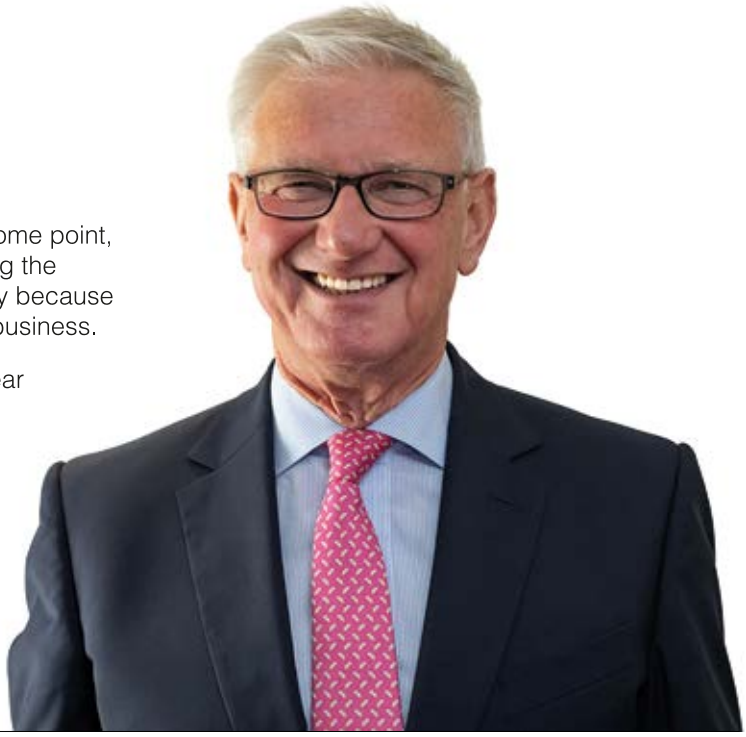
ALLEN, Charlotte Jane
BALDASSARRA, Sophie
BHATTI, Sohaib Uddin Ahmed
BROWN, Emma Louise
BURNS, Eilidh Anne
CLARK, Ellidh Meg
CLYNE, Amy Fiona McLeod
COLLINS, Mhairi-Clare
DENT, Olivia Ellen
GREIG, Rachel Catherine
GUNN, Eilidh Herriot
HARPER, Kirsty Louise
JUDGE, Megan
LEUNG, Alex Chi Fung
LYNCH, Steven James Mather
McKAY, Alis Christina
MACKAY, Kirsteen Elizabeth
MACKINTOSH, Laura Frances
MACLEOD, Eilidh
MASON, Aimee Margaret
MUIR, Lana
PAPACHRISTOFOROU, Styliana
PHILIPS, Mollie Amy
REID, Charlotte Maya
SALAM, Haikah
SAUTTER, Ana
SHEARER, Ellen Main Anderson
THOMSON, Cameron Glen

Getting out of business is harder than getting into it.

You must have a plan!

Graeme McKinstry

Exit Strategy Consultancy



Every business owner needs to exit their business at some point, whether it is succession to the next generation or selling the business. However, many of them overlook exit strategy because they are so involved in the day-to-day running of their business.

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Wills: the signing pitfalls

Kenneth Law of Lockton considers the minefield of signing wills and offers some tips to avoid things going wrong

It is a scenario most solicitors will have had at one time or another, and private client solicitors more than most: the client has returned the documents that you sent, but has made a mistake with signing them. Perhaps they have signed them in the wrong place, or not in all the places marked, such as annexations or schedules, or done so without a witness or before a witness who is a beneficiary of the document. They might have sent you only a photocopy or scan and kept the principal themselves; or even worse, having sent you the copy and thinking all was in order, thrown the principal in the bin.

Most of the time such issues can be remedied, but that is not always the case; and it is by no means unknown for a client to die before the problem can be sorted out. Claims against a solicitor in such circumstances would depend on the particular facts and it is certainly not a given that the solicitor would be found to have been at fault. Any solicitors who think they may have such a situation on their hands should be in touch with their usual Lockton contact to discuss the benefits of early notification to the insurers.

Wills are unique

In few circumstances are the consequences of deficient signing more obvious than with a will. While most legal transactions require some sort of signature to give effect to them, wills are perhaps unique in that the deficiencies in signing them tend to come to light only when the one person capable of remedying those deficiencies is no longer around to do so.

Section 3(2) of the Requirements of Writing (Scotland) Act 1995 requires that a will be signed on every page by the testator and on the last page by a witness, and it is good practice that the witness should be someone who is not a beneficiary. While small failures in this regard will not necessarily be fatal, and even the absence of a witness's signature can be corrected by affidavit evidence, they may delay the process of obtaining confirmation or even require an action to prove the tenor of the will. If the defects are sufficiently serious, the entire will may be rendered void, which could be catastrophic.

We all know that the easiest way to avoid this in the first place was always having the client come into the office – or for you to go out to the client – so that you could show them exactly what to do, witness the signature yourself and then keep your hands on the principal once finished; and indeed many private client lawyers will have been used to many such appointments in any given week. We would encourage returning to this practice as much as circumstances allow.

Covid wills

Of course, conditions during the pandemic and lockdowns made such meetings impossible for much of the time, and many "in person" interactions will have been replaced by phone calls or virtual meetings. These had their advantages, allowing questions to be asked and answered in real time, and attempts at signing held up to the camera for approval. Guidance was issued by the Law Society of Scotland when lockdown first began that a solicitor could witness a signature on a will which they had seen being applied over a virtual meeting, which addressed a pressing concern for the profession. Solicitors should be aware that these arrangements are among the things being retained post-Covid and have now been given status as Advice & Information (in Section F, Division I, Non-face to face will instructions).

Caution in this area is strongly advised, so where the opportunity presents itself of contemporaneous in-person witnessing, solicitors and their clients would be well advised to avail themselves of it.

If a client's circumstances or technological abilities precluded the chance of a video call, most solicitors in those circumstances will have been largely reliant on written instructions for signing or trying to give explanations over the phone. Isolation rules may have meant that a will has been validly signed but the signature was not witnessed. Although we have had no such reports so far, we are concerned about the possibility of wills executed in this way during Covid not having been checked properly as to execution, any necessary follow-up steps not having been taken, or the principal will not having been stored correctly.

Solicitors who have dealt with wills over the Covid period would do well to carry out an audit of those files to ensure that everything is in order, especially where the file is closed and therefore would not form part of the firm's regular file review process. The best approach would be for a different fee-earner than handled the file to carry out the review, and to do so with the physical will itself rather than electronic copies.

Consequences of defective signing

While a lost principal will might be able to be remedied through an action to prove the tenor if sufficient supporting evidence of its contents exists, it will be more difficult to correct the situation if the will exists but was defectively signed and the testator has died. If the worst were to happen and a will were deemed invalid, there could be disastrous consequences for the intentions of the deceased and the inheritance of intended beneficiaries; and claims for compensation could come from several directions.

To protect against claims of this type, firms should implement a strict system of checks on the validity of signed wills before sending them for storage or returning to the client as requested. Where such a system does not already exist, we strongly recommend an early audit of the firm's wills bank, and especially of any wills executed during lockdown. With luck, this should allow subsisting problems to be cleared up while the testator is still alive.

Recording instructions

Taking instructions from a testator is a high-risk activity and should always be carefully documented. Any disagreement about the contents of the will is unlikely to come to light until the testator is no longer around to confirm its contents. Disappointed beneficiaries may insist they knew the testator's true intentions and that the will you have prepared is defective in not reflecting them. In such circumstances, without sufficient reliable evidence on your part, the court will have a hard time deciding between competing accounts.

To protect against such a scenario you might wish to consider having a witness present at the meeting, or making an audio recording of it, but either of those would be subject to the testator's consent. The alternative and recommended course of action is to make a detailed attendance note, recording as comprehensively as you can the instructions given by the testator, any questions they ask of you and any advice you give or concerns you raise, as well as your considerations in satisfying yourself regarding the testator's capacity. The note should be completed as soon as possible after the meeting takes place and saved or stored in your file. You might also consider putting a copy with the principal will to avoid it being destroyed. Try to imagine when composing the attendance note that it might come to be relied upon in the future, and consider whether it is sufficiently detailed that you would be confident in doing so.

If you will be attending on the client personally for signing of the will, take time at that meeting to make sure they have understood the contents and make a further attendance note reflecting that by reference to the same points above. If the will is to be posted out to the client for signature, put your explanation of the contents in the covering letter with a clear indication that they should contact you if they have any concerns.

Protecting against these risks

The good news is that most of the risks identified here can be reasonably easily guarded against. Encouraging clients to come into the office for signing is surely the most reliable way of having a will signed properly, while developing a set of clearly explained signing instructions which can be issued to each client should reduce the likelihood of mistakes in signing at home. Taking time to check the signed document when it is returned should catch mistakes at the point they are made and enable prompt rectification.

A review of all wills signed remotely during the Covid period should identify any in which mistakes in signing or other parts of the procedure have been made, and adding a physical check for the principal will in the rolling schedule of will reviews most private client departments operate will also identify missing principals while there is still time to have a new one signed.

Practitioners are also recommended to consider Lockton's checklist for drafting a will, one of many resources available in the Resource Centre of our website, www.locktonlaw.scot

FROM THE ARCHIVES

50 years ago

From "*Law and Pollution in Scotland", February 1973*: "It would be difficult now to dispute that mankind faces a crisis unique in its history, or that the problems must be faced and solved before the end of this century... The nature of the crisis is also a matter on which there is general agreement, although there may be considerable dispute as to the speed with which and the manner in which it must be met. It springs from the fact that we are reaching the limits of our finite planet... and to the ability of the biosphere to cleanse itself of man's wastes."

25 years ago

From "*Can E-Mail Replace Snail Mail?", February 1998*: "As a solicitor you should certainly ensure that your e-mail is encrypted. You can do this with a system called PGP (Pretty Good Privacy)... Do not worry if you cannot understand how it works, this is the stuff that mathematicians get knighthoods for. Some smart computer anorak might spend the next few years breaking the code of such programs but with... increased use..., it is less and less likely that you would be targeted. It is also fair to say that e-mail has not proved to be a target of particular worth to the hacker."

Kenneth Law is a solicitor and risk manager in the Master Policy team at Lockton

COMMUNICATION

Keep the faith with fax

Fax continues to play an important part in key communications and business processes, and rumours of its demise have been greatly exaggerated, says Scott Wilson

It's easy to assume that faxing has no place in today's digitised workplace. When email and instant messaging apps are so established and familiar, the idea of typing in a fax number, feeding a document into a machine, and then having to wait beside that machine to print out a response for you, sounds at best quaint, and at worst slow, inefficient and insecure.

But fax has evolved and continues to underpin vital operational processes across a range of sectors. The ongoing importance of timestamping plus the advent of cloud in particular means that whether it's finance, exchanging the details for buying a house, or sending and receiving critical and confidential healthcare documents, fax still has a significant contribution to make in the day-to-day running of an organisation.

Ofcom and the future of fax

In November last year, UK communications watchdog Ofcom launched a consultation on the future of faxing in which it proposed changes to existing rules so that UK telecom operators would no longer be required to provide fax services under their universal service obligation (USO).

According to Ofcom, fax has become increasingly outdated. Furthermore, as telecom operators upgrade the networks used to deliver faxes, there is no guarantee that fax services would work in the same way.

But fax is very much with us

It might therefore come as a surprise that the fax is still very much with us. One in six NHS trusts in the UK were found still to be using fax machines in 2022, despite former Health Secretary Matt Hancock's call in December 2018 for a complete phase-out of their use by April 2022 in favour of secure email. While this is still a reduction from the 9,000 fax machines used across the NHS in 2018 (source: Royal College of Surgeons), that fax has hung in there and that staff continue to use it despite the availability of newer competing technologies is an indication of its value as a trusted tool for certain tasks.

In 2020, my company eFax polled 1,001 senior IT and business decision-makers in large enterprises, small to medium-sized businesses (SMEs) and public sector organisations to gain a greater understanding of the cloud-based electronic faxing market and its dynamics.

We found that the number of fax users in organisations is far higher than you'd think. Over half of the sample – 54% – had between six and 50 users; a full fifth even claimed that there were 51 or more fax users in their organisation. Fax usage within businesses was also expected to increase in over 37% of sampled businesses.

When it comes to fax, 35% use cloud-based fax systems, while 31% use a combination of cloud and traditional faxing. Only 15% of the sample remained wedded to their traditional fax machine. Faxing is more suited to documentation such as contracts, tenancy agreements, company accounts, financial documents and patient records than email, and thus it's understandable that 68% of the sample saw fax remaining for at least the next five years.

Fax will exist for years to come

Fax remains central to many businesses and their operations. It underpins many organisations by enabling the secure communication of legally binding documents. Business users attest that the biggest driver for their ongoing use of fax is its security (41%). This is followed by its cost efficiency (36%), compliance to GDPR (34%), and the increasing importance of cloud storage (23%).

Fax, and especially digital cloud fax, is a tried and tested technology. Cloud fax providers have developed an infrastructure that provides business users with a private, secure and legally compliant way to transmit confidential or business-critical data to clients, vendors, partners, and other third parties.

Faxing also remains secure against human error or social engineering attacks. It remains consistently off the radar of hackers, so cybercriminals are less likely to target documents that are faxed compared to those sent over email. These reasons are why fax will retain a role at the heart of many businesses.

Furthermore, making the move away from analogue solutions to cloud faxing can help businesses save money and embrace enhanced convenience and functionality. Organisations that adopt cloud-based service tools for their faxing needs allow the encryption of e-document transmission, security controls to allow or deny their transmission, and overall organisation-wide capabilities and access without risking documents being lost or stolen.

It's for these reasons that faxing continues to be a reliable, secure, up-to-date communication method that is in use around the world. Let's keep the faith when it comes to fax.

Scott Wilson is Vice President at eFax

Clio

Digital marketing for law firms: What it is and why you need it

When it comes to marketing your law firm online, many law firms struggle to find the right approach.

Should you start a blog or put yourself on social media? How much attention does your website need? Do you need to spend a lot of money and time to be effective?

It can feel hard to find the answers to these questions when times are good; in more challenging economic times, digital marketing can feel like even less of a priority.

While marketing budgets are often first on the chopping board, cutting out digital marketing is a mistake. Building a strong online presence is essential to surviving and thriving for all law firms.

Marketing helps firms stay front-of-mind among their target audience. If you're seeking to improve (or begin) marketing online, here are some easy and low-cost tips to keep in mind.

Make sure your website stands out

A massive 96% of people who seek legal advice search online as their first port of call. As such, it is essential that your website is up to scratch and up to date when they come looking. Key things to pay attention are: Is the site easy to navigate? Does it contain easy-to-understand language? Does it work well on a mobile phone?

Pay attention to your online reputation

Clio's 2022 *Legal Trends Report* showed that client reviews are the most important factor when clients are considering hiring a law firm – substantially topping other major considerations, such as location, billing type, and office type. Incentivise positive reviews by asking clients proactively to review you. Be sure you make it easy for them to leave a review and build this step into your existing processes.

Embrace content marketing

Content is king when it comes to digital marketing. Creating regular content can help you to demonstrate your firm's expertise, build trust in your firm, and increase your website's position online. An easy way to start is by publishing a law firm blog, making sure you also share your articles across other channels (such as LinkedIn and Facebook).

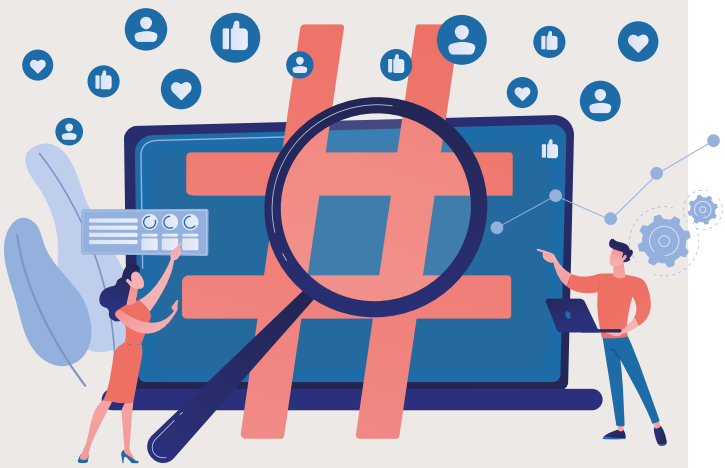
Get your social media approach right

There are five cardinal rules when marketing your law firm via social media:

1. Avoid bragging or begging
2. Don't forget about hashtags
3. Create curated legal content
4. Showcase firm activity outside of representation
5. Demonstrate your personality

***

Taking just these simple – and low-cost – steps can help your law firm to thrive. Want to learn more?



Clio's new 'A Guide to Online Marketing for Law Firms' expands on all of the above steps to give you a playbook for online law firm marketing without breaking the bank. Download the guide for free at clio.com/lawscot/marketing

ENVIRONMENT

Calculating your carbon footprint

Measuring its carbon emissions is an essential first step for any organisation seeking to move towards net zero. Louise Farquhar explains how to go about it

The building blocks of every sustainability journey start with laying a strong foundation. Measuring carbon usage is a critical early step for any organisation transitioning towards net zero, as it provides essential metrics on where the business stands in terms of carbon usage and where it wants to go.

A carbon footprint covers direct and indirect carbon emissions, capturing the amount and type of greenhouse gas ("GHG") emissions on an annual basis. These emissions can include energy used for heating and lighting, company transport and supply chain operations. An accurate footprint allows a business to assess its own contribution to climate change and inform its tailored sustainability action plan. With corporate environmental performance becoming increasingly under the spotlight, a published report of this kind also meets the expectations of stakeholders.

What to measure

Carbon dioxide (CO2) is the best known GHG, but others also have a significant impact on the environment: methane, nitrous oxide, sulphur hexafluoride, perfluorocarbons and hydrofluorocarbons are all measured when calculating a carbon footprint. The combination of these gases is expressed as a carbon dioxide equivalent (CO2e). There are three categories of emissions, as determined by the Greenhouse Gas Protocol (www.ghgprotocol.org) – this is the world's most recognisable accounting standard for GHG emissions. These categories are described as scope 1, scope 2 and scope 3.

Scope 1 covers direct activities of the business, such as fuels expended onsite or using company-owned vehicles. Scope 2 includes indirect emissions that a business does not directly control, like purchased electricity. Both these categories are reasonably straightforward to measure. Scope 3 emissions cover indirect emissions that occur fully beyond the control of the business: food, air travel, office furniture and IT equipment are examples. These emissions are the most difficult to quantify and tackle.

To reach net zero, an organisation must reduce these emissions as much as possible, balancing any remaining scope 3 emissions via carbon offsets. The Scottish Government has a target date of 2045 for net zero emissions of all GHG.

Data capture

Capturing data for emissions can be done using a simple spreadsheet. This enables a business to record and update figures regularly.
A 12-month period should be selected to collect activity data using the most recent annual period available, if this is a first report. Consider how the business works in terms of energy use, water consumption, business travel, entertaining, supply chains and waste. When recording, it is important to use correct units such as kWh for gas and electricity, actual fuel consumption for vehicles, and location-based or market-based figures for energy purchased. If there are data that are difficult or impossible to ascertain, the best reasonable estimate should be taken. The Greenhouse Gas Protocol gives detailed guidance on calculating scope 2 and scope 3 emissions.

To calculate GHG emissions associated with a business, the data collected need to be converted using an "emission factor" according to the calculation: Data x Emission Factor = Greenhouse Gas Emissions. Emission conversion factors are determined by the Government and published online with annual updates. From this calculation, a business can produce a report showing its total GHG emissions for the year. As an unexpected upside, many businesses find this data to be very helpful in monitoring and reducing costs.

Handy aids

If the idea of operating a spreadsheet system seems overly onerous in terms of time, there are many handy carbon calculators available. Free and fee-based tools can be found using an online search. For example:

- The Legal Sustainability Alliance (www.legalsustainabilityalliance.com/carbon-calculator/) offers members a free digital tool to keep monthly, quarterly or yearly figures on emissions. Its carbon calculator gives an updated carbon footprint based on core emissions and allows users to set targets for reduction.
- Carbon Footprint Ltd (www.carbonfootprint.com) has a range of business packages giving access to its carbon calculating software. A free version is available to registered users, with more detailed versions for larger organisations offered for an annual fee.
- The Carbon Trust (www.carbontrust.com) has a free calculator for SMEs, focused on scope 1 and scope 2 emissions, which may be suitable for small operations.

Once a business has a carbon footprint recorded, it can use it to set targets for comparison and improvement over a set period, like five or 10 years. By reducing waste, switching to renewable energy sources, transferring to electric vehicles or car sharing schemes and cutting down on water usage, a business can make considerable improvements to its carbon footprint. Carbon offsetting can then be used to deal with emissions that are difficult to eliminate.

Louise Farquhar is a lawyer and sustainability writer
www.louisefarquhar.com

Digital focus in new SLCC rules

An updated version of the SLCC's rules, reflecting its "digital first" approach, comes into force on 1 April

The Scottish Legal Complaints Commission's rules set out how we use the powers granted to us by the Legal Profession and Legal Aid (Scotland) Act 2007. They provide a framework for our process in dealing with complaints objectively, facilitating early resolution and acting proportionately in discharging our functions. Our current rules were last updated in 2016, and we are required to keep them under review, so an update is timely. We are grateful to those stakeholders, including the Law Society of Scotland, who responded to our consultations and helped inform this work.

Our 2020-24 strategy committed us to moving to a digital first approach, and the experience of the last few years has only underlined the importance of this. So, we specifically wanted to ensure that our rules reflect a digital focus in our operations and engagement with the profession. The changes take account of the changing external landscape and norms, including technology, communication methods and administrative tools. They include clarifying that, where appropriate, communications can be sent by electronic means, and that mediations, oral hearings and determination committees can take place using digital channels.

We will move to requesting information required from practitioners in digital formats where possible, to reduce delay and cost.

We also took the opportunity to respond to specific issues where we identified that a change would be desirable to update or to clarify our processes and procedures, or to help us improve our efficiency.

As such, we've removed unnecessary administrative barriers to making a complaint and clarified the information required by the SLCC in order to register a complaint.

In recognition of the time elapsed since the last changes to time limits came into force, we've brought all complaints into line with the three-year time limit. In practice, this only has implications for a small number of service complaints where the service was first instructed pre-April 2017. We have also clarified the circumstances in which the SLCC may accept a complaint that has not been made within the specified time limits.

We've recognised in our rules the significant proportion of complaints which we help parties to resolve successfully, and outlined the steps we may take to facilitate this.

Finally, with the introduction of alternative business structures in the legal services market in Scotland, the SLCC has new powers to act as the complaints body for both licensed legal services providers and approved regulators, and our updated rules include technical updates in relation to this new role.

Our new rules come into force on 1 April 2023 and apply to complaints made from that date forward. The full updated version of the rules can be viewed on our website, along with further details about the changes.

Vicky Crichton is Director of Public Policy at the Scottish Legal Complaints Commission

The Trades House: a charity funds management option

Founded in 1605, The Trades House of Glasgow includes within it the 14 ancient crafts of Glasgow. It is a Glasgow charity dedicated to providing poverty relief and educational support for people living in the city and surrounding areas.

The Trades House and its 14 incorporated crafts make donations of more than £750,000 annually to deserving causes and individuals. They do this with income from managed funds and other fundraising activity. Charitable funds include the Commonweal Fund, which is available to charities and organisations within the city of Glasgow and surrounding areas, the Drapers Fund, which supports children up to age 17 and their carers in the wider Glasgow area where there is great and urgent need, and the Relief Fund, which is available to individuals within the city and surrounding areas who are in great need due to financial hardship or other disadvantage.

These funds are administered by trustees drawn from members of the crafts and supported by Trades House staff.

The House has recently been very successful in attracting new funds to manage including, recently, taking over the management of a £1 million fund.

This can come about because a charity or trust has struggled to find appropriate trustees prepared to undertake the administration, or has had difficulty in identifying beneficiaries, meaning it cannot distribute its income in accordance with the purposes of the trust or OSCR's guidelines. It can also be where the trustees of these charities wish to reduce their administrative burden and costs.

In these circumstances, the funds can be brought under the umbrella of the Trades House charities and managed by the Trades House. This allows funds from underactive or dormant charitable trusts to be released to support good causes.

Anyone aware of such funds who would like to make enquiries about bringing them within the management of the Trades House, may contact the chief executive and clerk, John Gilchrist: john.gilchrist@tradeshouse.org.uk

Shona Frame, partner, CMS Cameron McKenna Nabarro Olswang

The Society in a changing world

Adam Marks introduces the Society's new International Strategy and invites the profession to engage as it promotes the Scottish legal sector in trade discussions and more broadly

Scotland's place in the world is changing. Both Covid and Brexit have altered how we interact with our neighbours in terms of law, trade and travel. In response to this, the Council of the Law Society of Scotland has passed a new International Strategy that aims to support the rule of law around the world and to promote the profession and Scottish jurisdiction internationally.

There are a series of challenges before us. The war in Ukraine has seen international norms abandoned and a prosperous European nation illegally invaded. Promotion of the rule of law and access to justice cuts across every aspect of our work at the Society, but now more than ever we must stand up for our values globally and at home. Therefore, a key part of our international work will be to seek to work with partners, such as the UK and Scottish Governments, to strengthen the institutions of the rule of law and promote best practice around the world.

We will aim to work with other legal professionals to provide mentoring or guidance in areas in which Scotland is a world leader. Our memberships of the International Bar Association (IBA) and the Council of Bars & Law Societies of Europe (CCBE) provide platforms for us actively to promote the rule of law at an international level and ensure equal access to justice for all.

We're proud to work on behalf of and with the Scottish solicitor profession to engage with other organisations and groups across the globe. It helps us to work towards ensuring that wherever in the world you happen to be – whether it's in the EU or further afield – the Scottish legal profession is known and respected.

Trade policy work

A key part of this work is to ensure that the profession is represented in the UK Government's trade policy. Post-Brexit, international trade will continue to be a major focus. Our increased policy engagement in this area presents an opportunity to be part of thought leadership on trade issues in Scotland. While we engage with the UK's new trade deals, we are conscious that the rules set by the EU will continue to be of interest to the profession, and so in the aftermath of the closure of the joint UK Law Societies' office in Brussels, we have joined Scotland Europa.

Scotland Europa is a membership-based organisation (aligned with Scottish Enterprise) that promotes Scotland's interests across the institutions of the European Union and to the representatives of Europe's regions and member states. It has a permanent presence in Brussels near to the Commission headquarters and will provide us with the support needed to ensure that the profession is still represented in the heart of the EU.

In the UK, the new generation of post-Brexit trade deals is no longer abstract and will soon start to come into force. We will continue to engage not only with the negotiations but with the implementation of these deals. Trade agreements can be used to bring about a wide range of changes in the relationship between states and regions. In many such agreements, provisions are a means to promote or reinforce the application of the rule of law.

Wider engagement

Other aspects of the legal framework play a similarly important role in facilitating trade. This extends, for example, to continuing protection of intellectual property rights, promotion of competition and facilitating flows of data. The top priority must be to continue to promote the legal sector in Scotland. We emphasise the importance of recognising that Scotland is a distinct jurisdiction with its own law, court system and separately regulated legal profession.

Any work on both the Scottish and wider UK brand should recognise the advantages of doing business in Scotland, drawing on the wider support network in terms of availability of high-quality legal advice, an effective commercial court, and the strength of the rule of law, alongside other important professional business services. We have begun this not only through working with the UK Government as it negotiates new trade deals, but also engaging with our international members and large firms in Scotland who have real world experience. Following a recent meeting with Minister Mike Freer MP, we have committed to regular meetings to ensure that the UK Government can support the Scottish legal sector and that firms are informed and can raise issues directly with the Government as they come up.

If you are interested in any aspect of this work please get in touch with Adam Marks (adammarks@lawscot.org.uk), who heads our international and trade policy work.

If you want to know more about our international work, you can read about it here: www.lawscot.org.uk/research-and-policy/international-work/

Adam Marks is Head of international and trade policy

ASK ASH

Homeworking when ill?

Should I be expected to log in when off sick?

Dear Ash,

I joined a new company during the pandemic and the rules at the time about home working were quite flexible. However, although hybrid working is still permitted, there does seem to be an issue about sickness absence. Recently I was quite poorly but I was still expected to be able to log in from home. I take the view that if I'm unwell I shouldn't be expected to work, but the situation seems fudged due to hybrid working. I don't seem alone in this, and others also seem under pressure simply to work from home even if ill. I'm not clear if there has been a shift in employer expectations or if it's just my team.

Ash replies:

I personally believe that we are still adjusting to life after the pandemic. The hybrid model certainly has its advantages and is no doubt providing us with greater flexibility, but the perceived advantages could be overshadowing some of the previously expected normal working conditions such as sick leave.

Perhaps it is because we have been taught now just to live with certain viruses post-pandemic, and because we are now used to working like troopers from home, that taking sick leave is more stigmatised, unless it is for more serious illnesses.

However, saying that, if you are ill and unable to work then make it clear you will be taking time off work. A reasonable employer will want to ensure that their employees are fully fit and able to work, and by not resting and recuperating you may ironically end up needing more time off in the long run. Take care.

Send your queries to Ash

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

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

A Brick Short of a Full Load

Thanks to the generosity of a former employer I now have a complete "run" of bound volumes of the Journal of the Law Society of Scotland right from the first issue in January 1956 apart from one volume being Volume 14 1969.

Does any firm either through the process of takeover or amalgamation have a surplus copy of this volume? I would be happy to pay a modest consideration to acquire the missing book to complete my set.

Please contact Ashley Swanson on **ajs100mr@hotmail.co.uk**

Classifieds

Mrs Meta Morris McKerley, Deceased

Any person holding a Will by the late Mrs Meta Morris McKerley formerly residing at 27 Wellside Avenue, Airdrie, ML6 6PD and who died at Wester Moffat Hospital in Airdrie on 3rd December, 2022, please contact Eric Wallace of Bell Russell & Co Ltd, Solicitors, 111 Graham Street, Airdrie, ML6 6DE (Tel: (01236) 764781) Email: ewallace@bell-russell.com

Patrick Robert Courtney Parker - Deceased

Would anyone holding or knowing of a will for the above, latterly of 13 Manse Street, Tain IV19 1HE, please contact John Peutherer, Anderson Strathern, 1 Rutland Court, Edinburgh EH3 8EY or john.peutherer@andersonstrathern.co.uk

Mary Wilson (Deceased)

Anyone with knowledge of a Will by the late Mary Wilson, formerly residing at 28 Earlspark Avenue, Glasgow, G43 2HW and latterly of St Francis Care Home, 54 Merryland Street, Glasgow G51 2QE, please contact Nicole V. Guidi at Frank Irvine Solicitors on 0141 375 9000 or nvg@frankirvine.com

JAMES STUART (DECEASED)

Would anyone holding or knowing of a WILL for the above, latterly of 22 Queens Rd, Boddam, Aberdeenshire, AB42 3AX, Sclattie Rd/Cres, Bucksburn, Aberdeen, please contact Masson & Glennie, Broad House, Broad Street, Peterhead, AB42 1HY (01779 873531 or Tracey.cameron@massonglennie.co.uk)

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FWA In-house™ Focus

FWA continues to be instructed on a range of interesting in-house legal positions, from large international businesses to public sector roles. In the last few months in particular, we have seen an increase in demand for lawyers who are interested in making this move.

We have highlighted below a selection of positions we are currently instructed on –

- **In-house Commercial Contracts Solicitor – Energy focused organisation – Edinburgh (Assignment 14675)**
- **In-House Legal Counsel - Public Sector organisation – Glasgow (Assignment 14603)**
- **Interim Solicitors (12 months FTC) - Public Sector organisation– Edinburgh (Assignment 14484)**
- **In-house Commercial Litigation Solicitor – Energy focused organisation – Edinburgh (Assignment 14676)**
- **In-House Commercial Property Lawyer – Technology & Infrastructure organisation – Bellshill (Assignment 14368)**

Each of the Frasia Wright Associates' In-House Track™ Specialist Consultants is familiar with placements at all levels across the board - in private practice, in-house or within the public sector. They will be able to answer any questions you may have, provide relevant and appropriate advice or, ultimately, assist you in the process of securing the offer which will most advance your career aspirations, allowing you to progress in the most appropriate direction for you.

If any of these roles are of interest to you, or you would like to discuss in-house opportunities more generally, please do not hesitate to contact us, Frasia Wright (frasia@frasiawright.com) Cameron Adrain (cameron@frasiawright.com) Teddie Wright (teddie@frasiawright.com) or Stephanie Togneri-Alexander (stephanie@frasiawright.com) on email, or by telephone on 01294 850501.

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