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COP26 SPECIAL

Journal

Journal of the Law Society of Scotland

Volume 66 Number 10 – October 2021



Planet law

This special issue of the Journal to mark the COP26 conference highlights how integral the law is to tackling climate change



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Online resources

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

Subscriptions

Practising Certificate (inclusive cost) £565;
Non-Practising Members (UK and Overseas,
inclusive cost) £315; Annual subscription UK £84;
Overseas £108; Trainees Free

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ISSN: 0458-8711

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welcome
message



Climate climax

Most likely we are about to enter a period of saturation coverage of climate change matters, as the COP26 global conference in Glasgow finally opens. This issue of the Journal, produced in collaboration with the Society's Working Group on COP26 and Climate Change, recognises the significance of the occasion with a spread of features highlighting the many legal facets of the subject.

Climate change is far from being the preserve of scientists or politicians. The more you look, the more you realise just how inseparable the law and legal rights are from the whole issue. We are, after all, talking about threats to the livelihoods, and therefore possibly the lives, of whole communities or even peoples. If a commitment to human rights means anything, it means standing up for those who are often least to blame for the predicament in which they find themselves, but have most to lose from what humanity is doing to the planet.

Of course there are many other ways in which the law can play a part, from regulating activities with a direct environmental impact, to holding corporations or even governments to account for alleged failures to comply with legal duties, sometimes of their own devising. And as is apparent from our features on climate change litigation, activists are determinedly pursuing an array of lines of


challenge in the attempt to enforce more rigorous action against global warming. One way or another, therefore, lawyers are going to find themselves increasingly drawn into advising, whether on the rights of those adversely affected, the possibilities for enforcing a change in policy or practice, or the risks of being subjected to a claim.

If that is the case, it should be something to welcome, and not just from a

business planning point of view.

Human rights is, regrettably, still something treated with suspicion, if not outright hostility, by a substantial section of the public, encouraged even more regrettably by members of the UK Government. If the law and lawyers can be presented, and

recognised, as nothing less than integral to saving the planet, a long overdue change in attitude, and greater respect, may follow.

There may be a further role to play. It is at least conceivable that, as more stringent measures are found to be necessary to meet increasingly strict emissions targets, governments will seek to direct our lives to an ever greater extent. If that should happen, lawyers will be sought to stand up in defence of individual freedoms. How that would play out against a global emergency can only be speculated at present, but there may be lessons from the emergency from which we are just emerging. We are always learning. 



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ONLINE INSIGHT

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



An urgent deadline like no other

Environmental lawyer Jamie Whittle reflects on our place on the planet, the crucial importance of the COP26 conference, how he remains optimistic despite the challenges ahead, and what we can do individually.



How to become a new sheriff

Frank Crowe recalls his early experiences of sheriffs and the development of the current judicial appointments process, and offers a few tips for those considering a judicial career.



Vaccine for work: a belief exemption?

Can an anti-vaxxer's belief be protected under the Equality Act 2010? Debbie Fellows and Baktosch Gillan suggest that it is unlikely to meet the tests set out in the case law.



Online fraud: when is a bank to blame?

Cat McLean believes the Court of Session decision in *Sekers v Clydesdale Bank* has improved the outlook for customers seeking redress from their bank following a fraud, compared with previous English cases.

Emma Dixon

COP26 will bring changes for legal professionals, as individuals and as advisers, and the Society's Working Group on COP26 and Climate Change will evolve to continue raising awareness of the implications



We are all in this climate crisis together. That provided my original motivation when invited to chair the Society's Working Group on COP26 and Climate Change. Created in July 2020, it was the height of the pandemic. Our primary focus was then COP26, delayed subsequently to November 2021. We saw that COP26 provided us with opportunities and responsibilities to explore, being hosted in Scotland, the Society's own jurisdiction.

Our membership, then quite narrow, reflected mainly environmental and energy policy interests. Those involved the lawyers already directly working for clients considering the impact of climate change.

Principally, we, the working group sought to inform and raise awareness of the meaning of the climate crisis for the Society and its members. We emphasised the significance of the landmark Paris Agreement (2015), vital in the multilateral climate change process. It is a binding agreement bringing nations together in an ambitious effort to combat climate change and adapt to its effects. In short, it sought to limit global warming to well below 2 degrees Celsius, and preferably to 1.5.

We highlighted the importance of the global progress towards meeting these targets. We emphasised that commitment to achieving the targets is the focus of COP26.

Our own work included a survey (December 2020) to measure our members' awareness of the COP26 conference. Round table events have been held focusing on the human rights impact of the climate crisis on different groups. We have covered climate change law, biodiversity, and flagged up the ecocide debate about its recognition as an international crime. Online conferences have illustrated the practical policing implications of holding COP26.

Our work to date has inspired the Society's own direct action in appraising its sustainability and carbon footprint.

It has also uncovered a vast, multi-faceted range of climate crisis-related topics, snowballing in ways unforeseen, and unimagined by us at the outset. As momentum towards COP26 has increased, we too have been surprised.

On reflection though, perhaps not, as that inclusion, interest and responsibility are exactly what I suggest it means for us as lawyers today and as climate conscious lawyers of the future.

COP26 is now less than a month away. It provides us with a once in a lifetime opportunity, as the decisions taken will be critical for us all. Our own work here and as professionals cannot and must not end in November when the COP26 attendees pack their bags to return home. Flexibility in all our

approaches going forward is imperative in considering how best to take actions affecting our sustainability and our future.

For us, the working group, we are considering how it metamorphoses, developing options on how best to consolidate its legacy for all our benefit and to support essential changes required by the climate crisis.

More widely, lawyers will require to use their professional skills to aid those impacted through adverse climate change. Seeking out transition and decarbonisation will touch many practice areas. But that only scratches the surface. In representing and utilising our professional interests, enthusiasm, energy and commitment to the climate crisis, we have sought to provide an impetus for the Society and the Scottish legal profession.


COP26 is not the end but the beginning of us all as climate lawyers.

Across the Society, we will disseminate the significance of the detailed policy and professional implications arising from the COP26 commitments made by the UK Government. That will allow us all to take account of these and to identify actions to address the climate crisis, in our own way. We can spread information to and for all levels of the Society as a unique institution and for its influence in relation to current and


future generations of law students and staff.

We, as a Society, should not feel constrained by the outcome of COP26. Mitigating the impact of, and adapting to life in, a changing climate is a challenge for which we must all take responsibility.

Climate change action is for now, for all and not just for those involved in environmental matters. There is continued scope for lawyers to take a creative and innovative approach to this unique opportunity to share information and implement change in many diverse forms. And your views to us in looking to that legacy are important.

In conclusion, I hope that at the end of COP26 people will be able to say: "I was encouraged and inspired for the climate change future, when I called you last night from Glasgow." 



 Emma Dixon is a senior in-house lawyer, and convener of the Law Society of Scotland's COP26 & Climate Change Working Group

No holiday courts

GBA's open letter to ministers

I am writing on behalf of our executive committee to confirm that, until further notice, our members who are nominated solicitors will not be attending holiday custody courts.

Last spring, the Lord President confirmed that custody courts would be convened on each court holiday. There was no consultation with the defence. No thought was given to providing enhanced remuneration for defence agents to relinquish their entitlement to such holidays, as is provided to other participants.

As Vice President and currently as President of the Glasgow Bar Association, I have alerted our justice partners in many meetings to the manifest unfairness of the position defence practitioners have been put in by this chronic underfunding. We no longer have equality of arms and legal aid provision is in crisis. There is an immediate and urgent concern about the prospects of an independent bar unless this terminal decline is reversed as soon as possible.

We have previously highlighted the issue by taking direct action in holiday custody courts, and in the "Gowns down" campaign on 17 May 2021. We have now been advised that there is no reasonable prospect of our concerns being addressed by legislative change until next autumn at the earliest. Court holidays for next year have already been suspended by our sheriff principal.

In light of this, we took a poll of our members. Such is the strength of feeling about this matter that all who responded are in favour of this course of action. This would ordinarily be anathema to us as our *raison d'être* is to help the most vulnerable in our society. It is clearly symptomatic of decades of underinvestment in the defence and the widening gulf

between Crown and defence. Insult has been added to injury by the underspend in the legal aid budget by £21.5 million during the pandemic compared to the reinvestment of £9 million, disastrously implemented by your Resilience Fund and only rescued with the input of Bar Association Presidents and Law Society representatives.

No member who voted is in favour of continuing to work holiday custody courts without achieving pay parity. This unity demonstrates their strongly held beliefs about their treatment by successive Scottish Governments and the apparent lack of respect towards us amongst our justice partners. Until this is resolved, our members will not be participating in any holiday custody courts, unless in their capacity as duty solicitor or to fulfil contractual obligations as PDSO employees. We invite all defence practitioners to join us.

Glasgow Sheriff Court is the flagship court of Scotland. The spotlight of a world stage will soon be upon us because of COP26. The conference has necessitated SCTS planning for three consecutive weeks of Saturday and Sunday courts in Glasgow. Our members will be undertaking 26 consecutive days of custody appearances in addition to their usual workload. Again, there was no consultation with us. Until such time as details of funding are resolved, our members cannot make an informed decision about participating in the duty solicitor scheme. A decision is required urgently.

I would be happy to discuss matters further with you and extend an invite to visit us at Glasgow Sheriff Court.

Fiona McKinnon, President, Glasgow Bar Association

This is an edited version. The full letter is on the GBA website

Climate Justice: A Man-Made Problem with a Feminist Solution



MARY ROBINSON

PUBLISHER: BLOOMSBURY (2018)

ISBN: 978-1408888469

PRICE: £19.99 HARDBACK; £8.99 PAPERBACK; £7.99 E-BOOK

On the cusp of the COP26 conference, why this book should be read should be self-explanatory.

It seeks to emphasise how climate change impacts significantly and disproportionately on women. Though feminism features in its title, it should be stressed that does not mean excluding men: it is about acknowledging the role that women play in tackling climate change, frequently in the front line.

Mary Robinson is well known to many as a lawyer and the President of Ireland from 1990-97. Her service as the UN High Commissioner for Human Rights from 1997-2002 is perhaps less well known. Her interest in climate change was sparked by that role. She has a mission to secure justice by bringing to the fore the urgency of the human rights of those affected by climate change.

Though now slightly dated politically, the book is valuable for readers seeking a frank, easy to read initial step to understanding climate justice.

Robinson uses powerful and emotive images such as the birth of her grandson, who will be 47 in 2050. Unless work is done now there will be no climate justice for our successors to inherit.

This book provides an important start with its resounding message from Mary Robinson to take "personal responsibility for our families, our communities, and our ecosystems".

Gillian Mawdsley. For a fuller review see bit.ly/3iH3FSy

The Kindness Project



SAM BIRNIE

HEADLINE: £9.99; E-BOOK £3.99)

"Running away is rarely the answer. Friendships can sometimes be the only answer."

This month's leisure selection is at bit.ly/3iH3FSy

The book review editor is David J Dickson

Party conference time, and Justice Secretary Dominic Raab is again turning the Conservatives' sights on the Human Rights Act, with a promise of action before the next election.

But what might his promised "overhaul" involve? David Allen Green's blog is wary, but

suggests that "the blast of the repeal trumpet today was not a loud one". (An update on what Raab knew about the case he cites in his speech is also worth reading.)

To find this blog, go to bit.ly/3oLLKnf; update at bit.ly/3oHfThM

"We will overhaul the Human Rights Act" – What this means, and why the case cited by Raab for doing so may not be a sound example

08 October 2021

Conference season: the time of year when it is customary for Conservative politicians to declare their stance on the Human Rights Act 1998.

This post is in the form of the new Lord Chancellor and Justice Secretary Dominic Raab.



Tails from the bar

The serious business of voting may be over by the time you read this, but if you became fixated on lawyers' pets during lockdown Zoom meetings – or are just fixated on pets in general – check out @LawPawCalendar on Twitter.

Daily polls are running as we go to press, to choose the pin-ups for a 2022 charity calendar supporting Save the Children's work for refugee children, from a selection of probably long-suffering animals in assorted legal poses.

Some definitely look the part, such as Fergus the black lab, or Freya who – going one better than that poor chap with the kitten filter – proudly proclaims she is a lawyer AND a cat. (We were less convinced by co-feline Daphne, who did however outpoll Lyra the Supreme Court dog to become the face of February – status is no advantage here.)

However we are assured that all candidate pets will feature somewhere. So no bitching.

WORLD WIDE WEIRD

① Try a lampshade?

Police in Derbyshire caught a suspected thief who tried to hide by standing in a wardrobe with a blanket over his head – which only came down to his knees.

bit.ly/3msXqDD



② Poached egg

The search is on for two thieves who stole a bronze statue of Humpty Dumpty sitting on the loo, titled "Dumpty Humpty", from an art fair in Wisconsin.

bit.ly/3oAXFyz

③ Go find yourself

A man who was reported missing in Turkey when he wandered off after drinking with friends in the woods, was "found" when he joined a search party looking for him, then realised they were calling out his name.

bit.ly/3Bkqdd

PROFILE

Alison McNab

Alison McNab, a policy executive with the Society, supports the work of a number of its policy committees and is joint secretary to the COP26 working group

① Tell us about your career so far?

I trained and practised in a high street firm, focusing on criminal defence and family work. The mix gave a great variety, and I enjoyed working with a range of clients. I moved to the Society three years ago. The nature of policy work is such that there is always more to be done, or to learn about. I thoroughly enjoy engaging with a vast range of stakeholders and the ever-changing policy work, but I miss the buzz of appearing in court!

② Have your perceptions of the Society changed since you started?

Yes, absolutely. In private practice, I had no idea about the vast range of work that the Society undertakes, particularly through its many committees. The dedication of the solicitor and non-solicitor members is remarkable and it is with their commitment that we can help shape good law.

③ How can lawyers work to address climate change?

It is increasingly clear that law, social policy and economics will play a significant role in tackling the climate crisis. There is an opportunity for each of us, as professionals, to contribute, whether in advising clients or contributing to policy development. We can also review our own day-to-day business operations – COVID-19 has brought some aspects into sharp focus, providing a springboard to reconsider the way we work and live.



④ What are the main issues you think the Society has to address at the moment?

There will be a key role in supporting members as we continue to adjust following COVID-19. Changes to working practices within firms and in the wider justice sector have brought issues such as access to justice, flexible working, equality and diversity, and mental health to the fore.

Go to bit.ly/3iH3FSy for the full interview.

TECH OF THE MONTH

Cloze

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Cloze is "like a personal assistant for your professional relationships". It collects tweets, emails, Facebook posts, and other bits of communication from your contacts, and prioritises them based on people who are most relevant to you. So even if your boss isn't chronologically at the top of your Twitter feed, they will be at the top of your Cloze view.



Ken Dalling

This month I urge solicitors to ensure they are prepared for the challenges and opportunities in tackling climate change; highlight their commitment to keeping the justice system running; and share in the pride of our new solicitors and solicitor advocates

It

is a great honour to lead any members' organisation, and I remain humbled by the faith shown in me by my fellow Council members who supported my election as Law Society of Scotland President. Of course there are privileges.

There was no budget to join the Commonwealth Lawyers in Nassau, nor would there have been even if the

American Bar Conference hadn't been cancelled. However, in late September, our chief executive and I were graciously hosted in Belfast for the Law Society of Northern Ireland Council dinner. Nassau would have been nice, and I didn't realise that I Stephanie Boyce, President of the Law Society of England & Wales, was participating in our Brussels event on COVID, held during the CLA meeting, from Cable Beach until her webcam moved and I saw the ceiling fan! Oh well.

Challenges of climate change

As we look ahead to the arrival of COP26 in Glasgow, we are increasingly aware of climate change and the potential impact it will have for us all. Solicitors are involved in advising their clients or employers on a range of matters associated with climate change, as well as considering the environmental impact of their own businesses and activities. We need to understand the challenges which are ahead, and ensure we are prepared for opportunities to influence and inform policy and legislative development in this area.

This month's special edition Journal, co-edited by the Society's COP26 & Climate Change Working Group, will explore some of these issues and provide valuable insight for us as a profession. And of course there is our upcoming COP26 conference on 29 October, which will examine how we should respond as a profession and will feature fantastic speakers, including Professor Philippe Sands QC, who will ask whether ecocide should be considered an international crime.

Shared ideas

In Belfast, I was able to speak to Sir Declan Morgan, former Lord Chief Justice. We spoke about the efficient disposal of criminal court business, virtual custodies and resourcing. He was impressed to learn that in Scotland case disposal fees allow, and reward, "early" guilty pleas in summary cases – at substantial savings to the system as a whole. Apparently that had been an idea of his that had not found favour in his jurisdiction. If only there was something comparable in jury cases, we wondered, what impact could that have in reducing trial backlogs?

Pride in others

Taking pride in the role each of us plays in the lives of our clients is only natural. Taking pride in the accomplishments of others maybe not so. But it was with pride that I presided over the first admission ceremony for solicitors since I took office. It was great to see the enthusiasm with which so many new faces were embarking on their professional futures. When Claire Gregory's three year old daughter, Holly, exclaimed: "Well done Mummy," her emotions only mirrored those of so many family and friends who, at least virtually, were able to show their continued support to the loved ones of whom they, too, were so proud.

The new civil solicitor advocates, who I had the pleasure of introducing to Lord Turnbull at the Court of Session, are at a different stage of their lives as solicitors and have taken further their skills and studies. Nonetheless, I have no doubt that exclamations of pride in their achievements would have been in the minds, if not the mouths, of their family members if they had been present.



Day in court

As an innovation on the ceremony for the Opening of the Legal Year, the Lord President asked the Dean of Faculty and me each to summarise the last 12 months and detail some of the challenges to be faced in the year ahead. Roddy Dunlop QC, with characteristic eloquence, spoke of the unquantifiable benefits of in-person hearings.

For those of you who haven't seen it on YouTube, my opening observation noted that, despite all that was thrown at the profession, we "continued to deliver essential advice and representation to those for whom help was needed". I went on to point out that so many solicitors had gone above and beyond, again and again, to ensure that those who relied on their expertise were not disadvantaged and that our justice system continued to function. I was and remain very proud of all of that. Pride again. But a virtue rather than a sin, I think. [1](#)



**Ken Dalling is President
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ANDERSON STRATHERN, Edinburgh, Glasgow and Haddington, has promoted three senior associates to director: **Laura McCabe**, solicitor advocate (Commercial Litigation, Edinburgh), **Danielle Edgar** (Family Law, Edinburgh), and **Ewan Regan** (Corporate, Edinburgh). **Anne Lawrie** and **Mandy Armstrong** are promoted from associate to senior associate; **Laura Bowen**, **Liam Smith**, **Lucy Thornton** and **Jemma Forrest** from senior solicitor to associate; and **Stuart Orr**, **Kirsty Nicoll**, **Emily Fleet-Grant**, **Nick Dobbs**, **Ysabeau Middleton**, **Francesca Glendinning**, **Sarah Donnachie**, **Jamie Devlin**, and **Rory Knox** from solicitor to senior solicitor. **Arlene Hall**, **Kirsty Maitland** and **Elaine Caricato** move up to senior paralegal, and **Jackie Curran** to senior accredited paralegal.

BALFOUR+MANSON, Edinburgh and Aberdeen has appointed **Russell Eadie** as a senior associate in the Employment team; and **Stephanie Nicol** as a senior associate in Commercial, initially as maternity cover for partner **Stephanie Zak**. Both join from DENTONS. **Iain Balfour**, who joined the firm as an apprentice in 1952, has retired as a consultant.

BELL + CRAIG, Stirling announce the promotion of **Aran Wilson** (Private Client) and **Abby Kemp** (Conveyancing) to associates with effect from 6 August 2021.



BLACKADDERS, Dundee and elsewhere, has appointed **Stephen Connolly** as a partner from 13



September 2021, in the Glasgow office. He was previously an employment partner with MILLER SAMUEL HILL BROWN.



BURNESS PAULL, Edinburgh, Glasgow and Aberdeen has acquired the practice of immigration firm MCGILL & CO. **Grace McGill**, who becomes head of Immigration at Burness Paull, and four colleagues have moved to Burness Paull.

CAMPBELL RIDDELL BREEZE PATERSON LLP, Glasgow, has become part of HOLMES MACKILLOP LTD from 1 October 2021. The merged business will trade initially as "Holmes Mackillop Solicitors incorporating Campbell Riddell Breeze Paterson", and then as "Holmes Mackillop Solicitors". Members **Richard Leggett** and **Robert Stewart** will become directors and voting shareholders in Holmes Mackillop, and all their staff will join the firm.

Richard Donaldson, formerly of HARPER MACLEOD LLP, Lerwick office, is now practising as a sole practitioner, under the name RD LAW PRACTICE, Eastbye, Exnaboe, Virkie, Shetland ZE3 9JS (w: www.rdlawpractice.co.uk; e: info@rdlawpractice.co.uk; t: 01950 310125).



GILLESPIE MACANDREW, Edinburgh, Glasgow and Perth, has appointed **Gordon Clark**, formerly with DENTONS, as an associate in the Planning team; **Kevin Sturgeon**, formerly with HARPER MACLEOD, as a senior solicitor in Commercial Property; and **Ross Baron** (formerly with WATERMANS LEGAL) and **Catherine Wyllie** (formerly with RAWORTHS) as solicitors in the Energy team.

LINDSAYS, Edinburgh, Glasgow and Dundee, has appointed **Alison McKay** as a director in its Private Client team in Glasgow. She joins from the PRG PARTNERSHIP



Lindsays has also promoted **Alastair Smith** to director in the Corporate & Technology team, and **Darren Lightfoot** and **Brian Pollock** to senior associate in Commercial Property and Dispute Resolution & Litigation respectively.

LIVINGSTONE BROWN, Glasgow and London, has moved its Glasgow headquarters to 250 West George Street, Glasgow G2 4QY (t: 0141 673 0169).

Laura McCallum has been appointed general counsel of ABERDEEN FOOTBALL CLUB. She joins from DUNDEE UNITED FC where she was head of football administration and legal affairs.

MACKINNON'S LLP, Aberdeen, Cults and Aboyne, has appointed **Gregor Sim** as a senior associate in its Property team. He joins from BRODIES.

PACITTI JONES, Glasgow, Lenzie and Bishopbriggs, has acquired the practice of ALEXANDER, JUBB & TAYLOR, Glasgow. Principal **Bill Nugent** has joined Pacitti Jones' office at 648 Alexandra Parade, Glasgow.

PINSENT MASONS, Glasgow, Edinburgh, Aberdeen and globally, has appointed **Michael Watson**, previously head of Global Finance & Projects, as the new head of the Climate Change Mitigation & Sustainability team.



Euan McVicar, formerly OFGEM general counsel, rejoins the firm as senior climate adviser.



© Peter Sandground

SHOOSMITHS, Edinburgh, Glasgow and UK wide, has appointed partner **Janette Speed**, previously head of Edinburgh, as head of Scotland for Shoosmiths; **Alison Gilson**, head of Corporate in Scotland, to also head the Edinburgh office, and partner **Barry McKeown** as head of the Glasgow office.



THORNTONS, Dundee and elsewhere, has appointed **Karen Cornwell**, an accredited specialist in professional negligence law, as a legal director. She joins from KENNEDYS.

URQUHARTS, Edinburgh, has appointed **Andrew Graham-Smith** as a solicitor in the Commercial Property department, and **Ashley French** as a solicitor in Dispute Resolution & Litigation.



WRIGHT, JOHNSTON & MACKENZIE, Glasgow, Edinburgh, Inverness, Dunblane and Dunfermline, has promoted **Nicola Martin** (Planning, Edinburgh) to partner; **Stephen Grant** (Corporate, Glasgow) to senior associate; and **Amy McDougall** (Planning, Glasgow and Edinburgh) to senior solicitor.





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Stats are a funny old thing.

We see them a lot and I don't know about you, but I often wonder if there is any truth to them.

You see, when it comes to using technology of any kind to make our working lives easier, lots of companies like to use stats to sell their products. The idea is to work them into the initial sales pitch on the phone, make sure you mention them in demos, and even share a video showing how simple that particular feature is and wax lyrical about how it's a "game changer" for that lawyer's business. Sound familiar? Of course it does.

Here's a funny statistic: did you know that only 5% of people remember statistics, whereas 63% of people remember stories? We want you to remember this, so here's a short story about law firms using e-signatures...

Many of our law firm partners have used electronic signature to onboard 65% of their new clients in less than two hours. It's a statistic, but it is also a true story. Imagine that turnaround time in your own practice.

Not only that, but they tell us they have transformed the client experience and are able to get agreement on terms of business ("TOB") in what has been described as "lightning quick time".

That's it, that's the story. It's a very short story, yes, but I bet you are now thinking about how you could achieve the same stat!

Improved process

Getting a signature on a legally binding document has long been a cumbersome process. Either the document would have to be sent by post/courier to the relevant parties, with the lawyer hoping the signatory would sign and initial in all the correct places. Otherwise, those involved would have to physically travel to the law firm to provide a "wet ink" or physical signature. Over the past 18 months, circumstances made that whole process even more challenging.

Many of our law firm partners had long been curious about the use of e-signatures in the legal sector. There were initial,

understandable concerns. Thankfully the industry as a whole has come to accept that e-signatures are now a necessity, and embraced digitisation for critical processes such as TOB.

Legal challenges

This year the Law Society of Scotland created guidelines that will provide assistance to members on the electronic signing of documents, covering the relevant law and potential risks. They are reinforcing the need to overcome the impractical logistics of signing in wet ink. Charlotta Cederqvist, the Society's Head of Business Development said: "Used appropriately, electronic signatures offer a secure, fast and remote way to conduct legal transactions, meaning it doesn't matter if you're down the road or the other side of the globe. Integrating signature solutions with case management systems such as Denovo's CaseLoad will create efficiencies for law firms and their clients."

The stats don't lie!

When law firm leaders are giving you stats like 65% of clients are onboarded using e-signature in less than two hours; when they are telling us that 80% of TOB, agreements, contracts, etc, business are returned in one day, I think it's worth finding out how they are doing it. Don't you?

Let's make life easier together

Our job at Denovo is to get you there – to explain how you can do it too. By introducing our case management system, you will have e-signature already fully integrated. We'll help you collect data electronically and automatically update information in CaseLoad – eliminating the need to rekey data. Everything stays legal and visible with a complete audit trail.

If you want to learn more about CaseLoad, Signable e-signature and how to begin a partnership with Denovo visit denovobi.com, email info@denovobi.com or call us on 0141 331 5290.

“Seriously? They want me to print this off, sign, scan and send back? What a hassle! I’ll do it later.”



“Great, I can sign this electronically and send it back right now!”



It’s competitive out there. Law firms able to onboard and convert clients quickly are the ones winning.

Your clients expect you to be smart in everything you do – legal knowledge, communicating, paying you and signing documents. Using CaseLoad & Signable is the smart way law firms get **80% of agreements returned in less than a day**. Meaning happier clients and fees paid.



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Climate change: the reach of the law

Fiona Ross considers the trends in climate change related litigation, in which human rights grounds, government policy and corporate responsibility have all come under scrutiny in the UK or abroad

The 26th Conference of the Parties to the Rio Convention (COP26) will take place in Glasgow in November, with the aim of finalising the detailed rules which implement the Paris Agreement and accelerating action to tackle the climate crisis. Since the Paris Agreement was adopted in 2015, we have seen a significant rise in climate change related litigation, both in the UK and overseas.

This includes challenges in relation to government policy, individual projects and more recently even company policies and targets.

Increasingly we are seeing cases being brought based on human rights grounds. One of the first was the case against the Dutch Government brought by Urgenda, an action group of over 800 Dutch citizens. In 2015 the District Court of The Hague ruled that the Dutch Government must cut its greenhouse gas emissions by at least 25% by the end of 2020 compared with 1990 levels. It also required the Government to urgently and significantly reduce emissions and to implement higher standards of climate change mitigation. The ruling was appealed by the Government, but was upheld by the Supreme Court in 2019. The court held that the threats posed by climate change to the citizens of the Netherlands, both current and future, were so extreme as to amount to a threat to the right to life under article 2 of the European Convention on Human Rights (ECHR), and the right to respect for personal and family life under article 8.

In 2020, the Supreme Court in Ireland, in a landmark case brought by Friends of the Earth, held that the Irish Government's National Mitigation Plan did not specify how Ireland would transition to a low carbon, climate resilient and environmentally sustainable economy by 2050, as required

by the Climate Act 2015. The court required the Government to revise its national climate policy accordingly, and also create a new more ambitious plan that complies with Ireland's national and international obligations.

In 2021 the German Federal Constitutional Court held that Germany's climate protection law, which set a target of 55% reduction in emissions by 2030, violated the fundamental rights of young people and future generations and that it must be strengthened. The court recognised that climate change represents a "catastrophic or even apocalyptic" threat to society, and made clear that the German Government has a constitutional duty to protect the climate. It held that "one generation must not be allowed to consume large portions of the CO₂ budget while bearing a relatively minor share of the reduction effort, if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom". It required the Government to amend the climate law to make clear how it will reduce its emissions after 2030 so as to achieve climate neutrality in time. Following the decision, the German Government increased its emissions reduction target from 55% to 65% by 2030, compared to 1990 levels.

Other human rights based cases are being brought by citizens in countries including Poland, Italy, Peru, Pakistan and Nepal, and we expect that such grounds will increasingly be argued in the context of climate change related litigation.

Lawful policies?

A different type of challenge was brought in relation to the UK Government's Airports National Policy Statement (ANPS), challenging the policy basis for a third runway and expanded airport at Heathrow. A national policy statement sets out the policy applicable to nationally significant infrastructure projects applying for development consent under the Planning Act 2008. Rather than being based on human rights grounds, the claimants argued that the Government had failed to consider the Paris Agreement before designating the ANPS.



Fiona Ross, senior
associate, Pinsent
Masons LLP

The High Court found that the ANPS had been lawfully designated. The claimants (Friends of the Earth and Plan B) appealed, and the Court of Appeal held that the Secretary of State for Transport had acted unlawfully in failing to consider the Paris Agreement before designating the ANPS. That was obviously a major blow for Heathrow, which was preparing to submit its development consent order application at the time of the Court of Appeal judgment. Heathrow appealed to the Supreme Court, even though the Government at that stage indicated that it would not appeal the judgment. The Supreme Court issued its judgment in December 2020, overturning the Court of Appeal to hold that the ANPS had been lawfully designated.

Section 5(7) and (8) of the Planning Act 2008 requires that a national policy statement must give reasons for the policy set out in the statement, and that the reasons must (in particular) include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change. The court held that for s 5(8) to operate sensibly, the phrase "Government policy" needed to be given a relatively narrow meaning, so that the relevant policy could be identified. It held that a statement qualifies as policy only if it is clear, unambiguous and devoid of relevant qualification.

The court noted that the Government was in fact still developing its policy on achieving net zero in accordance with the Paris Agreement targets at the time of designating the ANPS, and rejected the argument that ministerial statements regarding net zero could be considered "Government policy" for the purposes of s 5(8).

Another interesting point was around the argument that the Secretary of State had breached their duties under s 10 of the Planning Act 2008 to exercise their functions in relation to preparation and designation of national policy statements with the objective of contributing to the achievement of sustainable development, and in particular to have regard to the desirability of mitigating and adapting to climate change. The court held that the Secretary of State had considered whether the ANPS needed to take account of the Paris Agreement, and had exercised their discretion not to take it into account. In this context the Secretary of State had already had regard to the Climate Change Act 2008, which was held to be sufficient, especially since the ANPS was

drafted such that the latest targets under the Climate Change Act 2008 would apply, and could be amended if needed, for example if in the future there was an inconsistency.

Heathrow sought to argue that because carbon emission targets were set out in the Climate Change Act 2008, Government policy was entrenched in the Act and could only be altered using the procedure for amending targets under the Climate Change Act. However, the court rejected this argument.

Whilst the Airports National Policy Statement was finally found by the Supreme Court to have been lawfully designated, matters have since moved on, and not only is it likely that the Airports NPS would now need to be reviewed, but also the full suite of Energy NPSs are under review, and there are challenges to the National Networks NPS and the investment programmes for road infrastructure in England.

Corporate responsibility

It is not only government policy that is the subject of challenge. The recent Royal Dutch Shell case is another truly groundbreaking piece of litigation, resulting in the court ordering Shell to cut its emissions by 45% by 2030 compared against 2019 levels. The judge noted that the ruling would have "far-reaching consequences" for the company and may "curb the potential growth of the Shell group", noting that "the interest served with the reduction obligation outweighs the Shell group's commercial interests".

The case was brought by various NGOs, led by Friends of the Earth Netherlands. The claims were only admissible insofar as they related to the interests of current and future generations of Dutch citizens, but not insofar as they related to the interests of the global population.

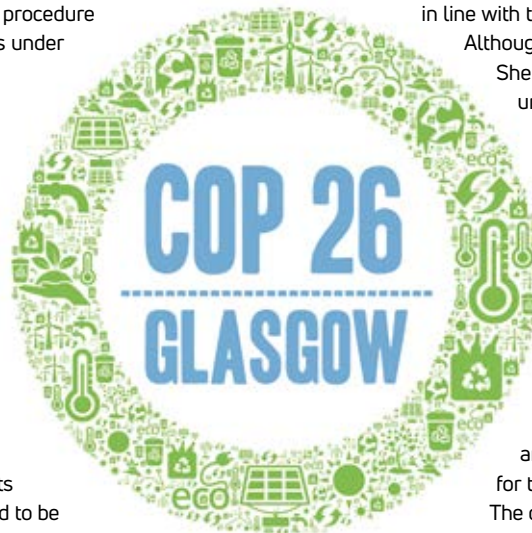
The claimants argued that Shell was breaching the Dutch civil code and violating articles 2 and 8 of the ECHR (the right to life

and the right to family life) by causing a danger to others when alternative measures could be taken. The court noted that Shell had known for a long time about the damage caused by carbon emissions.

It held that Shell owes a duty of care, and that the level of its emissions reductions and those of its supply chain must be brought in line with the Paris Agreement. Although the court held Shell had not acted unlawfully, it found that there would be an "imminent violation of the reduction obligation". It added that the company's "policy intentions and ambitions for the Shell group largely amount to rather intangible, undefined and non-binding plans for the long-term".

The court ruled that due to Shell's size and impact, it has an obligation beyond simple compliance with regulations: it is necessary for corporations to be proactive in tackling climate change and not simply leave it to the state. Shell has the flexibility to decide how it will achieve the reduction, but it needs to achieve a net 45% reduction in emissions across the whole group in scope 1, 2 and 3 (covering all CO₂) emissions by 2030, in order to support limiting the global temperature increase to 1.5°C as per the Paris Agreement. This is significantly greater than the targets Shell had set, which were to reduce the carbon intensity of its products by 6% by 2023, 20% by 2030, 45% by 2035 and 100% by 2050 from 2016 levels.

Shell is appealing the ruling, but the case has already sent shockwaves through the boardrooms of large emitters. It seems clear that not only is climate related litigation on the rise, but that company policy as well as that of governments can increasingly be expected to be subject to challenge. NGOs are increasingly well organised and funded, and there are a number of organisations which are dedicated to bringing challenges against policies and projects on environmental and climate change related grounds. Developers therefore need to carefully consider carbon and climate change matters in the context of their projects and apply appropriate mitigation. Consumers are also increasingly aware of corporate greenwashing, and in order to protect their interests companies will need to ensure that they not only have stretching emissions reduction targets but also credible plans for achieving them. 



"It seems clear that not only is climate related litigation on the rise, but that company policy as well as that of governments can increasingly be expected to be subject to challenge"

Rights: avoiding meltdown

The interconnections between climate change and human rights are many, and run deep. Elisa Morgera, Professor at Strathclyde University, tells Peter Nicholson of the relevance of biodiversity law – and why we need to consider human rights, climate change and biodiversity as interlinked



Climate change affects human rights? Absolutely. The more you look, the more you see how human rights and the

environment are inseparable. Indeed there is a whole discipline of international law dedicated to the interplay between the two.

An expert in this field is Elisa Morgera, Professor of Global Environmental Law at the Law School, University of Strathclyde, and a member of First Minister Nicola Sturgeon's National Task Force on Human Rights Leadership. She has a particular focus on matters such as equitable and sustainable natural resource development, biodiversity, oceans governance, and corporate accountability.

It is not difficult to grasp how basic rights to food and shelter can be imperilled by the impact of climate change on agriculture, for example. But biodiversity itself is essential to our survival, Morgera explains. "From protected areas and healthy diverse forests, to access to healthy food, and also healthy microbes in the environment in which we live, all these things affect our own wellbeing: our life expectancy, our health, our ability to recuperate from surgical operations, and of course our access to food and water. All our basic human rights are really dependent on vibrant other life on earth, which in turn contributes to the non-living elements of our environment

which are also essential for our wellbeing and ultimately our survival."

Source of tension

Civil and political rights, she observes, have been prominent in previous climate negotiations, with different groups and constituencies including indigenous peoples seeking a voice in the development of the international climate change framework. "More attention is being placed on socio-economic rights. It's very clear how livelihoods are affected as a result of the impacts of climate change, as is our right to health: the World Health Organization has done really good work in mapping in how many ways climate change affects the spread or severity of transmissible diseases. The idea of climate justice, which is a good label to look at how climate change can be everybody's concern, not just climate experts, really captures the variety of human rights issues that come to bear."

With different countries being affected in different ways – and contributing to the problem to different degrees – negotiations are bound to be tricky, even if the conflicts may not emerge on the main stage. "That underlying tension is always there, although it's really more in the detail that you see it – are we paying more attention to one sector, agriculture or forests, as opposed to others – and each country will find ways, including very technical ways, to show they are contributing in a positive way to climate change."

But Morgera is clear that the countries

with greater resources have to play the biggest part. "We do need co-operation across the globe to tackle climate change effectively. And with that we need international solidarity to support those countries that contribute the least to climate change, have the least resources to respond to it, but are the most affected by its negative impacts."

Holistic approach

Are there existing principles of international law that can help lay the foundations for progress?

"Yes. One key argument I'm keen to explore is the importance of looking at the ecosystem approach to climate change mitigation and adaptation, which comes from international biodiversity law. It's really important to see international climate law not in isolation from the broader body of international environmental law. In addition, the ecosystem approach can support a human rights based approach to climate change adaptation and mitigation.

"Again, it's looking at, say, agriculture, forestry, not in isolation from each other, not purely from a climate accounting perspective, but really looking at co-benefits – benefits in terms also of nature protection, contribution to human health, consideration of the needs of different rights holders such as children or people with disabilities; and identifying solutions that also contribute to other environmental and human rights goals.

"Although we have existing concepts, underpinned by international obligations and guidance for states, we still need to work out how exactly they apply in the very detailed context of climate change. That's the work that has to be done, on the more specific rules and approaches to properly support this holistic approach to climate change adaptation and mitigation."

Do experts like her have a role to play? Some work closely with the UN Climate Change Secretariat on papers to support the negotiations, "but there is also quite a lot of work that happens around the convention, a lot of side events, and non-formal discussion spaces where academics, UN officers or other experts come together and bring to attention new issues or new insights that usually are not immediately taken up in current COP negotiations but have the ground prepared for them to be discussed more formally at later COPs".

"All our basic human rights are really dependent on vibrant other life on earth, which in turn contributes to the non-living elements of our environment"

Technology trap

What in Morgera's view should the richer countries be willing to accept and to commit to?

"I think it's really important that there's a clear and more ambitious commitment on choosing nature-based solutions as opposed to maybe more risky, technology-driven solutions. That means committing money, capacity building and other support for other countries to develop nature-based and human rights-based solutions. Richer countries both have to lead by example and do their own work, but also support others, particularly with international funding, to do the same. So they have a double responsibility, leading by example and leading by support."

The technology part of the answer comes as a surprise, but some high tech solutions, Morgera explains, also carry high risks of potentially worsening climate change and of significant if not irreparable damage for biodiversity, with negative impact on particular groups within society.

"While the urgency of climate change of course pushes the advance of technology, we have to be very careful that we might try to fix a problem by creating an even bigger problem. Trying to focus on sustainable solutions that are based on nature's own capacity to mitigate and address climate change is a surer path for real systemic change, as opposed to hoping for a technical fix that might make climate change disappear."

Is she referring to renewable energy? "I was referring to geo-engineering. But it's important to reflect also on renewables: they may appear a low risk technological development, but we have plenty of evidence showing that some renewable developments have led to human rights violations as well as negative impacts on biodiversity. So we need to be very cautious about how these projects are developed and implemented, who is involved, and whether all other risks beyond trying to address climate change are taken into account. Work on renewables and work on forests has shown that tunnel vision on climate change may end up creating quite a lot of damage."

Limits on freedom

I wonder whether, as tougher action becomes necessary, we might all have to accept some restrictions on our individual freedoms, whether on travel, property rights, or otherwise. Morgera agrees.

"There will be some difficult balancing acts to be considered, and again human rights provide a way to make sure that the balancing is appropriate, transparent, and protects the vulnerable while we need to rethink our lifestyles. There are some tough choices ahead, but they can only be tough for those that can afford them and who will not be as negatively impacted as others."



Professor Elisa Morgera

What particular changes might we have to accept? "From everyday decisions about how we travel to work and travel across the country to how we use energy. But transformative change needs to be systemic: energy efficiency across the built environment, protecting biodiverse areas across the country. So it's a variety of things, but it really cuts across almost all the dimensions of our lives."

Measures of success


What will Morgera be looking for in order to assess how successful COP26 has been?

"That's a tricky question: high expectations are important to put pressure on climate negotiators, but the COP is one of a series of annual events, so it's important to keep a realistic approach and see this as part of a process. What would be really good is to have a clear sense of direction moving forward, of higher ambition in terms of climate mitigation. A clear connection between action on the ocean and climate change would also be very important: at the moment there is more of a dialogue than a negotiation on this

topic. In addition, very clear and ambitious commitments on climate finance and on adaptation would be good outcomes.

"Of course climate change is so urgent that we do want as much progress as soon as possible, but some of the detailed rules that need to be discussed might take a bit more time."

She concludes by highlighting the importance of being able to showcase examples of real progress. "For Scotland, for instance, this COP is an opportunity to showcase ambition in reducing greenhouse gas emissions: where we have already made concrete progress, where we have perhaps been more ambitious than other countries, as may be the case with human rights leadership and recognition of the interaction between human rights and climate change, or the protection of children's human rights in Scotland. Concrete examples are a way to push for higher ambitions across the board."

And in seeking action at all levels, "It's also really important to create global networks of likeminded experts, activists and governments that can create a critical mass for seeing more radical change." 

Litigation: turning up the heat

Regulators, shareholders and activists have all become potential litigants against businesses allegedly failing in their climate-related obligations. What impact will they have? Three Dentons lawyers explore the issues

Environmental, social and governance (“ESG”) issues, particularly decarbonisation and net zero targets, are already high up board agendas. A recent landmark decision of the Dutch courts in a claim against Royal Dutch Shell has highlighted the growing risk of climate change litigation, a subject increasingly attracting the attention of a wide range of businesses as regulators sharpen their focus on the climate emergency and activists explore a range of tactics.

Actions based on emissions

Climate change litigation has been particularly topical since, in May, the District Court of The Hague ordered Royal Dutch Shell (“RDS”) to reduce the CO₂ emissions of the entire Shell group by 45% by 2030, compared to 2019 levels. The decision marks the first time a court anywhere in the world has ordered a company to cut its CO₂ emissions. RDS is appealing, but if the ruling is upheld it will have major consequences both in the Netherlands and internationally. Even if the decision does not survive an appeal, success to date will embolden environmental campaigners.

The Dutch court concluded that RDS’s responsibility to reduce CO₂ emissions arose from a standard of care set out in the Dutch general tort statute, in particular a section providing protection against acts or omissions which breach a rule of unwritten law relating to proper social conduct. The court decided that, in interpreting this standard of care, it could look to “soft law” instruments endorsing corporate responsibility to respect human rights, such as the UN Guiding Principles on Business and Human Rights. These instruments were said to reflect what is now generally accepted as the required standard of corporate responsibility.

An interesting question is whether a similar conclusion is likely to be reached by our courts. The particular rule of Dutch law is not replicated in English or Scots law. However, both English and Scots law impose a general duty of care, in certain situations, to avoid acts or omissions which cause foreseeable harm to others. Breach of this duty may entitle a claimant to an order requiring particular activities to cease, or to payment of damages for harm caused. The courts also have the power to order performance of a specified act. That could, at least in theory, be the route to an order similar to the one made against RDS.



Malcolm Gunnyeon, partner, Douglas Blyth, partner, and Fiona Caldwell, managing practice development lawyer, Dentons



Based on our current legal framework, a significant degree of judicial innovation would be required for such a claim to succeed. A key battleground will be the need to show that the activities of a particular organisation will cause, or at least materially contribute to, a harmful situation. This is challenging when the number of CO₂ emitters, current and historic, is endlessly high. The Dutch court took a flexible approach to this question, stating that RDS had an “individual partial responsibility to contribute to the fight against climate change according to its ability”.

Challenges to project authorisations

Challenges by way of judicial review to approvals of major infrastructure, oil and gas, and other carbon-intensive projects are increasingly common. To date, such challenges have typically been framed in terms of whether the decision-maker has taken sufficient account of the UK’s climate change commitments (an irrationality challenge). These challenges have mainly failed. However, litigation success is not the only objective when activist groups commence judicial review proceedings. Delay, disruption, increased costs and public debate usually follow, even where the challenge is unsuccessful. The increasing likelihood of judicial scrutiny may also put climate change considerations front and centre of the minds of decision-makers.

A notable example of this type of challenge is the litigation over the intended expansion of Heathrow Airport. Last year, the Court of Appeal upheld Friends of the Earth’s challenge to the plans, concluding that the proposed extension was unlawful because the Government’s Airports National Policy Statement did not adequately take into account its commitments in the Paris Agreement to tackle the climate crisis. The Supreme Court overturned this conclusion in December: [2020] UKSC 52. However, the battle is far from over. As the Supreme Court pointed out, when development consent is applied for to construct the runway, it will be necessary to demonstrate, at that stage, that the development will be compatible with the up-to-date (and stricter) climate commitments.

Other examples include Client Earth’s challenge to the Secretary of State’s decision to grant development consent for the construction of two new gas-fired generating units at Drax Power Station, and the Good Law Project’s challenge to the Energy National Policy Statements. Transport Action Network has also recently failed in a challenge to the Government’s Second Road Investment Strategy, although the Government



has pledged to review its national network policy to take account of net zero commitments.

This type of activism is clearly on the rise and shows no sign of slowing. Indeed, calls for reforms to improve access to justice in bringing environmental challenges have grown. In August, the UN's Aarhus Convention Compliance Committee criticised the cost of litigating in Scotland, concluding that it was incompatible with the Convention commitment to provide access to affordable procedures to challenge public decisions on the basis that they fail to respect environmental laws (Report of the Compliance Committee on compliance by the United Kingdom of Great Britain & Northern Ireland – Part I).

Looking forward, we anticipate an increase in recourse to human rights grounds in judicial review challenges. In May, Plan B Earth and three young people filed a petition for judicial review against the Prime Minister, alleging that Government support for coal projects, aviation, oil and gas, and roads investment is contrary to the UK's climate change commitments and violates rights to life, private and family life and protection from discrimination (guaranteed by articles 2, 8 and 14 of the European Convention on Human Rights, as enacted into UK law by the Human Rights Act 1998).

Greenwashing

Another increasing risk facing businesses across many sectors is greenwashing. Greenwashing is the term used to describe the misstatement of the environmental benefits of products or services, thereby misleading consumers. Allegations of greenwashing have exploded in the last couple of years as manufacturers and advertisers respond to growing consumer interest in environmental factors. "Eco-friendly" and similar claims are now increasingly being scrutinised by consumers, activists and regulators.

The highest profile litigation in this area is the "Dieselgate" emissions claims brought by consumers in various class actions in the UK, US, Germany and Australia against Volkswagen. In Scotland, permission has been granted for litigation involving around 5,000 Volkswagen owners to proceed under the new group proceedings rules.

In the UK, tackling greenwashing is a priority for both the Competition & Markets Authority and the Advertising Standards Agency. The CMA published its Green Claims Code on 20 September 2021, providing businesses with guidance

on how to comply with consumer protection law when making environmental claims about products and services. The code sets out core principles for compliance, including that any claims made must be truthful and accurate, clear and unambiguous, and substantiated; must not omit or hide meaningful information; must consider the full life cycle of the product; and only reference fair and meaningful comparisons. Enforcement action by the CMA for breaches of consumer protection law is expected from early 2022.

Climate change is also high on the agenda of the ASA, which has an ongoing Climate Change and the Environment project taking stock of the rules regulating environmental claims. In recent years, the ASA has upheld complaints against environmental claims made by airlines and vehicle manufacturers.

Corporate disclosure litigation

As recognition and understanding of the impact of the climate emergency on corporate performance increases, shareholders globally are turning to litigation to challenge failures to disclose the impact of climate change risk, with the aim of influencing corporate strategy. A claim in Australia brought by a beneficiary of a pension fund prompted a settlement last year in terms of which the fund agreed to incorporate climate change financial risks in its investments and implement a "net zero by 2050" carbon footprint goal. Exxon is currently facing challenges in both New York and Massachusetts that it has failed to make relevant climate-related disclosures.

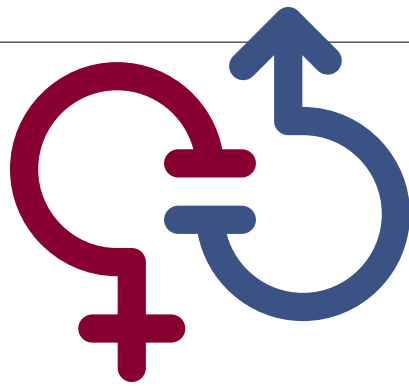
Litigation is likely to follow in the UK. Existing legislation may provide routes of challenge, such as the duty in terms of s 414 of the Companies Act 2006 to disclose the principal risks and uncertainties facing the company.

However, the focus of UK climate-related disclosure requirements is the recommendations made in the Task Force on Climate-Related Financial Disclosures ("TCFD"). This international initiative provides a reporting framework based on a set of disclosure recommendations for use by companies to provide transparency on their exposure to climate-related risk. Currently, many companies voluntarily comply with the TCFD recommendations.

Mandatory compliance is the next step. The Financial Conduct Authority has introduced a rule that commercial companies with a UK premium listing must disclose, on a comply or explain basis, against the TCFD recommendations for accounting periods beginning on or after 1 January 2021. TCFD-aligned rules are also expected to be introduced imminently by the FCA for asset managers and for workplace pension schemes. The UK Government has announced its intention to make TCFD-aligned disclosures mandatory across the economy by 2025, with a significant proportion of requirements in place by 2023.

Final thoughts

The increasing risk of climate change litigation is a rapidly evolving threat for business and lawyers to grapple with. The extreme nature of the threat of climate change is a disruptive force that requires us all to innovate at pace. It poses a unique challenge to regulators, as well as our courts, as activists increasingly turn to them for solutions. Are we on the cusp of a period of judicial innovation, as we see from the Dutch court in the action against RDS, which will transform the regulatory landscape? We are certainly expecting an increasing number of challenges in the coming years, and it will be fascinating to see how our legal system responds. 📌



Wanted: an inclusive approach

Effective solutions to climate change can only be found by giving an equal voice to those who suffer most from its effects – women and disadvantaged minorities, I Stephanie Boyce maintains

Climate change is one of the most complex challenges of our time, requiring an ambitious, holistic and collaborative response. As world leaders gather in Glasgow, a cruel irony and injustice must be properly addressed: the climate crisis disproportionately impacts women, ethnic minorities and those from poorer backgrounds, even though they have contributed the least.

Women's vulnerability to climate change

Some may question how an insentient threat could be gendered. However, there is a wealth of evidence which indicates that women are generally more vulnerable to the impacts of climate change.

First, one necessarily accepts such impacts if one acknowledges that extreme weather has a greater impact on the poor and vulnerable: globally, women disproportionately experience poverty and enhanced vulnerability.

This is due to entrenched social norms and socio-economic structures – their role as primary caregivers; their limited access to education; healthcare; and income. The impacts of climate change exacerbate pre-existing vulnerabilities from racial, regional, gendered, and economic inequality.

For example, in some countries women and children are 14 times more likely to die or be injured during a natural disaster than men; however, a 2007 study covering 141 countries found that where women and men possessed equal rights, approximately equal numbers died from disasters.

The threats outlined by the harrowing IPCC 2021 Assessment Report will continue to have a disproportionately gendered impact through extreme weather events and forced migration. Currently, UN figures indicate that 80% of people displaced by climate change are women; and 200 million people could be displaced by climate change by 2050.

Gender and inequality must be considered

We cannot address climate change in a globally just manner, unless we embrace climate justice and integrate issues of inclusion and intersectionality front and centre in strategies.

The Gender Action Plan of the United Nations Framework Convention on Climate Change sets out clear principles and objectives for climate policy, action and finance that provide targeted gender-sensitive solutions to women and minorities.

These principles and objectives are essential for decision makers to consider when developing climate change adaptation strategies and climate finance instruments. Even the Paris Agreement can fail to include a gendered perspective – although it references gender throughout, it omits gender

considerations in some crucial operative areas such as finance. It is essential to bear this in mind approaching COP26: when finalising the Paris Agreement rulebook, gender considerations must be incorporated where relevant.

On this front, the UK has made progress this year – for example, the Government has pledged that its £11.6 billion international climate finance investment will integrate gender-responsive and inclusive approaches into the design, delivery and assessment of its programmes between 2021 and 2025.

Under-represented in negotiations

The Gender Action Plan also considers equal access and outcomes for all. It outlines the importance of multi-stakeholder participation, highlighting that women are essential agents in solving and adapting to the climate crisis.

Indeed, climate action has been shown to have a symbiotic relationship with gender equality: a study published in *Nature* found that countries with a high level of gender inequality generally have a lower level of climate action. Similarly, higher female representation in national parliaments has been shown to galvanise climate change policy. However, the UN reports that the average representation of women in climate negotiating bodies is below 30%.

Change must begin at home, and positive steps have been made this year. For example, the UK joined the Feminist Action for Climate Justice Coalition at the Generation Equality Forum.

However, the UK Government has failed to ensure gender equality in the COP26 senior management team. "SheChangesClimate" found in 2020 that only 15% of the UK leadership team were women.

Equal representation of women and minority groups is crucial for the leadership team.

After COP26 there is a long road ahead, fraught with unprecedented challenges which demand a whole-sector approach. Recognising this, the Law Society of England & Wales has established a member Climate Change Working Group which is developing a long-term strategy for the Society.

Lastly, we cannot confront the immense task at hand without also addressing historic gender-equality problems, including within the legal sector. Taking steps such as signing the Society's "The Women in Law Pledge" will help ensure that when firms inevitably confront climate change challenges, high-level decisions are enhanced by a diverse collaborative approach.

Solving climate change demands that everyone comes together. Locating equitable solutions requires opportunities for marginalised communities and female voices to be heard and supported, and to provide the solutions to manage their own destinies and survival. **J**



I Stephanie Boyce
is President of the
Law Society of
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Net zero: the in-house opportunity

In-house lawyers have a key role in helping their organisations meet growing expectations to achieve sustainability targets, and Lawyers for Net Zero has been set up to support them

The world is gathering in Glasgow for COP26, and there is rapidly growing pressure on organisations, both public and private sector, to respond to the climate crisis and all its attendant risks. In-house counsel are ideally placed to help their organisations turn the good intentions of net zero pledges and sustainability commitments into rapid practical action.

General counsel ("GC"), and their teams, can proactively leverage their role at the centre of their organisations, with their fingers on the corporate pulse, to ensure risks of greenwashing and reputational damage are avoided and legitimate net zero is delivered. This is particularly pertinent as 90% of net zero plans made by business have been found to be not rigorous enough.

This article explores this critical area, featuring comments from two Lawyers for Net Zero champions, the GCs from Nestlé and E.ON. We seek to understand the wider context and how they have been interacting with the climate, net zero and the environmental, social and governance (ESG) agenda, the most meaningful indicators they see, and how they are proactively working to build a wave of action.

Accountability and urgency

"As a planet we're facing an existential threat: it is incumbent on each one of us to do something about that," asserts Mark Maurice-Jones, GC of Nestlé UK and Ireland. Kirin Kalsi, E.ON UK's GC concurs: "It's all of our responsibility to protect the planet for future generations."

Taking action on climate is a collective responsibility, but some have more influence than others, and in-house counsel are one of those groups.

Debate over whether the climate crisis is real or not has disappeared into the rear view mirror. In its place are emissions targets from corporations, cities, regions and countries, represented by the surge of organisations committing to net zero and joining the UN's "Race to Zero".

What is net zero?

Net zero has considerable energy behind it, being the first environmental narrative to truly capture the attention of governments and businesses around the world. This is largely because it has an international law behind it (the Paris Accord from COP21), it is by nature a proactive target (achieve net zero by 2050 latest), and, unlike vague terms such as "being sustainable", businesses love a good target.

There is a challenge with net zero, though. At the global level, there is a clear definition from the Intergovernmental Panel on Climate Change ("IPCC"), which is that net zero is achieved when human-caused emissions of greenhouse gases to the atmosphere are balanced by removals over a specified period.

However, as observed by the authoritative Science Based Targets Initiative: "Within the corporate context, the definition is not so clear, leading to significant confusion and inconsistent claims." Furthermore, because certain countries, such as the UK, and many companies, have moved early we can't expect everyone to get across the net zero line at the same time.

We could wait for a more suitable narrative to be developed, or a universally agreed standard to be adopted, but the climate crisis waits for no one. We are already at 1.1 degrees warming above the background rate, and as the wildfires and floods this summer demonstrate, going above the 1.5 degrees agreed at Paris will cause massively bigger issues.

The dangers to individual companies of inaction are clearly spelled out in a special report by *The Economist* from autumn 2020: "[Climate change] will hit every firm directly or indirectly. For different companies this will translate into different costs," but the risks are clear to be seen.

Advanced solutions

While the environmental situation is *much* worse than most people realise, fortunately the solutions are *much* more advanced and available than most people think. This reality is highlighted by the huge CO₂ reduction opportunities of the top 100 solutions, which were calculated by the leading authority Project Drawdown.

Project Drawdown's list emphasises there are many net zero solutions that must be acted on immediately, but not all climate solutions are created equal, and some less well known ones have massive potential. For example, refrigerant management and alternative refrigerants can cut more greenhouse gas emissions globally than all transportation solutions combined (electric cars, trains, bicycles, carpooling, efficient shipping and aviation, etc).

Lawyers shaping the narrative

Lawyers have a key role in both interpreting and shaping the rules that govern our approach to the environment and climate issues. They therefore have a considerable contribution to clearing up this confusion and helping their organisations avoid accusations of greenwashing and then aim for legitimate net zero, as Nestlé's Maurice-Jones observes:

"I think historically lawyers have reacted to legislation, perhaps taking a little bit of a defensive approach. I think there's a real opportunity going forward to be more on the front foot and proactive in trying to shape legislation. We're supportive of good



Adam Woodhall is CEO of Lawyers for Net Zero



legislation because it creates a level playing field that all companies need to adhere to.”

Being proactive is a theme that resonates with E.ON’s Kalsi: “I think we’ve got to be proactive in the context of promoting legitimate net zero, and support our purpose of leading the energy transition by offering our customers smart, sustainable and personalised energy solutions. So we are engaging positively with our board and our colleagues in a number of teams, such as our strategy, supply chain and marketing teams, which are also focusing on achieving net zero.”

Pressures to act

Businesses must now guard against greenwashing, with regulators starting to flex their muscles. The Competition & Markets Authority (CMA) recently published the Green Claims Code, and will carry out a full review of misleading green claims, both on and offline, at the start of 2022. Furthermore, climate risk reporting is becoming mandatory by 2025 in the UK, but the significant players in the market, and many customers, are expecting it before then.

While the environmental imperative is in itself a clear driver for organisations, there are numerous other indicators all pointing in the same direction: that business must act, and act fast.

“We’re seeing increasing societal pressure in this area. Whenever I speak to people who are looking to join the company, the first thing they will ask me is what is Nestlé doing in this area,” Maurice-Jones observes.

Managing reputation is becoming increasingly important. For example, according to the influential report *The State of Corporate Reputation in 2020*, global executives attribute 63% of



their company’s market value to the company’s overall reputation.

This links directly to the escalating importance of the ESG agenda in business, as it becomes increasingly recognised that failures can collapse business value: an average of \$100 billion per year was wiped off the value of US large businesses due to ESG issues in the five years to 2020.

The ESG agenda

The increasing importance of ESG to businesses is being reflected in an increase in legal work for in-house lawyers.

Maurice-Jones has been increasingly involved in ESG initiatives: “Here at Nestlé we’ve been involved in a number of different initiatives, such as negotiating contracts to enable the UK business to be 100% sourced from renewable energy and supporting the business in a very significant regenerative agriculture programme: agriculture is the biggest source of carbon emissions that impact Nestlé.”

Kalsi states: “At E.ON we’ve been

Backing a proactive strategy: Mark Maurice-Jones of Nestlé and E.ON’s Kirin Kalsi


working to ensure we can provide 100% renewable electricity to our customers, building on our 30-year legacy in the development of UK renewables and helping customers who are actively looking for help on their net zero journey.”

Maurice-Jones adds: “There is increasing expectation from society that companies have a clear plan as to how they will address climate change. This is being reflected in a huge increase in environmental regulation. In the UK, for example, we face legislation such as the plastic tax starting next April, and the CMA has recently announced its guidance on greenwashing. As in-house lawyers we need to stay on top of these developments.”

Legal sector desire

There is a clear desire in the legal sector, with a growing number of initiatives, such as the recently launched World Lawyers’ Pledge on Climate Action, the Net Zero Lawyers Alliance (aimed at city law firms), and The Chancery Lane Project, along with Lawyers for Net Zero.

As David Attenborough said in September 2020: “Profound change can happen in a short period of time. This is starting to happen with fossil fuels. We may yet pull off a miracle and move to a clean energy world by the middle of this century.”

Net zero is a complex jigsaw, and nobody knows what the end picture looks like, but we have most of the pieces we need, so we must use our imagination and intelligence to start piecing together the puzzle in our businesses. In-house lawyers are ideally placed to help their organisation with this. 

About Lawyers for Net Zero

Lawyers for Net Zero is working with one of the most influential sectors in UK society, the in-house legal community, to deliver significant climate action. We help in-house counsel via three linked stages: convening a community of likeminded individuals, providing focus via our Net Zero Action Principles, and generating momentum via Action Learning Groups.

The Action Learning Groups are the core of our process, with counsel meeting online regularly in small groups to share challenges, best practice and create peer-to-peer learning and accountability. This is a coaching-led practice which supports individuals to focus

on the meaningful actions they can take. We are delighted to have grown so rapidly. From a standing start in April, and with no funding, we now have approaching 100 individuals acting as champions, with GCs and senior counsel from organisations such as Sky, E.ON, Amazon, Nestlé, Deutsche Bank, GSK, NHS and Standard Chartered Bank. We have lawyers joining every week, and welcome inquiries from interested in-house counsel.

Lawyers for Net Zero has a stand in the Green Zone at COP26 on the Finance Day, 3 November.

Find out more on www.lawyersfornetzero.com and join our LinkedIn page.

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Support.

When you onboard new practice management software you will receive training. Preferably that will come from the software supplier rather than a third party. However, you won't learn everything you need to know in one go.

By its very nature, legal software is complex and you will require ongoing assistance to bring your knowledge up to a higher level. That's where good support comes in. Ideally you should receive it from a UK-based team. Contact with the team is far more effective by phone or personal visit rather than by a website help app.

Training.

Your training requirements will develop as you grow into the software. The best providers anticipate your needs and offer training both to help you improve your skills and on demand.

Learning Resources.

Training can be delivered in many formats. Any software supplier worth their salt will be able to provide different formats tailored to meet your specific needs. Online learning resources are just one way to achieve this.

Good software vendors will provide an online "Academy" which you can use at your own pace and which delivers both basic software skills and more advanced, specific user skills as your knowledge of the product grows.

Onboarding new team members.

It's all very well meeting the needs of seasoned software users. When someone new joins your team, it shouldn't be a case of the supplier chalking up one further subscription

and leaving new team members to their own devices. Newcomers may not be familiar with your current software or, in the case of trainees, may have no experience of case management systems.

Software updates

How many times have you paid for a new version of any piece of software? More to the point, legal software has to evolve to meet the requirements of changing law and the legal regulators.

The best suppliers provide solutions to meet these needs as part of the asking price rather than as upgrade premiums.

Having your say - developer forums.

This two-way street relationship is wider than you might imagine. It's not just the supplier's software - it's **your software**. That means you should be able to shape its future to suit your needs. Again, the best suppliers support you to do this via a developer forum and regular contact.

Ongoing relationships.

The real measure of a good supplier is concrete evidence of ongoing support. This should come in the shape of a dedicated client relationship person who is there as your point of contact when you need help of any kind.

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**Mike
O'Donnell.**

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Ecocide: a crime against the planet

Hosting COP26 requires Scotland and the UK to show global leadership, and it would be fitting to recognise in law the now authoritatively defined crime of ecocide, Jojo Mehta argues

Members of the Scottish Parliament were recently briefed on a legal concept that is rapidly gaining traction on the international stage: an international crime of "ecocide". It is widely recognised that humanity stands at a crossroads. As underlined in the IPCC's (Intergovernmental Panel on Climate Change) AR6 report (August 2021), the scientific evidence points to tipping points already crossed and more to come. Emission of greenhouse gases and the destruction of ecosystems at current rates is already producing catastrophic consequences for our common environment and it is accelerating, not slowing down.

Our briefing of MSPs, one of many political briefings we've been requested to provide lately, asserted that international law may have a seminal role to play in transforming our relationship with the natural world, shifting that relationship from one of harm to one of harmony.

This is because, despite significant progress, existing laws and treaties are proving inadequate to supply the strong guardrail needed to prevent the root causes of the global climate and ecological crisis.

What is required is nothing short of a new taboo, and criminal law is particularly well placed to help create this, since in our dominant (Western) paradigm we use criminal law to draw moral lines. We all know one cannot request a licence to kill people in pursuit of a new infrastructure project. Indeed, it wouldn't even cross our minds to do so. But we don't yet recoil in the same (healthy) way from destruction of ecosystems, and it is becoming ever more apparent that we must. We believe an international crime of ecocide has the potential to begin to create this much-needed shift in perspective.

History and recent progress

The word "ecocide" was coined in 1970 to describe the damage caused by defoliant Agent Orange in Vietnam, and in 1972, at the UN Conference on the Human Environment, Swedish Prime Minister Olof Palme evoked the idea of ecocide as an

international crime. The idea was then taken forward by others, including Richard Falk (1973) and Benjamin Whitaker (1985); there have also been more recent efforts, notably from the late Polly Higgins (1968-2019), a Scot and barrister whose legacy is being expanded on by a growing collaborative movement. The work of Stop Ecocide International, founded in 2017 by Higgins and myself, sits at the heart of this expanding global network.

In November 2019 Pope Francis, addressing the International Association of Penal Law, suggested that ecocide should be considered a fifth category of crimes against peace, and in December 2019 climate-vulnerable island states Vanuatu and the Maldives officially called on member states of the International Criminal Court (ICC) to consider amending the Rome Statute to include ecocide alongside the four existing international crimes. The ICC route is particularly interesting because of the complementary mechanism of the court: any member state ratifying a crime there must also include it in its own domestic legislation, so it's a logical, efficient way to create a new serious crime with transboundary coherence and enforceability.

Since that time, a further 14 member states of the ICC have a record of discussion of this crime either at parliamentary or government level: Bangladesh, Brazil, Belgium, Canada, Chile, Finland, France, Luxembourg, Mexico, the Netherlands, Portugal, Spain, Sweden and the UK. The EU Parliament has voted in support of ecocide crime in the contexts of foreign affairs, legal affairs and biodiversity strategy, and support was virtually unanimous at the Inter-Parliamentary Union. Closer to home, a motion put forward by Monica Lennon MSP in support of the recently launched legal definition of the crime has gained broad cross-party support in Scotland.

Legal definition of ecocide

Momentum around this new crime has gathered significantly since consensus was reached on the core text of a definition of ecocide as an international crime by an independent expert panel. This panel, comprising 12 lawyers from around the



Jojo Mehta is co-founder and executive director, Stop Ecocide International

www.stopecocide.earth



world with a balance of backgrounds and expertise in criminal, environmental, humanitarian and climate law, was convened by the Stop Ecocide Foundation and co-chaired by British/French barrister Professor Philippe Sands QC and Senegalese jurist Dior Fall Sow. The group was assisted by outside experts and a public consultation that brought together hundreds of ideas from legal, economic, political, youth, faith and indigenous perspectives from around the globe.

The consensus definition the panel reached was launched in June 2021, and it is clear and concise: “ecocide” means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts”.

This definition is the first to be drafted in direct response to political demand, following a request from Swedish parliamentarians last year, and is intended specifically for the context of adding a fifth crime to the Rome Statute of the International Criminal Court alongside genocide, crimes against humanity, war crimes and the crime of aggression. It is already being considered by a number of governments and has been well received in the political world, perhaps because it hits a “sweet spot”, striking a balance between protection from the most egregious harms and acceptability to governments with varying national legal provision in place.

The definition, which extends to a further paragraph defining terms used, draws on multiple precedents, in particular the Geneva Convention, the Environmental Modification Convention (“ENMOD”), and the Rome Statute itself. Virtually all of the language used is established and familiar, yet as a whole it draws international criminal law forward in a new direction. While the other crimes in the Statute focus almost exclusively on harm to humans, ecocide would, inter alia, criminalise acts threatening severe environmental harms in and of themselves. This is a highly significant development and could begin to rebalance the heavily anthropocentric current focus of the global legal system, strengthening worldwide the relatively young edifice of environmental law in the process. The

commentary and core text can be viewed at www.stopecocide.earth/legal-definition, and at www.ecocidelaw.com.

Stimulus and deterrent

International crimes address the criminal responsibility of individuals, i.e. natural persons rather than governments or corporations. And ecocide is, by and large, a corporate crime (albeit a number of polluting corporations are government-backed). While one might not expect a war criminal or a *genocidaire* to be concerned first and foremost with public image, the same is not true of corporate decision-makers, since reputation directly affects share price, investor confidence, insurance provision and so on. The possibility of finding themselves in the same dock as a war criminal has the potential, therefore, to be a particularly effective deterrent for such individuals with regard to ecocide.


However, to use a rather basic metaphor, we see this law not just as a stick, but also as a carrot. After all, there is nothing that stimulates creativity and innovation so well as a clear parameter. At present, fiduciary duties oblige CEOs to consider maximisation of profit above all else, but nonetheless, this must always be within lawful parameters. The visibility on the horizon of an approaching new parameter, therefore, will level the playing field for those wishing to move towards sustainable and eco-effective practices and prevent finance from flowing towards destructive ones.

Many of the solutions needed to transition to an economy which thrives with nature are already available – regenerative agriculture, circular economy, renewable energy – and a crime of ecocide will support these while also stimulating the improvement of existing environmental laws. It can thus act as both a guardrail and a guidance system, even before its adoption into the Rome Statute or into national law.

Time to show leadership

Beyond the benefits of creating an enforceable and effective deterrent, providing a useful parameter to spur innovation and sustainability, and influencing a shift in moral perspective, this law also offers a political opportunity. COP26 presents Scotland – and more broadly, the UK – with a requirement for global leadership on climate and ecological crisis, and support for an international crime of ecocide is an opportunity to show this strongly. Amending the Rome Statute will take some time (an estimated four or five years) and requires broad global support from 80+ states. It does not therefore constitute an immediate political and economic risk, but nonetheless strongly encourages the necessary transition policies and compliance pathways to move towards a safe operating space for humanity.

The UK is the seat of the industrial revolution, and is also at the origin of the present global legal system which focuses heavily on private ownership; both have brought prosperity to many but also, as we are at last acknowledging, relentless destruction to our planetary home (“ecocide” means, etymologically, “killing one’s home”). With a centuries-established history of innovation and pioneership, it would be both just and fitting for Scotland and the UK to help lead the world in respect of this new international law to protect ecosystems and future generations of all species, helping in this way to engineer a new and desperately needed global ecological responsibility.

Certain moments in history demand not only practical but also deeply moral leadership. This is such a moment, and support for an international crime of ecocide offers both. 

"Stand up!" for children's rights in the climate crisis

Children hold strong views on the impact of climate change, and have a legitimate demand that their voices be heard in and around COP26

In November, the world is coming to Scotland. Whether in person or online, all eyes will be on Glasgow

for the UN Climate Conference. We are all surrounded by images of the devastating impacts of climate change and the talk of it as "the biggest threat... modern humans have ever faced".

In the face of that threat, children are making demands. One young climate activist recently told the Commissioner that we must all "Stand up!... and let the people in charge know that the planet is worth saving for future generations and wildlife."

Recognising that "a safe, clean, healthy and sustainable environment is the foundation of human life," the UN Commissioner for Human Rights, Michelle Bachelet, recently stressed that, "because of human action – and inhuman inaction – the triple planetary crises of climate change, pollution, and nature loss is directly and severely impacting a broad range of rights, including the rights to adequate food, water, education, housing, health, development, and even life itself".

Rights to protest

Children are answering the call to stand up to "the people in charge", by leading climate justice movements in the streets, online, and in court. In particular, the global climate school strikes have reinforced the chilling reality that the climate crisis is also a critical children's rights crisis.

All this is happening against a backdrop of the throes of a global pandemic, where the most profound effects have been felt by some of the

most vulnerable communities. Existing inequalities have been exacerbated, meaning, as the UN warns, that "for children caught at the apex of this crisis, there is a genuine prospect that its effects will permanently alter their lives".

Mitigating the risks of further injustice is crucial. Through protesting, in person or online, children are exercising their autonomous rights to participation, and to freedoms of expression, thought, conscience and religion, privacy, and association and peaceful assembly: collectively, their rights to protest. They are letting the world know that the planet is worth saving.

These rights are not absolute. Human rights law recognises that restrictions may be justified in particular situations, but any interference must be in conformity with the law, in pursuance of a legitimate aim, temporary, and necessary in a democratic society. Limitations on the exercise of children's rights to protest may exist for their protection, in certain circumstances, but they must be proportionate, for example to fulfil the child's right to be protected from harm under UNCRC article 19.

Participating in protests is part of children's broader rights to education (UNCRC articles 28 and 29), to develop an understanding of human rights and a respect for the natural environment.

Legitimate controls

So, what will this mean for children and young people protesting at COP26?

Protection from harm during protests must be balanced with the obligations to facilitate protest, to educate police and other officials on children's rights, to encourage children to form associations, and to refrain from requiring parental

consent to join associations. Children must not face discriminatory attacks, reprisals for peaceful protest, nor be silenced, discouraged, or punished, including in educational settings or the criminal justice system.

There is a real concern that children aged between 12 and 17 may face criminal sanctions, including being deprived of their liberty, in the adult justice system. This is incompatible with the UNCRC, the UN Committee on the Rights of the Child General Comment 24, and with Scotland's policy commitment to a welfare-based, human rights approach, for all children: A Rights-Respecting Approach to Justice for Children and Young People: Scotland's Vision and Priorities (2021).

How can we be sure children know what their rights are and how to exercise them in the climate crisis?

Despite rights-based commitments by public bodies, including provisions in the education curriculum, implementation is lacking, and children have told us they need better climate education and human rights education, in line with obligations under UNCRC article 29.

Police Scotland has assured children that officers will continue to engage with and support them to raise their voices on the need for urgent climate action ahead of, throughout, and beyond COP26. It has stressed that consent-based policing "has an important role in facilitating peaceful protest and demonstration. Successful policing is human rights in action... and Police Scotland is committed to enabling people to make their voices heard".

Lasting legacy

As Scotland welcomes the world, we must all seize the opportunity to stand up for children's rights and create an environment that supports peaceful protest, promoting and facilitating children's meaningful participation in finding longlasting solutions to this crisis. Their request is simple: the legacy of COP26 must go beyond November 2021.

"Give us a seat at the table where decisions are being made about our futures and our lives. And if bureaucratic structures mean that's not possible, then it's time for a new table. One where everyone has a voice, no matter their age." (Young Human Rights Defenders Action Group, Scotland)

Children are rights holders. They are human rights defenders. They deserve a place at the table in Glasgow. **J**



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Client focus foremost for new CEO

Former FD and client services director has clear vision for top job

It has been six months since Chris O'Day became Cashroom CEO. The midst of a global pandemic is possibly not the easiest time to become CEO, but six months on Cashroom, and the legal profession are thriving.

Chris always wanted to do something big. After qualifying as a Chartered Accountant at Deloitte, he saw the opportunities at Cashroom and joined as a Management Accountant in 2014. His extensive experience in legal accounting saw him become Cashroom's Client Services Director in 2017 – gaining significant insight as to what is valuable to clients and to the legal industry. In 2017, Chris also took on the role as Finance Director. When David Calder became Chairman earlier this year, Chris

stepped into the role of CEO and hasn't looked back since.

David Calder, Chairman at Cashroom: "I'm incredibly proud of what we've achieved at Cashroom over the last 10 years, and look forward to seeing what Chris and the team achieve over the next 10."

"From working at Cashroom for many years, Chris knew that keeping clients at the core of the business was key – understanding what lawyers want and need and ensuring Cashroom provided that in the most efficient, compliant and risk-free way."



"The management information and constant support provided by Cashroom's outsourced FD service was the life-raft that we clung onto to guide us through the stormiest of waters we have ever experienced as a business – we could not have made it through the pandemic without the support of Cashroom."

Billy Smith, Clarity Simplicity Solicitors

"Cashroom continue to partner very well with Laurus. Key to the successful processing of a high level of transactions up to initial stamp duty deadline, was regular reviews and planning. The Cashroom operate like an in-house finance team, albeit they are outsourced which provides the benefit of greater expertise. Excellent processes were maintained throughout this busy period, and additional shifts and cover were provided to get through all transactions. Communication between Laurus' dedicated team at Cashroom was excellent throughout, resulting in a high level of clients and solicitors being very happy with the service."

Richard Carroll, Laurus, CFO

For more information about how Cashroom services could help your law firm remain compliant with the Solicitors Accounts Rules, reduce risk and practise more efficiently, visit www.thecashroom.co.uk



With the depth and breadth of expert Legal Accounting knowledge within our team at Cashroom, coupled with efficient processes and exceptional technology, we want to change the way firms view their accounts function

Our vision is to Revolutionise Legal Accounting, and we're on a mission to free lawyers from its complexity.

The legal tech industry is buoyant at the moment. The global pandemic has accelerated the adoption of new technologies in all areas, and the legal sector is no different. We were all forced to rethink the best way of doing things. Over the years firms have made significant investments in practice management systems, covering aspects such as document management, lead management, client communications and more, allowing firms to develop efficient processes and workflows for their fee earners.

However, we believe that a law firm's finance function is often overlooked or misunderstood. Because Cashroom provides legal accounting as a service at scale, we can make the necessary investment in people, process and technology that very few firms can afford. In turn, that allows us to deliver an exceptional service to the profession, who can then pass all the benefits of that service on to their clients.

We have developed our portal platform over the last five years. From the outset we designed it to integrate with leading legal technology systems, as well as integrating into the open banking network. We firmly believe that collaboration is key to exceptional service. By collaborating with PMS providers and banks we are able to increase the speed, reduce the risk and improve compliance of all financial transactions across the legal sector. In June this year we successfully processed £1.6 billion of client payments through our client portal in a timely, efficient and secure manner. We made a real difference to what was a stressful time for our clients and received some fantastic feedback. Our aim is more than improving Cashroom service and technology; it's about the larger impact we can have on the legal experience.

I am incredibly proud of what we have achieved at Cashroom, growing our team from two cashiers servicing three clients, to where we are today with a team of 110 people servicing 250 law firms across the UK.

But our revolution is just beginning – and we're all excited to see what the next 10 years brings, as our revolution spreads across the UK and beyond!

ID from CCTV

Along with a roundup of recently published appeal decisions, including one centred on sufficiency of identification using CCTV images, we publish a note from the High Court on an important point arising in a case awaiting trial

Criminal Court

FRANK CROWE,
SHERIFF AT EDINBURGH



Identification evidence

We have come a long way on this vital front in recent years.

In *Orr v HM Advocate* [2021] HCJAC 42 (10 September 2021) the appeal centred on the quality of the evidence of identification. There was CCTV footage taken in and around the locus of a serious knife assault. The images showed the assailant to be wearing a fur lined parka jacket with the hood down. The face was readily visible. Later the figure was seen without jacket, gesturing towards the complainer, and later with a shiny object in his hand. At trial the complainer could not identify his assailant and another witness said the assailant was not the appellant.

Police later viewed CCTV images. Two had never seen the appellant in person before; both identified him as the person who had been wearing the parka, and said the attacker was the same person. A further officer could not assist. The appellant gave no evidence at trial.

The court held there was sufficient evidence. No timeous objection had been taken. The appellant had a Mohican haircut and there had been no material change in his appearance. In addition to police evidence the jury could make up their own mind as to whether the man in the dock was the assailant shown in the CCTV images.

Section 275 applications

I have dealt at length many times in recent articles with s 275 applications seeking to admit evidence of the complainer's sexual activities other than immediately around the offence. These applications should be dealt with before the trial commences.

However in *JW v HM Advocate* [2021] HCJAC 41 (12 February 2021) the focus was on s 275(9) of the Criminal Procedure (Scotland) Act 1995, which contains the power for the trial judge to review and if he sees fit to revoke orders made in this context at the pre-trial stage. The appellant faced numerous charges of rape involving six complainers. A s 275 application was granted in June 2019 in relation to the defence line that the complainers had all been in consensual relationships with the appellant.

In light of recent decisions of the High

Court tightening the law in this regard, the trial judge had to consider a motion by the Crown to review the s 275 application. The trial judge duly disallowed the applications and this decision was appealed. The appeal court refused the appeal. Whereas initially the Crown had not opposed the application, now it did. In light of a reconsideration of all the circumstances the trial judge had taken the correct approach.

Fitness for trial

Cases involving accused persons with mental health problems often present special difficulties.

In *Patrick v HM Advocate* [2021] HCJAC 37 (17 January 2020) the decision to desert the original proceedings with a view to re-indicting for trial was the subject of a bill of advocacy. The judge, after hearing an examination of the facts following medical reports in which the complainer was deemed unfit for trial, later saw reports that the complainer was now fit to stand trial. The Appeal Court held that the judge had the power to desert the original proceedings with a view to the Crown re-raising them, and refused the bill.

Subsequently the complainer was tried and unanimously acquitted by the jury.

Sentencing

I conclude by referring to two recent sentence appeals.

Marshall v HM Advocate [2021] HCJAC 40 (17 August 2021) concerned a 35 year old appellant convicted after trial of assaulting and later attempting to murder a friend, as well as a charge of assaulting his partner when he was intoxicated.

Needless to say the attempted murder charge was the most serious, involving stabbing the victim in the neck. The appellant had a lengthy record back to 2002 and the social work report identified him as having a very high risk of offending. While the Appeal Court agreed in large part with the judge, the sentence of 12 years' imprisonment with an extension period of six years was excessive, and it was reduced to 10 and five years respectively.

The appellant in *Malcolmson v HM Advocate* [2021] HCJAC 39 (24 August 2021) was a secondary school teacher, aged 23 and 33 at the time of the offences, who was convicted after trial of sexual offences against two of his female pupils. The girls were sexually assaulted when under 18, when the appellant stood in a position of trust. One of the offences involved digital penetration and penile penetration of the girl's mouth. He was intoxicated at the time. He had been dismissed from the teaching profession. He denied the offences and expressed no remorse, but it was submitted he had otherwise been of good character.

The sheriff had imposed a sentence of 15 months' imprisonment on charge 1 and six months concurrent on charge 2. This was reduced to a *cumulo* sentence of 12 months' imprisonment on appeal. ¹

Criminal Court

JUSTICIARY OFFICE BRIEFING

Editor's note: The following is the first of what may be a series of briefing notes issued from time to time by the High Court over a trial period. These are intended to inform practitioners promptly of new criminal case law or approaches prior to the decisions being published in full. These notes will relate to cases which are still pre-trial and subject to restrictions regarding publication of information. Any further enquiries can be made to the appeals manager at amckay@scotcourts.gov.uk.

Domestic abuse: sufficiency of evidence

The case of *HM Advocate v DF* (10 August 2021, unreported) relates to a minute raising a plea in bar of trial based on oppression. The first instance opinion was delivered by Lord Matthews. It is understood that his decision has not been appealed, but it is subject to embargo given that the trial is still outstanding. The point raised is of some significance and practitioners may be interested in it.

The question was whether, in respect of a charge under s 1 of the Domestic Abuse (Scotland) Act 2018, where there was corroborated evidence, accepted by the jury, of some parts of the libel (at least two episodes of abuse at a minimum), the jury would be entitled to convict in respect of other parts of the libel which were uncorroborated and involved three different allegations of non-consensual anal, vaginal and oral penetration.

Refusing the plea, Lord Matthews said at para 37:



"What I take from these authorities is that, while the doctrine of mutual corroboration has specific requirements such that evidence of physical violence cannot corroborate evidence of rape, all of this offending, at least in a domestic setting, can be viewed in appropriate circumstances as a course of conduct. The context of jealousy, humiliation and control echoes very closely the conditions in the 2018 Act, and in my opinion, where the conditions are met, disparate offences can be considered as part of a course of behaviour, there being no significant difference between the words 'behaviour' and 'conduct'."

At para 39 he stated:

"Drawing all this together, in my opinion the acceptance by the jury on corroborated evidence that two episodes of the abusive behaviour had been proved would suffice to warrant a conviction of the new offence. Whether they could also convict of uncorroborated elements would depend on whether or not they were satisfied that those uncorroborated elements formed part of the same course of behaviour. There requires to be some sort of nexus or link between the various elements, otherwise they would be simply separate incidents and not part of a course of behaviour. Whether or not that link exists will depend on the evidence in each case and may not be capable of delineating *ab ante*, although it might be found if the jury were satisfied, for example, that there was a continuity of purpose in that the accused intended or was reckless as to whether his behaviour, whatever it was, caused the complainant to suffer physical or psychological harm, in other words if the accused was pursuing the sort of campaign described in *McAskill* [*McAskill v HM Advocate* 2016 SCCR 402]. In my opinion it is not necessary that the individual incidents require to be of the same kind or of a similar kind to the full extent required by *Moorov*. That is part of the law of evidence rather than a substantive requirement of an offence. It will always be open to an accused person to submit that there was no case to answer where the evidence did not support a course of conduct." ①

Licensing

AUDREY JUNNER,
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HILL BROWN



In 2003 the Nicholson Committee report declared that the "proliferation of different types of licence" was "confusing and unhelpful", and recommended that the seven licence approach was replaced by a single premises licence. It was hailed as a progressive new approach to licensing. However, 18 years and a global pandemic later we find ourselves once again arguing over old definitions.

In November last year the Scottish Government decided that for a short time in Glasgow, only cafés could open. "Cafégate", as it very quickly became known, saw proceedings being raised against the Glasgow Licensing Board for interdict against the issuing of prohibition notices to enforce the regulations. Interim interdict was granted while every licensing solicitor and operator in the city scratched their heads trying to interpret and apply the unhelpfully vague and unfit for purpose definition of "café". Very quickly the matter became a moot point, as the legislation evolved to introduce the tier system and a further lockdown was eventually imposed.

What is a "nightclub"?

Fast forward 11 months and vaccine passports are on the agenda, meaning we are once again faced with new legislation based on outdated definitions of premises which in ordinary times have no legal distinction.

In Parliament the First Minister set out the definition of a nightclub for inclusion in the vaccine passport scheme: any venue that opens between midnight and 5am, serves alcohol after midnight, provides live or recorded music and has a designated space for dancing. The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No 2) Regulations 2021 put the definition on a statutory footing. The trade reaction was intense, with concerns that such a vague definition led to unintended consequences, bringing what could be termed low-risk premises into the scope of the scheme. While nightclubs still exist in their purest form, hybrid premises and bars with entertainment are now common, and the burden of implementing a system for checking vaccine status was considered disproportionate against the risk in these venues.

The Night Time Industries Association (NTIA) also launched a legal challenge to the Scottish Government's plans, in which it claimed that the policy was "deeply flawed and incoherent" and raised "serious issues" around discrimination and its economic impact. The judicial review

"Fast forward 11 months and... we are once again faced with legislation based on outdated definitions of premises"

sought to halt the introduction of the scheme, but Lord Burns said in dismissing the petition that it was an attempt to address "legitimate issues" of the pandemic in a "balanced way". Rejecting the legal challenge, he noted that the plans had been signed off in principle by MSPs, and would be subject to frequent review.

Consequently at 5am on 1 October the legislation came into effect, albeit with a grace period for enforcement until 18 October. In an attempt to exclude those premises brought into the scheme unintentionally, the regulations provide that where a person responsible for premises ceases to provide one of the criteria in order to circumvent the passport requirement, they do not commit a licensing offence. This terminology is confusing and it's difficult to comprehend a situation where it might apply.

The guidance, taken with the regulations, provides operators with more clarity on what is required from them, but raises almost as many questions as the legislation itself. What is a reasonable system for checking vaccine status? What is a compliance plan? Do you need to scan the app or will visual inspections be sufficient?

Government agenda?

The fact remains that the hospitality sector continues to face unprecedented challenges 19 months on from the first lockdown. Vaccine passports may be seen by many as the ticket to freedom, but to others they represent a further tightening of the noose held by what they feel is a Government with an anti-alcohol agenda. Emotions are high on this topic, and with the Welsh Senedd recently voting through controversial vaccine passport plans on a vote of 28 to 27, with one Conservative MS unable to participate due to technical difficulties, it only serves to highlight the continuing controversy surrounding the scheme. This is unlikely to be the last in what has been a very long series of regulations.

Recently the First Minister announced some support, with a new £25 million package for SMEs to improve ventilation and reduce the risk of COVID-19 transmission in "high risk" settings, saying: "The package will initially target higher risk sectors where people spend significant amounts of time in close proximity to each other, such as hospitality and leisure, and will make indoor settings safer, especially through the winter months." ①





Planning

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This article provides an update on important changes in planning law and policy, particularly in regard to the steps taken by Scottish Government to ensure that the planning system can operate efficiently during the COVID-19 pandemic.

COVID-19 modifications

The Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2021 (SSI 2021/292) ("2021 Regulations") came into force on 29 September 2021. They are made under the Planning Act 1997, the Listed Buildings Act 1997 and both COVID Acts 2020.

The regulations make important adjustments to the COVID temporary modifications to the planning legislation. These are as follows:

Extension of permissions and consents

The 2021 Regulations extend the duration of planning permission, planning permission in principle, listed building consent and conservation area consent by ensuring that, if the permission or consents would otherwise expire during the new "emergency period" (that is now extended until 31 March 2022), then provided development is lawfully commenced on or before **30 September 2022**, the permission or consent will not expire. Under the earlier arrangements the emergency period was until 30 September 2021 and the date for lawful commencement was on or before 31 March 2022. The policy objective of this extended duration is stated to be to support the construction sector in its recovery from the COVID restrictions and to ease the burden on planning authorities who would otherwise need to consider new applications.

Pre-application consultation ("PAC")

PAC applies to applications for "major" and "national" development and requires that prior to making an application the prospective applicant must undertake a minimum amount of public consultation, characterised by the holding of at least one public event. The Town and Country Planning Regulations 2020 suspended the requirement to hold a public event and the

Development Management Regulations 2013 were amended to allow consultation by electronic means (e.g. online). The 2021 Regulations retain the suspension of public events until **31 March 2022**.

An important aspect of PAC is that it is to be amended by the Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021 (SSI 2021/99). These regulations increase to two the number of public events that must be held; introduce publicity by electronic means; require additional specification in PAC reports; and provide exemptions where a proposal is for essentially the same development as covered by an earlier application. Section 18(3) of the Planning (Scotland) Act 2019 also specifies that an application must be made within 18 months from serving a proposal of application notice on a planning authority. The 2021 Regulations postpone the coming into force of these changes to PAC from 1 October 2021 to **1 April 2022**.

The policy objective of temporarily excluding public events for PAC is due to uncertainties regarding COVID, its infection rates and other variants which may cause reversals in the emergence from lockdowns.

Local review bodies ("LRB")

Planning applications for "local" development are delegated to an officer of the planning authority. Where such an application is refused, granted subject to unacceptable conditions, or a decision is not taken within the statutory period, the applicant has the right to appeal to an LRB made up of no less than three members of the planning authority. Under the LRB Regulations 2013 the local review must be held in public. The 2021 Regulations operate to terminate the ability of LRBs to meet online on 30 September 2021. From 1 October LRBs must meet in public.


National Planning Framework 4

NPF4 is published by the Scottish Government and must be approved by the Parliament following consultation. It is a spatial plan to 2050, stated to be a "long-term plan for Scotland that sets out where development and infrastructure is needed to support sustainable and inclusive growth".

"The policy objective of temporarily excluding public events for PAC is due to uncertainties regarding COVID"

The NPF4 Position Statement was published in November 2020. Currently it is intended that the draft NPF 4 will be published in autumn 2021, which may coincide with the COP26 Climate Change Conference in Glasgow from 31 October-12 November.

NPF4 will be a very different policy document from NPF3 that it replaces, as it will be part of the statutory "development plan" to which all planning authorities and the Scottish ministers must have regard in their planning decision-making. There is a rebuttable legal presumption in favour of applications that are in accordance with the provisions of a development plan, and conversely a presumption against those which are not.

NPF4 will also contain for the first time ministers' policies and proposals for the development and use of land, and targets for the use of land for housing. Unlike NPF3, which sat at the top of the hierarchy of planning policy but was rarely engaged in local planning decision-making, it is expected that NPF4 will be engaged much more frequently. The direction of travel for national planning policy is clear from the Position Statement, which signals a key shift towards a net zero agenda and sets out Scottish Government thinking over four key themes – net zero emissions, resilient communities, wellbeing economy, and better, greener places. 

Insolvency

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Schedule 10 to the Corporate Insolvency and Governance Act 2020 introduced a number of measures in response to the global pandemic.

These temporary measures, examined in previous briefing notes, were intended to protect those businesses whose downturn in fortunes could be traced to the impact of the coronavirus.

The Government has recently begun the task of unwinding these measures as it eyes a more business as usual approach for the UK economy. The first step on this road is the snappily named Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment



of Schedule 10) Regulations 2021 (SI 2021/1029), in force from 29 September 2021.

Conditions A to D

Creditors will welcome the news that the restrictions imposed on the use of statutory demands are to be abolished. However, in place of those restrictions a number of conditions have been introduced in relation to any petition for winding up lodged against a company. Those conditions, referred to in the regulations as conditions A to D, are considered below in turn.

Condition A provides that the debt which forms the basis of the petition must be a liquid debt which has fallen due for payment. It must also not be an "excluded debt", which is defined as including commercial rents that are unpaid due to a financial effect arising from the coronavirus.

Condition B requires the creditor to provide the debtor company with a written notice in terms of the regulations. This must be delivered to the company's registered office unless there are reasons why that cannot be achieved. Notably, the content but not the form of the notice is set out in the regulations.

In terms of the regulations, the notice must set out certain prescribed information. This includes statements to the effect that the creditor seeks the debtor's proposals for payment and that if no such proposals are forthcoming within 21 days, the creditor intends to proceed with a winding up petition. Condition C stipulates that no petition can be presented until that 21-day period has expired without any satisfactory proposals being received.

Significantly, there is provision in the regulations for a creditor to apply to the court to dispense with or shorten the 21-day period. The regulations don't give any guidance as to the grounds on which such an application might proceed. One assumes that some urgency would require to be demonstrated, but case law may be required in order to give clarity as to the test to be applied. The application may be made at any time and must be made by petition. It is unclear whether an application may be made retrospectively on the lodging of the winding up petition.

Condition D provides that where a petition is presented by a single creditor, the debt must be £10,000 or more. That is a significant change from the £750 limit that was in place pre-pandemic. The regulations also allow for creditors to band together, provided the sum of their debts amounts to at least £10,000 in total. The law has always had provision for such a banding together, though it is rarely exercised. One might surmise that it will become far more common in the coming months.

Where a creditor satisfies the foregoing conditions and presents a petition for winding up, the petition must contain averments to the effect that the conditions have been satisfied and

IN FOCUS

...the point is to change it

Brian Dempsey's monthly survey of legal-related consultations

Building regulations

In the context of its recent draft Heating in Buildings Strategy, the Government seeks views on proposed changes to rules on energy standards, ventilation, overheating and electric vehicle charging infrastructure in the Scottish building regulations. See consult.gov.scot/local-government-and-communities/building-regulations-energy-standards-review/
Respond by 29 October.

Short lets licensing

The Scottish Parliament's Local Government, Housing & Planning Committee wants to hear views on the Government's proposed licensing regime for short lets. See yourviews.parliament.scot/spice/licensing-of-short-term-lets/consult_view/
Respond by 29 October.

Scotland in the world

The Parliament's Constitution, Europe, External Affairs & Culture Committee is looking at how the Government engages internationally and

what it seeks to achieve. See yourviews.parliament.scot/cteea/international-engagement-external-affairs/consult_view/
Respond by 29 October.

Care home isolation

The Government seeks views on delivering "Anne's law". The question is how to frame a right for persons in adult care homes to spend time with family and friends. See consult.gov.scot/pandemic-response/annes-law-legislation/
Respond by 2 November.

Community justice

Section 16 of the Community Justice (Scotland) Act 2016 requires ministers to review the National Strategy for Community Justice by 24 November 2021. Views are sought on how the strategy has worked and what changes are needed. See consult.gov.scot/justice/community-justice-national-strategy-review/
Respond by 8 November.

Keeping COVID powers?

The Government seeks views

on which COVID related laws in the fields of public health, services and the justice system are no longer necessary, and which remain of benefit. See consult.gov.scot/constitution-and-cabinet/covid-recovery/
Respond by 9 November.

Agricultural transition

How should farming, food production and land use in Scotland be regulated now the Common Agriculture Policy no longer applies? See consult.gov.scot/agriculture-and-rural-communities/agricultural-transition-in-scotland/
Respond by 17 November.


Guaranteed pension rates?

The UK Department for Work & Pensions seeks views on the proposed move from 3.5% to 3.25% pa in the rate of revaluation applied to fixed rate revaluation of guaranteed minimum pension for early leavers. See www.gov.uk/government/consultations/guaranteed-minimum-pension-fixed-rate-revaluation
Respond by 18 November.

that no proposals for payment have been made during the 21-day period. If proposals have been made and rejected, the creditor must explain in the petition why those proposals have been rejected. It's not explicit in the regulations, but one assumes that the intention is for the court to refuse the petition if satisfied that a proposal in settlement was rejected unreasonably.

Summary

The regulations, which do open up the option of insolvency to a degree, will remain in place during the "relevant period". This is defined as 1 October 2021 until 31 March 2022.

However, the exclusion of rent arrears and the increase in the debt level to £10,000 present significant barriers for a large swath of creditors. While the measures to date have been very successful in limiting insolvency cases during the pandemic, many creditors will themselves be struggling due to non-payment by their debtors. Notably, the World Bank has suggested that such measures "have merely postponed the coming of the tide to the months and years ahead". Consequently, it is anticipated that from 31 March 2022, some further liberalisation of the regulations will take place and a rebalancing can ensue. 



Tax

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Rishi Sunak, Chancellor of the Exchequer, has confirmed that this year's Autumn Budget will take place on 27 October 2021. However, it may be that the most important tax news of the year happened on 7 September, with the introduction of the new health and social care levy. Pitched as a new tax, it continues the Government's trend of introducing new taxes rather than increasing existing taxes.

Another new tax which will be introduced from April 2022 is the UK residential property developer tax. The draft legislation was published on 20 September, to some criticism by the British Property Federation. Final details of both taxes are expected in the Budget.

Health and social care levy

The health and social care levy will be introduced from April 2022 at 1.25%. Initially, for the 2022-23 tax year, it will operate as a simple increase in the rate of class 1 NIC (including class 1A and class 1B paid by employers on employee expenses and benefits), and class 4 NIC. The increase will be 1.25% for employees, employers and the self-employed. This means an effective total increase of 2.5% for employed workers (1.25% for each of the employee and the employer), and 1.25% for self-employed individuals.

From April 2023, the levy will operate as a separate tax and will be shown separately on payslips and self-assessment payments. The 1.25% levy will also apply to those still working above state pension age (who do not pay NIC) from April 2023. The new levy will apply on the same principles as NIC, specifically to the same population and income as classes 1 and 4 NIC, and will be collected via PAYE and self-assessment.

For small businesses qualifying for the £4,000 annual employment allowance for NIC, the allowance can be used against the health and social care levy as well as NIC liabilities. Individuals operating through personal service companies will have to pay the levy on any salary paid by their company, and if they take their income in the form of dividends from the company, the tax rate on those dividends will also rise by 1.25% from April 2022.

Employers may also consider the reward packages being offered to employees and whether there are efficiencies that could be

made in order to make their incentivisation more attractive, for example by utilising salary sacrifice arrangements, including in respect of pension arrangements. As the levy is a new tax in its own right, lawyers should ensure that all employment contracts, corporate documents and precedents are drafted widely enough that the levy is covered within the relevant provisions in relation to employment tax and NIC.

Residential property development tax (RPDT)

The draft legislation confirms that the new RPDT, which will tax the profits of the largest residential property developers, will not include most student accommodation; however, build-to-rent developments have not been excluded, despite calls from the British Property Federation (BPF). The draft legislation provides that student accommodation buildings will be excluded from the tax if they are designed or adapted, or are being constructed or adapted, for use by students or school pupils and it is reasonable to expect that the building will be occupied by students or school pupils on at least 165 days a year.

RPDT is one of the measures designed to contribute to the costs of the Government's plan to remove unsafe cladding from leased residential buildings. The BPF said it

would be "unfair" to levy RPDT on build-to-rent developers to enable remediation work in the homes-for-sale market, given that build-to-rent investor-developers remain fully liable for remediation work and costs are not passed on to renters. RPDT will apply to the residential property

development profits of companies that undertake UK residential property development activities. Tax will only be charged on profits exceeding an annual allowance, which has not been confirmed, but the earlier consultation suggested a figure of £25 million. RPDT will only apply to companies which (i) have or had an interest in the land concerned, and (ii) are subject to corporation tax, so will not apply to charities such as housing associations or to the property rental business profits and gains of real estate investment trusts.

The tax on the residential property development profits will be charged as if it were an amount of corporation tax. However, the method of calculation is different as finance costs are not deductible. The rate of the tax has not yet been announced.



Immigration

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The grave deterioration in the security and humanitarian situation in Afghanistan has been well documented in recent weeks. One might think that the installation of a new Taliban regime would have resulted in an increased emphasis on protection of Afghan asylum seekers. Unfortunately, the Home Office's position has been, at best, unclear.

Prior to these developments, the baseline position regarding the return of failed Afghan asylum seekers was relatively clear from the Upper Tribunal's country guidance in *AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130 (IAC)*. That set out that it would not, in general, be unreasonable for a single adult male in good health to relocate to Kabul, irrespective of whether he had a support network.

In practice, the Home Office's position has often been to maintain that the majority of Afghan asylum seekers, save for lone women and children, can safely relocate to Kabul. Therefore, assessing whether relocation to Kabul is reasonable is the crux of many Afghan appeals, the Home Office often having conceded that an individual cannot return to their area of origin, either by reason of risk on return or risk when attempting to travel back due to road insecurity.

Tribunal on the Taliban

What the impact of the Taliban's seizure of control over Kabul will be on the Upper Tribunal's guidance remains to be seen. However, the evidence does, on the face of it, appear to constitute very strong grounds for departing from that guidance (the test in asylum appeals which must be met before country guidance does not require to be followed). The basis for that suggestion is contained within the judgment itself, as the tribunal relied on the fact that Kabul was not, at that time, under Taliban control and there being "no real risk that Kabul will fall under the control of anti-government elements" (para 213).

Of course, the tribunal could not have predicted how quickly the Afghan Government would collapse, albeit it has always been careful to acknowledge that the situation is extremely fluid and required to be kept under frequent review. Nonetheless, this passage does indicate that the Upper Tribunal might have reached a different decision had the Taliban been in control of Kabul or had the tribunal been aware of the events which would shortly unfold.

This proposition equally finds support in the Upper Tribunal's previous country guidance relating to Afghanistan. In *AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC)*, which was affirmed in *AS* as still applicable in relation to a number of issues, the Upper Tribunal addressed

the issue of relocation to an area which was then under the control of the Taliban. It held that, for most civilians, excluding those with a history of family support for the Taliban, Taliban control of the proposed area of relocation was a factor which might make relocation unreasonable.

The position now?

It has been widely reported that the Taliban now holds itself out to be a reformed organisation with respect for the human rights of all living under its governance. Even if that claim were to be taken at face value for the time being, the situation in Kabul and Afghanistan can hardly be said to be durable.

In *HH (Somalia) v Secretary of State for the Home Department* [2010] EWCA Civ 426, Sedley LJ held that, in assessing the viability of an area as a potential place of relocation, it had to be considered whether the area was one which an individual could be expected to “go to and remain in” (para 83). In reality, no one can truly know how the Taliban is going to act over the next period. The only indicator of its future policies comes from its past actions, in which it is not disputed that the human rights of all citizens were violently repressed.

The weight of evidence supports that no individual should be returned to Afghanistan, and in particular Kabul, as things currently stand. It has now long been reported by human rights organisations that Afghanistan has surpassed Syria as the most dangerous country in the world. Recent events have led to an increase in insurgent activity by groups such as ISIS-K, as well as in the perpetration of large-scale indiscriminate attacks. Kabul is reported to be bursting at the seams due to the influx of displaced people from other areas of Afghanistan, and humanitarian conditions continue to deteriorate, even more so in light of the impact of COVID-19.

The Home Office’s recent withdrawal of all but one policy note in relation to Afghanistan is recognition of the significant changes which have taken place; however the continued delay in establishing a clear policy on how Afghan asylum claims should be processed stands in clear contradiction to their, admittedly admirable, policy of resettling vulnerable Afghans. Clarity on the Home Office’s position is required urgently, as the current practice of requesting adjournment of hearings with no clear timescale is unlikely to be entertained by the courts. ❶

OPG update

OFFICE OF THE PUBLIC GUARDIAN (OPG)

Remuneration and VAT

Professional guardians are asked to note that VAT should not be added to remuneration. Remuneration is calculated by OPG on the

approval of an account and the amount set is the total amount that can be taken from the adult’s estate.

For accounts submitted from 1 November 2021 onwards, professional guardians charging VAT on their goods and services must take VAT from the total amount awarded.

Professional guardians are reminded that remuneration should be taken within 12 months from the date it was awarded. Where remuneration has accrued, guardians should contact OPG.

Lay financial guardian’s declaration form

Since 29 March 2021, prospective lay guardians are asked to complete a [declaration form](#) early on in the guardianship application process.

The form seeks information about the lay guardian’s circumstances and outlines what is expected of them if appointed as guardian. This part of the process allows prospective lay guardians to agree to the responsibilities of the role prior to any order being made by the court. It also provides the court with adequate information to assess fully the prospective guardian’s suitability.

Solicitors are reminded that the declaration form should be provided to their client at the outset or civil legal aid stage. The form should be completed by the potential guardian and then sent to OPG along with intimation of the summary application.

OPG asks that solicitors familiarise themselves with this process as they play a pivotal role in ensuring the court is provided with sufficient information.

When OPG receives the completed form it sends a copy to the court along with a letter outlining any observations. OPG will also observe to the court whether the form was completed and returned. When appropriate, OPG will direct the sheriff to any sections of the form which may promote the suitability of the prospective guardian or which may flag a concern.

For further information please email: opgorders@scotcourts.gov.uk

Changes to the Professional Guardians’ Scheme

The Professional Guardians’ Scheme has been running for four years. In 2019 OPG carried out an engagement exercise with nominated scheme owners (NSOs) at each firm to find out more about the user experience.

The feedback gained, along with OPG’s own insight, has provided valuable information which will help improve the scheme. OPG has been working with this information over the past few months, and as a result the following improvements will be implemented in October 2021.

1. Terms and conditions have been drafted to help with the management of the scheme and to outline the responsibilities of scheme members.

“Delays have been caused by large increases in PoAs and case related mail”

These are available on OPG’s website.

2. OPG will allocate a designated member of staff to each NSO and firm. OPG review officers will be in contact with NSOs over the next few weeks to introduce themselves and to outline their role, which is primarily to give guidance and feedback to the firm.
3. Updated Professional Account Declaration form: the summary and declaration has been updated to enable key information to be provided.

OPG is also in the process of developing an online training course to replace the mandatory training workshop. It is anticipated this will be available towards the end of the year. For more information on any of the above please contact opgprofguascheme@scotcourts.gov.uk

Update on the PoA position

The OPG has recruited an additional, sizeable, cohort of permanent staff to address the issue of delays in processing powers of attorney (PoA). Delays have been caused by large increases in volumes of PoAs and case related mail, and exacerbated by the impact of the COVID-19 pandemic. OPG’s new staff are currently undergoing training, which means turnaround times will progressively improve over the latter part of this year and early 2022.

In addition, an exercise will be run later this year to recruit staff on a fixed term basis.

Expedited PoAs

It is appreciated that in some cases there is a genuine need for a PoA to be processed urgently due to the granter’s circumstances. OPG offers an expedited registration service in recognition of this. To request this service OPG requires key information and the reason why the PoA is to be given priority over other PoAs.

If your request is granted the expedited PoA will usually be processed within five working days. There is no need to contact OPG to ask for the status of the PoA: this may inadvertently delay the PoA from being processed on time.

Solicitors acting as attorneys or substitute attorneys

Solicitors are often appointed as an attorney or substitute attorney. However, if a professional is no longer willing to act or take up the appointment, e.g. they leave the firm, they should advise their clients at the earliest opportunity. This allows for appropriate arrangements, and/or amendments to be made to deeds while the granter has capacity and is in a position to approve a change. ❶

Common parts: a welcome clarification

In a decision ruling on competing claims of common property and sole ownership under a registered title, the Inner House has clarified that common rights can be created in respect of a structure not yet built

Property

DANIEL BAIN, SENIOR ASSOCIATE, AND ANN STEWART, SENIOR PROFESSIONAL SUPPORT LAWYER, SHEPHERD AND WEDDERBURN



Even the most experienced property lawyer can find drafting a deed of conditions a daunting prospect. There are many issues to consider, not least of which is the requirement for clear and effective definitions, and their interplay with the operative provisions of the deed.

One of the thorniest definitions that gives rise to a fair degree of anxiety for the drafter, is the description of the common parts of the development, and the rights to them that proprietors are to have.

That anxiety is aggravated by the Lands Tribunal of Scotland decision in *PMP Plus v Keeper of the Registers of Scotland* in 2008, with which readers will be familiar. *PMP Plus* cast doubt on many definitions that used a popular formula, intended to provide flexibility for developers, that in effect anticipated what would be built out as common parts in the future. The resulting fallout from that decision is that many purported conveyances of *pro indiviso* shares in common parts fail to meet the *de praesenti* principle, i.e. the principle, as expressed in *PMP Plus*, that “it is not possible to convey an area of land ascertainable only under reference to an uncertain future event”.

In *PMP Plus*, the common parts were defined as the unbuilt portions of the development which, on completion, have not been exclusively alienated to purchasers of dwellinghouses in the development. The boundaries and extent of the common parts could not be ascertained until completion. Sometimes, however, the boundaries of the common parts are identified in the deed of conditions, but have not yet been formed, and it may not be clear whether the *de praesenti* principle is met. The recent Inner House decision in *BAM TCP Atlantic Square Ltd v British Telecommunications plc & Firleigh Ltd* [2021]

CSIH 44 (20 August 2021) has provided some welcome clarification on the application of the principle in the context of the conveyance of common property, and gives some useful clarification on the often poorly understood effects of registration under the Land Registration (Scotland) Act 1979.

Common parts or exclusive ownership?

The case concerned ownership of a vehicular access ramp and turning circle located between two buildings and leading from York Street, Glasgow, to an underground car park. BAM, the owners of the northern building, contended that they had sole and exclusive ownership of the ramp and turning circle. BT, the owner of the southern building, and their tenant, Firleigh, argued that those parts were common property and that BT owned a one-half

pro indiviso share of them. The buildings were once a single parcel of land.

A deed of conditions was registered against the land, in 1997, before it was split in two and each part was conveyed. The deed stated that the common parts, including the ramp and turning circle, were to be owned in common by the owners of both buildings. The conveyance to BT (also in 1997) included the “whole rights common, mutual and exclusive pertaining thereto as specified in the Deed of Conditions”. While such a reference may not be entirely helpful, since one must then read through the deed of conditions to identify those rights, it is nonetheless a perfectly competent way of conveying such pertinents.

At first instance, Lady Wolffe rejected an argument by BAM that the conveyance to BT did not validly include a *pro indiviso* share of the ramp and turning circle. She determined that it did.



The effect of land registration

However, under the 1979 Act, timing had a critical role to play. BAM's title to the northern building was registered in 2002, and the title plan showed the ramp and turning circle within the boundary of its property. Lady Wolffe held that the *subsequent* registration of BAM's title gave it sole and exclusive ownership, by operation of the Keeper's "Midas touch". The effect of registration without exclusion of indemnity under the 1979 Act meant that a bad title could immediately become good. So in this case, even although a one half share had already been conveyed to BT, subsequent registration of the conveyance (originally to predecessors in title of BAM) of the whole of the title to the ramp and turning circle in effect trumped BT's one half share. In this respect, registration law under the 1979 Act could ride a coach and horses through property law.

But where the application of registration law results in an inaccuracy, rectification could be possible, and the Land Registration etc (Scotland) Act 2012 sets out transitional arrangements for determining whether a 1979 Act inaccuracy has either been extinguished or rectified (sched 4, paras 17-22).

Lady Wolffe held that BAM's title was inaccurate in showing it as the sole and exclusive owner of the disputed subjects, and that a proof was required to determine whether the inaccuracy could be treated as either having been extinguished or rectified under the transitional provisions.

This was because, in terms of the transitional provisions, only inaccuracies which existed

immediately before the designated day (8 December 2014), and which the Keeper had the power to rectify under s 9 of the 1979 Act, are to be treated as having been rectified. Accordingly, if, for example, the Keeper could not have rectified an inaccuracy because it would have prejudiced a proprietor in possession, the inaccuracy would not be treated as having been rectified. There is a rebuttable presumption that a registered proprietor was in possession of the land on the relevant date.

BAM appealed against Lady Wolffe's decision, and introduced a new argument based on the *de praesenti* principle.

The appeal and the *de praesenti* principle

The ramp and turning circle formed part of the "vehicular access", defined in the deed of conditions as "those structures to be constructed pursuant to the Works", and shown "indicatively" on plans annexed to the deed. The "Works" were defined as "the works to be carried out to form the Common Parts in accordance with the Approved Drawings and this Deed". The approved drawings were to be approved by both proprietors and could be amended or varied with the approval of both of them.

By reference to the *de praesenti* principle, BAM argued that, because the ramp and associated turning circle did not exist at the time of registration of either the deed of conditions or BT's disposition and were described by reference to "Approved Drawings" that had to be agreed and were subject to change, and because the

plans referred to in the deed were indicative only, the disposition could not validly convey a *pro indiviso* share in the disputed subjects.

By a majority decision, the Inner House rejected that argument. They accepted BT and Firleigh's argument that the circumstances of this case differed from the circumstances in *PMP Plus*, in such a way that the conveyance to BT did not offend against the *de praesenti* principle. The Lord President, Lord Carloway, stated:

"There is no difficulty with the ascertainment of the boundaries of the land which was to form the common parts, even although, at the time of both the deed of conditions and the disposition to [BT], the ramps had not been constructed. The land is clearly delineated in both the basement and ground floor plans attached to the deed... There is, in short, no uncertainty."

The Lord President also commented: "If the *de praesenti* principle were to be applied in the manner sought by [BAM], it would operate as a substantial obstacle to developers of multi-occupation phased development sites for which they wish to set out *ab ante* the rights and obligations of potential purchasers in connection with what is intended to be used as common property... The use of the deed of conditions by [the original owner of the development site] was a common, sensible and appropriate use of a single document setting out the conditions to be incorporated by reference in subsequent split off dispositions. In practical terms, no doubt the nature of the structures to be built would already have been the subject of extensive planning and building warrant procedures. The nature and location of the structures was described in a manner which met the *de praesenti* principle."

PMP Plus distinguished

It is clear that the specific circumstances in this case were quite different to the issues in *PMP Plus*. The deed of conditions provided for flexibility. However, as Lord Menzies put it (in agreeing with the Lord President on this issue): "The area occupied as, or allocated to, common parts is not affected by this element of flexibility. I consider that this is sufficiently clearly identified, and is not properly categorised as 'an area of land ascertainable only under reference to an uncertain future event'. There were clearly uncertain future events anticipated, but unlike in [*PMP Plus*], the extent of the land was not ascertainable only by these."

Developers and their solicitors can draw a great deal of comfort from the confirmation in this decision that so long as there is sufficient identification of what is to be common, it does not need to physically exist at the time of conveyance. **1**

Shepherd and Wedderburn, through Daniel Bain, acted for BT in the litigation discussed in this article

Lawyer with natural energy

This month's in-house interviewee tells what prompted her to work in the renewable energy sector, about her experiences of attending past COP climate conferences, and what we can all do as this year's event approaches

In-house

LYNETTE PURVES, HEAD OF UK LEGAL AFFAIRS (WIND ENERGY & BUSINESS DEVELOPMENT), ERG



You are currently the sole UK in-house legal counsel at ERG. Can you tell us a bit about ERG and what your role involves on a day-to-day basis?

ERG is a European renewable energy company with such an interesting heritage, which I'm really proud to be part of. Today, ERG is one of Europe's top wind and solar energy companies – very different from when it was formed 80 years ago as an Italian oil company. For me, ERG's bold transformation from oil into renewable energy is an excellent example of the energy transition needed to fight climate change and achieve net zero.

As for my role, the only constant is that no two days are ever the same. The role brings a huge variety, which keeps it interesting and exciting. One day, I might be in an all-day negotiation, finalising the share purchase agreement for a new M&A deal; the next, negotiating an option for lease agreement with a farmer landowner for a new wind farm development; and the next, enjoying a sunny site visit at one of our wind farm construction sites, watching the cranes lift the blades onto our wind turbines.

Although I'm the sole UK in-house counsel, I'm fortunate to be part of a bigger international in-house legal team, with legal colleagues across Italy and France. We regularly hold internal meetings to share our experiences and exchange expertise across our different countries. Although our laws are different, we often experience the same legal and commercial issues, so we can act as each other's sounding boards. I also have the support of our excellent external law firms who advise us on our outsourced legal work.

Tell us about your career path. What prompted you to work in-house and in the renewables sector?

After enjoying a varied traineeship with a full-service commercial law firm, I worked in private practice as a commercial property lawyer for six happy years before it was time for a new challenge. Having experienced in-house life through a couple of secondments, my sights were firmly set. As a climate enthusiast at heart, the renewable energy sector and ERG were a natural fit for me – it makes me feel proud to work in a sector which is helping to fight climate change and achieve net zero.

What has been the biggest reward of moving in-house?

Variety is the spice of life, and, for me, it is the variety of my work which makes the role so fulfilling – from commercial contracts to construction, from planning to procurement, and from health and safety to human resources. I also enjoy experiencing multiple legal systems – my work covers all three UK jurisdictions (Scotland, England & Wales and Northern Ireland), and I'm learning about European laws too. It is also very rewarding being part of an international company – it gives me the opportunity to experience doing business with other countries and cultures, as well as free language classes to help me learn Italian.

Are there any pieces of legal work at ERG that you're particularly proud of?

I'm particularly proud of our community benefit agreements, which share the financial benefits of our renewable energy projects with the local communities where they are located. The renewables sector has a long history of supporting local communities, and our projects are proudly continuing that tradition.

For example, our Scottish wind farms in Sutherland and Dumfries & Galloway will donate around £1 million annually to their local

COP veteran: Lynette Purves



communities – this includes recent donations of over £50,000 to local schools, which helped them buy educational technology during the COVID-19 pandemic.

You are also a director of ERG's UK holding company and its UK subsidiaries. Do you think lawyers are well placed to hold company directorships?

An increasing number of organisations – across all sectors and industries – are appointing lawyers to their boards of directors, and I think lawyers are well placed to take on these roles. Lawyers are naturals when it comes to analysing and managing risk, and we are already well versed in directors' duties and the Companies Acts.

In-house lawyers, in particular, often benefit from a "bird's-eye view" of our organisations – gaining key insights across multiple departments – and can therefore bring a well-rounded and holistic perspective into the decision-making process.

Personally, I've found that joining the board of a charity as a trustee is a great way to build the relevant skills. Charities are often looking for legal trustees, and it can be a really fulfilling way for lawyers to give back to the community. Before joining ERG, I spent three years on the board of



a local climate charity, which gave me invaluable hands-on experience, as well as being great fun.

As a climate enthusiast, you must be excited about COP26?

For sure! COP26 is the biggest international summit that the UK has ever hosted, and a great opportunity to showcase ourselves on the global stage. As the host country, the UK gets to set the tone for the whole climate conference. Scotland can boast the toughest statutory targets anywhere in the world (a 75% reduction in emissions by 2030, 90% by 2040 and net zero by 2045); and Glasgow can present its plans to become the UK's first carbon neutral city by 2030. Given that the word "Glasgow" translates as "Dear Green Place", it certainly makes it a fitting host city for COP26.

You have attended COP events in the past. What did you learn from these experiences and why is COP so important to you?

I feel very fortunate to have attended two previous COPs: COP22 in Morocco and COP23 in Germany. These opportunities came about while I was volunteering with local climate charity, 2050 Climate Group.

If I'm being completely honest, before I went to COP I didn't feel all that optimistic about our

climate future – the climate crisis seemed far too big and far too difficult a problem to solve. But at COP I experienced the whole world coming together, to help solve the climate crisis together. And that gave me real cause for optimism.

COP26 is particularly important because it is the most significant climate event since the Paris Agreement was adopted, and is being described as humanity's "last chance" – both politically and scientifically – to do something meaningful about climate change.

How can we all get involved with COP26?

First of all, you can save the date! COP26 is scheduled between 31 October and 12 November 2021.

I also encourage you to register to attend COP26's Green Zone if you can (restrictions permitting). The Green Zone is COP's publicly accessible space, offering a platform for the public, youth groups, civil society, artists, academia and business to have their voices heard and showcase their activities.

Within the Green Zone, you can expect to be dazzled by events, exhibitions and talks, as well as art, music and dancing. A typical day in the Green Zone might start by arriving on a hydrogen-powered bus, drinking a smoothie blended by a bike's pedal-power, sitting in the

driver's seat of the latest electric sports car, scaling an offshore wind farm through virtual reality, enjoying climate art exhibitions, and experiencing different world cultures – all while keeping your eyes peeled for VIPs and celebrities (expect to see the likes of Greta Thunberg, Arnold Schwarzenegger and the Queen, among many more).

Lastly, you can look out for the huge programme of unofficial events taking place all across the UK. There is expected to be a wide range – both virtual and in-person – including everything from climate conferences, awards dinners and networking events, to art, music and food festivals. At ERG, we're looking forward to organising our own exciting side events in honour of COP26.

Do you think it is important for each of us to keep environmental factors in mind when doing our legal jobs?

Absolutely. "ESG" (environmental, social and governance) is a real hot topic at the moment, and is of growing importance to companies, investors and stakeholders.

At ERG, for example, our new 2021-2025 business plan puts ESG right at its core. We've adopted four ESG "pillars" which are integrated into our business model – (1) Planet: the fight against climate change; (2) Engagement: commitments in favour of local communities; (3) People: personal growth and wellbeing; and (4) Governance: principles and management inspired by best practice.

For "Planet", we've set a carbon neutrality target of 2025 for scope 1 (direct emissions) and scope 2 (owned indirect emissions). For "Engagement", we've committed to contributing at least 1% of revenues to communities and to education and training for future generations. For "People", we're implementing diversity and inclusion initiatives to create an ever more inclusive business; and for "Governance", we've linked the short and long-term remuneration of our management to the achievement of our ESG objectives.

As lawyers, I think we have a huge opportunity to influence the ESG agenda. We are already advising our clients on ESG-related laws (even if we don't realise it), and therefore already have a seat at the ESG table. For example, the "E" includes our advice to our clients on the Climate Acts and other environmental legislation. The "S" includes ensuring that our clients' counterparties are contractually bound by similar values, such as eliminating modern slavery and championing health and safety. And the "G" includes keeping our clients safe from bribery, conflicts of interest and poor governance practices.

We can help to focus our clients' minds on ESG even further, as well as adding value by sharing the best practices we see emerging amongst our clients' peers. 📌



Legal services consultation runs until Christmas

Scottish ministers have opened their promised consultation on options for changing the way legal services are regulated. The options presented are (1) the independent regulator and complaints handler proposed in the Robertson report; (2) an independent market regulator, overseeing the work of the professional bodies and the SLCC; and (3) a model in which the current regulators retain their functions but with enhanced accountability and transparency, and a simplification of the current framework. In an initial response, President of the Law Society of Scotland, Ken Dalling said reforms to the current system were long overdue, with a slow, complex and expensive complaints system and rigid regulatory processes that “all too often place a straitjacket on the Law

Society and prevent us from stepping in quickly to protect the public interest when we need to”.

He continued: “However, some of the options presented in the Government’s consultation risk undoing much of what already works well within the current system. We know the cost of legal services is one of the biggest barriers to people getting the advice they need. Yet the paper presents an option of creating a brand new regulatory body, adding substantial costs which consumers would ultimately have to bear. This threatens the competitiveness of the Scottish legal sector, just as we recover from the COVID pandemic, and risks a loss of jobs to other parts of the UK.”

The SLCC welcomed the fact that the options included the Robertson review proposals.

The consultation runs until 24 December 2021. Next month’s Journal will explore more fully the options presented.

AML levy campaign pays off

Most Scottish law firms will be exempted from the planned anti-money laundering levy, following representations by the Law Society of Scotland.

The Society argued that it would be wrong to add such a financial burden, and in particular that it would create a disproportionate burden for high street firms. The Government response and draft legislation provides that entities with UK revenue of less than £10.2 million will not have to pay the levy. This will exempt 97% of eligible firms, though around 20 large firms will have to pay the levy, due from 2023-24.

SLAB consults on accounts assessment

Assessment of accounts submitted by solicitors and advocates is the subject of a current consultation by the Scottish Legal Aid Board.

SLAB is seeking to bring greater consistency across areas where it can apply discretion, and to align travel rates with legal aid and external benchmarks. The change will not apply in criminal matters regulated by statute.

SLAB also wants to hear views about the overarching accounts assessment policy, and more detailed policies which it is not proposing to change at this stage but where it is “interested in any possible unintended consequences... which impact on the services available for people”.

It hopes that the consultation will lead to more clearly stated policies and guidance both for those preparing and for those assessing accounts. The deadline for responses is 5pm on 4 November 2021.

Lifetime Achievement Award for Jack

Lorna Jack, retiring chief executive of the Law Society of Scotland, was honoured with the Lifetime Achievement Award at the Scottish Legal Awards 2021.

The award recognised the major improvements in transparency, governance, engagement and business management during her 13 years at the Society. Shonaig Macpherson, chair of the Scottish Legal Awards, said: “Lorna has been an immensely positive force in the Law Society of Scotland and can be credited for a number of improvements, including most recently the Society’s response to the pandemic.”

Appeal to take part in CPA study

The Universities of Edinburgh and Heriot Watt are conducting a new study to gather information on the role of the legal professional when arranging continuing power of attorney (CPA) for individuals living with dementia in a family care setting.

Legal professionals are invited to take part in individual, confidential interviews. Those interested should contact Dr Kitty Shaw: k.shaw@hw.ac.uk. For further information see the online legal news (7 October): bit.ly/3adVZ5B.

PUBLIC POLICY HIGHLIGHTS

The Society's policy committees analyse and respond to proposed changes in the law. Key areas from recent weeks are highlighted below. For more information see the Society's research and policy web pages.

Trade and Cooperation Agreement

The Society responded to the UK Government's call for views on how it should engage with business and civil society groups on implementation of the Trade and Cooperation Agreement (TCA) through the Domestic Advisory Group (DAG) and Civil Society Forum (CSF). On the institutional framework, the Society particularly welcomed the provision to make transparent the meetings of the proposed Partnerships Council and its committees.

The Society highlighted the role which the legal professions play in the administration of justice and maintenance of the rule of law – principles which are key to the implementation and functioning of the TCA. DAGs should comprise members of the legal professions from each of the UK jurisdictions, alongside other bodies, so that they produce a balanced representation from around the UK. Meetings should take place more than once a year.

These proposals should be applied also to the CSF. Further, when making appointments to the DAGs and the CSF, the Government should follow the spirit of the Governance Code on Public Appointments (2016). Trade unions and charities should be included in the CSF membership.

COP26 Working Group

The Society's COP26 & Climate Change Working Group organised a round table event on 30 September to consider COP26, climate change and human rights.

Keynote speakers covered the recognition of the human right to a healthy environment in Scotland, how the Society might show leadership at COP26 in this area, and the role of human rights in climate change litigation. A panel session discussed developments relating to climate change and rights, considering the role of children and young people as "human rights defenders"; the implications for, and duties of, businesses particularly in the developing area of due diligence; and the interests of older persons.

The event touched on the role of education about climate change and

the differing rights and interests across society, and identified possible benefits of inter-generational learning. It also highlighted the need to equip lawyers with skills for the future.

Subsidy Control Bill

The Subsidy Control Bill was introduced into the House of Commons on 30 June 2021. This follows a consultation by the BEIS Department, *Subsidy Control: designing a new approach for the UK*, to which the Society responded. The bill will implement a domestic regime now that the UK is not covered by European state aid rules, and provide a legal framework within which public authorities make subsidy decisions.

In its response, the Society expressed the view that a well-functioning subsidy control regime must be based on clear rules that provide legal certainty to businesses and granting authorities. As subsidy control is a reserved matter, much of the autonomy that the Scottish Government had when the UK was under the EU state aid regime has been transferred to the UK Government. It is hoped that the Government would consult fully with the devolved legislatures and administrations in developing and implementing the regime; and also that flexibility is built in to ensure that different markets within the UK are recognised and local authorities are able to address their own priorities, while respecting relevant subsidy rules and principles.

COVID-19 inquiry

The Society responded to the Scottish Government's call for views on the draft aims and principles of an independent public inquiry into the handling of the COVID-19 pandemic.

It welcomed steps taken to establish an inquiry, while highlighting the potential challenges of delineating the scope of Scottish and UK-wide inquiries and calling for consideration of how matters of inter-government co-operation could be included within the terms of reference. It also highlighted opportunities for lessons to be learned.

The response welcomed the indication that ministers will expect the inquiry to adopt a human rights based approach. It highlighted that any recommendations must be produced timeously in order that lessons can be implemented; and it must be appropriately resourced. The Society's recommendation for a review of the law relating to health emergencies was also reiterated.

ACCREDITED SPECIALISTS

Agricultural law

Re-accredited: PETRA GRUNENBERG, Blackadders LLP (accredited 19 July 2016).

Arbitration law

Re-accredited: BRANDON JAMES MALONE, Brandon Malone & Co Ltd (accredited 9 August 2011).

Child law

KAREN WILKIE, Aberdeen City Council (accredited 18 August 2021).

Construction law

MICHAEL CHRISTOPHER CONROY, Harper Macleod LLP (accredited 21 July 2021); EUAN PIRIE, Harper Macleod LLP (accredited 24 August 2021). Re-accredited: KEITH KILBURN, Brodies LLP (accredited 21 July 2016).

Employment law

Re-accredited: STEPHEN CHARLES MILLER, Clyde & Co (Scotland) LLP (accredited 27 August 1996).

Environmental law

Re-accredited: BARRY LOVE, Environmental Law Chambers Ltd (accredited 24 August 2006).

Family law

JOANNE RONNA MURRAY, Blackadders LLP (accredited 21 July 2021); JANIE KERR LAW, Family Law Matters Scotland LLP (accredited 21 July 2021); DAVID MICHAEL COUTTS, Simpson & Marwick (accredited 25 August 2021). Re-accredited: JANE ELIZABETH YOUNG, Innes & Mackay (accredited 5 July 2011).

Family mediation

Re-accredited: JUDITH MAY HIGSON, Scullion Law Ltd (accredited 19 July 2012); PAUL GERARD GOSTELOW, Baker Gostelow Law Ltd (accredited 13 July 2018); NICOLA JEAN BUCHANAN,

Scullion Law Ltd (accredited 27 July 2018).

Liquor licensing

Re-accredited: ANDREW JOHN HUNTER, Harper MacLeod LLP (accredited 15 July 2011).

Medical negligence (defender only)

HAYLEY JANE MAYBERRY, NHS (CLO) (accredited 21 July 2021).

ACCREDITED PARALEGALS

Civil litigation – family law

LEANNE JOHNSTONE, Thorntons Law LLP.

Company secretarial

MICHELLE MAHON, Davidson Chalmers Stewart LLP; NICOLA MITCHELL, Kellas Midstream Ltd; KEVIN WHITE, Burness Paul.

Residential conveyancing

SHARON ARIS, Cullen Kilshaw; SHARI O'HARE, Esson Aberdeen; LORRAINE WOOD, Morgans.

Wills and executries

CAROLINE MITCHELL, Macnabs.

OBITUARIES

KATHLEEN HELEN SIMPSON PRESTON, Edinburgh

On 29 June 2021, Kathleen Helen Simpson Preston, formerly partner of Fyfe Ireland & Co, Edinburgh and employee of Lindsays, Edinburgh, and latterly employee of the Scottish Government, Edinburgh. AGE: 69 ADMITTED: 1975

MARGARET ALISON MUIR (retired solicitor), Edinburgh

On 14 August 2021, Margaret Alison Muir, formerly employee of Shepherd & Wedderburn WS, Edinburgh. AGE: 71 ADMITTED: 1976

Appreciation – Bryan Longmore: see p 48

Safe to speak up?

What can managers do to improve wellbeing in their firms? A major study by LawCare provides some answers, as Nick Bloy and Caroline Strevens report

LawCare has released the findings of its groundbreaking study *Life in the Law*. This research into wellbeing in the profession captured data between October 2020 and January 2021 from over 1,700 professionals in the UK, Republic of Ireland, Jersey, Guernsey, and Isle of Man. The aim of the research was to take a snapshot of mental health and wellbeing in the legal profession to help inform future steps the profession must collectively take to improve wellbeing in the sector.

As part of the research we wanted to know what makes a difference to wellbeing, and what firms and legal organisations can practically do to help their staff stay mentally healthy at work.

Training with catch-ups

In our questionnaire we presented a list of common workplace measures for wellbeing, and asked participants to identify in relation to each whether the measure was in place at their workplace, and whether they found it helpful.

Of all the options we gave, participants agreed that the most helpful, and indeed the most prevalent, were regular catch-ups and appraisals.

Our qualitative data gave us some further insight into why this can benefit wellbeing. The informality of these meetings was highlighted

as a positive, as was the usefulness of sharing problems and empathising. This sense of collegiality is fulfilling the psychological need for strong and trustful work relationships. It may also ameliorate feelings of being isolated that result from homeworking. Importantly, the qualitative data indicated the need to know how well you were doing in the eyes of your colleagues and seniors. Participants wished to be sure that they “understood their role in the team and expectations of me”. This is satisfying the psychological need for a growing sense of competence.

Despite the positive comments about regular catch-ups and appraisals, we noted that only 40.8% who listed this workplace measure as the most important found these helpful. We also observed from our data that of the 829 participants who indicated they worked in a position of management or a supervisory capacity, only 395 (47.6%) said that they had received leadership, management, or supervisory training. Of these respondents, 353 (89.4%) said it was helpful or very helpful.

This suggests that there is considerable potential for supporting lawyer wellbeing through training aimed at increasing the effectiveness of regular catch-ups and appraisals conducted by managers and supervisors.

In addition, the survey data indicated that

over 40% of participants who had experienced mental ill health in the last 12 months had not mentioned it at work.

The qualitative data give some insight as to the reasons for this, including fear of the consequences for one’s career; and no point, because nothing would be done or because it was part of the job to risk such ill health.

Training managers to support the mental health of their teams could include an understanding of the concepts of *psychological safety* and *autonomy support*. Improved psychological safety reduces the risk of burnout. Experiencing autonomy support at work improves wellbeing and motivation.

Give staff autonomy

Managers and supervisors have a role to play in promoting autonomy within their teams: the ability to control what, where, how, and with whom, work is done. In addition, managers can positively influence wellbeing and motivation in their employees by adopting a non-controlling, interpersonal style. This is particularly important where there is a relationship between lawyers in which one person is in a position of power over the other. In essence the manager would acknowledge the preferences of their supervisee, provide meaningful choices where possible, and if not, explain the reason why choice is not available.

Research on lawyer happiness and wellbeing indicates that autonomy is an important concept. If you experience autonomy in your working life, your chances of happiness and wellbeing are increased. The responses to a survey of several thousand lawyers in America were analysed using a theory developed over the past 40 years by positive psychologists, known as self-determination theory. This is a useful theory for examining social contexts, such as the workplace, to identify factors that positively impact on wellbeing. It suggests that where an individual experiences autonomy, competence and relatedness, their levels of wellbeing flourish. This research indicated, and please forgive the simplification, that what made lawyers happy was experiencing autonomy support at work.

Research has also found that controlling behaviour undermines wellbeing and motivation. The *Life in the Law* research supports this and found that participants with lower



autonomy at work displayed higher burnout. So, if you are in a position of power over a less experienced colleague and you wish to support their wellbeing, motivation, persistence and happiness, autonomy support is key. Actively listening to colleagues to understand their perspective, and balancing control with meaningful choices where possible, is key. By understanding autonomy and an individual's perception of this, we can better understand wellbeing in the workplace.

Cultivate psychological safety

The concept of psychological safety has existed for decades, and Harvard Business School Professor Amy Edmondson has made it her life's work since coming across the concept and publishing her seminal paper in 1999. More recently, Google published its multi-year project, codenamed Aristotle, to identify the core attributes that drive peak performing teams – the most important attribute (amongst more than 200 metrics) was found to be psychological safety.

Psychological safety relates to how safe someone feels to take interpersonal risks, such as raising a concern, admitting a mistake, asking a question, or asking for help, without the fear of negative repercussions. Our research found a correlation between higher rates of burnout and a lower level of psychological safety. This indicates that targeted interventions to increase psychological safety in the workplace might help to reduce the risk of burnout, as well as increase levels of wellbeing in the profession.

Leaders play a critical role in cultivating higher levels of psychological safety in a team environment. Our research found that while the majority have felt comfortable disclosing mental health concerns to someone at work, a sizeable minority (43.5%) indicated that they had not disclosed their mental ill health at work. The most common reason for not disclosing was the fear of the stigma that would attach, and the resulting career implications, and financial and reputational consequences: a clear indication that those people lacked the psychological safety needed.

However, psychological safety isn't simply about whether people feel able to disclose challenges with their mental health. It's about facilitating more candid everyday conversations in the workplace, which psychological safety makes possible. If people don't feel safe to own up to mistakes, legal careers can be jeopardised, and a firm's reputation tarnished – the cases of Sovani James and Claire Matthews are good examples. When people can't ask questions without fear of looking stupid in front of colleagues, because of a culture of perfectionism, everyone (including clients, firms and lawyers) loses.

Some firms are starting to take positive steps

Notifications

ENTRANCE CERTIFICATES ISSUED DURING AUGUST/ SEPTEMBER 2021

ADAIR, Jack James
AITKEN, Lyndsey
ALLISON, Jacqueline Marie
ANDERSON, Laura Elizabeth
ANDERSON, Richard Douglas
BALNIONYTE, Agne
BANCEWICZ, Frances Anne
BANKS, Kevin Francis
BARNES, Connor Simon
BELL, Laura Alejandra
BENDLE, Louis
BLACK, Anna Louise
BRACELAND, Elisa Maria
BRECHANY, Patrick
BROWN, Laura
BULTER, Lori Megan
BURNS, Raegan Janice
CAMPBELL GUION, Kirsten Mary
CHALMERS, Ellis Anne
CHENERY, Ellie Kari
CHENG, Laura Ka Wai
COLLINS, Kelsey James
COLVILLE, Caitlin Mary
CONNELLY, Ryan
CONNER, Emelia Lily
CRAIG, Leighton
CROMBIE, Ewan Fenton
CUMMINGS, Christina
DEMPSEY, Megan
DEMPSTER, Sheryl Linda Margaret
DOUGALL, Robert
DOUGLAS, Lucy
DOUGLAS, Megan
DUNLOP, Alasdair James
ELLIOTT, James William
FAIRBROTHER, Hannah Elizabeth
FERGUSON, Lucy Kate
FERRIE, Nikia Jane
FLETCHER, Charlie
FORD, Gareth
FOWLER, Catherine
FOX, Stacey
FRAME, Lauren Louise
FREE, Jennifer Margaret
FREER, Abbey Louise
GALLAGHER, Rebecca Jane
GILMOUR, Laura Kathryn
GODDEN, Fraser Donald Docherty
GRANT, Deborah Sandra Jean
GREIG, Madeleine Anne
HARLEY, Amy Shannon
HOLLIGAN, Antonia Rose
HOWELLS, Alison Georgia
HUMMERSTONE, Matthew Charles
HUNT, Fiona
IQBAL, Adina Sapna
JONES, Elidh Elizabeth

KHAN, Shahroze Shabbir
LARGE, Chris James
LIEDER, Sean
LINDSAY, Mary Margaret Rose
McBAIN, Nathan Douglas
McDADE, Joanne Ashley
McDOUGALL, Sandy John
McEWAN, Morag Katherine Lydia
McGEORGE, Ashleigh Mary
McHUGH, Joseph
McMAHON, Laura
MACNICOL, Lynda Kathryn
MARSHALL, Rebecca Alice
MEEK, Abbie Anna Carden
MEIKLE, Ellie Marie
MOORE, Bronwyn
MORGAN, Molly Alaula
NAIRN, Laura MacLeod
NOLAN, Sian Elizabeth
ORGILL, Sandy William
PATIENCE, Hannah Charlotte
PEPPER, Katie Elizabeth
QUINN, Rowan McNaughton
RAMSAY, Louise
RAMSAY, Robert Gordon
RANKIN, Craig Martin
REILLY, Lisa
RIDGWAY, Hannah
RIMMER, Sheyda Ellen
ROGALA, Aleksandra
RUSSELL, Alannah Beth
RUSSELL, Hayley
SCOBIE, Chris Andrew
SCOTT, Rachel
SHAW, Eleanor May
STEER, Hilary Catherine
SUNASSEE-MACKEY, Jessica Mackey
WALKER, Natasha Jade
WEBSTER, Heather Elizabeth
WESTWOOD, Shona
WHYTE, Sarah Whyte Tong
WILLIAMS, Ellie Kristin
WILSON, Jake
WILSON, Judith
WILSON, Sean Edward
ZYDEK, Antonia Elisabeth

APPLICATIONS FOR ADMISSION AUGUST/SEPTEMBER

AINSLIE, Sophie Katherine
ALLEN, Kyle Michael James
ANDERSON, Megan Ailsa
BAIN, Isabelle Eliza
BEATON, Holly
CAMPBELL, Alanah Janna Tara
CAMPBELL, Alexander James
Murray
CAMPBELL, Matthew Stewart


CANNING, Ross Bradley
CARMICHAEL, Emily Morrison
CASIDAY, Augustine Michael
Cortney
CHEYNE, Lewis William
CLARK, Andrew Jamie
CONNELL, Danielle Mari
CRAIG, Stuart Andrew
CREEVY, Lisa Anne Blake
CUTHBERTSON, Kay
DALY, Edward
DE-PELLETTE, Nicole
DICKIE, Stuart Robert
DIXON, Karen Christine
DOCHERTY, Sean Kevin
DONNACHIE, Hope Catherine
FALLOO, Chellsey Margaret Jane
FAROOQ, Miriam
FITZGERALD, Edward
FORBES, Robbie Stuart
FULTON, Ben Robert
GADDIE, Hannah Janet Patricia
GALBRAITH, Heather Tennant
GALBRAITH, Linzi Rachel
GILLILAND, Emma Lauren
GONÇALVES, Armando Denis
HARRISON, Joanne Louise Isobel
HARTY, Darren
HAWTHORNE, Claire Margaret
HOFFORD, Sophie Emma Paterson
JABER, Miral
JAMIESON, Thomas Anthony
JENKINS, Kris Robert
JOHNSTONE, Gemma-Grace
JONES, Kristina Orianne
KIRKMAN, Laura Annetta
MACANDREW, Nicholas James
McBURNIE, Kelly
McGLINCHEY, Benjamin Scott
MACKENZIE, Ross Alexander
MACKIE, Scott Alexander
MADDEN, Alasdair William
MARSHALL, Hannah Felicity Kate
MATHEWSON, Amy Mary Corcoran
NOBLE, Hazel
O'RAW, Megan
PATERSON, Kirsten Elizabeth
PEARSTON, Amy Lauren
PELOSI, Mark
REILLY, Anna
ROPER, Max David
SLATER, Megan Anne
SPOONER, Emily Kate
STEEN, Anna Katie
STEVENSON, Hayley
WALKER, Carly Louise
WATRET, Charlotte Frances

in cultivating psychologically safe cultures, but the data (including from our own research and a recent International Bar Association wellbeing survey) suggest there is still some way to go.

In terms of specific leadership skills that can be taught, research in this area suggests that developing more empathetic leaders is crucial. So too is encouraging leaders to be more open and humble about some of the challenges they have faced in their careers. Doing so can readily pave the way for more junior colleagues to do the same, which will encourage greater candour in the workplace. The increased levels of psychological safety that this can create,

may help to reduce the risk of burnout, bolster wellbeing, and just as importantly bolster individual and team performance.

Opportunities to cultivate psychological safety at work are plentiful, and informal catch-ups are a great forum in which to put some of the above skills into practice.

The full report is at www.lawcare.org.uk/lifeinthelaw 

Nick Bloy, a former lawyer, an executive coach and founder of Wellbeing Republic, and Professor Caroline Strevens, University of Portsmouth, are both research committee members of Life in the Law

Terminating training contracts: myth v reality

Can a traineeship contract be ended early if things go wrong? Rob Marrs explains whether and how it might happen, and dispels some common myths

Starting a training contract is an exciting time for everyone involved, but in rare circumstances things go wrong and an employer or trainee may seek to end the training contract early.

This, I have to say, is a subject that no one really wants to discuss. Everyone going through a traineeship knows that there is a theoretical possibility that a traineeship can be terminated, but whenever their mind turns to it, they shudder and move on to happier thoughts.

Even with that in mind, I've decided to take a deep dive here. Why?

Well, I am one of the voices on the phone that speaks to trainees or trainers who call looking for guidance when traineeships become a little tricky. I reassure you that these calls are not frequent, and those looking to end a traineeship are less frequent still.

However, one thing I am alive to from those conversations is that there is a bit of a misconception as to how and why training contracts can be terminated, who has the power to terminate the training contract and what the role of the Society is. I hope this article can put minds at relative ease.

Two quick things to note

First, despite rumours to the contrary, *the only organisation that can terminate a training contract is the Law Society of Scotland*, via the Admissions Subcommittee (more on which in a minute).

Secondly, actual terminations of training contracts are very rare. At any one time, there are likely more than 1,000 traineeships ongoing around Scotland. Over the last year, I doubt that more than 10 traineeships have been terminated – less than 1% – and a number of these were due to the extreme financial difficulties some firms found themselves in because of the pandemic. Given that the last 18 months have seen the profession face its greatest hardship in living memory, such a percentage is remarkable.

Who are the Admissions Subcommittee?

You can find more information on the Society's website, but essentially the Admissions Subcommittee is a regulatory subcommittee of the Society, comprising a balance of lay people and solicitors. As part of their role, they look over any submission from an employer or an employee to terminate a training contract.

Our general view is that training contracts should be completed and the overwhelming majority are completed at the 24 month stage.

In the rare occurrence that either party seeks to terminate a training contract, we are at pains to explore every option to avoid that outcome prior to the Admissions Subcommittee considering this.

Let's look at some examples about when we might be asked to act.

- If an organisation contacted us noting that it was seriously concerned about the financial health of the business and it thought that one of the ways to keep the business afloat was to terminate the training contract of a trainee, we would talk through options with the employer. Could the trainee be assigned to another training organisation? Could the trainee work part-time? If all else failed, the matter would go to the Admissions Subcommittee for consideration. In my experience, employers really do want to try and look for any other option and will often assist trainees in trying to assign a training contract.
- An employer contacts us about the performance of their trainee at, for example, month 13 of the training contract. The previous two reviews have been below the standard of the training contract and the trainee – despite additional support, mentoring and training – is not improving. We would discuss with the employer a number of performance management techniques, including additional reviews, reduced workloads, briefings and debriefings, moving seat (if possible), a change in management style and approach, changing supervisor, changing the nature of work etc, and ask the employer to consider more time (e.g. to the next PQPR) before



requesting anything of the Admissions Subcommittee. Usually when a trainee is underperforming, with hard work on both sides they get back on track and no request is made to the subcommittee. That said, there are rare occasions when a trainee – even with additional support, guidance and assistance – will not meet the PEAT 2 outcomes.

- If a trainee contacts us wishing to terminate their training contract, we will talk them through every option, including potentially assigning their traineeship to another employer prior to any request to the subcommittee. Why might a trainee contact us? Two reasons include that they think they aren't getting trained as they might like, or there are relationship problems with the supervising solicitor.

The examples given above are just that; they aren't exhaustive. There may be other times where the Admissions Subcommittee is asked to intervene or make enquiry.

The Admission Regulations make clear that the Society may make enquiries concerning any matter relating to performance or obligations under a training contract, including the conduct of the parties. They also note that the Society may require parties to the contract to produce evidence regarding those enquiries.

Considering a termination

Consideration of a termination would only ever occur after those processes were complete. Sometimes, however, we must acknowledge that, despite our efforts and the efforts of the employer and trainee, a request will be referred to the Admissions Subcommittee.

When that does happen, the subcommittee will ask for a clear explanation as to why the request is being made, and the views of the other party. It will ask the employer what time credit should be added to any future traineeship (usually employers credit the trainee with the precise period they've spent training, but there may be exceptions).

It should not be assumed that just because one party has asked for the training contract to be terminated, it will be terminated. I'm aware of cases where the subcommittee has refused to do so.

I should note that some calls from trainees to the Society do refer to their mental health.

We treat any such references with the utmost seriousness, and will always point people towards the following three sources:

- First, and most importantly, their GP.
- Secondly, LawCare.
- Thirdly, our Lawscot Wellbeing resources.

When someone notes that they have such health concerns, we highlight to them that there are provisions within the training contract to take time away from work which may not impact the length of the training contract. Even with this advice in mind, it may be that a termination is still requested by the trainee, and the subcommittee would consider any such request very sensitively. Simply put, health absolutely always must come first.

When all else fails

Sadly, there has to be a mechanism to end a training contract. Sometimes, employers find themselves in such dire financial straits that they have to consider options that would normally be unpalatable.

Other times – and extremely rarely – trainees simply aren't performing at the requisite level and won't ever do so. In such instances we expect to see evidence from the employer that it has taken all steps to try and help the trainee towards the PEAT 2 outcomes. Similarly, and even more rarely again, sometimes a trainee does something that is a clear breach of their obligations. In such instances – after investigation – it may be viewed by

the Admissions Subcommittee that they are not a fit and proper person.

And, yes, sometimes there is simply a catastrophic breakdown of relations between a trainer and trainee where they can no longer work together. In larger organisations this may be managed via seat moves simply because there are other seats available and other supervisors, but in smaller organisations that can be more difficult. Again, I'd stress that we are talking about a handful (at most) in every 1,000 traineeships that end up at that stage.

I have stressed throughout that terminations of training contracts are rare. They really are.

And each of the situations above is rarer again. The overwhelming majority of trainees complete their traineeship at 24 months and their only involvement with the Society is our automated PQPR reminders.

In the circumstances where things do go wrong, our goal is always to see if we can get things back on track, either at the current employer or assigning a traineeship to somewhere else.

I can guarantee you though that, when these matters do come to us, we treat them with sensitivity, respect and an understanding of just how important this is to all involved. 🕒

Rob Marrs is head of Education at the Law Society of Scotland

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Using a checklist: it's one thing after another

Matthew Thomson from Lockton discusses the risk management benefits of using checklists in legal practice, some caveats, and helpful resources

Soon after I joined Lockton, I read about a professional negligence claim that had been made against a law firm. The firm had been acting in a personal injury matter. The client, Mrs Smith, had been on a flight and one of the cabin crew had opened an overhead luggage locker. A laptop shifted and fell out on to Mrs Smith's head causing her injury. It had taken the law firm a while to investigate the case: liability was denied, and the medical position was uncertain. The law firm had been progressing matters and, when they last checked on timescales, it was two and a half years post-accident. The solicitors had thought that they had plenty of time to raise the action. However, they had forgotten that, in respect of accidents in the air (which includes "air side", i.e. before disembarking) the time limit is two years.

Later, I read about a second claim. In this case, a law firm had been acting on behalf of a client in the purchase of a property. There was an outstanding inhibition against the seller, which was listed in the search report produced in advance of settlement but went unnoticed by the purchaser's solicitor. It was not addressed at, or prior to, settlement. The inhibitor raised an action for reduction of the disposition in favour of the purchaser and the related standard security in favour of the lender. The solicitors who had overlooked the existence of the inhibition were at a loss to explain how this had occurred.

While these claims might seem, on the face of it, completely different, they both involved a simple oversight or omission on the part of the solicitors. In the first example, the oversight was that the

injury was not checked against prescriptive time limits. In the second example, an outstanding inhibition in a search report had not been spotted.

Benefits of using checklists

These types of situation, involving oversights and omissions, have featured regularly in Master Policy claims over the years. The examples illustrate how claims can arise where solicitors overlook or omit steps in the multitude of tasks they perform every day.

In the scenarios outlined, a variety of risk management controls and tools might have been effective in addressing the risks. For example, file review meetings, diary systems, reminder systems, and further training, could all have helped to avoid a professional negligence claim. However, one powerful and simple tool that might have avoided these errors is the simple checklist: a series of steps that prompts

consideration of points to be (double) checked.

It is now a well established principle that, no matter how expert you may be, a well designed checklist can improve outcomes (see *The Checklist Manifesto* by Atul Gawande for a number of examples of how checklists have improved practice in other sectors). How often have you gone into a supermarket without a shopping list and then gone home having forgotten to buy some items? Memory alone can be unreliable, and checklists, devised in a user-friendly way, can help reduce the risk of important issues being overlooked. This is why many firms use a range of comprehensive and suitably adapted checklists for all types of work.

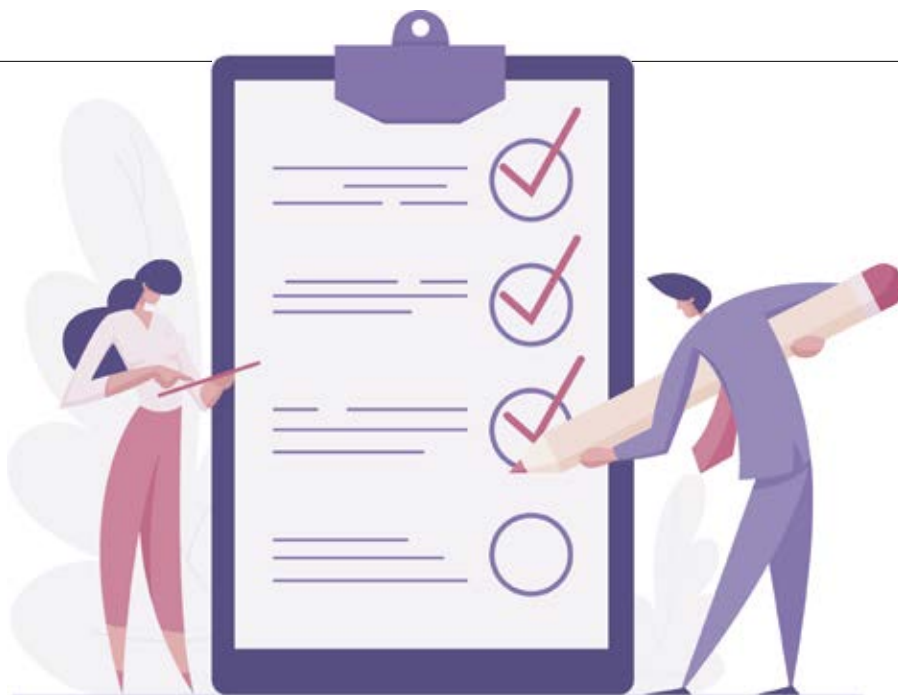
Risks of using checklists

There are, of course, risks associated with relying too heavily on checklists. The danger is that the process takes over and the checklist becomes a substitute for independent thought. The insurers have advised that they have seen too many cases where a checklist is just blindly followed, without any real thought being given to it.

It's worth remembering that a checklist is intended as an addition to, and not a substitute for, an intelligent appraisal of a transaction or case. It must be combined with professional judgment and consideration of all of the issues.

There have also been arguments over the years that checklists are, at least to some extent, inappropriate and that solicitors should be using their own experience to cover the points which may arise. There is obviously no point in having a lengthy checklist stapled inside a file if those handling the business do not discipline themselves to completing it. If a shorter checklist which does not cover every eventuality is more likely to be





used, then that may be the better option.

However, there is no doubt that checklists of some kind have their place in professional practice. They can assist as an aide-memoire to prompt consideration of critical issues that might otherwise be overlooked. With more complications and potential traps to contend with in practice today, there is far more to remember than ever before, and more that might be overlooked. Furthermore, checklists help you focus, make it easier to prioritise tasks and help manage complexity.

Lockton styles

Lockton has devised a set of checklists that are available online at www.locktonlaw.scot. Our most recent checklist for Scottish solicitors forms part of our Property Purchase Questionnaire, a downloadable resource for conveyancers. The questionnaire itself is designed to assist conveyancing practitioners in capturing the main details of a client's purchase and to provide a prompt to clients to notify their solicitor of any non-standard aspects. It includes a short checklist of issues at the end of the document, intended for solicitors to be able to use as an aide-memoire should they choose to do so.


We have also published a Notice to Quit Checklist to help solicitors avoid some of the common pitfalls when serving a break notice for leased premises; and a Red Flag Wills Checklist to help solicitors identify areas of risk when drafting a will. Again, these items are available on the resource centre on the Lockton website. These particular checklists are not intended to

document every single step in the process but are designed to highlight the "red flag" areas which, in our experience, can lead to issues with clients or Master Policy claims.

We are interested in continuing this work, and please get in touch with us if there is a particular area of practice where you would like to see a bespoke Lockton checklist developed. Our checklists are given as templates and firms will of course want to adapt and use their own styles; these should be constantly tested, refined and reviewed on a regular basis. The firm should have in place a system for such reviews.

Preventing mistakes and creating structure

The value of checklists is arguably justified by referring to the number of recurring themes in the Master Policy claims experience where checklists have had the potential to make a difference to the record of claims arising as a result of oversight or omission.

More generally, it's always useful to have a structured approach to our daily professional practice. This becomes critical in times of uncertainty. Over the last year and a half, with the ever-changing situation we have faced as a nation and the level of uncertainty for all professional service firms, the checklist may have been our most essential risk management tool. 



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

50 years ago

From *"Annual Report of the Keeper of the Registers"*, October 1971: "the Keeper describes the slowness [towards registration of title] as 'extremely disappointing'. Perhaps he feels that the present rate of progress... can be likened to the protracted sojourn and erratic wanderings in the wilderness of the children of Israel as they struggled towards an elusive promised land. The Keeper's Registration of Title Pilot Scheme seems, however, to be a more constructive method of employing waiting time and a much less wasteful diversion than dancing around a golden calf, however talented the Register House officials might also have proved in the latter exercise".

25 years ago

From *"CPD: The Final Frontier"*, October 1996: "From 1st November all solicitors holding a practising certificate will be required to undertake a minimum of twenty hours' Continuing Professional Development in each practice year... For professional bodies, the introduction of CPD schemes is a natural progression from setting standards for initial qualification and entry to membership... No one likes change. No one likes yet another form to fill in. No CPD scheme will meet with the approval of all solicitors... But the scheme demonstrates a public commitment to promoting the quality and professionalism of solicitors and as such should be hailed as a commendable initiative."

A unified Land Court: why?

The Scottish Government has announced the merger of the Lands Tribunal for Scotland into an enlarged Scottish Land Court. Lord Minginish, who presides over both bodies, answers the Journal's questions as to the rationale

Where did the idea for the merger originate?

The idea came from me in a paper I, with the Lord President's approval, put to the Scottish Government in July 2015, a few months after my appointment as Chairman of the Land Court and President of the Lands Tribunal.

What was the thinking behind it?

This can be summed up in three words: simplicity, coherence and flexibility. Simplicity because it replaces two bodies, which already have the same judicial head and which both deal with land issues, with one. Coherence, in that it resolves certain statutory anomalies and complexities where, presently, both bodies have a role to play in the same or similar processes (for example, the tenant farmer's right to buy under the Agricultural Holdings (Scotland) Act 2003, and the community and crofting community right to buy under the Land Reform (Scotland) Act 2003). Flexibility in that it allows the deployment of the expertise available in both bodies across the range of the unified jurisdiction.

The two bodies already share a building. Are there efficiencies to be gained from a formal merger?

Both the Land Court and the Lands Tribunal occupy premises on the third floor of George House, Edinburgh. They are very similar in size. The Land Court has a Chairman, a part-time Deputy Chairman, two part-time agricultural members and a staff of four. The Tribunal has a President, a QC who is, in effect although not in name, the Deputy President, two part-time surveyor members and a staff of three. These are very small numbers, given that each body has a Scotland-wide jurisdiction. The scope for cost savings is therefore marginal. Where efficiencies will come is in the way the expanded Land Court will do its business, with the ability to deploy lawyers, surveyors and agriculturalists across the unified jurisdiction.

From a practical point of view, will members still have to be qualified for, and sit on, cases in one branch or other of the enlarged jurisdiction?

While the jurisdictions are different, there are Land Court cases, such as the recent *Stornoway Wind Farm Ltd v Crofters having rights in the Stornoway Wind Farm Site*, SLC/59/17 (21 July 2021), where the expertise of a surveyor is advantageous and, equally, Lands Tribunal cases (those involving agricultural land) where farming experience is advantageous. While that can be achieved to some extent by appointing the requisite expert as an assessor, that is not the same as that person being a full court or tribunal member. More significantly, flexibility with personnel will enable the Deputy Chairman of the Land Court to be assigned to Lands Tribunal type cases, and *vice versa* with the (*de facto*) Deputy President of the Lands Tribunal.

A crucial thing to realise is that, under the new arrangements, the composition of the bench will match the requirements of the particular case and there will be no dilution or diminution of the expertise brought to bear.

The Land Court sits locally to the subjects in dispute whereas the Lands Tribunal operates in a formal court setting. Do they not work in quite different ways?

No. They work in very similar ways. The Lands Tribunal has always worked more like a court than a tribunal: the cases it hears are mainly individual v individual, rather than individual v the state; and witnesses are put on oath and cross-examined as they would be in court. So the Lands Tribunal

is a very atypical tribunal, and that is one reason why it makes sense for the tribunal to join the court, rather than the other way round.

As to sitting throughout Scotland, that option is equally open to the tribunal, although it is fair to say that it happens less frequently, due to a higher proportion of tribunal cases coming from the central belt or elsewhere within reasonably easy reach of Edinburgh.

Will any flexibility (regarding place of sitting, procedure or otherwise) be lost by having a larger combined body?

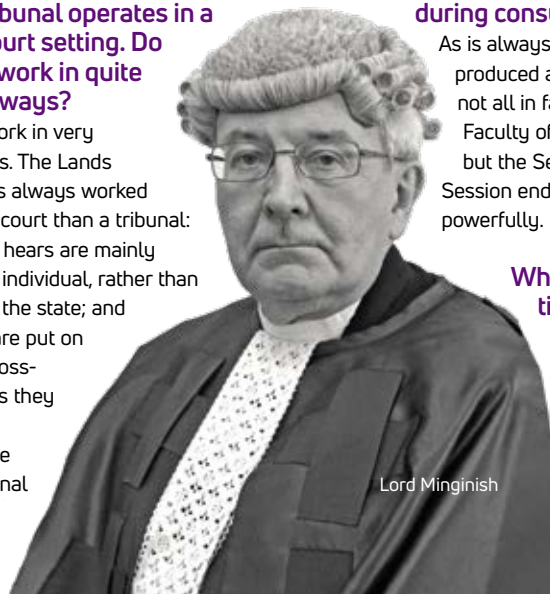
No. The Minister was careful to emphasise that the traditional character of both bodies would be retained in the reformed court. Nobody is more aware of the need to preserve the heritage of the Land Court, if I can put it like that, than I am and one effect of this union will be to give it a new lease of life, charged with a wider jurisdiction, which makes the name "Land Court" more meaningful. The rich history of the court and the affection in which it has been held, particularly in the crofting community, over its history is another reason why the tribunal (with its shorter history) is joining the court.

Were any significant objections raised during consultation?

As is always the case, public consultation produced a wide range of responses, not all in favour. For example the Faculty of Advocates opposed it, but the Senators of the Court of Session endorsed it wholeheartedly and powerfully.

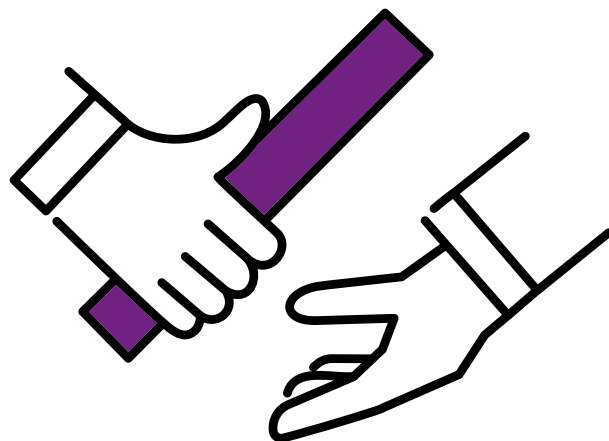
What is the likely timescale for completion of the merger?

That is in the hands of the Scottish Government. It has committed to legislation before the next Scottish parliamentary election. ①



Lord Minginish

Sit down, there's something we need to talk about



As lawyers we are pretty good at having difficult discussions with clients, but are there conversations we need to be having with colleagues and staff?

As part of my remit with HM Connect I often chat to legal business owners about their thoughts and aspirations for the future, perhaps more accurately put as exit and succession planning. Similarly, I've presented a few seminars on the topic to local faculties. With my other hat on, I teach on the Diploma and present TCPD to trainees and NQs, so I have a little insight to the thoughts of that demographic about their career paths. What has struck me recently is the ever widening gap between the two in their wants and expectations.

For many high street and rural firms, exit and succession planning remains a challenge. It can be difficult to attract and retain staff, which most practitioners find both frustrating and baffling when considering what the high street has to offer. They have built solid businesses in good locations that provide a quality of life and a good income (even if, for some recently, that quality may have reduced due to high demand for services). The situation is the same throughout the country, and I know of several unhappy practitioners whose exit strategies have changed as their hoped-for successors have left to quit the profession, to go in-house or to join rival firms.

Looking different ways

On the other hand, when I speak with law graduates or those more recently qualified, they seem to have little interest in running their own firm or aspiring to partnership. That I realise is a sweeping generalisation, and there are of course exceptions, but I have come across relatively few of these to date. Their desires lie more towards work-life balance, career satisfaction, flexible working and maternity leave. Nothing wrong with any of these, but some, I suspect, are almost diametrically opposite to those of the business owners. There are many other factors at play here, ranging from generational issues, gender balance change, a much greater

"For many high street and rural firms, exit and succession planning remains a challenge. It can be difficult to attract and retain staff, which most practitioners find frustrating and baffling"

appreciation of risk, and the barriers by way of panel appointment to new entrants. A very different world indeed to the 70s, 80s and 90s, when so many of us started our own firms or were assumed as partners.

Turning to the makeup of the current intake to the profession, it now lies around 70% female to 30% male – almost the reverse of the current partner split of 33% female and 67% male. In many, many ways this is a very positive thing, but I wonder if in itself it is accelerating the disconnect between the predominantly male business owners and their hoped-for successors.

While writing this piece I quickly scanned the Journal's own jobs website, currently overflowing with vacancies, as are many others, but the adverts remain remarkably similar in their omissions. Very few mentioned flexible working, and none that I saw covered maternity leave. Most however did mention that there were "prospects for progression", even though this is perhaps not something that many NQs seek and might be seen as a negative. With talent in such high demand and so difficult to find, shouldn't firms be looking to make themselves as attractive as possible to the needs of this target audience? Are we perhaps making assumptions about what the next generation of lawyers are looking for, rather than engaging in a dialogue with them about it?

Is there anything that can be done?

For those seeking to employ, perhaps look to address adverts and job descriptions to the needs of your target audience to cover the points above. Likewise, look to consider other solutions to skills gaps or vacancies within a practice. For example, often two part-time positions are easier to fill, giving you more flexibility and potentially more than 100% of the role being covered, as most will exceed their hours/duties. For those with young families or returning after a career break, this may well be a more attractive option. Perhaps a wider target age group should also be considered: succession may no longer be just for the "young". There is a trend for those in their 40s and beyond to look to move away from the cities and/or the time recording-driven city practices. Indeed those in their 50s will still have long careers ahead of them, and may be ideal candidates for succession planning and a much closer fit to the mindset of existing practice owners.

If retention is the issue, I suspect that the title of this piece refers best. It's probably time to have a good and in-depth conversation to really gauge what the issues are. You might believe that these were all agreed at the interview X years ago, but experience tells me that often people at that time are more interested in securing a role than being totally transparent, and in any event, people's expectations change as they develop within a role. Now might just be the perfect time to revisit and refine each other's understandings of the road ahead, to ensure it is a long and happy one. **1**



Stephen Vallance
works with HM Connect,
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A Bryan G Longmore

30 April 1935-19 August 2021

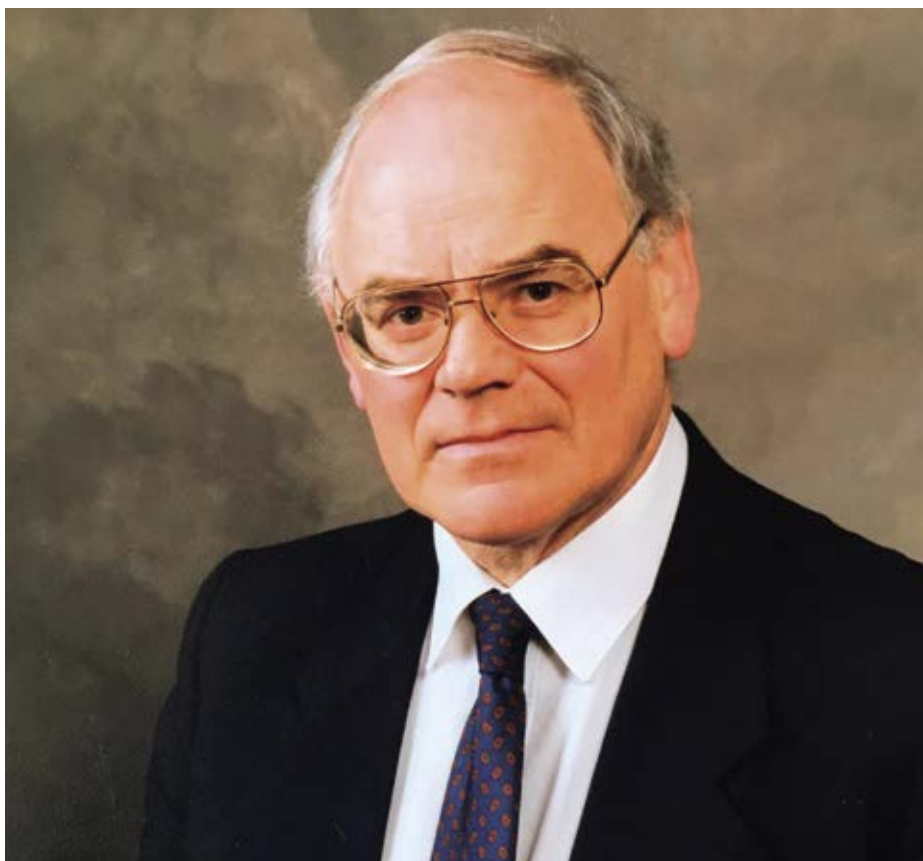
Among the many tributes paid to Bryan it was thought that the local Faculty of Solicitors of the Highlands, of which he had been such an important part, should record its own recognition of and gratitude to him.

Bryan came to Inverness and joined the firm of Anderson Shaw & Gilbert in 1961. He was assumed as a partner and remained there for the rest of his professional life. His workload was varied, including court appearances and chamber practice, and he established himself as one of the leading solicitors in the area. He had excellent advocacy skills and cut an imposing figure in court. He built a large following of devoted clients, in whom he inspired great confidence, treating them with respect and compassion. It became almost a badge of honour for clients to boast that Bryan Longmore was their solicitor.

Fellow solicitors admired him for his intellect and his knowledge of the law. This professional respect extended outwith the immediate area and he was engaged by the Law Society of Scotland to be a member of its "Troubleshooter" taskforce. There are several common themes in the recollections of Faculty members past and present: his absolute trustworthiness, which coupled with his professionalism and ethics outweighed any competitive inter-firm rivalry; his warm welcome to those who were new to the area; his courteous treatment of others as equals, regardless of age or experience. Other agents used him as a sounding board and source of advice and guidance, knowing that he would give thoughtful and careful consideration to their concerns.

In the office he was a dynamic presence, always busy, with two secretaries engaged in producing his dictation. Our offices and ways of working have of course changed almost beyond recognition since he sat behind his traditional partner's desk, which was far too high to be comfortable for anyone else. Behind him on the windowsill was an additional telephone – the original "direct line" – which he could use when he needed to circumvent the switchboard or to permit certain very privileged parties to contact him out of hours.

To those of us following on, he was generous with his time and knowledge, patient with the inexperienced, and a loyal support when



required. We learned a lot by observing his ways of putting his clients at their ease and firmly but politely persuading other agents round to his point of view. He retired in 1995, but remained for many years as a valued consultant.

As well as his acknowledged intellectual ability, he possessed a keen sense of humour which made him excellent company. His pithy remarks at office parties are still recalled by those of us who were fortunate enough to have heard them.

But legal practice was by no means the limit of his endeavours. He had a hinterland. Away from the office he had a very happy and busy family life with a variety of interests. He enjoyed working in his garden and astounding his neighbours with the luxuriance of his flowerbeds. He was involved in many local organisations, where his legal training, coupled with his own natural humanity and his life experience, made him an invaluable adviser.

Perhaps even more importantly, Bryan had a

long association with St Mary's Catholic Church in Inverness. In the words of Father Bell, Bryan became the "paterfamilias" of the community at St Mary's. Parish priests came and went but, as Father Bell explained at the funeral service, Bryan was a permanent focus of unity. He was "the spokesman, the witty erudite proposer of toasts and farewell speeches... the exquisite insights, the elegant expression and the touching warmth of his sentiments often reducing the listeners to tears of appreciation".

In 2019, in recognition of his service to the church, he was invested with the insignia of a Papal Knight of St Gregory. Those of us who knew him can imagine how humbly he would have received such an honour, albeit so well deserved. It was this combination of humility and selflessness, together with his innate integrity and wisdom, which made him such an iconic figure in our Faculty, and this is how we will remember him. ①

MEM

ASK ASH

Masking our feelings

Office anxiety not helped when people wear masks

Dear Ash,

I've recently returned to the office after working from home for a long period due to the pandemic. However, I am finding that I'm less inclined to be sociable compared to pre-pandemic times. It doesn't help that we are expected to wear masks when we are not at our desks and some staff choose to wear the masks practically all day. It's really unnerving and I'm finding it difficult to concentrate and frankly find it easier to work from home! I'm not sure how to address this going forward as I don't want to feel more isolated at work.

Ash replies:

The wearing of masks has effectively become something of a social norm; and whether the rules about masks change or not in the short term, I suspect that many individuals feel safer subconsciously behind their masks and may choose to keep wearing them.

It is important that you give yourself time to adjust and not put any undue pressure on yourself about the social aspects.

Remember back to the lockdown period and how strange and surreal that felt: we had to stay indoors, and were not able to socialise; however, despite all these restrictions, we still managed to adjust to the rules.

You will also overcome this period of anxiety and you will not be alone in having to adjust to your office surroundings. Some of your colleagues who choose to wear the masks even at their desks are perhaps feeling more anxious than others, and may require more time to settle back into their surroundings.

If your anxiety persists, consider asking your manager whether you might be able to work from home at least two days in the week, as this may help to address certain anxieties and give you added flexibility too. Employers are increasingly recognising some of the productivity benefits of increasing such flexibility for employees, therefore your manager may be more open to such a proposal.

Also perhaps suggest meeting up with colleagues for lunch in a park or outside space at a café, as this could be the first step in helping you to address any anxiety about social interaction, while allowing you to feel more comfortable in less restrictive surroundings.

We are slowly but surely resuming normal life, and it's about convincing ourselves now that we can look to enjoy our freedom once again.

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).

Susan Clough (Deceased)

Would any solicitor or other person holding, or having knowledge of, a Will by the late Susan Clough, who died on 1 June 2021 and who resided at 6 Bright Terrace, Edinburgh, EH11 2BL please contact Emma Brice at Neilsons solicitors, 2A Picardy Place, Edinburgh, EH1 3JT or email emmabrice@neilsons.co.uk

Elizabeth Ann McKenna (formerly Devlin)

Would anyone holding or having knowledge of a will of the above named deceased, of 2 Antonine Grove, Bonnybridge, FK4 2DW, please contact Mailers Solicitors, 2A King Street, Stirling, FK8 1BA, PH: 01786 450 555 or email: ian.mcculloch@mailers.co.uk

DAVID CALDWELL MORRISON (Deceased)

Would anyone holding or having knowledge of a Will by David Caldwell Morrison late of 33 Dumbreck Place, Lenzie, Kirkintilloch, Glasgow, G66 5PQ who died on 21st July 2021 please contact David Geddes, 25 West High Street, Crieff, PH7 4AU, or by telephone: 01764 653771, or by email: david@irvinggeddes.co.uk.

Allison Marion McDougall

Would anyone holding or having knowledge of a Will by Allison Marion McDougall who resided latterly at Lochside, North Connel, Oban PA37 1QX and who died on 28 July 2021, please contact Sandy Murray of MacArthur Legal, Boswell House, Argyll Square, Oban PA34 4BD. 01631 562215

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Some of the briefs we are currently working on in Scotland include:

Partner, various areas – Scotland

This commercial law firm built on the advice of industry experts are currently recruiting Partners. This firm is client focused and is centred around the clients and their needs. They are looking for experienced lawyers who can add value to the firm, as well as guide and support clients. The key clients are businesses; therefore, candidates should show a good understanding on how businesses work and what challenges they may face, whilst taking into consideration their aims and ambitions of their clients. (Assignment 8228)

Personal Injury Partner – Glasgow or Edinburgh

This is a new strategic role created to help grow the business within this area. The high profile role will work closely with the Board and have responsibility of leading the team through employer liability, public liability, and clinical negligence work. There will be no direct case handling responsibilities. The preference is for this role to be Glasgow based, however the firm is open to applications from those working in Edinburgh. The ideal candidate will have at least 7 years' PQE, with a good reputation within this area of the law and business following less important. (Assignment 12858)

Private Client Partner – Scotland

The firm is entering the next stage of its growth plan and expanding its Private Client team and requires a Head of Private Client to lead this busy area. The firm has offices in Glasgow and Hamilton and there is hybrid working on offer. This role will include overseeing Private Client matters within the firm and regularly providing advice on Estate planning, including preparation of Wills and Powers of Attorney as well as dealing with all aspects of estate administration. Between 50% and 75% of the time will be fee earning and the rest on business development. (Assignment 12846)

Construction Partner – Glasgow or Edinburgh

This award-winning law firm are currently recruiting a senior lawyer to join its Construction & Infrastructure team. You should have between 6-12 years' PQE of non contentious construction matters. There is scope to be involved in contentious matters too. Knowledge and experience in the interface between real estate, banking and construction documents is essential, as well as drafting and revising contracts and appointments for a range of projects. (Assignment 12216)

For more information or a confidential discussion, please contact Frasia Wright (frasia@frasiawright.com) or Cameron Adrain (cameron@frasiawright.com) on email, or by telephone on 01294 850501.



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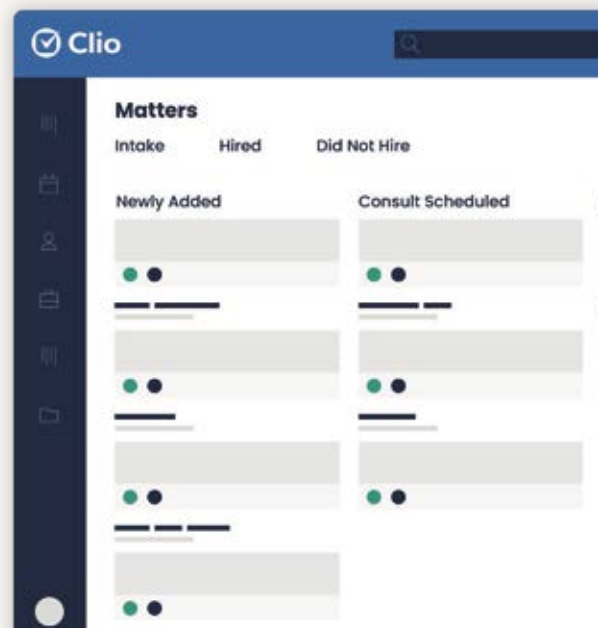
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