

Starting a new job  
under lockdown

P.14

Station lawyer for  
clients off the rails

P.16

IT features and  
supplier pitches

Pp 18-29

# Journal

Journal of the Law Society of Scotland

Volume 65 Number 11 – November 2020

## Heading for the rocks

Criminal legal aid lawyers' SOS messages  
to Government still waiting for an answer





# Child Abuse, Child Protection & the Law 2nd Edition

Tom Guthrie; Morag Driscoll

Coming Spring 2021 | £60  
9780414023321

This title will also be available as an  
eBook on Thomson Reuters ProView™

## PLACE YOUR ORDER TODAY

sweetandmaxwell.co.uk  
+44 (0)345 600 9355

The law surrounding child abuse and protection in Scotland has seen huge changes in legislation in recent years. Accessing full coverage of the law can be time-consuming, which is why an up-to-date reference is invaluable for the field.

This second edition builds on Alison Cleland's ground-breaking title. It has been thoroughly revised and rewritten by its expert authors to reflect the dramatic changes in Scottish legislation and development of policy and practice in the last decade.

*Child Abuse, Child Protection and the Law* serves as an exhaustive guide for anyone in the field, particularly criminal and family lawyers, social workers, medical practitioners and police and youth workers.

### The text discusses the following relevant legislation:

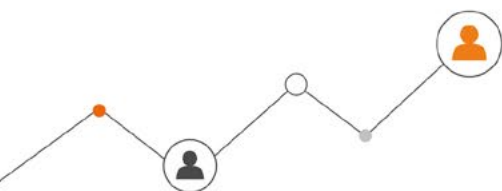
- Children's Hearings (Scotland) Act 2011 and related secondary legislation
- Victims and Witnesses (Scotland) Act 2014
- Children and Young People (Scotland) Act 2014
- Human Trafficking and Exploitation (Scotland) Act 2015
- Domestic Abuse (Scotland) Act 2018
- Data Protection Act 2018
- Age of Criminal Responsibility (Scotland) Act 2019
- Children (Scotland) Act 2020

### An intensive resource on child protection law

This new edition contains a comprehensive analysis of the applicable law, policies and procedures, presented in an accessible, child-centred way.

It covers familial abuse, Local Authority led protection processes, the legal processes including emergency protection, criminal processes and the impact of child maltreatment.

Ultimately, this guide acts as an essential reference for every child protection case.





**Publishers**

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

President: Amanda Millar  
Vice President: Ken Dalling  
Chief Executive: Lorna Jack

**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

**Editorial**

Connect Publications (Scotland) Ltd  
Editor: Peter Nicholson: 07785 460743  
e: peter@connectcommunications.co.uk  
Advertising: Elliot Whitehead: 0131 561 0021  
e: journalsales@connectcommunications.co.uk  
Review editor: David J Dickson  
Online legal news:  
e: news@connectcommunications.co.uk  
Other Connect Publications contacts,  
telephone 0141 561 0300  
Head of design: James Cargill (0141 561 3030)  
james@connectcommunications.co.uk

**Editorial board**

Austin Lafferty, Lafferty Law  
Andrew Todd, Springfield Properties Plc  
Philip Hannay, Cloch Solicitors  
David Bryson, Baillie Gifford  
Ayla Iridag, Clyde & Co  
Kate Gillies, Harper Macleod LLP

**Disclaimer**

The views expressed in the Journal of the Law Society of Scotland are those of invited contributors and not necessarily those of the Law Society of Scotland. The Law Society of Scotland does not endorse any goods or services advertised, nor any claims or representations made in any advertisement, in the Journal and accepts no liability to any person for loss or damage suffered as a consequence of their responding to, or placing reliance upon any claim or representation made in, any advertisement appearing in the Journal. Readers should make appropriate enquiries and satisfy themselves before responding to any such advertisement, or placing reliance upon any such claim or representation. By so responding, or placing reliance, readers accept that they do so at their own risk. On no account may any part of this publication be reproduced without the written permission of the copyholder and publisher, application for which should be made to the publisher.

© The Law Society of Scotland, 2020  
ISSN: 0458-8711  
Average circulation:  
Print edition Jul 19-Apr 20: 13,788  
Digital edition May-Jun 20: 13,626  
Audit pending



# Editor

**Email** > [peter@connectcommunications.co.uk](mailto:peter@connectcommunications.co.uk)  
**Read** > [www.lawscot.org.uk/news-and-events/blogs-opinions/](http://www.lawscot.org.uk/news-and-events/blogs-opinions/)  
**Follow** > [twitter.com/jlsed](https://twitter.com/jlsed)



## Crisis point

There is no doubt that the COVID-19 lockdown and its aftermath (or possible revival) has seen winners and losers across the spectrum of legal practice. But few will be enduring travails to the extent of the legal aid sector, and criminal defence in particular.

What had already become a precarious existence due to rates of pay that required costs to be kept to a bare minimum in order to make a living, has effectively become unviable due to the reduced throughput of cases since March. The Society's success in negotiating interim payments and other concessions from the Scottish Government and SLAB helped immediate cash flow, but was never going to achieve more than that: fewer cases simply mean less income.

Summary cases are taking up more time as well, with new procedural requirements and, if a virtual trial is involved, necessary setup time. Hence while it may cause an initial double take that the Society has appealed for a 50% across-the-board rise for legal aid fees at the present time – in addition to grant assistance based on recent levels of work – it is no more than can reasonably be claimed in our changed circumstances.

With SLAB having an unexpected underspend for the year to date due to the lockdown, one might think there would be

room for an accommodation here. Sadly, things are never that simple: the Scottish Government has been slow to accept the Society's case, and negotiations have dragged on much longer than Ian Moir and his team hoped at the outset. So much so that the Glasgow Bar Association has written a somewhat despairing letter to Holyrood's Justice Committee to see if it can bring any further pressure to bear.

Small wonder, then, that the concerns regularly voiced since early in the century for the future of the sector, with too few new lawyers being attracted to criminal defence work – or sometimes being able to find an employer even if they are – are now being heard more urgently than ever.



To their credit, the group who have formed New Generation Lawyers, to campaign for a properly funded legal aid system and sufficient opportunities for those they believe would take up this work if they could, have taken up the fight. While they have yet to formulate their own proposals, they are appealing for the information on which to base these, as our lead feature sets out.

No one should expect quick results from their initiative, but it is a welcome move and one of the few recent developments to give any cause for optimism over the future. They deserve all the support they can get. **1**

## Contributors

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

**Erin Grant**

is a solicitor with Springfield Properties plc

**Sarah Blair**

(co-author with Douglas Hanley) is director of IT with Thorntons Law

**Jim Drysdale**

is a partner with Ledingham Chalmers and convener of the Rural Affairs Committee

**Karen Leslie**

(co-author with Laura Mack) is convener of the Accredited Paralegal Committee

**Stephen Vallance**

(new columnist) works with HM Connect, Harper Macleod's referral and support network

**Perspectives**

- 04 Journal online**  
November's website exclusives
- 05 Guest view**  
Matthew McGovern
- 06 Viewpoints**  
Twitter selection; Blog; Reviews
- 07 Offbeat**  
Quirky news; Profile column
- 08 President**  
Strategy, diversity, wellbeing...  
and defending the profession

**Regulars**

- 09 People**
- 33 Consultations**
- 45 Archive**
- 48 Notifications**
- 50 Classified**
- 51 Recruitment**

**Features**

- 10**  
**The efforts to achieve urgent support for criminal legal aid firms – as New Generation Lawyers steps into the fray**

---

- 13**  
**The Society's new strategy focuses on the challenges of the next two years**

---

- 14**  
**How do you start a new job under lockdown? One solicitor shares her experience**

---

- 16**  
**We interview Tony Bone, who runs a unique Kilmarnock firm**

---

- 20**  
**How collaboration overcame the technical barriers to using Civil Online: a model project**

---

- 24**  
**How do the profession's IT suppliers view its progress responding to lockdown?**

**Briefings**

- 30 Civil court**  
Roundup, with Sheriff Appeal Court decisions
- 32 Employment**  
Redundancy refresher
- 33 Family**  
Behaviour divorce still gives rise to issues
- 34 Human rights**  
WhatsApp and privacy rights
- 34 Pensions**  
Regulator consults on strategy
- 35 Discipline Tribunal**  
A striking off case
- 36 Crofting**  
The Society's reform proposals
- 38 In-house**  
Highlights from the first Virtual Legal Festival

**In practice**

- 40 Professional news**  
Price transparency; AML; Menopause support; policy work; Practice Rules
- 42 Accredited paralegals**  
Ten years of recognition
- 43 Ask Ash**  
Too busy, but feeling insecure
- 44 Risk management**  
Property pitfalls: problematic but preventable
- 46 The Word of Gold**  
Lawyers as entrepreneurs?
- 47 Financing tax payments**  
Advice from the Society's strategic partners
- 48 The Eternal Optimist**  
Stephen Vallance's new series
- 49 Appreciations**  
Ross Paton; Claire Robertson

Society's  
new 2020-22  
strategy:  
Page 13



**ONLINE INSIGHT**

PUBLISHED ONLY ON [WWW.LAWSCOT.ORG.UK/MEMBERS/JOURNAL/](http://WWW.LAWSCOT.ORG.UK/MEMBERS/JOURNAL/)

▼  
**Discount or windfall? Valuing accommodation needs**  
The eagerly awaited decision in *Swift v Carpenter* has confirmed a new approach to calculating costs of future accommodation needs in a world of negative discount rates, as Adam Black and Grant Markie explain.

▼  
**When sorry might be the wrong word**  
Fergus Whyte considers when an apology or retraction can give rise to difficulties in defamation, in light of a recent English High Court case concerning an article about Melania Trump being retracted by a newspaper.

▼  
**Antigone, and the limits of state powers**  
When a government acts against its people's interests, citizens must be allowed to use the legal system to make things right. Paulo Nunes de Moura believes Sophocles' play *Antigone* has modern relevance.

▼  
**Appreciation: Alistair McGregor**  
Iain G Mitchell QC pays tribute to the advocate and Queen's Counsel who then found his calling as a Church of Scotland minister.

# Matthew McGovern

While a recent SYLA survey found that many new lawyers felt supported during lockdown, employers need to do more regarding situations of potential risk – and we all face a challenge in relation to enabling career development

**T**he Scottish Young Lawyers' Association (SYLA) recently undertook a survey of our membership about the impact COVID-19 was having on new lawyers and their careers. We were interested to find out to what extent, and in what ways, the pandemic had affected our membership. It is testament to how important our membership considered these issues that this survey attracted a record number of responses. The full results can be found at [www.syla.co.uk](http://www.syla.co.uk)

Notwithstanding the unique challenges that COVID-19 has posed for the legal profession, our survey found that a significant majority of trainees (over 56%) advised that they felt they had received adequate support and supervision from their firm during lockdown. A narrow majority of newly qualified solicitors (51%), and an overwhelming majority of both solicitors with between two and five years' post-qualified experience (over 67%) and those with between five and 10 years' PQE (nearly 65%) agreed. These results are certainly encouraging.

However, it would be wrong for these results to encourage a sense of complacency amongst firms, particularly when considering the fact that just over half of respondents who have had to attend court during the pandemic did so without being consulted by their employer. Furthermore, 50% of those who have been required to attend a prison during lockdown reported that they were not consulted by their employer before being required to do so. These results are concerning, and it is imperative that firms consult with their staff before asking them to undertake work which puts them at increased risk.

Another concerning aspect of our survey is that nearly 70% of students reported as feeling unsupported by their organisation during lockdown. The survey also suggests that students have been disproportionately affected in the jobs market, with nearly 10% of respondents advising that they have been unable to find a traineeship as a result of COVID-19. Our respondents also reported instances of traineeships being withdrawn, and extended, during lockdown.

It would be materially unfair if this year's Diploma graduates paid the price of COVID-19, and there are a number of suggestions made by respondents about how to mitigate the impact COVID-19 will have on those wishing to enter the profession. These include extending the validity of the Diploma in Professional Legal Practice (DiPLP) from five to seven years, and a reduction in DiPLP fees to reflect the extent of remote learning this year, as well as Government funding for traineeships.

We are aware that the Law Society of Scotland has been

lobbying the Scottish Legal Aid Board and Scottish Government to provide direct support for legal aid firms taking on trainees. It appears that our membership would support this proposal and that it may alleviate some of the problems facing graduates that have been caused by the pandemic.


Whilst it is reassuring that over 70% of respondents advised that they had not been impacted by the effects of COVID-19 on the jobs market, perhaps the most extraordinary result of our survey was that over 97% had concerns about the impact that COVID-19 will have on their career development. Our membership advised that they were concerned that as a result of COVID-19, there would

be fewer opportunities to develop skills (such as advocacy by personal appearance in court), few opportunities to network and build a reputation, limited supervision and feedback, and being unable to observe and listen to colleagues (our survey found that over two thirds of respondents are still working from home), as well as there being fewer job opportunities.

These results pose a challenge for both the profession and indeed SYLA. Our purpose has always been to educate, entertain



and represent young lawyers in Scotland, but how we fulfil our purpose has had to adapt to the present climate. We cannot host drinks receptions to allow our members to expand their network, nor can we host face-to-face CPD events aimed at educating our membership. Instead we have launched a podcast, started sharing vacancies on our social media platforms, organised the Battle of the Trainees – an online moot which was judged by, amongst others, the Dean of Faculty – and taken steps to begin our CPD programme online.

It remains to be seen what, if any, lasting impact the pandemic will have on the legal profession. There will no doubt be debates about the merits of virtual advocacy and working from home. It is essential that the voices of young lawyers are heard during these debates, and SYLA remains as committed as ever to representing our membership – whether online or in person. 



**Matthew McGovern is a solicitor with McGovern Reid and a committee member of the Scottish Young Lawyers' Association**

## The editor's pick of some recent Twitter posts

### Faulks review

It's unsatisfactory that the Independent Review of Administrative Law refuses to publish responses to this crucial consultation. It means that we will have no sight of what Govt Depts have said, or any data they rely on. It's impossible to test any assertions they've made. [@DinahRoseQC](#)

### Rights forum

Are you interested in human rights? A new engagement forum – called All Our Rights in Law – has just been launched in connection with the Scottish Government's National Taskforce on Human Rights. Our Profs [@alan\\_miller01](#) & Elisa Morgera are involved. More info here. [www.allourrightsinlaw.scot](#) [@lawstrath](#)

### Remote juries

A nice little segment on [@BBCRadio4](#) Law in Action just now with Tim Barraclough [@JudgesScotland](#) discussing the novel approach by [@SCTScourtribs](#) to clearing the backlog of criminal trials in Scotland. Feedback on first remote jury trials in #cinemas 'largely extremely positive'. [@JacqFordyce](#) [available at [www.bbc.co.uk/sounds/play/m000p10c](#)]

### In-house Festival

We were honored to join the '#Inhouse Virtual Legal Festival 2020' organised by the [@Lawscot](#) [@In\\_houseLawyers](#). Take a look at the insights during the session we had the pleasure to chair on #Covid19 Response and Recovery: [ow.ly/JFRU50CabZA](#) [@LexisNexisUK](#)

### Hate Crime Bill

Thanks to all the witnesses who gave evidence to [@SP\\_Justice](#) on the Hate Crime Bill today [including [@RoddyQC](#) [@Lawscot](#) [@COPFS](#)]. Lots to reflect on but my takeaway:—whilst all witnesses welcomed [@HumzaYousaf's](#) proposed amendments to the Bill,

none thought they go far enough to protect basic rights (1/2)

In particular, all thought that criminalising "insulting" speech/behaviour a step too far. Threatening or abusive behaviour is one thing, but insulting behaviour is another. The committee will take more evidence next week (2/2) [@ProfTomkins](#)

### Secret Barrister

"In an age where people are fed up of being lied to, I think there's a market for truth." We spoke to [@BarristerSecret](#) on issues ranging from Covid, to drug policy to the best remedy for ignorance. Here's what they had to say [eachother.org.uk/the-secret-barrister-on-covid-drugs-and-the-remedy-for-ignorance/](#) [@EachOtherUK](#)

### Salmond inquiry

So many civil servants former/current giving evidence to the committee on the SG's handling of harassment complaints appear to have such a poor grasp of detail, of even their own memory, that you do worry about how the country is being run. [@holyroodmandy](#)

### Land reform

The way that land is owned and used is central to tackling climate change and post Covid-19 recovery in Scotland, and the decisions and action needed should be driven at the regional scale.

That is the message in our advice to [@scotgov](#) on the establishment of new Regional Land Use Partnerships: [bit.ly/SLC-RLUPs](#) [@ScottishLandCom](#)

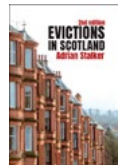
### Lawyers and the rule of law

Ban Ki-moon warns of the increasing attacks on lawyers around the world, including from the highest levels of government. He calls on leaders to uphold #humanrights commitments & stop turning lawyers into political scapegoats: [www.theelders.org/news/justice-frontline-covid-19-pandemic](#) [@TheElders](#)

## Evictions in Scotland (2nd ed)

ADRIAN STALKER

PUBLISHER: EDINBURGH UNIVERSITY PRESS  
ISBN: 978-147448216; PRICE: £85



Housing law is somewhat of a Cinderella of legal practice. It is also a tricky area of law. Absent a code, what practitioners need is a treatise they can use both as an atlas and an Ordnance Survey map, charted out by an expert and reliable navigator. That's exactly what this book is.

The new edition states the law as at 31 May 2020. Since its 2007 predecessor, Holyrood has passed two further Housing (Scotland) Acts, as well as four other significant Acts and numerous SSIs. The principal form of private tenancy has undergone fundamental revamping, while the Housing & Property Chamber has taken on the private sector regime. Principal content has more than doubled in length, including an excellent new chapter, "Public Law, Human Rights and Equality Act Defences". The appendix deals with COVID-19 measures.

I can affirm from experience that it serves not only as an entire (and readable) treatise, but also as an extremely practical and illuminating day-to-day toolbox. It is a book for all housing law advisers, practitioners and law teachers who have any interest in evictions in Scotland. For them, it is indispensable. And for their clients.

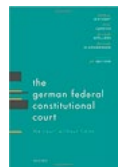
*Jon Kiddie, advocate*

For a fuller review see [bit.ly/363rQU6](#)

## The German Federal Constitutional Court

JESTAEDT, LEPSIUS, MÖLLERS AND SCHÖNBERGER

PUBLISHER: OXFORD UNIVERSITY PRESS  
ISBN: 978-0198793540; PRICE: £80



"This insightful and timely series of four essays..."  
Read the review by *David J Dickson, review editor*, at [bit.ly/363rQU6](#)

## The Ratline

PHILIPPE SANDS

(WEIDENFIELD & NICOLSON: £20; E-BOOK £8.99)



"This is an outstanding work of interest on many levels, from historical detail to morality and humanity."

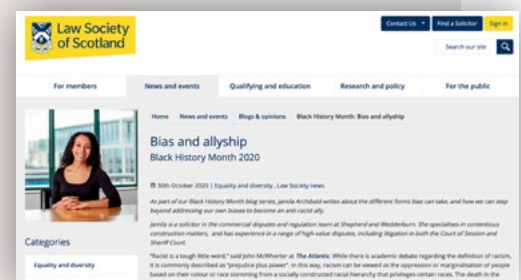
This month's leisure selection is at [bit.ly/363rQU6](#)

As Black History Month closed, the Society posted a blog from Shepherd & Wedderburn's Jamila Archibald headed "Bias and allyship".

Taking a more practical slant than the theme of the month might suggest, she writes about the various forms bias can take, and how to recognise

and counteract them. "Allyship" covers the ways we can endorse and support people from marginalised groups, thus becoming an anti-racist ally. "The best allies are those who are willing to make mistakes and to keep trying," she writes.

To find this blog, go to [bit.ly/3oUxrEN](#)



# Make America Grunt Again?

Amid the sound and fury of the US presidential election, at least two communities tried to create a diversion from all the rancour – with the help of our furry friends.

The 55th Street mayoral race in Oakland, California began with Wally the cat running unopposed, until opponents “decided our cat Betty seemed mayoral” – campaigning under the slogan “Change Meow”.

The dogs didn’t take this lying down, and Mimi the Shiba Inu (“She’ll bark when it matters... keep the squirrels away) and pit bull Macy (“Keep Oakland Ruff”) entered the fray. But it didn’t turn nasty: voting was for the kids, as a lesson in democracy, with candy on the side, “because it’s Hallowe’en”.

Meanwhile in Rabbit Hash, Kentucky (no kidding), French bulldog Wilbur Beast ousted incumbent mayor Brynneth Paltro (still no kidding), a pit bull, in a three yearly election first held in 1998. A record 22,985 votes cast raised \$13,156 towards preservation of local historical buildings.

No feathered candidates, so no unseemly tweets.



## WORLD WIDE WEIRD

### Bring on Lionel Moose-i

A sporty moose stunned onlookers by kicking a ball about on a football pitch in Homer, Alaska. The clever creature certainly didn’t just hoof the ball up the park.

[bit.ly/3esWvhs](http://bit.ly/3esWvhs)

### Upwardly mobile

A Slovakian company has taken a flying car for a test flight and hopes to bring it to market next year. It transforms from a road vehicle in about three minutes. But is the insurance sky high?



[bit.ly/2JrSRZF](http://bit.ly/2JrSRZF)

### Meanie in a bottle

A doctor in India saw his savings vanish in a puff of smoke when he paid £72,000 for an “Aladdin’s lamp” after he was fooled by a fake genie.

[bit.ly/22ss2uS](http://bit.ly/22ss2uS)

## PROFILE

# Emma Dixon

Emma Dixon is senior in-house lawyer with the Oil & Gas Authority, interim convener of the Society’s COP26 & Climate Change working group, and a member of the Public Policy Committee

### 1 Tell us about your career so far?

Most of my career has been in-house, initially by chance when I was seconded to a client and later by design. I moved into oil and gas over 10 years ago, and to my current role on creation of the OGA in 2016. It now works with Government and industry on the role of oil and gas in the UK energy transition.



### 2 What led you to become involved with the Society?

An interest in gaining a fresh perspective. Lawyers tend to specialise early, so it can be hard to get a sense of what “other” lawyers do. My present post has given me a broader outlook on what all lawyers can contribute to the continuing evolution of the law, access to justice and other issues affecting wider society. As a parent, it’s also important for me to find meaningful ways to benefit future generations.

### 3 Have your perceptions of the Society changed?

Absolutely! I have been really impressed by the depth and breadth of its outstanding work. This wouldn’t be possible without the volunteer members who collectively devote thousands of hours each year, but also the excellent support provided by the Society’s staff, as I have experienced.

### 4 How can lawyers help address climate change?

On a personal level, I think we’re all now aware of the need to make more sustainable lifestyle choices. As professionals, focused and collaborative efforts will contribute to the empowerment of business and communities to transition to net zero emissions.

Go to [bit.ly/363rQU6](http://bit.ly/363rQU6) for the full interview

## TECH OF THE MONTH

### Louvre Museum tour guide

As Paris remains largely off limits due to lockdown, why not enjoy some Parisian culture by downloading this guide to the Louvre Museum. It’s available for iPhone and Android and lets you get up close to hundreds of masterpieces, including the Mona Lisa.

More info at [www.vusiem.com/App/Louvre-Museum-Tour-Guide](http://www.vusiem.com/App/Louvre-Museum-Tour-Guide)



**WalkerLove**  
Sheriff Officers • Collections • Investigations

#### SERVICE PROVIDERS

- CITATION & DILIGENCE
- INTERNATIONAL CITATION
- EFFICIENT CASE MANAGEMENT
- STAND-BY OUT OF HOURS SERVICE

- CONCISE REPORTING
- COURT PICK-UP SERVICE
- TRACING & ENQUIRY SERVICE
- PRE-SUE ENQUIRY & REPORTING
- TOTAL CUSTOMER FOCUS



For further info, visit: [www.walkerlove.com](http://www.walkerlove.com)

Network of 8 offices across Scotland, including Principal Offices at:

**GLASGOW - WEST** Tel: 0141 248 8224  
16 Royal Exchange Square, Glasgow G1 3AB

**EDINBURGH - EAST** Tel: 0131 557 0100  
17 Hart Street, Edinburgh EH1 3RN

**ABERDEEN - NORTH** Tel: 01224 635771  
40 Union Terrace, Aberdeen AB10 1NP

# Amanda Millar

Just another month... involving the Society's new strategy, a further diversity initiative, the mental wellbeing campaign, pushing for involvement in public sector IT developments – and not least, defending the profession and the rule of law from Government

## So

... November is here; hopefully firework season has passed without increased animal anxiety levels and you all remain safe and well. The days are darker, literally and sometimes metaphorically too. This was recognised by some of the members participating in the SeeMe Pass the Badge campaign, although their

willingness to share and the support they received from friends and colleagues was uplifting to see. Those tips, hints and personal stories are out there for you all to read and hopefully benefit from, if you feel overwhelmed or see someone else who might be: visit [www.lawscot.org.uk/members/wellbeing/get-involved/pass-the-badge/](http://www.lawscot.org.uk/members/wellbeing/get-involved/pass-the-badge/), or search #PasstheBadge on Twitter.

Our strategy work, which moved from a five-year plan at the start of the year to a two-year one in the spring to take account of COVID challenges, has been completed and the two-year strategy has been published: see [www.lawscot.org.uk/strategy2022](http://www.lawscot.org.uk/strategy2022), and p 13 of this issue. It remains ambitious in terms of engagement, regulation and maintaining our responsibilities to the public. The crosscutting themes of technology, equality and resilience have never been more relevant.

### Keep us in the loop

I wrote at the start of my year as President of my desire and motivation to have at the end of it supported the profession to remain well regulated, sustainable and viable. In these most challenging of times, technology, diversity and resilience have never been more tested or needed. Our members invested in technology to keep their businesses running and be able to serve their clients, while following Government guidance.

Some of our publicly funded stakeholders were slow to do the same, and many current technological solutions continue to need work. Members advising business in relation to immediate challenges and the fast approaching end of transition date for Brexit face daily challenges and often, particularly with regard to the latter, a lack of clear information with which to advise. The common theme is that progress is being made most effectively when the profession is included in the conversation – a point we continue to make at every opportunity.

### Still seeking diversity

Our work in improving diversity in the profession has continued to lead the way. This year we are collecting pseudonymised data during the practising certificate renewal process to allow us to be better informed. We are setting up a working group looking at BAME challenges in the profession, while continuing to work

with The Glass Network, SEMLA, Women in Law, Scottish Young Lawyers' Association and others to challenge ourselves and others to improve the diversity of the profession and so its sustainability.

It will not be progress if the Law Society of Scotland waits another 70 years for a President from the LGBTQI+ community, if in the next 70 years we have had only five more female Presidents, or in the next generation we have not had a President from a BAME background. Our society is intersectional and becoming increasingly so; our profession is made up of that intersectionality at least to a degree, but we must and will do better.

### Rule of law: lip service?

Our resilience has been tested not just financially in the closure of courts and challenges in achieving meaningful restart, with resulting backlogs building, business damage and income

generation, but also through "criticism" by Government leaders who say they value the rule of law but treat those tasked with the independent and professional responsibility of upholding it with populist disrespect and disregard.

As a fundamental pillar of a first world democratic society, the legal profession must prevail in the interests of all. Our professional responsibilities and desire to serve our communities have seen many of us put ourselves at risk to keep the justice sector running (as far as it was permitted), representing clients, often the most

vulnerable of us, upholding their rights and those of society.

Without adequate acknowledgment, respect and resource for what has been done it may not be possible for the current service level to be sustained. But I know, and will continue to tell everyone I have the opportunity to meet as President, that what can never be in doubt is the absolute professionalism demonstrated by Scottish solicitors every day, and the absolute commitment from your Law Society, its staff, its volunteers and its leaders to continue to influence, engage and offer solutions.

Stay safe. 🙏



**Amanda Millar is President of the Law Society of Scotland –**  
[President@lawscot.org.uk](mailto:President@lawscot.org.uk) [Twitter: @amanda\\_millar](https://twitter.com/amanda_millar)



# People on the move

Intimations for the People section should be sent to [peter@connectcommunications.co.uk](mailto:peter@connectcommunications.co.uk)

To advertise here, contact Elliot Whitehead on 0131 561 0021; [elliott@connectcommunications.co.uk](mailto:elliott@connectcommunications.co.uk)

BLACKADDERS, Dundee and elsewhere, has appointed **Philip Buchan** as a director in its Rural Land & Business team. He joins from ANDERSON STRATHERN and will be based in Blackadders' Edinburgh office.



BLM, Glasgow, Edinburgh and UK wide, has promoted Glasgow-based solicitors **Lorna Ferguson** and **Zoe McDonnell** to partner and **Nicola Buchanan** to associate. In total, the firm has promoted 12 of its associates to partner and 23 solicitors to associate, across nine of its 13 locations.

BURNESS PAULL, Edinburgh, Glasgow and Aberdeen, has appointed **Fiona Killen** as a partner in its new Public Law & Regulatory division. She joins from ANDERSON STRATHERN.



CMS, Edinburgh, Glasgow, Aberdeen and internationally, has appointed **Jae Fassam** as a partner in its UK Pensions practice. He joins from PINSENT MASONS and will be based in CMS's Edinburgh office.



LINDSAYS, Edinburgh, Glasgow and Dundee, has launched a human

resources consultancy, prism HR, to complement its Employment Law department. It is headed by HR professional **Jane Watson**.

ALLAN McDOUGALL Solicitors, Edinburgh are pleased to intimate that as of 1 October 2020, **Sean White** has been promoted to associate. Sean is based in the firm's central Edinburgh office, predominantly within the Personal Injury team.



MACROBERTS, Glasgow, Edinburgh and Dundee, has announced the promotion of property lawyer **Kyle Moir** to the partnership and the appointment as associate of private client specialist **Chris Gardiner** (previously with THORNTONS), both in its Dundee office.

PBW LAW, Glasgow, announces that it has promoted litigation solicitor **Pamela Rodgers** to associate.



SHOOSMITHS, Edinburgh, Glasgow and UK wide, has appointed three more senior lawyers to its Glasgow office: corporate lawyer **Tom Maxwell**, who joins the firm as a legal director from DWF; **Jennifer Wright**, who joins as principal associate (employment) from DWF; and **Lewis Ritchie**, who joins as senior associate (plot sales manager) from SHOOSMITHS.



SIMPSON & MARWICK, Edinburgh and North Berwick, the residential property and estate agency arm of global law firm CLYDE & CO, is to demerge from its parent and become part of the newly launched ABERDEINS GROUP. Clyde & Co's Commercial Real Estate practice in Scotland is unaffected.

Simpson & Marwick's 26-strong team has moved into a dedicated new office at 23 Alva Street, Edinburgh EH2 4PS, while its East Lothian office remains at 88 High Street, North Berwick EH39 4HE. Partner **Richard Loudon** steps up to chairman. Aberdeins Group founder **Rob Aberdein** joins as managing partner. The firm will also be led by the existing team of solicitor director **Bobby Fife** and property directors **Louisa Raistrick**, **Katie Macdonald** and **Di Jennings**.

ST LAW has launched as a practice offering private client legal services. Its address is PO

Box 5918, Forres, Moray IV36 9AY (t: 01309 752022; e: [laura@st-law.co.uk](mailto:laura@st-law.co.uk)). Its principal is **Laura Thomson**, formerly of Civil Legal Assistance Office, Inverness.

THORNTONS LAW LLP, Dundee and elsewhere, has welcomed eight newly qualified solicitors following a two-year traineeship: in Dundee, **Hayley Blackman** in Corporate & Commercial, **Angela Robertson** in Dispute Resolution & Claims, **Jillian McLaughlan** in Employment, and **Alex Hirst Dawson** in Residential Property; in Edinburgh, **Maria Gravelle** in Employment & Immigration, and **Scott Douglas** in Corporate & Intellectual Property; in Glasgow, **Lindsey Cross** in Commercial Property & Insolvency; and in St Andrews, **Chloe Anderson** in Private Client.

TLT LLP, Glasgow, Edinburgh and UK wide, has appointed **Ainslie Benzie** as legal director in Scotland, advising in restructuring and insolvency. She joins from

## Introducing IDEX's latest hire!

### Why I joined IDEX?

"I was very excited to join IDEX, being able to combine my market knowledge with their fantastic reputation, to bring an exciting new offering to the Scottish legal market."

**Meena Bahanda,**  
Head of legal - Scotland

[www.idexconsulting.com/meena-bahanda](http://www.idexconsulting.com/meena-bahanda)



Thorntons - top from left: Lindsey Cross, Angela Robertson, Chloe Anderson, Jillian McLaughlan. Bottom from left: Alex Hirst Dawson, Scott Douglas, Hayley Blackman, Maria Gravelle.

# Save Our Sector

Financial pressures facing criminal legal aid lawyers have become so acute during the pandemic that the Society has appealed for emergency Government support – as yet without response. Has the sector a future? New Generation Lawyers has emerged, with a mission to secure one

Words >  
Peter Nicholson

## We

have been here before. Pressure building from the legal aid sector for urgent action on fees; talks with Government; response awaited... and then? Meanwhile, fresh warnings are sounded of the dangers from the lack of new blood coming into the sector.

This time, however, there is added urgency due to the havoc caused to court business, and to defence firm finances, by COVID-19. And there is evidence that practices really are now unable to make ends meet.

The Scottish Government should know the score well enough. Ian Moir, the Society's legal aid co-convenor and its chief negotiator for 10 years now, has been seeking urgent relief for criminal practitioners all through the pandemic. (Co-convenor Patricia Thom has been involved throughout on the civil side.) Initial success was achieved with arrangements including interim fee payments to help cash flow while the courts closed completely, and these remain in place for the duration of the emergency legislation, but the real and now urgent need is for support in the changed environment as business resumes.

### Dire warning

"We've asked the Government for a minimum of a 50% rise across the board on all legal aid fees, to take account of the huge amount of extra work that's involved in processing a case at the moment," Moir confirms. "For example on a summary fixed fee you now have to do a joint written record for the intermediate diet, and you can spend a long time doing that, but then if there's still an issue you've got to go to the hearing as well.

"There is a lot more waiting about with virtual hearings. Trying to set up a virtual summary trial could involve four or five hours of additional work, and the trial itself will take longer, and be more difficult. So we've asked for increased fees to reflect that, and I've asked for grants for legal aid firms based on their legal aid turnover for last year, with a graduated scale of grants, to give financial assistance in the short term to cover extra costs of PPE, training, the IT for virtual hearings, as well as the dramatic drop in revenue that we've suffered due to the lack of business going through the courts."

He points out that on SLAB's own figures, it has saved £6.5 million that it would otherwise have expected to have spent in the first six months of the year, and argues that at the very

least the anticipated savings for the whole year ought to be made available to practitioners.

"I would be devastated if the Government turned a deaf ear to the plea that was made to them. I can't stress enough to them the urgency of helping out and just how desperately that help is needed."

But he is being kept hanging on. Indicated dates in September and October for likely replies have come and gone, and even after a lengthy day of negotiations in late October, which also involved the Society's President Amanda Millar, Vice President Ken Dalling and chief executive Lorna Jack, Moir was expecting "at least another couple of weeks" before we hear any news.

### Still in business?

Ahead of the practising certificate renewals, Moir was concerned that legal aid practices would be unable to afford this year's outlay. As the Journal signed off, the final renewal figure was not yet available. Earlier this year a survey of private practice by the Society showed around 50% of respondents doing criminal court work experiencing reduced turnover and cashflow, and a fall in new business. The Society is currently re-running the survey to update the situation, but the recent picture has remained challenging, with court business restarting slowly.

Asked if the Scottish Government recognised the risk of legal aid practices going out of business, and for a timescale for a response following the talks, a spokesperson said: "We appreciate the flexibility and resilience shown by the legal profession during these challenging times. Solicitors have, and continue to make, a significant contribution to keeping the justice system going. We acted immediately to bring in interim payments, recognising the difficulty firms could be placed in financially, and have encouraged solicitors and firms to submit all final accounts to SLAB, to make use of this scheme and also any other forms of support, such as the [UK] Government furlough payments."

They added: "We are considering proposals submitted by the Law Society on 26 October and will update in due course. We are committed to supporting solicitors undertaking legal aid funded work and continue to engage with the profession to look at how we best maintain our justice system during the pandemic, while keeping people safe."

It appears, by the way, that the onset of the pandemic stalled the final report of the panel set up to propose a new framework for reviewing legal aid rates, following Martyn Evans's review of legal aid. The spokesperson added: "The final meeting of this panel had been due to take place on 20 March 2020 to finalise their report to the Minister for Community Safety, though this had to be postponed due to the pandemic. Providing immediate

support for the legal profession took precedence over the summer with regular meetings between officials, the Law Society of Scotland and the Scottish Legal Aid Board."

### SOS call

An indication of the desperation now being felt was seen following that last meeting, when the Glasgow Bar Association wrote to the Scottish Parliament's Justice Committee appealing to it to "make every effort to ensure a prompt response" from the Government.

"Our members have waited patiently [during the pandemic] for the Scottish Government to provide them a support package recognising the essential role these practitioners undertake in the justice partnership," the GBA stated.

"Our membership consists of the small to medium enterprises that the Government stated at the outset they wished to help. We are astonished and deeply concerned that the Scottish Government has still not provided an offer, despite months of discussions having taken place. Our members have worked for seven months of lockdown in the most fraught circumstances, showing flexibility, working on holidays and adapting to new ways of undertaking court representation to ensure that the court process continues. The promise to come back to the profession 'as soon as possible' is simply not good enough."

*"Our members have waited patiently [during the pandemic] for the Scottish Government to provide them a support package"*

### New lawyers with hope

Who would become a legal aid or criminal defence lawyer at the present time? There are still those with that desire, and some of them have banded together to sound the alarm over the future of a sector now fighting for survival.

Launched last month, New Generation Lawyers are a group of recently qualified or aspiring criminal lawyers committed to making it easier for solicitors to qualify in, and build a career in, criminal law. "We came to the consensus that we don't know who the criminal bar will be in 10-15 years' time," founder member Lauren Sangray explains, "because there is such poor payment and retention for young solicitors to remain practising criminal law. People are training and then finding a job outwith the criminal field, or just not finding a place because it is so difficult to find firms that will take on criminal defence trainees."

Funding and legal aid rates, she continues, are key. "High street firms are normally small, and there aren't any real



→ incentives or schemes for them to hire additional staff in this field. In Falkirk where I was [she has just moved to a Glasgow firm], I was the youngest solicitor practising criminal defence, and everyone else there was at least 12, even 15 years my senior. This generational gap is a common thread throughout most courts and sheriffdoms. When these men retire there is going to be very little access to justice, and that's a big concern to us."

She adds: "We now fear there is going to be an even more severe drop in traineeships due to the pandemic, and we need to address that as well."

It is also difficult to compete with the prosecution service, which has recently advertised traineeships as far ahead as 2023 and can offer an attractive salary and pension package along with a career structure.

### Mission to change

The Society and others have been sounding warnings about the lack of criminal defence lawyers coming into the profession for many years. What difference does Sangray think New Generation Lawyers can make?

"I definitely think we can focus on raising awareness of the problems affecting our generation of criminal lawyers. We are a group of new lawyers who really have a fire in us. We probably

are the future of the criminal bar, and if changes aren't made there is going to be no criminal bar, and where would that leave access to justice, which is the most important part of this? It's almost an

*"We are a group of new lawyers who really have a fire in us. We probably are the future of the criminal bar"*

extinction of criminal defence solicitors in Scotland, really."

New Generation Lawyers' mission statement pledges them to campaign for a sustainable legal aid system which allows access to expert criminal legal assistance for all members of society; to promote the interests of new and aspiring criminal lawyers and to increase diversity within the criminal bar; and to provide a network for lawyers beginning their careers in criminal law. It concludes with the declaration: "Whilst we enjoy our work, and recognise the importance of our role within society, we are of the view that the status quo is not sustainable and will result in a generation of the most vulnerable people in our society being denied access to justice."

### "Any help is welcome"

Sangray confirms their intention to put forward their own ideas. First, however, in addition to raising awareness, "We are gathering information and data, and when we have that we plan to propose solutions. Data on people coming into the profession, the number of people doing primarily criminal defence, the number of those wanting to continue doing criminal defence work. We will be putting out a survey across our social media channels in order to gather data. We know there is a lot of interest in criminal law, a lot of prospective trainees show an interest, and it's unfortunate that they struggle to gain positions where they can actually explore their interest."

Asked what practical support others can give, Sangray says she and her colleagues – Matthew McGovern (McGovern Reid, Wishaw), Kevin Corr (Graham Walker, Glasgow), Gemma Elder (The Robert Kerr Partnership, Paisley), Heather Morrison (Paterson Bell, Edinburgh), and Maureen Duffy and Connor Ledger, both seeking criminal law traineeships – want people to engage with them, "even come up to us in court and have a conversation with us, give us your opinions. Senior colleagues who have been practising 10, 15, 20 years longer than I have, are people that we aspire to be, essentially our role models, so to have their opinion would assist us. Any form of help is welcome help".

Likewise they hope the Society will engage with them on a collaborative effort to address the problem.

The Society recognises the real risk that the slowdown in court business will impact particularly on high street firms' resources, and their ability to take on a trainee. This is another issue it has raised with the Scottish Legal Aid Board and Scottish Government, and it would welcome contact from New Generation Lawyers and anyone else who wishes to support entry into criminal practice, to discuss how to work together to support those calls.

Initial support from the criminal bar, and the wider profession, has been strong. "There's been a consensus that what we're doing just now is a welcome change," Sangray comments, "and that it's refreshing to see new lawyers acknowledging there are areas that need to be improved in this sector. That's what we really want to focus on: we want to raise awareness, we want to expand and get a following behind us, because the more people acknowledge and recognise that there are issues, that helps us spread the word as to what needs to be done."

### Last chance?

Moir can illustrate the way things are heading as matters stand. His firm opened a second office recently – but essentially funded by private work, and taking over premises vacated by another legal aid firm cutting back its operations. "I suspect we are in a minority of one in terms of firms that have expanded this year. We are fortunate to have some good quality private work which pays many times more per hour than legal aid work does," he explains. "We're investing some of that in what we hope can still become a future in legal aid. But unless the Government significantly increases the fees and offers the bailout that we've approached them for, the legal aid sector is just not going to survive this." 📌





# Leading legal excellence in a pandemic

The Society introduces its new strategy for 2020-22, deliberately targeting the shorter-term challenges as the profession, and the economy, seeks to recover from the effects of COVID-19

**M**any things have changed since the Law Society of Scotland launched the first *Leading Legal Excellence* strategy in 2015. Setting a medium-term plan for the future is always challenging, but it would be fair to say that no one expected what 2020 would bring when that was set as the date for the next formal review of the strategic direction of the organisation.

Work actually began last year on what the new strategy would look like. There was consultation widely both within and outwith the profession on what the key issues were, just now and for the future. However, at a fairly early stage in this unpredictable and challenging year it became clear that the immediate challenges needed to be the primary focus. The Society's Council agreed that a shorter two-year plan was more appropriate in the circumstances.

President Amanda Millar commented: "The pandemic has crystallised priorities for the profession. Throughout this crisis the Society has been at the forefront in advocating for our members, their clients and wider society to the heart of government. We have consistently highlighted the important role the legal profession plays in supporting businesses and individuals and the risks to justice if support to this sector fails."

This includes the impact on legal aid practitioners, as highlighted elsewhere in this issue, as well as the wider challenges faced by businesses and individuals working in the sector. These challenges are at the forefront of the new *Leading Legal Excellence* strategy for 2020-22.

## Assuring and supporting

Of the five key themes within the strategy – Assure, Support, Excel, Influence and Evolve – it's Support which most specifically highlights the needs of a sector looking to what comes next after the pandemic: "We support members to meet the challenges of a recovering legal services market and economy."

Within the Support theme there is a focus on using technology and promoting wellbeing to support the profession as it adapts to new ways of working – alongside careers work to champion fairness and progression, assisting those who have become unemployed or underemployed as a result of market uncertainties.

Millar is keen to highlight, however, that there is also much that has not changed for the organisation. "We have not lost sight of our core responsibilities. Our regulatory

role remains fundamental as we maintain and support high standards for our members, for the benefit of the whole profession and the public they serve.

"Nor have we forgotten our responsibilities to equality, and supporting a diverse profession which is representative of our communities – highlighting a range of voices, and working to ensure that no one with the right knowledge and skills is excluded from law as a career."

The Assure theme highlights this focus: "We assure the quality of legal services, the public interest and the reputation of the profession."

This theme highlights the impact of education and training standards on ensuring excellence, as the profession continues to innovate and develops how it uses technology to support new ways of working. It also looks to regulation as proportionate and risk-based, to build both client confidence and a competitive sector.

## The Society evolves

With the public health restrictions driving innovation across the profession, the 2020-22 strategy also highlights the opportunities for a faster pace of digital change. Millar explains: "There have been new opportunities created out of the necessity to support new ways of working. The digitalisation of our courts is driving changes in practice, and artificial intelligence and digital solutions are allowing legal firms to deliver services in new and innovative ways. Embracing digital and helping members to take advantage of the technology available will be a key part of sustaining, recovering and growing the profession in the future."

Recognising the need for the Society itself to make changes to support this, is part of the Evolve theme. As an organisation the Society is committing to evolving to maintain its own financial sustainability, working to recover commercial operations to take the pressure off core fees and help replenish reserves which were used to support reductions in core fees for members this year.

Against a backdrop of the economic and social challenges presented by the pandemic, the new strategy sets out a pathway to the future. While it is still not easy to predict what comes next, it is clear that the next two years will present both challenges and opportunities, and the Society wants to ensure it is ready and able to respond to these for and with the profession.

View the *Leading Legal Excellence 2020-2022 strategy* at [www.lawscot.org.uk/strategy2022](http://www.lawscot.org.uk/strategy2022)

# New job, no office?

Starting a new job during COVID-19 restrictions is an unplanned but necessary experience for many. Erin Grant, whose first day met the arrival of lockdown, offers a survival guide

**W**hether you have been qualified for 10 weeks or 10 years, I think we all have the same thoughts when starting a new job. What to wear on my first day? Will I find my way round the office? Will I manage not to set off the fire alarm, ensuring my co-workers aren't left out in the freezing cold waiting for the fire brigade (ahem, that may or may not have happened on my first day as a trainee). What I didn't expect on my first day was a global pandemic bringing the whole country to a shuddering halt.

I joined the in-house team at Springfield Properties plc, Scotland's only listed housebuilder, on 24 March 2020. That same day Nicola Sturgeon announced all building sites must close. By 5pm, Springfield was locking gates to all sites and the doors to all its offices. Within a week, 97% of my colleagues were furloughed. I'm pleased to say most of them are now back to work, but it was strange hearing about all the people I would work with and not having a chance to actually meet them until months later.

## Virtual reality

Starting a new job during lockdown has been, in a word, weird. I quickly found my tour of the office being replaced with virtual meetings, and my office and admin introduction consisted of a colleague reading a checklist of health and safety questions while I confirmed that yes, I knew where the toilet was in my own house and, if there was a fire, I knew how to escape my livingroom.

Six months later, while sites have reopened, our offices have not, and I still have met most of my colleagues only from the shoulders up. It has been a challenge; however there have been many positives and it has been surprisingly easy to adapt. With that in mind, I wanted to share my top takeaways for trainees or NQs who might be nervous about working remotely as they start a new job.

### 1. Your boss and colleagues are human too.

Inevitably during a video call, someone will have to excuse themselves to deal with a barking dog or the postie delivering your latest Amazon parcel. That's actually quite nice. It's a good icebreaker and the chit chat that goes with these interruptions helps you get to know people.

### 2. No one cares what you wear. Well, within reason!

I don't think I've been on one call where someone has worn a suit. I think going forward we will see a change in attitude to dress code. If you can do the job it shouldn't matter what you wear. Plus it saves on a lot of ironing.

3. Everyone will be *even* more supportive. I think because this is a shared experience, people are very conscious that it's difficult, particularly for those fairly new to the profession, so don't be afraid to ask for help, whether that be how to switch on your shiny new computer or how to deal with a complex title examination. No question is a daft question.

4. One of the best questions you can ask anyone – clients in particular, but colleagues too, is "Is this a good time to talk?" With homeschooling, partners or flatmates on furlough, or just any of the daily interruptions we get at home, it may not be a good time to speak to someone. Most people call when it is a good time for them; very few ask whether it is a good time for the person being called.

5. Don't forget you can phone people, email them or send them a text or WhatsApp message. While video calls are great way to keep in touch, they are not always the best way. Sometimes you just want a quick answer and an email or other message can be just as effective.

6. In your first weeks, call people to introduce yourself. We can't meet people at coffee points or photocopiers, so we need to call and say "Hi, I just wanted to introduce myself." A supervisor or colleague may be able to help set up meetings. They can then introduce you to the team.

7. Don't be afraid to show a personality. Remember they hired you and not a robot. So, don't be afraid to tell people who you are, what you do outside work, or to reply to an email with something other than a Latin maxim and a case reference supporting your opening sentence.

8. Remember, your colleagues want to meet you and help you. But they can be busy, so if they don't get in touch, it's not anything you've done, it's just the lockdown. We all need to make more of an effort.

Finally, while it may not be how you envisaged your first months in the office, it won't be forever and those after-work drinks will return. In the meantime, embrace this challenge and remember, it will be a heck of a tale to tell the grandkids one day! 📌



**Erin Grant**  
is a solicitor with  
Springfield  
Properties plc



3rd Edition, Volume 2  
October 2020 | £100  
9780414017832

**PLACE YOUR ORDER TODAY**

sweetandmaxwell.co.uk  
+44 (0)345 600 9355

# Scottish Land Law

Publishing under the auspices of the Scottish Universities Law Institute, the second volume to this well-established and respected work is a thoroughly updated and comprehensive account of Scottish land law. It brings together material of significant practical importance in relation to the rights and obligations inherent in the ownership of land.

**Key legislation includes:**

- The Conveyancing and Feudal Reform (Scotland) Act 1970
- The Title Conditions (Scotland) Act 2003
- The Land Reform (Scotland) Act 2003

**Continuing from Volume I, the content of Volume II includes:**

Chapter 19: General Principles of Security Rights

Chapter 20: Standard Securities

Chapter 21: Floating Charges

Chapter 22: Involuntary Heritable Securities

Chapter 23: Title Conditions and other Burdens

Chapter 24: Real Burdens

Chapter 25: Servitudes

Chapter 26: Judicial Variation and Discharge of Title Conditions

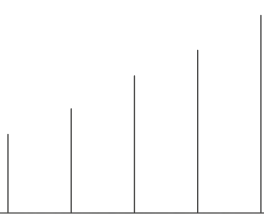
Chapter 27: Public Access Rights

Chapter 28: Nuisance and other Delicts

Chapter 29: Social Control of Land Use

Chapter 30: Compulsory Acquisition

Chapter 31: Community Rights to Buy



REUTERS/Russell Chey

## Tony Bone

Part of the Community Enterprise Village at Kilmarnock Railway Station, the family and criminal practice of Tony Bone Legal is an element of a possible model for intervention services elsewhere, as Peter Nicholson reports



# All change here



Platform 1, Kilmarnock Railway Station is not the typical business address of a Scottish solicitor practice. Nor would most firms be part of a

community enterprise trust, sitting alongside and working with counselling, addiction and rehabilitation services. Or have as their main players an ex-CID officer and a former social worker.

Tony Bone Legal, on the other hand, is not your typical legal practice. But since setting up at the station a year ago, it has furthered its founder's aim of providing an intervention for clients rather earlier than most legal advisers achieve, in a way that others, funding bodies included, might look at copying more widely.

Despite qualifying only in 2016, Tony Bone himself has a long connection with the law. After leaving school at 16, he sat Highers at college and joined the police, progressing to chief inspector in the CID before transferring to the National Training College at Tulliallan and then Glasgow's Violence Reduction Unit (VRU). Discovering early on an aptitude for the law, he eventually took a part time LLB, and by the time he retired from the police aged 49, he knew he wanted to qualify.

Having a home background of a violent father, which he left as soon as he could, Bone's various police experiences convinced him that the VRU's preventative approach was the better one – but a Glasgow criminal traineeship, while great experience, was “like the lawyer version of the CID, where you were churning cases and clients in the door then back out once they signed their legal aid papers”. After gaining further experience in civil work including domestic violence, he resolved to set up his own practice, and discovered the Community Enterprise Village in Kilmarnock, where his combination of criminal and family law is a natural fit.

I wonder whether his police career has been any disadvantage in finding business.

“It's funny you say that, because I had the same thoughts when I started as a trainee. Now I know the reaction is quite positive. If you're a criminal client, you see that as an advantage because of my insight, and equally clients in family law see it as a bonus because of my previous

work especially in domestic violence and CID. Clients in general really like that investigative ability.”

### Village life

The Village is primarily funded by the Kilmarnock Station Railway Heritage Trust, a condition of funding being a focus on young people and reducing and preventing reoffending. “It's the first of its kind ever in the UK, but it's giving a template to do this elsewhere,” Bone tells me.

His neighbours include a GP, a behavioural therapist, addiction recovery, a delicatessen offering training and experience to people trying to get into mainstream working, and an active travel hub with a focus on health and wellbeing. “It seemed to me quite logical that what was missing was legal representation, because many people who are in the system suffer because of the system, and I have these services at my doorstep.”

What does he mean by “suffer because of the system”? It applies, he says, both to those familiar with the court system and those who are not. The latter “find going to court, whether it's a child welfare hearing or a criminal procedural matter, extremely stressful. And that has an effect on their mental health. Then I have clients who are never out of the system; there doesn't seem to be an attempt or an intervention to take them out, especially young people”.

He instances a young female client who “went off the rails” at age 16, when childhood traumatic experiences



The legal practice has an unusual home at Kilmarnock Railway Station



mixed unfortunately with adolescence. "Because she was arrested and brought to court she was immediately treated as a criminal, and it took about a year before anyone recognised that what they were actually dealing with was a patient and not a criminal. Very fortunately we had a sheriff who had a background in children's hearings and recognised that.

"In actual fact she needed specific specialist help, which she is now getting. That's really where I'm coming from: it's to try and deliver more of a holistic service with legal advice as the primary focus, while also considering what else can be done to help the individual, and their family in many cases."

### Double act

In this he is assisted by his colleague James McKay, currently his trainee but with a previous career in social work that parallels Bone's in the police. "He decided to study the law because he wanted to do things differently, and recognised there was a gap in terms of representing children and children's rights. It seems to be that the system talks to children rather than listens to children."

McKay quickly became invaluable to Bone. "It soon got to the stage where I couldn't do without him, because he was helping to enhance the business model not just with his experience but with his views on how we should be delivering our services. My background in domestic violence, along with his background in children and family, parental capacity assessments, has just been an excellent partnership that we've developed."

Especially since lockdown, most of the firm's work is family rather than crime centred, albeit with domestic abuse increasingly featuring over that time. Bone believes it important that professionals – doctors, dentists and teachers as well as lawyers – are trained to recognise the signs of domestic violence and of trauma.

"We as solicitors have a responsibility to do the same, especially when the victims are our clients. That may be difficult for a criminal practice, but certainly from my perspective as a criminal and family lawyer, it's my responsibility if I think I recognise the signs of domestic violence, whether physical or psychological or financial, to make the appropriate referrals to ensure my clients get the best service possible."

Where children are involved, with or without a domestic abuse element, Bone believes the system could focus better on



Tony Bone is determined to help vulnerable people get their lives back on track

their needs. Contact and mediation centres, he explains, tend to be quite clinical and to use rather untrained staff: with better resources, sessions could be a much more constructive and positive experience for everyone involved.

If, for example, a young child has not seen their father for a long time, "having to take them to a strange environment makes it even more stressful for the child, and of course young children pick up on stress and anxiety from their parents as well". Particularly with centres having had to close, he promotes an open air alternative, like a park or play area, "because it doesn't cost anything, and children love being out in the open air, no matter the weather".

He continues: "I have now used that quite successfully on several occasions in child welfare hearings, which then opened up contact between both parents. On some occasions contact had to be observed by a child welfare reporter or bar reporter. It just meant that rather than clogging up the system we were able to get things moving with alternative venues.

"Of course the whole idea is to avoid any traumatic experiences for young children. One of my good friends, Iain Smith, is a leading advocate of recognising childhood trauma and its effects in adulthood. That's a focus for us, for all solicitors, that we need to do as much as we can to avoid that situation."

### Specialist helps the preventative

Glasgow has a specialist domestic violence court, but there is nothing more local to Kilmarnock. Would it help? "Definitely," Bone replies. "There are plans for a domestic abuse court, but they are on hold because of the COVID restrictions.

I would go further: I would like to see a mental health court as well, because that would enable more focused and specialist support services to deal with clients who are just involved in a vicious cycle of repeat offending. I think that's the way forward.

"In my previous life in the VRU, we were pushing for a specialist weapons court, and the only sheriff who liked the idea was Sheriff David Mackie up in Alloa, who was a tremendous advocate of preventative work and could see the need for that type of approach. Yes, specialist courts in general are the way to go."

How far does he think we can take that approach?

"We need to start off with what we know already, and there are already examples in the States of where mental health courts have been quite productive. We also have the drug testing courts, and probably an even bigger issue is alcohol. The vast majority of criminal cases that I deal with involve alcohol. There are opportunities to be much more innovative in the use of remote monitoring of clients who find themselves involved in alcohol fuelled cases. We have the legislation in place where we can tag clients to monitor their alcohol levels, and rather than incarcerating them in a prison unnecessarily, they could be monitored out in the community. It seems to me that is a more intelligent way of managing reoffending than just sending people to prison, which is counterproductive."

Concluding, Bone describes his outlook as "more of a public health methodology", as advocated by the former Chief Medical Officer Sir Harry Burns. "He is a great inspiration to me. If you look at his work it's all about the public health models, and in the public health sphere it's all about preventing illness. So for me it's about preventing crime, preventing abuse, preventing reoffending, and just being more intelligent in terms of how we deliver legal services." 📌

*"It's about preventing crime, preventing abuse, preventing reoffending, and being more intelligent in terms of how we deliver legal services"*



# Shape your firm's success in 2021

Modernising your legal software brings many benefits, and is easier than you may think

Did you know the average life of a practice management system is 13 years? If you use one you will definitely know that law firms replace these core systems very infrequently.

Changing and modernising your legal case management software is not as complex or costly as you may think either. Early case management programs *were* difficult to use and a nightmare to convert when changing systems. The software wasn't nearly as customisable and user-friendly as it is today, and the change process was far from seamless. But, it's a new day.

The best case management software suites are designed to be simple enough that both support staff and solicitors can use them effectively. The customisability built into the top systems makes it easy for law firms to adapt the software to fit their specific needs, whether they are starting from scratch or replacing an existing system. Additionally, the best case management providers back that up to deliver outstanding customer support and training to ensure that all users are adept when implementing new software.

## The "switch"

Oddly, many law firms operate without using legal case management software, especially small firms and sole practitioners. This reluctance largely stems from a flawed belief that the cost of case management programs is prohibitive, along with a fear of using new technologies. As long as the old system works, why fix it? The short answer is: Because you will be able to work more efficiently, expand your client base, and make more money if you invest in a suite of high-quality legal practice management software.

Switching from a paper-based, or an outdated and dispersed digital case management to modern, integrated legal practice management software offers your law firm many advantages, and there are many solutions (like CaseLoad) that can help you achieve all of the benefits below.

The most common concern in legal practices is what value these "new-fangled" software solutions can bring in running the legal practice more effectively compared to an existing system or a paper-based system.

Paper-based systems have existed for as long as legal practice. In the past, these systems managed to do a reasonably good job. But times have changed, and with the rise of technology accelerating in 2020, lawyers are looking for more efficient ways of running their practices.

While your tried and true methods for running your firm have worked well for you in the past, the benefits of better legal case management software far exceed those of traditional processes. Greater flexibility, improved efficiency, centralised data sources, better information sharing, preservation of data, and customer satisfaction are just a few of these benefits.

Modernising case management will help your law firm save time and resources, and it can also help improve your visibility in the legal world, so you can focus on keeping your clients satisfied.

Modern legal practice management software offers you:

- Leads management
- Coordinated communication
- Manageable deadlines
- Integrated time recording and billing
- Improved file organisation
- Consolidated client directory for contact management
- Consistent case organisation for all firm members
- Client communication portal
- E-signature
- Management of legal accounts
- Outsourced cashroom service

## You've got to compete!

Despite other firms and departments experiencing overwhelmingly positive results with new practice management systems, some law firms are still unwilling to make the switch. A few common reasons include:

- Some firms are reluctant to invest in a new system if they aren't able to see an immediate financial reward, but a case management system is a valuable long-term investment.
- Other firms mistakenly view case management as an immature solution, because they simply don't realise that modern systems are very sophisticated and efficient.
- Some practices believe that they don't need one unified system. However, using a mix of unrelated programs will never be as efficient as one comprehensive system.
- Someone needs to take charge of selecting and implementing a new management system, but some firms haven't selected a senior-level individual to take charge of the project.

Most legal practices like to take a "wait and see" approach to new technology, but case management has been around for decades now. The legal profession is becoming more competitive every day, so it's important to utilise tools, like CaseLoad, that will help you stay ahead of the competition.

Once you embrace modernisation and pick a flexible, scalable legal practice management solution, it is up to the expert team, like we have at Denovo, to look after you and get the software tailored and personalised for your needs. That will let you refocus on the key issue of running your law firm, and lead to substantial profitable gains in the long run.

# Whole Practice Management Software

Everything you need in one place, cloud based and fully compliant.



Modernising your Legal Practice Management Software is not as complex or costly as you may think. Implementing new tech may initially seem far-fetched and a hassle, but with the right team behind you it can lead to substantial profitable gains in the long run.

Not using Denovo to manage and grow your business? Get a free demo and see why some of the most successful small to medium sized law firms use Denovo to shape their firms success in 2021.

Email [info@denovobi.com](mailto:info@denovobi.com)

Call **0141 331 5290**

Visit [denovobi.com](https://denovobi.com)

## denovo

**Practice Performance Matters**

# From people talk to system talk

It's not enough to devise a great IT system – it has to work with everyone else's. Sarah Blair and Douglas Hanley provide law firm and SCTS perspectives on how a collaboration on Civil Online overcame the barriers to its adoption

## Collaboration delivers innovation: Sarah Blair

We're all becoming a bit tired of overused phrases these days. We hear about the circumstances we find ourselves in as being "unprecedented", and we are bombarded with articles considering the "new normal". For a long time firms have been seeking that holy grail of "innovation". In the legal technology space, where I spend much of my time, commentators are debating how much "digital transformation" has happened in the past six months compared to the many years beforehand.

Whether you think that the "pivot" (there goes another one) to using videoconferencing and digital signatures constitutes digital transformation or not, it is clear that we have all found ourselves faced with many challenges during this pandemic: how to communicate with and serve our clients best when seeing them in the flesh is not possible, and how to digitise processes long wedded to paper and physical documents. Most firms have risen to this challenge admirably and continued to deliver excellent services to their clients through difficult times. This challenge has been shared by key stakeholders such as Scottish Courts & Tribunals Service (SCTS) and Registers of Scotland – themselves forced initially to close down operations completely, and then faced with the need to digitise these operations as quickly as possible.

An optimist like myself would also see these challenges as potential opportunities, where the hand of many has been forced and barriers to change removed through sheer necessity.

One particular area of opportunity is around interoperability of systems in the legal space. Where in our personal life you can often select an integration between two apps with a sideswipe, integrations and data sharing across legal processes and systems is limited and often complex. On the LawScotTech board, we have recognised this as one of the challenges faced by the profession, and early work has started to look at how we can improve this in various ways, including exploration around an API (application programming interface) framework and a set of data standards.

### Talking and sharing

When the Civil Online portal was launched, initial enthusiasm for a digital solution at my own firm turned to frustration at yet another system without interoperability capabilities, and when met with the inefficiencies of rekeying data, we were among those who did not adopt it. We opened an early dialogue with the team regarding this, which developed into participation in the discovery phase to explore further.

We continued this discussion through the early stages of the pandemic and were pleased to be invited to ongoing discussions around the API and then into the beta programme.

From the early stages of the beta, it was refreshing to see such open and interactive collaboration between all parties. Participating firms were consulted on areas such as authentication methods,

and I was able to share both the insights of my own firm on this, but also those of solutions providers and other member firms to ensure we made decisions which would ensure that the API is accessible to smaller firms through standard integrations via their supplier. We had regular check-in meetings, and queries and issues were answered or resolved quickly (and worked out together). We were able to submit our first cases to the sandbox within six weeks of starting the project and were ready to submit live cases quickly thereafter.

To go back to some of those overused phrases, one definition of innovation describes it as "the execution of ideas which address challenges and deliver value for the firm and its clients". And Thomas Malone of MIT in Massachusetts said a few years ago that "some of the most important future innovations will not come from new technologies, but from new forms of collaboration".

The Civil Online project is only one part of a broader SCTS digital strategy which has been fast tracked due to COVID-19. Given that Civil Online is becoming mandatory for submission of simple procedure cases, it is encouraging that feedback is welcomed and the API has been developed collaboratively. When we consider the challenges still ahead

of us, this project has helped increase my optimism for the future. The increasingly collaborative approaches being adopted by SCTS and RoS to work with bodies like the Law Society of Scotland and firms of all sizes are required if we are to hope for transformation across the sector, and innovations which will deliver true value to firms and their clients. 📌



**Sarah Blair**  
is director of IT at  
Thorntons Law LLP

*"From the early stages of the beta, it was refreshing to see such open and interactive collaboration between all parties"*

## Formula for success: Douglas Hanley

In May, just after lockdown, the new SCTS director of Digital Services, Mike Milligan, brought me on board, into a new and visionary team set out with a clear mission to deliver the ambitious change set out within the SCTS digital strategy.

The impact of the COVID-19 pandemic quickly dictated our priority to respond and recover: it was essential to keep the wheels of justice turning. However, despite the enormous and almost instant impact of the pandemic, our Digital Services team was able to grow and galvanise quickly, demonstrating creativity in their innovations to deliver quality new digital technologies at a pace that was urgently needed.

The requirement for physical distancing and the need to reduce physical attendance at courts galvanised a move to virtual remote hearings where possible. A large number of SCTS staff went from being based in buildings to working from home, and there was a need to shift the dependency on physical documents (and their transport) to their electronic equivalents.

That was the backdrop to becoming involved with the Civil Online service. The Civil Online portal had been live for simple procedure for some time, and the barrier to its widespread adoption by solicitor firms was known. A "discovery phase" had identified that the portal approach was unattractive to solicitors as it involved a rekeying of data from their case management systems into the portal. It was confirmed that if an API were to be made

*"We now have all six firms electronically submitting simple procedure claims in courts across Scotland"*

available for Civil Online, firms could integrate directly for claim submission, avoid rekeying and prefer electronic submission to couriered case files. By my arrival, an "alpha phase" had been completed with a delivery partner that identified the minimal RESTful functionality to allow this.

The continued challenges presented by COVID-19 had motivated the introduction of new secondary legislation to mandate the use of electronic submission of claims in preference to paper. Pressure was mounting to make a production-grade API available for beta participants that would represent a significant amount of simple procedure business across Scotland, as soon as possible – weeks rather than months. Under Mike Milligan, Digital Services were seeking to grow in-house capability and adopt a more agile approach to change, and as I'd led initiatives like this in the past, we decided to change tack and, rather than work with delivery partners, quickly assemble an in-house development team and get to work.

### Blueprint for the future

From the beginning, it was clear that the success of the project would be defined by having working end-2-end integrations across all beta participants. We resolved to be as collaborative as possible. We checked in with firms individually to see if they would be happy to work openly on this beta, be part of a collaboration platform, meet regularly, share learnings and report progress to the mutual benefit of programme members. All six firms participating were delighted with the idea and signed up to the approach. The key ingredients that proved successful to the collaboration included:

- 1-2-1 sessions with each firm to introduce the proposed technical

approach to the API and the principles of collaboration, listening to feedback and making early adjustments;

- a beta kick-off to introduce all participating firms, share timelines and technical specs and agree ways of working together;
- a weekly "all hands" to update on progress within SCTS and hear how preparations were advancing across firms;
- use of Microsoft Teams to provide a global collaboration team for exchange with all firms and dedicated channels for sidebar (but open) conversations with firms that needed a deep dive on a particular topic;
- early availability of a "sandpit" environment that provided a stubbed-out API to allow firms to get acquainted with the integration scope while SCTS built out the backend of the API.

Broadly speaking, the SCTS team mobilised from a standing start and delivered the Civil Online API within eight weeks. Similarly, from various starting points, it feels like all firms managed to implement their integrations within about eight weeks. I think the speed and success was based on the adoption of a collaborative and agile approach with the willingness of all parties to openly communicate and discuss issues as we travelled towards a common goal.

We now have all six firms electronically submitting simple procedure claims in courts across Scotland every day. We can

accommodate any other firms who wish to participate, with setup in a matter of days using a well documented onboarding process. I think this API based integration was a huge success in dealing with the COVID-19 challenges, but also a success as a blueprint for how SCTS Change and Digital Services should continue to digitally enable integration with law firms and the wider justice system. 



**Douglas Hanley** is head of Digital Design, Scottish Courts & Tribunals Service





# Virtual Firm?

**Did 2020 make you look again at the way you work?**

If you are working from home, thinking about moving your business to a virtual office model or deciding to branch out on your own, contact us.

**LawWare, the virtual practice management specialists.**

 0345 2020 578    [innovate@lawware.co.uk](mailto:innovate@lawware.co.uk)    [lawware.co.uk](http://lawware.co.uk)

**lawware**  
software for the legal profession

# Has 2020 made you look again at the way you work?

A lot of lip service is paid to setting up virtual law firms. However, what is the reality of working in a virtual firm and do the benefits outweigh the drawbacks?

When COVID-19 forced many law firms to send their people home, remote work's time had really arrived.

The rush to give employees access to all the tools they'd need to work from home all came very suddenly. Yet, once everyone settled down, what quickly became apparent to many office-based firms is that employees could be productive and focussed when not in the office.

Once the pandemic is over, will firms go back to "business as usual" and require that everyone work onsite? I have my doubts that things will be that straightforward.

## Virtual law firm benefits

It comes as no surprise that remote work brings a plethora of advantages for law firms. Let's take a look at the key ones.

### Freedom to work from anywhere

A key benefit of a virtual law firm is that it allows you to tap into a talent pool that was formerly unavailable when location was paramount. Being able to commute easily to the office used to be a limiting factor. Remote working changes that. Whether you are in Dundee or Dunedin, you can still get the work done.

In addition, remote working is one way to avoid high-rent and high-mortgage areas. That's especially true for many firms where high cost city living was a pre-requisite for your career.

### Work / life balance

Hand in hand with remote working comes flexible working. Solicitors can start and end their day when they choose – as long as this does not interfere with the work being done on time.

This is invaluable when dealing with the needs of your personal life. Whether it's the school run, doctor's appointments or having to be at home when the central heating boiler needs fixing, the flexibility of homeworking addresses these needs. But remember your clients – their work / life balance needs you to be able to speak to them, provide updates and reassurance when they need it.

### Less commuting stress

According to [Lloyds Banking Group](#), the average UK commuter spends 492 days of his or her working life getting to and from work. That works out roughly at just over an hour each work day.



That's just one side of the coin. An hour of commuting each day is linked to higher levels of stress and anxiety.

Research also shows lengthy commutes to be associated with health issues such as raised blood sugar, higher cholesterol and increased risk of depression.

### Money savings

According to Lloyds, people across the UK are spending an average of between £67 and £90 each month on commuting costs. That means you can save between £800 and £2,000 a year by not having to commute. You could say a virtual law firm puts money back in your pocket.

### Reduced business overheads

Personal savings are one thing, but business savings also come into it. You can save on overheads, office costs, transport subsidies, business rates and a host of other things. Whilst you may still need to maintain some form of office environment, costs should dramatically reduce.

### Increased productivity and performance

Given the right home office working environment, you can enjoy fewer interruptions, less office politics, a quieter noise level, and fewer meetings or more efficient ones. More time and fewer distractions generally lead to increased productivity. That's a win-win for employees and employers alike. Executed well, remote working can allow solicitors and law firms to focus on what really matters – performance.

### Too good to be true?

I could add reduced environmental impact and a host of other benefits to this list but hang on, let's take off the rose-tinted spectacles for a moment. If you are seriously thinking about going virtual, you need to ask yourself a few difficult questions:

- Does your printing and mailing need to be centralised?

- How do you manage and motivate staff?
- How do you onboard and properly train new staff?
- How do you retain staff, build a business culture, set standards and maintain them?
- Are you tied into a long lease for your premises?

Cost savings and flexible working are one thing, but is the lack of a physical presence in the High Street going to help or hinder?

### The key question

Before getting carried away with the romance of remote working, you need to take a long, hard look at all these issues. However, the key question to ask is not what is good for you but rather what do your clients want? If the heart and soul of your legal business used to be a High Street presence that involved face-to-face relationship building, virtual working could put you on a sticky wicket.

### Conclusions

In an ideal world, I would work from a home office in my favourite place – [Granada](#) in Spain. I'd be up early for my tostada, cafe and cognac. Lunching on tapas and relaxing in the sunshine in the evening after a day's work. Reality check: that's not going to happen any time soon.

Virtual operation is probably best suited to sole traders, small firms and specific legal work types. Perhaps a halfway house solution involving reduced office space and partial remote working may suit others. The bottom line is working remotely can give employees the time and environment needed to make healthy choices. However, it has to be your clients' needs and the effectiveness of your business that come first.

**If you would like to find out more about both the benefits and the practicalities of setting up a virtual law firm, please contact us on: 0345 2020 578 or [innovate@lawware.co.uk](mailto:innovate@lawware.co.uk)**

**Mike O'Donnell, Marketing Manager.**

# Year of the cloud

2020 has seen attention turn to IT in the workplace like never before. But is there a consistent pattern, or are some firms getting left behind? The Journal sought the perspective of some well known IT suppliers

WORDS: PETER NICHOLSON



OVID-19 has forced much IT change on the legal profession and the organisations it depends on, and at a far faster rate than anyone would have predicted at the start

of the year. But many have not yet made the leap to fully digitised office systems. The Journal spoke to some of the profession's IT suppliers, to find out how they view it now.

While there is no doubt that nearly everyone has gone in for online conferencing tools, as an essential aid, they have not all been ordering smart new case management systems. Partly this is due to the uncertain business outlook and the need to conserve cash flow. "The buying profile has switched from aspirational to minimum necessary only," reports Simon Greig, sales director at LawWare. "Some firms have taken the opportunity downtime offered and looked hard at their processes in order to do more with what they have. In the harsh light of day most have not. Our impression is that the survival instinct was too strong for anything else to get a look in."

His CEO Warren Wander adds: "There's been support for the home office environment and tools needed, and an interest in security considerations when working from home. In addition, many have taken the opportunity to benefit from training and support (hence we launched the LawWare Academy and more webinars). Doing more with what they have seems to be a key theme."

Clio's general manager, Colin Bohanna, has a slightly different take, with the profession

seeing the urgency of using various cloud based and client centred technologies: "Tools that connect clients with lawyers online, support clients digitally, and help firms collaborate and communicate remotely with their peers and their clients have become table stakes."

In this he sees a client-led demand: "Data from the 2020 Legal Trends Report show that the majority of consumers also favour a lawyer who offers technology solutions, with 69% preferring to share documents electronically and 56% preferring videoconferencing over a phone call. These client-centered technologies will become

*"Some firms have taken the opportunity downtime offered and looked hard at their processes"*

the norm as lawyers and clients both acclimatise to the convenience and affordability of these solutions."

Grant Yuill at Denovo has been trying to get his customers to look beyond their immediate need. "We've tried to work with the leaders of our law firms to assist with support, whenever they need it, so that they are hopefully able to look past the crisis and move their firms from the 'react' phase of dealing with COVID-19, and plan tech initiatives to innovate into what will become the 'new normal' of law practice."

## Mixed picture

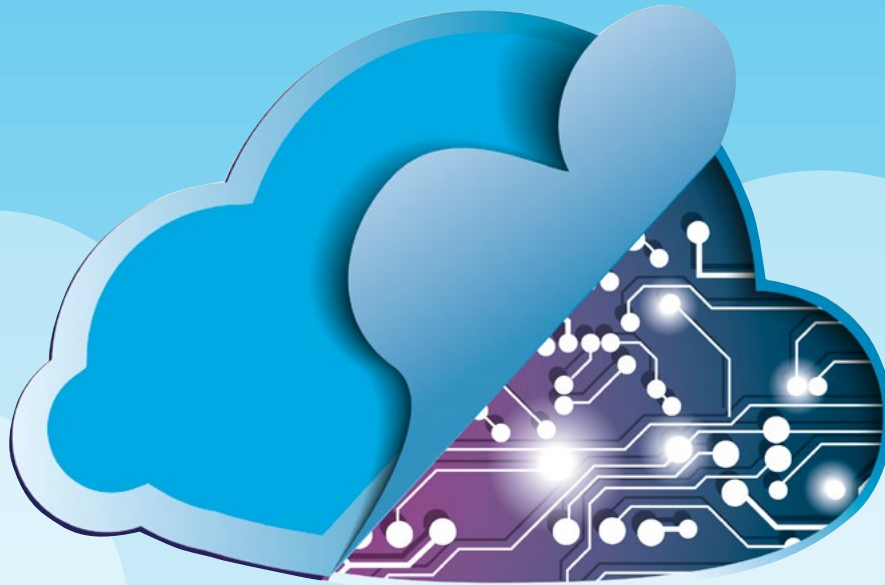
Yuill sees a mixed picture in the market. "The more established firms are holding tight; they are looking for continuity and the security of a system that works for them. Some are making the change and looking for better solutions to everyday tech, but a fair few are hanging on to what they have and just hoping to ride things out until next year when hopefully spring will see things in a better light."

Waterstons' Steve Williams records an increase in demand for technology, platforms and systems to facilitate the shift to remote working – though its specialist M&A practice, which he heads, has seen the level of deal activity reduced. He has noted the adoption of cloud based storage and collaboration tools; squeezing of laptop and webcam supplies due to demand; and sales of server/network infrastructure to allow greater connectivity and flexibility for out-of-office working.

Interestingly, Yuill reports: "One thing that stands out from our perspective is the number of startups emerging during the pandemic. Understandably, firms are paying close attention to profitability of work types, and we have seen whole departments being made redundant. This has led to new startup firms looking for advice on what they can achieve pretty quickly, and some need a lot of guidance as this is a new challenge that they haven't faced before."

Whether or not clients have been investing much, LawWare's Wander notes that lockdown has forced them to innovate in all aspects of their business, including marketing, as their high street physical brand presence is restricted. Echoing Yuill, he adds: "In addition, it has highlighted leadership challenges for





managing a remote workforce, as well as made positions redundant whilst creating opportunities for lawyers to set up on their own.”

### Have and have nots

Lockdown has not necessarily closed the gap between those who tried to keep abreast of the available IT and those who did not. “Whilst there are firms that have operated without paper for a number of years, it’s not right to say that they have had an advantage, because things haven’t changed that much for them,” Greig claims. “What is true is that firms that relied on paper files and manual processes have been much disadvantaged as a result of the pandemic. Inefficient processes are now more inefficient and therefore more costly in time and effort, and firms are not able to increase their fees in order to cover this, so are therefore worse off.”

Are many firms still in the latter category? Yuill believes there are. “A recent report stated that only 30-35% of small law firms are using the likes of modern practice management software. In comparison, larger firms reported a 62% usage rate. Those are some staggering stats and if you’re not part of that 30-35%, you need to start really thinking about how you are going to shape your firm’s success in 2021 and beyond.”

He continues: “What the last few months have done for many firms is force them into having a look around at the technology they are currently using. They’ve had to ask themselves if that technology is making this transition to running their business remotely easy or is it causing more problems than it solves. Whether it’s an unreliable server, a temperamental internet connection, or case management software with the wheels falling off, out-of-date technology will really slow a firm down.”

Bohanna describes the divide in this way: “The future is already here; it’s just not evenly distributed, and law firms are still catching up.”

### The next chapter

What might be coming down the line, in terms either of market trends or new tech? Waterstons’ Dan Burrows reflects the position of most in commenting: “We do not expect a return to the way things were. Flexible and homeworking will be adopted across all sectors.” That will involve tools like Teams and Zoom, and cloud based services will continue to increase in popularity, having come into their own during the pandemic.

He adds that on the M&A front, “due diligence will need to be still more comprehensive, with technology due diligence taking a more significant role”; further, even for deals not involving IT companies, “technology in the supply chain or other key domains speaks directly to value”.

Yuill also warns against thoughts of going back to where we were. “Allowing a reflex return to more conventional ways of working in any firm, even for just a few more months, risks undermining their ability to compete over the next few years. Firms who ramp back up their use of paper and retreat from the intensely agile model of the last few months might quickly find themselves literally years behind direct competitors.”

Rather, previous resistance to hybrid or agile operating models – with workers based partly or wholly remotely – will crumble in the face of employee, and client, pressure.

Bohanna predicts we will soon see “technology that vastly improves service and communications between lawyers and their clients, making it faster, easier, and more convenient for lawyers to share information about client matters without having to rely on meetings in physical office spaces”.

Wander promises that LawWare has “a few things up our sleeve” – but we will have to wait and see what those might be.

He further remarks: “At present, we’re seeing a pent-up busyness just now in areas such as property. However, it’s likely this will

nosedive as we reach the end of the year, and next year could be challenging economically. Firms will reconsider the need for physical offices and their working practices. People’s minds will be more focused and operations leaner – perhaps a well needed shakeup and wakeup call?”

### Concluding thoughts

While choosing the best system for your firm can be daunting, Bohanna flags up the importance of considering long term goals over any specific features that may seem attractive in the short term. “It’s also important to look at legal case management systems as more than just a single piece of software,” he adds. “Whether it’s word processing, email clients, electronic calendaring, document assembly services, client intake databases, bookkeeping systems, or other specialised legal tools, modern law firms typically incorporate several technology solutions into their office workflows. To ensure a seamless transition to the cloud, it’s important to do your due diligence and focus on what’s truly important to your firm’s ability to continue to work as a cohesive team.”

For Waterstons’ Williams, the pandemic has demonstrated that flexibility and adaptability in the face of uncertainty can make the difference between survival and failure. Looking at the broader picture, he concludes: “Businesses will need to work resiliently, but also move quickly to take advantage of opportunities that are thrown up by the uncertainties of the pandemic and Brexit. This means that legal practices will need a ready network of alliances with partners that can be deployed quickly to respond to their own and their clients’ opportunities.”

The overall message is, if you are not already looking at upgrading any less than streamlined processes, can you afford to fall further behind? [1](#)



# Five questions lawyers should ask cloud technology vendors

You need to ask the right questions to make an informed choice of supplier



In today's legal landscape, success requires more than just exceptional legal work. Sharp lawyers must also find ways to enhance productivity, minimise expenses, and serve clients from anywhere. While adopting cloud-based legal technology can support these goals, not all providers are created equal – and lawyers have to ascertain which vendors are up to standard.

If you're thinking of introducing (or changing) cloud technology at your firm, it's prudent first to assess potential vendors. While it may be obvious to evaluate business factors like a provider's history, funding, and stability, it's equally important to query things like the level of security and reliability they offer. But what risks should you be alert to, and what do you need from potential vendors to make an informed decision? Consider these questions to help guide your assessment.

## 1. What are their terms of service and confidentiality policies?

As a solicitor, it's essential – and it's your legal and ethical responsibility – to protect and ensure client confidentiality when it comes to cybersecurity. As such, your first assessments when considering any potential cloud provider should be whether they have clear and accessible:

1. terms of service and privacy policies;
2. lawyer and client confidentiality policies (specifically, do they recognise and agree to abide by the duties of confidentiality?);
3. contractual obligations to notify you of any demands for client information – with time for you to intervene.

### Key questions:

- What uptime does the vendor guarantee as part of their service level agreement?
- Is there an initial setup fee? Are there additional usage or bandwidth fees?
- Is there a cap or limitation on the cloud provider's ability of service, such as bandwidth caps or storage limits?

- Do they explicitly recognise your ownership of any intellectual property?

## 2. What is the plan for data backup and business continuity?

Disasters (both natural and manmade) do, unfortunately, happen. While using cloud-based technology can help mitigate the risk of losing data if a physical disaster (such as a fire or flood) happens at your office, providers must have a plan to protect your data and ensure business continuity.

### Key questions:

- What are their documented procedures for business continuity and disaster recovery? Have they been tested?
- Are there regular backups that are tested for validity? Are they encrypted?
- How – and how easily – could you retrieve your data from the provider if needed?
- Can you maintain a local backup of your data?
- If you retrieve data, is it in a usable, non-proprietary format?

## 3. What security measures do they maintain?

Security is critical for your firm – on all fronts. Take time to investigate and understand exactly what reasonable security measures the cloud provider offers.

### Key questions:

- What controls to prevent unauthorised access or disclosure of information (including penetration testing) have they implemented?
- What features (such as two-factor authentication, IP monitoring, strong password requirements, role-based access control) does the provider offer for user authentication and to prevent unauthorised access?
- What are their data protection policies? Do they employ encryption at rest and in transit?
- How regularly (and is it ad hoc, annually, or on some other schedule?) is the provider's security audited? Will they allow you to obtain copies of any security audits performed?
- What support and/or remedies will the vendor provide in the event of data breaches and service availability failures?

## 4. What is the provider's geolocation?

A key advantage of using fully cloud-based software is that it lets you go mobile and not be tied to on-premise servers at your office – but you still must think about where the provider is physically located. A true cloud-based provider should be capable of maintaining multiple geographical locations to ensure data safety and residency requirements.

### Key questions:

- Where are the cloud provider's servers located?
- Do they have multiple storage locations? If so, how often are these synced?
- Can they provide you a means to satisfy any applicable data residency requirements?

## 5. What are the policies for termination of services?

If, in the future, you decide to terminate your use of a cloud-computing technology service, you need to know what happens next. Are there, for example, any additional costs or penalties that your firm would incur for terminating the service? What would happen to your data and information?

### Key questions:

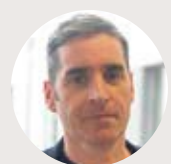
- Will your information be returned/deleted by the cloud provider on termination?
- Can your data be sanitised from the cloud provider in the event of termination?

## Conclusion

By thoroughly investigating a potential service provider's policies and asking smart questions, you'll be in a better position to evaluate their value to your firm. To help further, here is a handy Cloud Computing Due Diligence Checklist with some of the questions I outlined in this article, and more.

*Colin Bohanna is General Manager of Clio in the UK, working with solicitors and business owners*

*to transform their lives, practices, and client service through trusted legal technology. Clio is a leading cloud-based case management software and an approved supplier of the Law Society of Scotland*





**Prepare, send, and  
sign documents—  
without ever leaving Clio.**



Learn more about e-Signatures and document management with Clio—the UK's case management leader.

Visit [clio.com/uk](https://clio.com/uk) or call +44-800-433-2546.

# Waterstons – a trusted partner for IT/legal collaboration

We're not afraid to admit that as technology businesses go, we're a bit different at Waterstons. Over the last 26 years, we've grown from our founders' basement to a 200-strong business with offices in the UK and Australia, 24/7 operations, cybersecurity, bespoke software and consultancy teams. Same old, same old, you say?

What makes us different is our relationships with our clients. We're driven today by the same values that the business was founded on: always doing the right thing for our customers; only doing work that adds value; always being honest and objective (we don't promote or favour any vendors or products over others); putting our people and our customers' people first, and always innovating.

## M&A specialism

It's that spirit of innovation that led us to the creation of a mergers and acquisitions practice. Working with customers including private equity firms, and our existing customer base, we had provided technology due diligence services, helped integrate and separate businesses after deals, and advised on all aspects of technology in the deal process. Creating a dedicated team to provide this support on an ongoing basis to our customers was an obvious choice, and it continues to go from strength to strength.

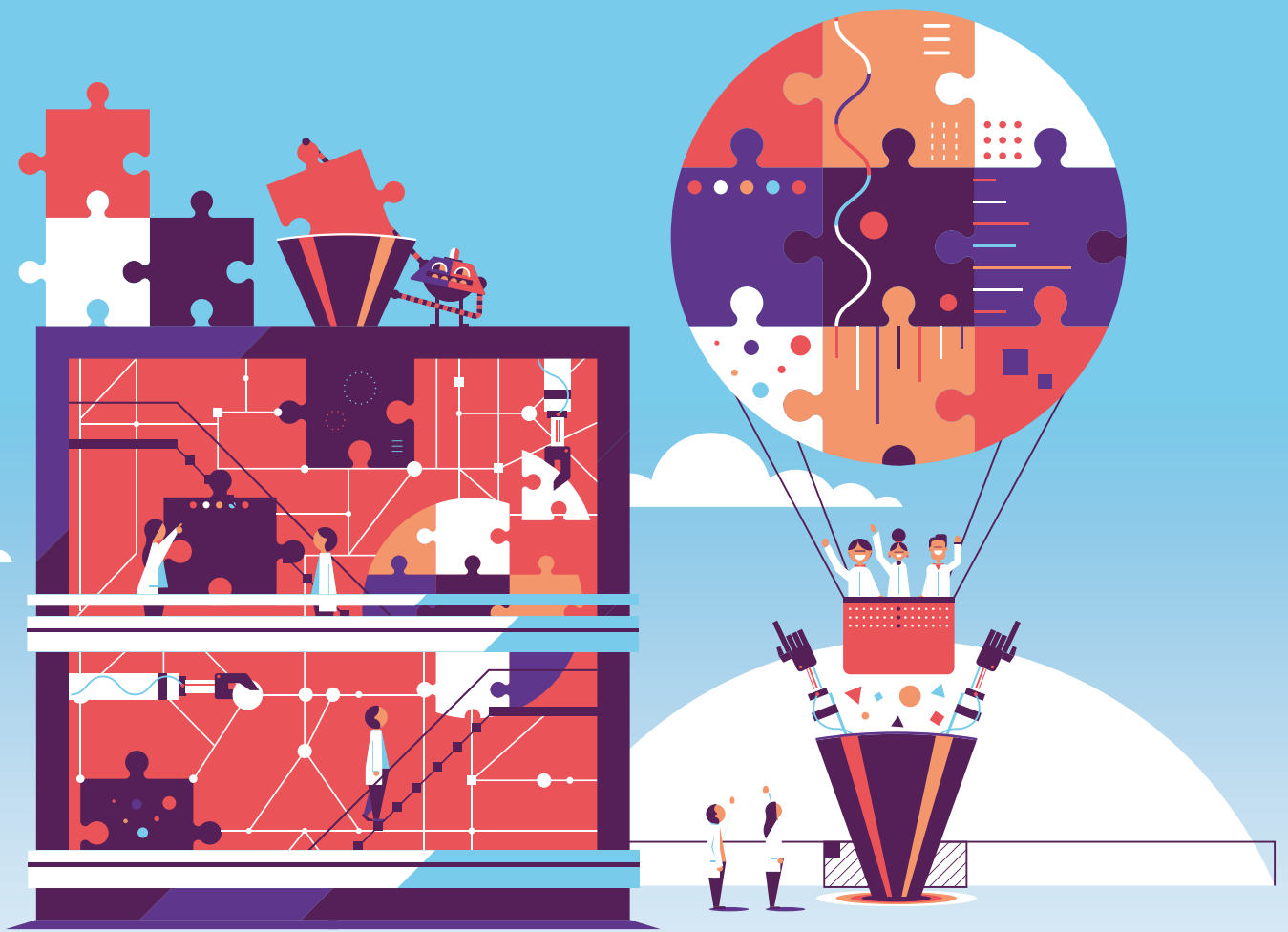
It's our experience of working alongside commercial, financial and legal due diligence teams that's led to us forming relationships with a number of those firms we've worked with, to whom we provide support when they need it. We're fortunate to have our own in-house legal experts, who speak your language to provide technology-focused,

unbiased advice on techno-legal matters. We undertake due diligence activities to identify key risks and opportunities which then inform the deal structure as well as the drafting of sale and purchase agreements, warranties, guarantees, conditions precedent and transition service agreements. We can also assist with negotiating IT contracts, reviewing licensing for transferability or scalability, and identify where steps need to be taken to secure contract positions to prevent stranded costs, licence infringements and detrimental financial, legal and operational consequences.

## Broad expertise






It's Waterstons' broad range of expertise and commitment to objectivity that really adds value, however. When a project requires a software developer to appraise an app, or write an integration between systems, we can help. If cybersecurity is a concern, we have accredited experts who can help gain ISO27001, IASME, or Cyber Essentials certification. It will come as no surprise that our technology projects experts can implement the latest technologies, whether locally or on a global scale; nor that we can provide ongoing 24/7 support for those implementations.

Whatever your requirements, we can provide our support flexibly and rapidly to help. From "due diligence as-a-service", where we are retained to provide ad hoc advisory services during deals on a flexible basis, to providing an interim CIO, IT manager, or dedicated support to you or your clients, we can work with you to determine the optimum model for supporting you not just in day-to-day IT operations, but to help you deliver better outcomes for your own clients.



# Your technology partner in M&A

Supporting merger, carve-out, MBI and MBO deals, we'll partner with you and other advisors and provide:


-  Technology due diligence to inform deal structure & transaction documentation
-  IT contract negotiation & licence review
-  Code reviews, systems & technology audits
-  Transition advice & support
-  Seller's pack technology documentation

If you'd like to know more about our M&A experience or our services, contact our M&A team:

**w@terstons**  
Business & IT Consultancy

Steve Williams, Head of M&A Practice

 [steve.williams@waterstons.com](mailto:steve.williams@waterstons.com)

 0345 094 094 5

Glasgow | Durham | London | Sydney

 [waterstons.com](https://www.waterstons.com)

## Keeping justice on the rails

This month's civil court roundup includes a clutch of recently released Sheriff Appeal Court decisions covering matters from proof by affidavits to recovery of documents

### Civil Court

LINDSAY FOULIS, SHERIFF AT PERTH

#### Proof by affidavit

It is difficult to categorise *Neill v Neill* [2020] SAC (Civ) 10 (28 May 2020). There were a number of issues, some outwith the ambit of this article. However, consideration of the Sheriff Appeal Court's opinion seems to me to emphasise why it is important to get the procedure right!

The issue I wish to cover here is the ground of appeal directed at the sheriff allowing additional affidavits to be lodged which had not been seen by the opponent, following the case going to avizandum. Affidavit evidence of the merits had been allowed. Whilst OCR, rule 33.28(1) and (2) permits such a course, it is unclear whether the relevant interlocutor specified that this was on the basis that the action was undefended on the merits. This might have provided a solution to the problems facing the Appeal Court, as the court observed that while the pursuer and the sheriff appeared to think the action had been allowed to proceed as undefended on the merits, this had not occurred.

Proof at large had been allowed. Accordingly, the defender was allowed to challenge the content of these affidavits at proof and indeed was allowed to receive intimation of any affidavit lodged in order that the content

could be challenged. As an aside, it appears that even the original affidavits had not been intimated. In any event, the situation arose as a consequence of the sheriff being unsatisfied with the affidavit evidence so far as enabling decree of divorce to be granted. The sheriff clerk emailed the pursuer's agent advising that the sheriff was "unable to ascertain which party was at fault", and suggesting amending the grounds of divorce. This proposal was initially adopted, but rather than wait for the defender to confirm consent, the pursuer's agent simply lodged supplementary affidavits. They were not intimated to the defender's agent albeit the agent was advised of the lodging. In his judgment, the sheriff took account of the subsequent affidavits. The question was whether this process and the defender's inability to dispute the content of the affidavits had a bearing on the sheriff's decision on the financial craves.

The Sheriff Appeal Court determined that the procedure was contrary to natural justice, with evidence being presented behind the opponent's back. As to whether it vitiated the determination on financial issues, if the action had been allowed to proceed as undefended on the merits, the court might well have decided that this unusual procedure did not vitiate that determination. However, it could not compartmentalise the evidence in the further affidavits to the merits alone, as the sheriff formed an adverse view of the defender. Accordingly, the court considered the case of new.

#### Appeals

In *WPH Developments v Young & Gault LLP (in liquidation)* [2020] SAC (Civ) 7 (4 August 2020) both parties moved the court to remit the appeal to the Inner House in terms of s 112 of the Courts Reform (Scotland) Act 2014. In acceding to the joint motion, the court noted that the House of Lords and UK Supreme Court had on

three occasions considered the operation of s 11 of the Prescription and Limitation (Scotland) Act 1973. The instant case raised a distinct issue. It was beneficial if there was certainty as to the operation of the legislation in these circumstances. Amendment to the provisions added to the uncertainty. Accordingly, the appeal raised a complex point of law and thus satisfied the first stage of the test as to whether an appeal should be remitted.

Considering whether to exercise the court's discretion in favour of granting the motion, the intention of the 2014 legislation was to limit onward appeals from the Sheriff Appeal Court to the Court of Session. The court observed that a crisp point of law which was novel or complex might well be suitable. The possibility of the matter ultimately being considered by the Supreme Court was also a factor, as was the raising of a point of wider interest which would have general application. In the circumstances, the motion was granted.

#### Family actions: decree by default

Decisions on decree by default are of necessity fact specific. In *A v A* [2020] SAC (Civ) 9 (17 July 2020) the decree was granted at a pre-proof hearing in early 2020 as a consequence of the defender failing to appear or be represented. As a result the divorce action was allowed to proceed as undefended. The action had been instituted at the end of 2017. The Sheriff Appeal Court noted that the merits of the divorce could not realistically be challenged and had been met by disingenuous averments in response. The defender's claim for a capital sum remained vague and provided no basis for an award in terms of the Family Law (Scotland) Act 1985. No proper explanation was given for the inadequacy of the defender's case. The pursuer was entitled to resolution of her divorce action within a reasonable time.

Interestingly, the court observed that a litigant's failure to challenge inadequate averments at debate did not constitute acceptance of their constituting a statable case in law. It was a perfectly valid tactical decision and there was no obligation to point out the deficiencies of an opponent's averments. As an aside, is litigation by ambush still alive?

An attempt to withdraw a concession made in a note of argument prepared for the appeal was also refused, as it was made in the course of the appeal process and related to the pleadings as opposed to an incidental matter.

#### Derivative proceedings

The procedure for leave to pursue derivative proceedings was examined by the Sheriff Appeal Court in *CJC Media (Scotland) v Sinclair* [2020] SAC (Civ) 11 (3 August 2020). The sheriff at first instance had granted leave to raise such



proceedings on consideration of the initial writ. On appeal it was held that this interlocutor was not competent, as OCR, rule 46.1 and s 266 of the Companies Act 2006 required the application to be served on the company if it was considered that there was a *prima facie* case for leave to be granted. If the company wished to be heard on the application, it required to lodge written submissions within 21 days of service.

This procedure had not been followed, but was an essential prerequisite. It was not a procedural nicety. It was conceded that notwithstanding the incompetency, it was open to grant retrospective leave and the Appeal Court was content to proceed on that basis. However it did not consider it was an appropriate case to grant leave. The company's two directors had fallen out. They had pursued separate interests thereafter. Whilst the other director was in breach of his duties to the company, to grant leave and an order for indemnification for expenses provided a privilege to one member at the expense of the other. The court did not consider that a disinterested director would have insisted on raising proceedings.

## Res judicata

In *Chief Constable of the Police Service of Scotland v XY* [2020] SC ABE 42 (1 September 2020) a plea of *res judicata* was taken to an application for a risk of sexual harm order. Many of the facts founded on had been the subject of prior referral proceedings. Sheriff Miller observed that whilst they could both be described as "manifestations of the state", two public officials did not necessarily fall to be regarded as the same party for the purposes of *res judicata*. Here the reporter and the chief constable were different when regard was had to their focus and interest in the context of the proceedings they pursued.

## Recovery of documents

Although ultimately Sheriff Cubie's decision in *XY Council* [2020] SC GLA 40 (15 November 2019) related to possible contempt arising from the unilateral redaction of documents produced following the approval of a specification of documents and commission and diligence for their recovery, in considering that issue he examined the procedure regarding recovery and it is worth drawing attention to these observations. Sheriff Cubie noted that the purpose of the procedure is to enable a court to monitor and decide on the relevance, admissibility, or confidentiality of material sought to be recovered and indeed ultimately recovered. If the haver is of the view that documentation, for which commission and diligence for recovery has been granted, is confidential, it still has to be produced.

The court then determines what is and is not confidential having considered the material. If the documentation is confidential, the court excludes it from disclosure or authorises redaction. The havers have no rights unilaterally to carry out redaction of any document which comes within the ambit of any calls in the approved specification, or to determine what can or cannot be produced if the documentation falls within that ambit. Sheriff Cubie applied his observations equally to any application in terms of the Administration of Justice (Scotland) Act 1972. He further observed that if production was sought under the data protection legislation, the haver could unilaterally redact documents produced.

In *Hannaway v Discount Trade Windows* [2020] SAC (Civ) 8 (19 August 2020) the Sheriff Appeal Court considered the refusal of an application in terms of s 1 of the 1972 Act in which the pursuer sought recovery of an insurance policy. The pursuer held a decree against the first defenders for damages in respect of personal injuries sustained in an accident. He averred that he intended to raise an action against their insurer to satisfy the decree. The company was not a relevant person in terms of the Third Parties (Rights against Insurers) Act 2010, as no insolvency procedure had been undertaken against it, nor had it been removed from the Register of Companies.

While the pursuer had disclosed the nature of the proposed claim and a reasonable basis for it, the Appeal Court did not consider there was a likelihood of proceedings being instituted. There was a clear obstacle to any action, as the company was not a relevant person in terms of the 2010 Act. The court had no indication when that position would change. The pursuer had been partly responsible for this state of affairs by opposing an application to remove the company from the register. He could initiate insolvency proceedings, but had provided no explanation why he had not. As the purpose of the proceedings was to ascertain whether the insurers had a defence under the insurance contract, it could not be said that the action was more likely than not to be raised. The court refused the appeal.

The court also observed that it had difficulty understanding the insurers' reluctance to release the policy. Any question of

confidentiality could be addressed by redaction or lodging the policy in a confidential envelope. The diligence was not a fishing one, as the basis for action was clear. The purpose was to assess the strength or otherwise of the insurers' defence. As a final comment, it is interesting to contrast Sheriff Cubie's observations regarding a haver redacting a document with the comment in the Sheriff Appeal Court's opinion.

## Pursuers' offers

The issue in *Davidson v Clyde Training Solutions* [2020] SC EDIN 34 (3 August 2020) was whether the pursuer's offer had been effectively withdrawn, thus preventing the defenders subsequently accepting it. In terms of OCR, rule 27A.3(3) such an offer could be withdrawn by the lodging of the appropriate minute. No such minute had been lodged. The offer was purportedly withdrawn by an email to the court.

Sheriff McGowan considered that while OCR, rule 22A introduced the new phenomenon of pursuers' offers, their purpose was to facilitate settlement and thus he could consider the pre-existing law relating to tenders. A tender could be treated as no longer open for acceptance by reason of any important change of circumstances known to both parties, albeit there had been no formal withdrawal. In the instant case, the pursuer's offer was to be treated as lapsed. Considering the law of contract, the same conclusion was reached. In this case, the defenders had rejected the pursuer's offer, which resulted in that offer being unavailable for later acceptance.

The Sheriff Appeal Court examined pursuers' offers in *Wright v National Galleries of Scotland* [2020] SAC (Civ) 12 (27 August 2020). The pursuer had failed at first instance but had succeeded on appeal, the award exceeding the figure set out in a pursuer's offer at first instance in terms of rule 27A. The Appeal Court considered that it could be substituted for the sheriff in rule 27A.8(1). It had pronounced the relevant judgment in overturning the decree of absolvitor with an award to the pursuer. The circumstances were quite different from those considered by the Inner House in *Anderson v Imrie* 2019 SC 243. The purpose of rule 27A was to provide a means to facilitate settlement and it mattered not whether the judgment which was at least as favourable was pronounced at first instance or on appeal, provided the offer had been made prior to proof. The relevant period for the purpose of the uplift ran from the date by which the offer could reasonably have been accepted until the judgment.

## Expenses

In *Keenan v EUI Ltd* [2020] CSOH 89 (15 October 2020) the pursuer had sued for £1,250,000. The action settled for £43,500 inclusive of interim damages. The motion for the

## Update

I seem to have missed this but *Santander Consumer (UK) plc v Creighton*; *Santander Consumer (UK) plc v Simpson* (January article) has been reported at 2020 SLT (Sh Ct) 61.

expenses of the action to date was opposed by the defenders, who sought a modification of expenses to the date of tender to nil with an award in their favour thereafter. Failing this, expenses should be restricted to the sheriff court scale. Before the action was raised, the defenders had offered the sum eventually tendered. The pursuer's quantification of claim lodged in process exceeded £1,100,000. Two months before the proof was due to commence, the defenders intimated surveillance footage taken over a four-year period. A minute of amendment was subsequently intimated referring to this footage, followed shortly thereafter by the tender which was accepted six days later.

Lord Weir concluded on the authorities that there were a number of clear principles. Litigation should not be commenced or prolonged unnecessarily. Notwithstanding a tender required an offer to pay expenses, this did not bind a court's discretion in determining expenses. All relevant material would be considered, including a party's conduct. In the absence of proof it was difficult properly to make a finding of dishonesty such as would justify departure from the normal rules relating to tenders. The sum at which an action settled could be taken into account.

Lord Weir considered that he could not reach a firm conclusion that the pursuer had been dishonest about the effects of her symptoms so as to justify departure from these normal rules. The only conclusion he felt able to reach was that when the tender was lodged, the pursuer considered there was a considerable litigation risk that the tender could not be beaten. The pre-litigation offer had only been open for acceptance for a limited period, after which it was considered to be withdrawn. At that stage, the pursuer was still investigating the value of her claim. Lord Weir further did not consider that modification to the sheriff court scale was appropriate. At that stage, the information available justified raising the action in the Court of Session. <sup>1</sup>

## Employment

CLAIRE NISBET,  
ASSOCIATE, DENTONS  
UK & MIDDLE EAST LLP



Redundancies are, unfortunately, big news at the moment. Given the impact of COVID-19 on the economy, in combination with the winding down of the Coronavirus Job Retention Scheme, many businesses are having to think about the best way to restructure their organisation in order to ensure survival. Law firms are no different.

At the end of the summer the BBC reported, following a freedom of information request,

that in June 2020, 1,888 employers filed plans for 156,000 job cuts, a sixfold increase from June 2019. In July, 1,784 firms made plans to cut nearly 150,000 jobs, up almost sevenfold on last year. This information is based on employers planning collective redundancies (i.e. 20 or more at a single "establishment"), who are legally required to notify the Government of their plans. In reality, far more businesses will have been planning redundancies then, will be now, and more still will make employees redundant in the coming months. Acas has reported a marked increase in calls to its helpline, those concerning redundancy up by 160% over June and July when compared to the same period in 2019.

## Current guidance

In timely fashion, Acas has issued updated guidance for employers considering making redundancies. This should be your first port of call if you are considering redundancies in your own firm or you have not advised a client through a redundancy process in a while. The guidance helpfully adds clarity to changes regarding redundancy and notice pay for furloughed or formerly furloughed employees. As it sets out, furloughed employees are entitled to redundancy pay based on their normal wages, not their furlough rate. Basic awards for unfair dismissal cases must also be based on full pay rather than furlough pay.

Acas stresses that redundancy should always be a last resort after attempts to save roles. Suggested measures to retain jobs include:

- implementing a hiring freeze;
- offering voluntary redundancy or early retirement;
- temporarily reducing working hours;
- asking employees to voluntarily stop working for a short time;
- retraining employees to do other jobs in the business;
- letting go of temporary or contract workers; and
- limiting or stopping overtime.

Employers should also consider moving employees into suitable alternative roles. If another role is indeed "suitable" and is not offered, the employer risks an unfair dismissal claim.

## Improper process

Indeed, employers' failings around the process of managing suitable alternative roles are a common cause of and contributor to tribunal claims, including the recent case of *Gwynedd Council v Barratt* UKEAT/0206/18/VP (3 June 2020).

Employers generally use

an objective scoring matrix when selecting employees for redundancy.

However, in this case, the council decided instead that new positions would be filled by an application and interview process. Both claimants applied for roles but were unsuccessful. The council did not consult with the unsuccessful employees and there was no right of appeal; the claimants were subsequently made redundant. The Employment Tribunal found that the redundancy process was unfair, because of the use of an application process, and the Employment Appeal Tribunal (EAT) has now endorsed that decision.

The EAT found there was a difference between a redundancy process where employees are considered for alternative roles using a "forward-looking" selection process, such as the competitive interview process used in this case, and a process of consultation and selection using fair and objective criteria. In this case, the claimants were applying for essentially the same jobs they had been carrying out previously – as such, the process was more akin to selecting employees for redundancy from a competitive pool. Because of this, requiring the employees to interview for their own jobs, with no consultation or appeal, was unreasonable and the dismissals were unfair.

## Commentary

This will no doubt be a significant finding for employers currently grappling with redundancies, and unsure how best to go about selecting for their new, rationalised workforce.

Key points for employers with other roles to offer, are that they can use an interview process when considering redundant employees for alternative employment, where that alternative is a genuinely new role.

However, interviews are unlikely to be the right approach if the roles are essentially the same as those which the employees had previously been carrying out. In those cases, the employer should identify appropriate "pools" and then select employees for redundancy using fair and objective criteria.

However, it is important that employers show they attempted, or at the very least considered, alternative measures to prevent job losses in the first place.

If redundancies are indeed unavoidable, employers should take advice and review the Acas guidance to ensure they are managing each stage of the redundancy process correctly. Otherwise, the increasing tide of redundancies will be met with a similar rise in tribunal claims. <sup>1</sup>





## Family

DIANNE MILLEN, ASSOCIATE,  
MORTON FRASER LLP



Some recent cases illustrate the evidential and procedural issues involved in dealing with proofs on the merits of divorce, which are worth considering even though most cases may conclude on a non-cohabitation ground.

*YI v AAW* [2020] CSOH 76 (8 July 2020) was the first Court of Session family proof to take place by videoconference. Both parties resided in Dubai; the defender had raised proceedings there after the pursuer had raised in the Court of Session. The parties agreed that the marriage had irretrievably broken down; however, their behaviour during the marriage and the reason for their separation were disputed.

Lady Wise considered a number of evidential issues. First, since only the parties knew what went on between each other, their evidence required “the most careful scrutiny” (para 32). She did not accept that videoconferencing made assessing credibility and reliability particularly difficult. Her “vision and ability to hear the witnesses was clear and unimpeded” (para 44), and she had been able to observe body language just as she would in the physical courtroom. It is helpful to have such a clear view given the ongoing debate about the role of virtual proofs.

The court also referred to other information in forming a view. Post-separation behaviour was relevant: in evaluating the defender’s evidence the court took into account his actions after separation that were consistent with the pursuer’s position. The pursuer had also provided “one or two adminicles of contemporaneous material that supported her position” (para 33). While merits proofs are unlikely to require extensive vouching, practitioners should consider whether there is any material such as texts or emails that may be lodged.

Finally, Lady Wise confirmed that while evidence must be provided from someone other than the parties to the marriage (Civil Evidence (Scotland) Act 1988, s 8(3)), per *Taylor v Taylor* 2000 Fam LR 78 corroboration of all material facts is not required. The pursuer’s two corroborating witnesses provided sufficient and consistent support for her account on important matters (para 46).

### Affidavit evidence

Proofs on the merits are rare, but even if behaviour is not the focus there can still be pitfalls, as discussed by the Sheriff Appeal Court in *Neill v Neill* [2020] SAC (Civ) 10 (28 May 2020). In challenging the financial provision ordered by the sheriff, the appellant argued that

**IN FOCUS**

# ...the point is to change it

Brian Dempsey’s monthly survey of legal-related consultations

### Encouraging in-work progression

The UK Department for Work & Pensions is consulting on how to ensure that “once in work, individuals are able to progress, by taking on higher quality work for higher wages”. Its recently established In-Work Progression Commission notes that the problem of persistent low pay is concentrated in certain sectors and most likely to affect women, younger, older, disabled and ethnic minority workers.

See [www.gov.uk/government/consultations/call-for-evidence-and-good-practice-on-in-work-progression/call-for-evidence-and-good-practice-on-in-work-progression](http://www.gov.uk/government/consultations/call-for-evidence-and-good-practice-on-in-work-progression/call-for-evidence-and-good-practice-on-in-work-progression)

**Respond by 20 November via the above web page.**

### Digital strategy for Scotland

The Scottish Government and COSLA wish to develop a “big, bold and transformative” strategy that “recognises that digital is now at the front and centre of how we live and work”, and seek views on actions to bring a digital Scotland to reality. See [consult.gov.scot/digital-directorate/digital-strategy-for-scotland/](http://consult.gov.scot/digital-directorate/digital-strategy-for-scotland/)

**Respond by 23 December via the above web page.**

### Private tenants’ fair rent

The Local Government & Communities Committee seeks views on Pauline McNeill MSP’s Fair Rents (Scotland) Bill. It aims to limit annual rent increases in private residential tenancies to no more than the Consumer Price Index plus 1%. See [yourviews.parliament.scot/lgc/fair-rents-bill/](http://yourviews.parliament.scot/lgc/fair-rents-bill/)

**Respond by 7 December via the above web page.**

### Registers of Scotland fees

The Keeper of the Registers seeks views on intended increases in fees to ensure that the Registers operate on a self-sustaining basis. See [consult.gov.scot/registers-of-scotland/registers-of-scotland-fee-review-2020/](http://consult.gov.scot/registers-of-scotland/registers-of-scotland-fee-review-2020/)

**Respond by 24 December via the above web page.**

### Travelling funfairs

The Parliament’s Local Government & Communities Committee seeks views on the Licensing of Funfairs (Scotland) Bill, a member’s bill proposed by Richard Lyle MSP. It would create a simplified licensing system with a much

### Road Works Register fees

Scottish ministers are consulting on regulations promulgated annually under the New Roads and Street Works Act 1991 which enables them to provide for the target cost of operating the Scottish Road Works Register in 2021-22. See [consult.gov.scot/transport-scotland/srwr-prescribed-fees-2021/](http://consult.gov.scot/transport-scotland/srwr-prescribed-fees-2021/)

**Respond by 18 December via the above web page.**

### .... and finally

As noted last month, the Scottish Government seeks views on measures to further challenge men’s demand for prostitution (see [consult.gov.scot/violence-against-women-team/equally-safe-reduce-harms-associated-prostitution/](http://consult.gov.scot/violence-against-women-team/equally-safe-reduce-harms-associated-prostitution/) and [respond by 10 December](http://consult.gov.scot/violence-against-women-team/equally-safe-reduce-harms-associated-prostitution/)).

his approach to the merits had vitiated these orders.

The pursuer and a witness had lodged affidavits dealing with unreasonable behaviour prior to the proof, but neither was cross-examined on this evidence. Having made *avizandum*, the sheriff took the view that he was “unable to ascertain which party was at fault” and thus unable to grant divorce. The

court invited the pursuer’s agent to consider amending to one year’s non-cohabitation with consent. A minute of amendment was intimated but apparently not lodged, following which the pursuer’s agent prepared and lodged (but did not intimate) supplementary affidavits. The sheriff then granted divorce and made financial orders.

The defender appealed on the basis



# Briefings

→ that the supplementary affidavits, which were “damaging to his general character” (para 14), had been taken into account by the sheriff when making financial orders. The SAC held it apparent that this was so. The lack of opportunity for the defender to challenge this evidence was clearly contrary to natural justice. The pursuer argued that the material in the affidavits was directed only to the (unopposed) merits of divorce, but the court disagreed that the action could be “compartmentalised in that way” (para 25). The action was not formally undefended on the merits and could not now be treated as such.

Agents preparing for a divorce proof must focus and prioritise for reasons of economy and strategy. While parties may informally agree by the time of proof that they both wish to be divorced, *Neill* suggests it may be risky for defenders not to deal with evidence for the merits on the basis of such agreement. Pursuers also cannot assume that because divorce is not actively opposed, the action can be treated as undefended to the extent of that crave.

The SAC allowed the appeal on the financial orders, but also observed that the sheriff had applied the wrong test to the merits: the question of “fault” was irrelevant. However, it took the view that the original affidavits provided sufficient evidence to grant the crave for divorce.

## Decree by default

Finally, the SAC has also provided commentary on the approach to decree by default in divorce actions: *A v A* [2020] SAC (Civ) 9 (17 July 2020). Because evidence is required before decree can be granted, repelling defences on the basis of default does not automatically lead to divorce. The fact that the sheriff then has to consider the affidavit evidence put forward with the minute for decree provides a safeguard for defenders in default, although in this case the interests of justice did not justify allowing the defender’s appeal. ①

## Human Rights

ROSS CAMERON, ASSOCIATE,  
ANDERSON STRATHERN LLP



In *BC v Chief Constable, Police Service of Scotland* [2020] CSIH 61 (16 September 2020), the Inner House upheld the Lord Ordinary’s decision that the reclaimers (10 police officers), who were part of closed “WhatsApp” group chats, had no reasonable expectation of privacy in respect of messages sent to the groups.

The reclaimers had petitioned for judicial review, seeking declarator that the use of their WhatsApp messages in misconduct proceedings was unlawful and incompatible

with their right to respect for their private and family life in terms of article 8 ECHR. The messages, containing sexist, racist, anti-Semitic and homophobic content, had been discovered during an investigation into sexual offences, in which the reclaimers were of no interest.

The Lord Ordinary, Lord Bannatyne, held *inter alia* that a right to privacy did exist in the common law of Scotland; however the officers could have “no reasonable expectation of privacy” in relation to the messages given their offensive content and the standards expected of police officers. It was essential for the purposes of public safety and successful policing that the police maintain the confidence of the public.

The officers reclaimed, arguing that the Lord Ordinary had erred in holding that they had no reasonable expectation of privacy, and as to interference with their rights being necessary in the interest of public safety.

## Content matters

The Inner House refused the reclaiming motion. It held that the reclaimers could have no reasonable expectation of privacy in respect of the messages in question, thus there was no interference with their rights under article 8(1).

The court did question the Lord Ordinary’s reasoning which led him to conclude that there was a fully developed common law right of privacy in Scotland concomitant in range and scope with article 8 (paras 75-86). However, as there was no cross-appeal questioning this conclusion, the issue was not a live one for the Inner House.

At para 100 the Lord Justice Clerk observed that the Lord Ordinary did not conclude that there could be no private life for a serving police officer: “the restriction was limited to those matters which were capable of suggesting that the officer was not capable of discharging his duties in an impartial manner”. The Lord Ordinary was entitled to take into account the content of the material, in view of what he described as the attributes of the reclaimers as police officers, and the fact that they held a public office by virtue of which they had accepted various restrictions on their private life. These factors were relevant to the question whether the reclaimers might, in the circumstances, be said to have had a reasonable expectation of privacy.

The court also held that, *esto* there had been an interference with the reclaimers’ article 8(1) rights, disclosure of the messages was necessary in the interest of public safety and prevention of disorder, and would thus be justified according to article 8(2). In particular, at para 114, the Lord Justice Clerk held that “The objective of maintaining [public confidence that police officers will approach their duties fairly and impartially] is sufficiently important to justify the restriction on the reclaimers’ article 8

rights. The information would be disclosed only to the regulatory body and only for a limited purpose... There is a clear rational connection between the aim and the objective. The level of intrusion is limited to the extent necessary for the maintenance of public confidence.”

Lord Menzies held that when deciding whether the reclaimers had a reasonable expectation of privacy, the court should have regard to all the circumstances of the case, which “includes the attributes of the reclaimers (including their status as holders of a public office), the attributes of the recipients, and the content of the messages, and may well include other relevant circumstances” (para 129). The fact that some or all of the recipients were serving police officers and thus under a sworn duty to report, challenge or take action against the conduct of other constables which had fallen below the standards of professional behaviour was a relevant circumstance when determining whether a reasonable expectation of privacy existed.

## Commentary

This is a significant decision in the context of human rights law in Scotland. It is clear that police officers, by the very nature of their occupation, in certain circumstances face restrictions in respect of their right to privacy, and that such restrictions are both necessary and proportionate.

While the current case is highly fact sensitive and is concerned with the privacy rights of police officers, its repercussions may be far reaching. At para 147, Lord Malcolm held that “In common with many other *professional people and public servants*, no police officer can reasonably or legitimately expect article 8 to provide a shield against the consequences of any and all communication to fellow officers, however inimical they might be to the standards he or she is expected to uphold” (emphasis added). This suggests that this judgment may also have consequences for the privacy rights of other regulated professionals and public servants.

There might yet be some more messages to come in the privacy group chat... ①

## Pensions

COLIN GREIG,  
PARTNER, DWF LLP



Some 15 years since its inception, the Pensions Regulator (“TPR”) has commenced a conversation with stakeholders on its provisional strategy for the next 15 years. In its consultation *Pensions of the Future – A Discussion on our Strategy*, TPR outlines its commitment to savers and the five strategic priorities and high level goals it has identified

for potential future focus. TPR is concerned that in an ever changing world it too evolves as society, the economy, Government policy and its priorities change.

## Objectives and role

TPR's six statutory objectives are:

- to protect the benefits of members of occupational schemes;
- to protect the benefits of members of personal pension schemes where direct payment arrangements are in place;
- to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund;
- in relation to its functions for defined benefit ("DB") scheme funding only, to minimise any adverse impact on the sustainable growth of an employer;
- to maximise compliance with employer duties and the employment safeguards introduced by the Pensions Act 2008; and
- to promote, and to improve understanding of, the good administration of work based pension schemes.

Bearing these in mind, being clear as to its role and how it prioritises its work is seen as key.

Reflecting on the shift from DB schemes to defined contribution ("DC") schemes over the last 15 years, accelerated with implementation of the auto-enrolment regime, TPR considers its focus must change from a scheme based view to one focused on the saver, protecting the savings outcomes of those in retirement or entering retirement in the next 15 years, and for those further away from retirement on driving participation and enhancing outcomes.

With that in mind, TPR differentiates various cohorts of savers and suggests what might be key areas of specific focus over the next 15 years, including:

### Baby Boomers (born between 1946 and 1964)

Having historically saved into pensions more than other generations, most commonly through DB schemes, this relatively financially secure generation will complete their move into retirement. TPR considers its key areas of focus will include:

- security and value in DB schemes;
- working with partners to prevent and tackle pension scams; and
- understanding and enabling good saver decision-making.

### Generation X (born between 1965 and 1984)/Millennials (born between 1985 and 2004)

With these generations of savers having no or reducing access to DB schemes and in general a reducing ability and appetite to make pension savings, TPR considers its core objective for these savers, in all income brackets, to be to enhance their savings outcomes with key areas of focus, including:

- driving participation in workplace pensions;
- ensuring that savers get value from their pensions and that their money is secure; and
- encouraging and supporting innovation.

### Generation Z (born 2005 onwards)

Recognising that over the course of its new strategy this generation will be entering the employment market, TPR's focus will be to evolve to meet the needs of those new savers.

## The pensions landscape

Consideration is given to the pensions landscape and how it might evolve. TPR's analysis suggests it will be regulating fewer but larger schemes of all types as the market consolidates (suggesting 50% fewer DC schemes, and around a third fewer DB). In all this, it sees the following trends as impacting:

- further changes in the nature of work and retirement;
- shifts in the trustee model, types of benefit and market place;
- the proportion of DB memberships and assets continuing to reduce;
- DC market continuing to grow and consolidating;
- suppliers innovating and integrating;
- technology driving and enabling change;
- evolution of regulatory frameworks.

With that in mind, TPR suggests five strategic priorities, each with a strategic goal as follows:

(1) security: ensuring savers' money is secure;

(2) value for money: ensuring savers get good value for money;

(3) scrutiny of decision making: ensuring decisions made on behalf of savers are in their best interests;

(4) embracing innovation: encouraging the market to innovate;

(5) bold and effective regulation: TPR being a bold and effective regulator.

TPR is looking to discuss its thoughts and ideas with stakeholders, with a view to publishing its strategy in the new year.

It is to be hoped that there

will be high levels of stakeholder engagement, with a view to identifying the most efficient and effective means of delivering these strategic goals. For an increasing number of savers it is clear that outcomes will depend on provision in larger consolidated DC arrangements, and the extent to which the auto-enrolment regime is developed. For TPR the trick will be to regulate sensitively in what will be a further period of transition, in a way that enhances rather than undermines the retirement outcomes of savers. **1**

## Scottish Solicitors' Discipline Tribunal

[WWW.SSDT.ORG.UK](http://WWW.SSDT.ORG.UK)

### Kevin Fredrick Macpherson

A complaint was made by the Council of the Law Society of Scotland against Kevin Fredrick Macpherson, solicitor, Stornoway. The Tribunal found the respondent guilty of professional misconduct in respect that between March 2011 and August 2013 he engaged in an improper course of conduct towards a trainee solicitor and on 22 June 2012 engaged in an improper course of conduct in email correspondence with a female employee of another firm of solicitors.

The Tribunal ordered that the name of the respondent be struck off the Roll of Solicitors in Scotland.

The respondent engaged in a course of email correspondence with a female employee of another firm of solicitors, with whom he was friendly, in which repeated reference was made to his trainee in sexually explicit terms. He repeatedly sent text messages to the trainee in relation to matters which did not fall within the sphere of her professional duties. He repeatedly attempted to persuade her to socialise with him, visit him at home and befriend his fiancée. When engaged in email correspondence with the other female, which contained other sexual comments, the respondent made reference to the statement of a child complainer in a sexual abuse case. The respondent had access to the statement in his capacity as the accused's solicitor. He breached client confidentiality. The conduct drew the respondent's integrity into question and the profession into disrepute.

The Tribunal considered that striking off was the only appropriate sanction. The respondent admitted that he found the sexual abuse of a child titillating and sexually gratifying and had used those circumstances to further a sexual conversation. This conduct was a danger to the public and was likely to seriously damage the reputation of the legal profession. It showed that the respondent was not a fit person to be a solicitor. **1**





With legislation postponed, the Society's Rural Affairs Committee has undertaken its own project on needed reforms to crofting law, and has now published a set of proposals to put to the Scottish Government



Crofting law was first recognised in the 1880s with the passing of the Crofters' Holdings (Scotland) Act 1886, and has developed over time in a piecemeal fashion by the passing of a number of Acts. The Crofters (Scotland) Act 1993, which consolidated much of the earlier legislation, was followed by the Crofting Reform etc Act 2007, Crofting Reform (Scotland) Act 2010 and Crofting (Amendment) (Scotland) Act 2013.

Crofting law is generally considered to be a complex and difficult area of the law, made particularly so by the combination of the law relating to property and that relating to landlord and tenant matters. Crofting remains of significant importance to the rural economy and living in Scotland. In 2017-18, there were 20,777 crofts registered with the Crofting Commission: see its *Crofting Statistics 2018*.

In 2017, the Scottish Government consulted on *The future of crofting law*, and Fergus Ewing MSP, Cabinet Secretary for Rural Economy and Connectivity, later announced an intention for a bill to be introduced in the current parliamentary session, as well as a longer-term piece of work to deal with some of the more complex issues. However, in September 2019, he announced that he could not commit to introducing legislation during the

current session due to the potential legislative pressures of the UK's exit from the EU. Stakeholders expressed disappointment at the lack of a firm commitment to legislation in this parliamentary session.

The Bill Group, established to take forward the work flowing from the 2017 consultation, has been disbanded for now and it is not clear when legislative change will be effected. While the lack of consensus on some aspects of the 2017 consultation is recognised, it is clear from crofters and other stakeholders that legislative change is desired, and considered by many to be long overdue.

### Project work

A working group of the Society's Rural Affairs Committee has recently undertaken a project to propose legislative change in relation to aspects of crofting law and to highlight the need for reform of the law in this area. A limited number of aspects of the law relating to crofting were identified by the group for consideration:

- aspects of succession;
- owner occupier status;
- statutory conditions of tenure;
- definition of "crofting community".

The group issued a call for views in February 2020 and engaged in discussion with a range of stakeholder organisations to explore the topics and possible solutions in more depth.

Following the working group's review of the four identified topics with input from stakeholders, it is clear that widespread reform of crofting law is required, both

simplifying and restating the existing law and making changes, and the group considers that this merits prompt action by the Scottish Government. There would be merit in undertaking such a task as a single package of work, so as to avoid further piecemeal legal development and reduce the possibility of unintended consequences.

The group's proposals include:

### Aspects of succession

The working group suggests that the relevant sections of the Succession (Scotland) Act 1964 be re-framed to set out the differing rules applying to agricultural and croft tenancies clearly.

While the group suggests that the 24-month period set out in the 1964 Act for transfer of a tenancy in intestate estates should remain as the primary position, it is clear that there is a need for clarity in the law as to the approach that should be taken where the tenancy has not been brought to an end, no transfer has been undertaken within the required period (or otherwise fixed), and where the Commission has not already taken steps to end the tenancy.

The group therefore suggests that the legislation should be amended to provide for a process whereby an executor, landlord or potential beneficiary may apply to the Commission for leave to transfer a tenancy outwith the 24-month period and in the absence of agreement or a court order. Such an application should be on an "on cause shown" basis and with a discretion in the

Commission as to whether to grant an application, with the process subject to a right of appeal. It is suggested that the right of the landlord to serve notice terminating the tenancy would be temporarily suspended pending the outcome of an application.

The group favours retention of the powers under s 11 of the 1993 Act which allow the Commission to take steps to give notice and terminate a tenancy if it becomes aware that there is no agreement. These provisions ensure that action can be taken to return croft land to use where appropriate.

Whether a croft tenancy can legitimately pass under the residue clause of a will merits clarification. The Land Court's decision in *Gardner v Curran* (Wick, 15 July 2008) is noted and there appears to be general agreement that this is sensible approach. Given the underlying purpose of a residue clause, it seems appropriate that a croft tenancy could pass under a residue clause. The group suggests that this could be resolved by the insertion of a statutory definition of "bequest" into the 1993 Act as being either a specific legacy or a legacy of residue.

### Owner occupier status

It is clear that a number of individuals have unintentionally, in some cases in good faith, fallen into the circumstances of being a landlord of a vacant croft rather than an owner occupier crofter. The working group suggests that a legislative provision be introduced to allow for an application to be made to the Commission to obtain

savills

# Amnesty on tenants' improvements

The COVID-19 extended deadline looms

Only a matter of weeks remain until the new deadline of 12 December for tenant farmers to agree with their landlord a record of improvements they have made to land or buildings so that they might be appropriately compensated during rent reviews and at waygo.

The six-month extension for the amnesty on tenants' improvements by the Scottish Government took account of the fact that coronavirus restrictions were preventing face-to-face meetings and site inspections, and in some cases would have led to the deadline being missed. If parties are still not close to agreeing schedules or have not yet submitted them to the landlord, the tenant may serve an amnesty notice prior to 12 December, initiating a two-month timeframe in which the landlord may object.

The statutory provision relates to improvements carried out by the tenant prior to the amnesty coming into force on 13 June 2017, allowing tenants and landlords time to resolve outstanding issues around past improvements, despite missing notices or consents. However, it does not apply where the landlord objected to the original improvement notice, or where the work carried out is significantly different from what was originally agreed.

Retrospectively unpicking arrangements is not always straightforward, for example where improvements were carried out decades ago, or where landlords may have paid for some of the work, either in cash or in kind through the supply of labour or materials for example. We are advising clients on both sides to act immediately if they have not already done so, to be as fair and pragmatic as possible over what is being claimed, and to provide as much supporting evidence as they can.

A full list of what land and property may be eligible for improvement compensation, and the steps required to be taken as part of the amnesty process, is available at [www.landcommission.gov.scot](http://www.landcommission.gov.scot)

*Rosie Ogg, Associate, Savills*



For more information contact  
Rosie Ogg on [rogg@savills.com](mailto:rogg@savills.com)  
or +44 (0) 7807 999 939

owner occupier crofter status. It is suggested that it should be for the Commission to exercise discretion as to whether to grant any such application, with the process subject to a right of appeal.

In addition to the process set out above, the group favours an amendment to the condition relating to letting in s 19B(4) of the 1993 Act: at the end of the subsection, there should be added: "unless it was subsequently renounced or otherwise terminated by operation of law".

The group notes the lack of clarity in relation to the intended policy on whether legal persons may be owner occupier crofters, and suggests that this requires to be considered alongside the policy relating to owner occupier status more generally. Legislation should be amended to state clearly the types of persons who may be owner occupier crofters.

## Statutory conditions of tenure

The working group suggests that the duties of croft tenants and owner occupier crofters should be consolidated and restated clearly in legislation.

There are mixed views in relation to the 32km residence duty, and it is suggested that this be fully considered and consulted on by the Scottish Government.

The duty to cultivate and maintain the croft lacks certainty in relation to the involvement of family members or hired labour, following the removal of the explicit wording in this regard from the 1993 Act. The group suggests that the Act be revised to reflect that family members or hired labour can assist with cultivating and maintaining the croft.

It is further suggested that the condition relating to bankruptcy (para 10 of sched 2 to the 1993 Act) be reviewed. If it is to be retained, the group suggests revised wording.


The group does not make any substantive recommendations in relation to the conditions set out in para 11 of sched 2, but suggests that these conditions

be fully considered by the Scottish Government in light of policies on environmental protection, and social and economic sustainability.

## Definition of "crofting community"

A number of difficulties have been identified with the definition of "crofting community" set out in s 61 of the 1993 Act. The definition was criticised by the court in *Eunson v Crofting Commission* (Application SLC/10-14/15 – order of 1 March 2016).

The appropriate definition may differ depending on the matter to which it applies. For example, it may be appropriate for one approach to be taken in the context of regulatory aspects of crofting law, roles and responsibilities (as relevant in the context of the 1993 Act), and a different approach when promoting the interests of crofting.

The working group has proposed two definitions. One is narrow in scope, covering croft tenants and owner occupier crofters who occupy crofts within a township and crofters with shares in common grazings associated within a township which consists of two or more crofts registered with the Commission. The other is wider in scope, covering a community of two or more persons who reside in a township or other area where crofting is carried on. While a wider definition may help to promote the interests of crofting generally, there is a risk that crofters could be outnumbered or overpowered by non-crofters, which may be considered undesirable, particularly in the context of regulatory matters. 

*Jim Drysdale is a Law Society of Scotland accredited specialist in agricultural law, and convener of the Society's Rural Affairs Committee.*

*The full paper including a discussion of the topics and proposed solutions is available on the Society's website: [bit.ly/2G2D9TT](http://bit.ly/2G2D9TT)*

# In-house, online and in demand

In-house Lawyers' Committee members have contributed to this account of the 2020 conference, reborn as the In-house Virtual Legal Festival

## In-house

IN-HOUSE LAWYERS' COMMITTEE

### What makes a conference a festival?

The Society's first three-day, fully online conference took place across 6-8 October. This article can only select some highlights for attendees and facilitators on what made this new format of CPD event a dynamic and fulfilling experience in this year of seismic change.

In addressing more than 100 attendees from in-house solicitor members spread across the world, this year's keynote speakers, Dr Stephen Hearn, A&E consultant, Air Ambulance Rescue and Arrochar mountain rescue team, Siobhan Moriarty, GC at Diageo, and Sandra Leece, GC at Vattenfall, certainly had a different experience to the usual face-to-face conference keynote presentations. The format allowed for increased dialogue and collegiate engagement, as well as notably relaxed discussions on the issues raised.

The timing structure allowed for a short morning session with panel insights, followed by an extended lunch break to either take time away from the screen or catch up on the day job, including an optional drop-in lunchtime discussion "knowledge café", followed by a two hour afternoon session of legal updates from sponsors DLA Piper, Pinsent Masons and CMS, and keynote presentations. One delegate commented: "As a telecoms lawyer I am ashamed to admit I was sceptical that this virtual conference would work – but it did. The programme being spread out over three days with good gaps between sessions meant I was able to both attend the conference and continue dealing with my normal work. Well done to all involved in making this event such a success."

### Day 1: peak performance

The first day saw RBS solicitor Marliese Perks named winner of the Law Society of Scotland In-house Rising Star Award for 2020 (Journal, October 2020, 38). Society President Amanda Millar announced the winner to a unique round

of applause with all mics on. The 2020 Rising Star Award judges agreed that Marliese's achievements were very impressive at such an early stage in her career, she having played a key role in a number of business-critical matters, working on a variety of complex contractual arrangements and navigating regulatory challenges.

Amanda Millar and keynote speaker Stephen Hearn then shared their takes on peak performance under pressure. Hearn explored many concepts, including methods and terminology to recognise in yourself to move from a "zone of frazzle to a zone of flow". He based his advice on his 2019 book, *Peak Performance Under Pressure*, on the psychology of pressure and how it can both positively and negatively affect the ability to perform. Top tips included the preparation required for

*"What I have personally realised is that we can only do the best we can to get through these unprecedented circumstances"*

performance; having a pause away – a rally point; positive self-talk; methods to cognitively offload using delegation; and cognitive aids by simplifying in a back to basics manner.

Rachael McLean, head of the Strategy & Business Division at the Scottish Government and host of the day's knowledge café session, reflected on the theme of wellbeing:

"I'd echo what both Amanda Millar and Dr Stephen Hearn commented on in their sessions, for anyone who is struggling to take annual leave at this time or to take a break from work during the day. You can't pour from an empty cup and, while you may feel that having some time out or taking time off will do more harm than good, it's so important to recharge your batteries. Trust that, as you would cover for

a colleague who is on annual leave, they will do the same for you.

"What I have personally realised is that we can each only do the best we can to get through these unprecedented circumstances. We are all human and we have to cut ourselves, and each other, some slack. We are all facing our own challenges and the best thing we can do is to keep talking to each other and offer kindness and support. This will pass, but the best way of getting through it is together."

### Day 2: leadership

Day 2 opened with an update from Lorna Jack, the Society's chief executive, and a review of the In-house Lawyers' Committee's projects and strategic priorities in the past year, led by co-conveners Sheekha Saha and Vlad Valiente.

The day's panel session expanded on the actions of in-house lawyers in the COVID-19 pandemic, with Melissa Moore, commercial property solicitor at LexisNexis UK as chair of the discussion. Senior legal counsel who featured on the panel were Karen Gribben, head of Legal – Scotland Region, Network Rail, Susan Ferguson-Snedden, head of Legal & Compliance at Historic Environment Scotland, and Calum Stacey, legal manager and company secretary at Total UK Ltd.

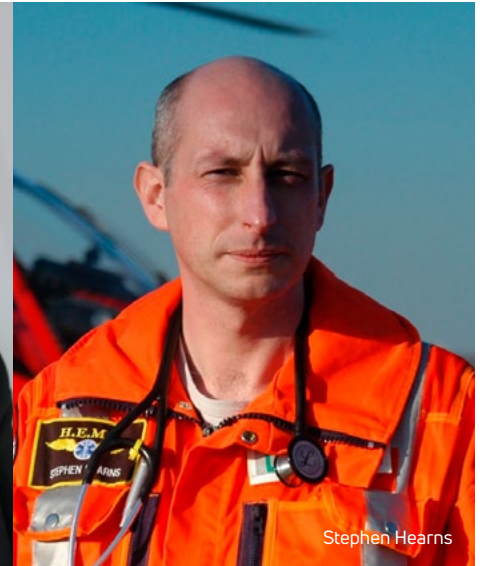
The session focused on how the pandemic has affected the work of in-house legal teams at three very different organisations. Delegate polls run by the chair, largely reflected by the panellists, found that 65% have been busier than ever since lockdown began; 79% have had to work outside their area of expertise; and 30% envisage their legal department increasing over next year. Overall panel members highlighted a very positive pivot by their teams in terms of adopting new working practices, and indicated that the virtual environment has facilitated better communication with internal clients. It appears that COVID-19 has allowed in-house teams to re-evaluate their roles, resulting in a positive repositioning of legal function within an organisation and bolstering the reputation of this department. However, concerns were raised around the loss of on-the-job learning and how to support more junior or new colleagues.



Sandra Leece



Siobhan Moriarty



Stephen Hearns

The festival plenary welcomed Siobhan Moriarty, GC and company secretary at Diageo, for the keynote session, from a virtual background of Landsdowne Road, home of the Irish Rugby Union team.

Moriarty reviewed ideas of authentic leadership and the question of why should anybody be led by you, taking questions throughout, facilitated by Bruce Beveridge, a past President of the Society. She discussed Diageo's leadership ambition, "To create the best performing, most trusted and respected consumer products company in the world", and its development. In order to achieve this, Diageo needed to lead differently over the long term. One of the Diageo standards was authenticity, defined by:

- Stand for what you feel is right and important
- Do what you say without exception
- Role model the Diageo values
- Build and sustain trust with others through real relationships.

She discussed in detail the development of the authentic leadership movement, defined by authors Robert Goffee and Gareth Jones, and explored its concepts with practical examples in the four leadership practices to be authentic with skill:

- Become a situational sensor: hone your context reading skills
- Know and show yourself just enough, and which part of yourself to disclose to inspire actions in others
- Get close but keep your distance, knowing when to empathise and when to step back
- Communicate with care; be clear and compelling, and create a vivid picture.

Authenticity, with a personal integrity that inspires others, was "the emotional cornerstone of great leadership". It was a notably insightful way to bring a close to the day.

### Day 3: collaboration

Arlene Gibbs, solicitor at Aberdeenshire Council and host of one of the knowledge café sessions, reflected on the day 3 conference theme of "The future of the in-house legal function" in this way: "With many of the in-house community managing changes to their working practices combined with an increase in their workload, it might already feel for some that the future has landed."

However, it was clear from the presentations, panel session and discussion that, despite the challenges, there is optimism that the future is bright.

The day began with an engaging and thought-provoking presentation from Neil Campbell, managing legal counsel, Outsourcing, Technology & IP, Royal Bank of Scotland, on the O-shaped Lawyer (see Journal, September 2020, 36). That is, that good, all-round solicitor we inspire to be and wish to have working in our organisations. Delegates learned how the five Os (openmindedness, optimism, ownership, originality, and opportunity) would complement a technical legal skillset and help future-proof the legal profession. With in-house lawyers being at the heart of their organisations and working closely with their stakeholders, their having the skills to build lasting relationships, create value and demonstrate adaptability – as well as knowing how to apply the law – is the key to driving and influencing organisational change.

This concept of collaborative working also featured in an interesting and diverse panel session chaired by Bruce Beveridge. Rob McIntosh, Marliese Perks and Suzanne Wilson shared their recent experiences of collaboration, efficiency, innovation and opportunity within their organisations. The panelists agreed that necessity often drives collaboration

and innovation and that, in times of financial constraint and with "more for less" set to continue, it was important that in-house legal teams made best use of their solicitors' skillsets, and the information and technology available to them.

The panel also discussed the concept of early intervention and the benefits to in-house legal teams of having senior management buy-in. This theme was explored further in the final keynote session of the festival, with Sandra Leece of Vattenfall AB speaking enthusiastically and passionately about the positive impact lawyers can have in the boardroom. Sharing her experience of being a member of the C-suite in her organisation, she explained that she brings "an analytical, ethical, and holistic perspective to corporate decision making".

### Impressions

All in all, the blend of online accessibility and opportunity to drop into discussions while keeping on top of day-to-day work was popular. As another delegate commented: "This course thoroughly deserved the name 'Festival'. A fantastic lineup of inspirational speakers and presenters. Heartening to hear shared experiences in times of COVID and a wealth of ideas and perspectives which I will certainly take further."

Sheekha Saha and Vlad Valiente, co-conveners of the In-house Lawyers' Committee and overarching chairs of the festival, rounded up with their appreciation for the positive engagement and lively discussions that took place across the festival's three days in albeit a uniquely different format to the usual in-person conference day. The in-house legal virtual festival is another example of the innovation and ingenuity that can come to the fore in times of crisis and change. Roll on 2021. 📌

## Price transparency now set for January

**G**uidance for Scottish solicitors on publishing pricing, to help consumers better understand the cost of legal advice and services, is now due to come into effect on 31 January 2021, having been postponed due to lockdown.

The guidance allows for different options for publishing pricing, including typical or average costs for cases, or fixed fees for certain types of work (which must make clear what is included in the fixed cost). Solicitors will also be expected to inform clients if additional issues arise, and of any associated costs. The guidance will not apply to firms that solely undertake legal aid work or those which provide legal services to businesses.

Craig Cathcart, convener of the Society's

Regulatory Committee, commented: "Research has highlighted that people can overestimate typical costs, so having a clearer picture will help to scotch some of the myths about the presumed high price of going to a solicitor for legal advice. A number of Scottish law firms are already publishing their prices to help demystify the costs of legal services for consumers, and this new guidance should improve price transparency and encourage people to speak to a solicitor sooner rather than later.

"While the very nature of legal services means that unforeseen complexities can arise, potentially leading to additional work and expense, we firmly believe that having a better understanding from the outset will benefit both the consumer and solicitor working on their behalf"

## New help through the menopause

The Society has partnered with Peppy Health to launch a comprehensive menopause support resource.

Tailored to the Scottish legal profession, the guide ([bit.ly/LSSmenopause](https://bit.ly/LSSmenopause)) offers information on the menopause and its symptoms; recommendations to organisations on how to

support their employees and develop clear processes and policies; advice for individuals on managing symptoms; and further resources to explore.

Sarah Gilzean, convener of the Equalities Law Reform Committee and contributor to the guidance, said: "Menopause still carries a certain stigma and a degree of embarrassment and hesitancy to

discuss it. We need to dismantle this taboo, so that organisations and their leaders fully understand the impact of the menopause on their employees and are able to support them, and that individuals feel empowered to talk about the menopause and are informed of the symptoms, be they experiencing it first hand or supporting someone through it."

## UK AML levy opposed

A proposed new anti-money laundering (AML) levy on solicitors has been opposed by the Society in its response to a UK Government consultation.

The Society argues that the levy, intended to fund AML activity, is unnecessary, as the profession already pays substantial sums toward regulatory costs, including AML regulation. The profession is strongly committed to fighting economic crime and takes a "front line defence approach" through current AML processes to prevent, identify and report money laundering activity.

Should the proposals go ahead despite the objections, any new levy should provide an exemption for small businesses – and it should only be calculated on AML-related work and not a firm's overall income.

The Law Society of England & Wales has similarly come out against the proposal.

## Scottish Barony Register

Alastair Shepherd is to succeed Alastair Rennie as custodian of the Scottish Barony Register from 1 December 2020. The register is a private venture which has recorded transfers of rights to the dignities of feudal baronies since the abolition of feudal tenure. From 1 December the new custodian can be contacted at 1 Monkkrigg Steading, Haddington, EH41 4LB or [custodian@scottishbaronyregister.org](mailto:custodian@scottishbaronyregister.org). A fuller article will appear in December.

### ACCREDITED SPECIALISTS

#### Agricultural law

Re-accredited: HAMISH LEAN, Shepherd & Wedderburn (accredited 29 August 2000); HEATHER CATHERINE BRUCE, Turcan Connell (accredited 28 September 2015).

#### Charity law

SARAH MARGARET BROWN, J & H Mitchell LLP (accredited 20 July 2020); ROBIN KENNETH FALLAS, MacRoberts LLP (accredited 26 October 2020).

#### Child law

IRINA BEATON, Scottish Child Law Centre (accredited 1 July 2020); LESLEY BELL ANDERSON, Lesley Anderson Law Ltd (accredited 14 October 2020).

#### Construction law

KATHERINE ELLEN CLARISSA DORAN, Holman Fenwick Willan LLP (accredited 1 July 2020); LYNDIA ELIZABETH ROSS, Burness Paull LLP (accredited 31 August 2020).

#### Employment law

RYAN ROBERT RUSSELL, MML Legal (accredited 2 September 2020). Re-accredited: MATTHEW LIAM PHILIP KERR, Trinity Kerr Ltd (accredited 27 August 2015).

#### Family law

SUSANNAH MOUNTAIN, Brodies LLP (accredited 14 October 2020). Re-accredited: EWAN MACKENZIE CAMPBELL, Russel & Aitken LLP (accredited 6 August 2010);

LESLEY BELL ANDERSON, Lesley Anderson Law Ltd (accredited 3 March 2015); NADINE MARTIN, Harper Macleod (accredited 30 July 2015).

#### Family mediation

Re-accredited: JACQUELINE STROUD, MacRoberts LLP (accredited 19 June 2010); LYDIA ISHBEL McLACHLAN, Brodies LLP (accredited 23 June 2014); FIONA ROSEMARY RASMUSEN, Gibson Kerr (accredited 14 July 2014); NADINE MARTIN, Harper Macleod (accredited 28 June 2017); JADE ELIZABETH CARTHY, A C O'Neill & Co (accredited 28 June 2017).

#### Housing and residential tenancy

KATHERINE SARAH

GRAHAM, Wheatley Housing Group Ltd (accredited 4 September 2020).

#### Incapacity and mental disability law

LINDA FOWLER, West Lothian Council (accredited 18 August 2020).

#### Insolvency law

Re-accredited: ERIC MARCUS BAIJAL, BBM Solicitors Ltd (accredited 5 August 2015).

#### Liquor licensing law

Re-accredited: JANET HEBE HOOD, Janet Hood Training & Consulting Ltd (accredited 27 June 1995).

#### Personal injury law

Re-accredited: DAWN McCAFFERTY, Digby Brown (accredited 3 September

2010); ALASTAIR CAMERON, Newlaw Scotland LLP (accredited 4 September 2015).

#### Planning law

Re-accredited: SARAH BAILLIE, Addleshaw Goddard LLP (accredited 13 August 2015).

#### Professional negligence

ASHLEY MAWBY, Burness Paull LLP (accredited 24 July 2020). Re-accredited: BEVERLEY ATKINSON, DAC Beachcroft Scotland LLP (accredited 4 September 2015).

#### Trusts law

Re-accredited: CAROLE TOMLINSON, Anderson Strathern (accredited 23 June 2015).



## PUBLIC POLICY HIGHLIGHTS

The Society's policy committees analyse and respond to proposed changes in the law. Key areas from the last few weeks are highlighted below. For more information see [www.lawscot.org.uk/research-and-policy/](http://www.lawscot.org.uk/research-and-policy/)

### Crofting law reform

A working group of the Society's Rural Affairs Committee completed a significant piece of work to propose legislative change in relation to aspects of crofting law, more fully discussed at p 36 of this issue.

### Judicial review

The Independent Review of Administrative Law was established following the UK Government's manifesto commitment to guarantee that judicial review is available to protect the rights of individuals against an overbearing state, while ensuring it is not abused to conduct politics by another means.

In its response, the Constitutional Law Committee questioned the extent to which the review should apply to Scotland. The call for evidence indicated that the panel was interested in receiving "evidence in relation to judicial review in its application to reserved, and not devolved, matters", but this appears to misunderstand how judicial review is applied in Scotland, as the same principles, grounds or procedures are applied regardless. Any proposed reform that would oblige Scottish courts to apply different rules in relation to reserved matters could lead to fragmentation of the law and would be undesirable.

### UK Internal Market Bill

The UK Internal Market Bill transferred to the House of Lords on 30 September. The Constitutional Law Committee issued a briefing in advance of second reading and suggested amendments ahead of the committee stage. As well as reinforcing the message that the bill should, as a matter of principle, comply with public international law and honour the rule *pacta sunt servanda* (agreements are to be kept), it noted that after a legislative consent memorandum was debated by the Scottish Parliament on 7 October, consent to the bill was withheld.

The briefing also highlighted the ways in which the proposed market access principles in the bill will differ from equivalent EU provisions.

### UK-US trade negotiations

Further to the responses submitted last month on trade negotiations with Australia and New Zealand, the Constitutional Law Committee and Trade Policy working group submitted a further response to the House of Lords committee inquiring into trade negotiations between the UK and US.

Its consultation spanned many different issues and areas of law, and the response centred around several main themes, including: ensuring that assessment of the benefits or detrimental impact of a trade agreement goes beyond purely economic considerations and should be seen as part of a sustainable recovery from the impact of COVID-19; the need for engagement and collaboration

with the devolved nations; ensuring that our high standards are maintained, and government and regulators at all levels continue to be able to introduce and enforce legislation in the interests of UK consumers, workers, businesses, animal welfare and the environment; the importance of legal services in the context of international trade, including as a significant export sector and major domestic employer in its own right; and the need to improve market access for UK lawyers in the US.

### Policing after Brexit

The Criminal Law Committee submitted written evidence to the Scottish Parliament's Justice Subcommittee on Policing call for evidence regarding the preparations for, and potential impact of, the UK's withdrawal from the EU on the Police Service of Scotland.

Its response identifies some of the overlapping interests in justice and security between the UK Government and devolved administrations, and highlights that in looking at the role of policing, there is a need to consider the distinct Scottish dimension in relation to criminal justice. It also notes that there are significant outstanding questions regarding how criminal justice, policing, law enforcement and security will be dealt with following 31 December 2020.

*The Policy team can be contacted on any of the matters above at [policy@lawscot.org.uk](mailto:policy@lawscot.org.uk)  
Twitter: @lawscot*



### Third sector Council member

Kirsty Thomson, co-founder and director of human rights and equality charity JustRight Scotland, is the first holder of a new seat on the Society's Council representing third sector solicitors. At JustRight Scotland she leads on legal work in women's rights, children's rights, human trafficking and asylum/immigration law.

### OBITUARIES

**DAVID GRAHAM** (retired solicitor), Perth  
On 16 June 2020, David Graham, formerly partner of the firm McCash & Hunter, Perth.  
AGE: 80  
ADMITTED: 1963

**DAVID ALFRED STEVENSON LOCKHART** (retired solicitor), London  
On 29 September 2020, David Alfred Stevenson Lockhart, formerly partner and consultant of the firm John W & G Lockhart, Ayr and latterly employed with Stockland UK Ltd, Glasgow.  
AGE: 77  
ADMITTED: 1972

**ALFRED WILLIAM WRIGHT** (retired solicitor), Kirkwall  
On 2 October 2020, Alfred William Wright, formerly employee of the Procurator Fiscal Service, Kirkwall.  
AGE: 90  
ADMITTED: 1960

## AML certificate results 2019

Earlier this year, Scottish law firms whose work is within scope of the Money Laundering Regulations completed their AML certificates, providing crucial data, informing and enabling the Society's regulatory work.

Fraser Sinclair, the Society's AML risk manager, has provided an update on the analysis of members' data, covering key insights on trust and company services provision (TCSP), conveyancing, and geographical and jurisdictional factors. He also provides important points for firms to look at when considering how they might improve their AML measures and procedures.

See [www.lawscot.org.uk/amlcertresults2019/](http://www.lawscot.org.uk/amlcertresults2019/)

## Tenancies succession reminder

The Trust & Succession Law Committee wishes to remind solicitors to look out for impending deadlines in respect of agricultural tenancies or croft tenancies passing under intestacy. Transfer of a tenancy to a beneficiary requires to be made by the executors in an agricultural tenancy within 12 months, and in a crofting tenancy within 24 months, of the death, or such longer period as fixed by agreement between the executor and landlord or on an application to the court (Succession (Scotland) Act 1964, s 16). Subsequent intimation of the transfer is to be given to the landlord (Agricultural Holdings (Scotland) Act 1991, s 12 and Crofters (Scotland) Act 1993, s 11).

It is considered that executors need to be confirmed to execute a transfer validly. With potential delays in the steps required to apply for and obtain confirmation, there is an increased risk of being out of time in obtaining confirmation before carrying out the transfer.

## Paralegals: 10 years of recognition

For 10 years now, paralegals in Scotland have been able to benefit from an official accreditation from the Society, acknowledging the significant role they play. Karen Leslie and Laura Mack reflect on the changes and challenges over those years

**It** is 10 years since the Law Society of Scotland launched a programme to ensure that paralegals in Scotland received the official acknowledgment they deserve for the important role they play in the Scottish legal community. Much has changed in that time.

Unlike “solicitor”, the term “paralegal” is not protected in law. To use the title “accredited paralegal”, however, you must demonstrate legal knowledge and proficiency within a specific practice area, complete at least 10 hours of continuing professional development (CPD) each year and abide by a code of conduct.

Setting these standards has promoted recognition and respect for the important role accredited paralegals play in the Scottish legal community. Karen Leslie, now convener of the Society’s Accredited Paralegal Committee, who worked alongside the Society in her capacity as joint President of the Scottish Paralegal Association when the scheme was first developed, is proud to have witnessed its continued growth.

Initially, just five practice areas were covered by the scheme: debt recovery; family law; residential conveyancing; criminal law; and wills and executries. Now, 10 years on, a further eight specialisms have been added: reparation law; commercial conveyancing; company secretarial; employment law; liquor licensing; remortgage; repossession litigation; and the most recent addition, financial services – asset management, bringing the total to 13. These developments could not have been achieved without the assistance of paralegals and solicitors who value the role paralegals play in the legal market.

### Birth of a practice area

Laura Mack has been a member of the Society’s Accredited Paralegal Committee for a year and a half. Initially obtaining her accreditation in family law in 2015, when Laura moved to work as an in-house paralegal at Baillie Gifford she realised that none of the current practice areas covered



her new role. The role of the paralegal has become far more widely recognised throughout the legal profession, both private practice and in-house, since the inception of the Accredited Paralegal scheme. Her new employers were fully supportive of Laura’s work with the Society to create a new practice area: financial services – asset management, the first in-house financial services practice area.

Creating a new practice area is an exciting and challenging project, which the Accredited Paralegal Committee is keen to support and provide guidance on. The process is thorough; the committee needs to be able to consider fully the scope of the new area – ensuring there is no crossover with existing areas – the competencies to be fulfilled, and an indication of the likely demand and take-up of the new area.

### Challenges of COVID-19

The legal market, like all markets, has faced considerable challenges as a result of recession, pressures of price, availability, access, diversity and technological advances – and continues to do so. These topics are too weighty to be covered in any depth here, but what can be said is that the modern day accredited paralegal is invaluable to legal service providers, in private

practice and in-house, enabling them to meet those challenges and ensure they continue to provide quality, specialist services to employers and clients alike.

The latest challenge, COVID-19, has brought significant changes. The minimum CPD requirement for the 2019-20 practice year has been suspended, although we strongly encourage our members to undertake CPD where you can and complete any required training where possible. A considerable amount of legislation, permanent and temporary, has been introduced in the last six months and it is important that we keep up to date with these changes in this challenging time. We have all become familiar with the various platforms for hosting virtual meetings, and there is a wide choice of free webinars and remote CPD sessions and workshops available, enabling us to keep our knowledge and skills up to date, while adhering to the restrictions. Keep your eye on social media, your email inbox and the Society’s website for updates on what is available.

There have certainly been highs and lows during lockdown, but the legal profession has adapted well to remote working. Necessity, being the mother of invention, has seen Registers of Scotland and the Scottish Courts & Tribunals Service introduce welcome measures allowing documentation to be received electronically, and the ability to have documents witnessed online has greatly assisted when dealing with vulnerable clients.

Furloughing and the prospects of redundancy have certainly been tough. Some of your colleagues may be living alone and struggling with the loss of interaction in the physical workplace. For others, sharing the diningroom table/spare room/any space you can find with significant others and small ones certainly has ups and downs, although now the kids are back to school, many of us will be breathing a sigh of relief!

For those who ordinarily commute, the time recovered enables a better balance between chargeable hours and quality of life. Internal virtual meetings do work, but is it the same as


collaborating, or chatting with colleagues around the kettle? (We could say “water cooler”, but this is Scotland!)

### Online community

As we continue to adapt to all of the changes, it is perhaps more important than ever that we look after our own wellbeing and look out for each other. As members of the Society, accredited paralegals have access to various resources which will help us do just that.

Developed in collaboration with NHS Scotland, LawCare, SeeMe, SAMH and other mental health charities, Lawscot Wellbeing ([www.lawscot.org.uk/members/wellbeing/](http://www.lawscot.org.uk/members/wellbeing/)) is a dedicated online resource that provides help and guidance for members and employers. And of course, the Law Society Mentoring programme ([www.lawscot.org.uk/members/career-growth/mentoring/](http://www.lawscot.org.uk/members/career-growth/mentoring/)) provides an online platform enabling you to reach out and get the additional career support you are looking for – or indeed offer the benefit of your skills and experience to someone else.

It is fair to say the modern day accredited paralegal has many skills to offer and is a valuable and integral part of the legal services market. It will be interesting to follow the changes and challenges the next 10 years will bring to the Accredited Paralegal scheme and the legal profession as a whole.

In the meantime, and in the absence of physical meetings with our paralegal colleagues, we are keen to nurture our online community and would love to hear from you. If you have an idea for a news update, a new practice area, blog, online event, or you would like to become accredited, please do drop us a line at [accreditedparalegals@lawscot.org.uk](mailto:accreditedparalegals@lawscot.org.uk) and follow us on Twitter at @AccParalegalLSS. 



**Karen Leslie** is convener, and **Laura Mack** a member, of the Law Society of Scotland's Accredited Paralegal Committee

## ASK ASH

# Too busy, but still insecure

I'm under pressure of work – but worry about my job security

### Dear Ash,

With the ever changing rules of COVID-19 I am concerned about the future of my position at my firm. There have been a number of redundancies recently, and although things seem to have stabilised I sense an atmosphere of tension, which has not been helped by the increased workload. There seems little in the way of communication in the office, and I appreciate that I should be grateful for having a job in the current climate but I can't help but feel anxious about my future. My work-life balance seems virtually non-existent as I'm under pressure to get things finished and I fear that if I don't put in the extra hours then I will lose my job.

### Ash replies:

The anxiety and apprehension that you are experiencing is quite normal in the current climate. But you should be comforted somewhat by the fact that you are busy and that you are still employed.

The pandemic has shaken most people to the core, and future employment is a particular worry, especially as COVID seems to have

severely impacted a number of key sectors. However, it is still important for you to strike a good work-life balance at least in line with pre-COVID times, for the sake of your continued wellbeing. Such a balance is even more critical

since COVID has resulted in more encroachment on home life with an increase in homeworking.

Make sure therefore that you establish some personal rules in order to ensure an effective work-life balance. For example, ensure you take a one hour lunch break every day, and be

strict about closing your laptop by a certain hour each day in line with when you would normally have left the office. We all require to work additional hours from time to time, but do not make this a habit as it will only result in others expecting this as the norm.

Also find some ways of chilling and relaxing after each day, whether it be through indulging in a good book or TV show or getting some exercise: any personal “me” time is critical to help you wind down. Yes you have a job and are fortunate, but this does not mean that you need to feel guilty about carving out some much needed time for yourself – if anything this pandemic should allow us all to prioritise ourselves more!



## 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](mailto: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](mailto:legaleduc@lawscot.org.uk)

## Property pitfalls: problematic but preventable

Matthew Thomson of Lockton highlights some Master Policy property related claims, posing the question of how preventable these matters could have been

**O**ne of the great truths of professional negligence is that there is often little relationship between the nature of the error and the cost of the consequence. Far more problems arise from what might be viewed as minor clerical or procedural errors than from ignorance of the law. And it's absolutely the case that great big claims grow out of apparently tiny mistakes.

A review of some conveyancing cases from the archives of RSA, the Master Policy lead insurers, amply demonstrates that, and perhaps provides some useful guidance on how best to avoid the pitfalls of these relatively minor mistakes, and the substantial claims they have caused.

### Assumptions can be very costly

The clients were delighted and excited when they instructed the solicitor to put in an offer on the house they had just been to see. After years in a flat far too small for their growing family, the house represented the first step towards their future. Amongst its best features was a large open plan kitchen/living/diningroom, ideal for family life. It was, they said, just perfect.

Happily the offer was accepted, and the solicitor took steps to progress the purchase. In particular, they sought assurance from the sellers' agents that removal of the internal wall was fully compliant and documented. The missive clause on the point was deleted and correspondence provided from

the local authority to the effect that a building warrant was not required as long as the wall was not loadbearing. The agents explained that this email was confirmation that no permissions were required for the removal.

Some time after the clients' entry to the property, cracks began to appear in the ceiling. Structural investigations indicated that the property was shifting as a result of removal of the (loadbearing) wall.

A substantial claim was pursued against the solicitor for the cost of repairs to the property, including installation of steelwork to replace the missing wall, and the costs of obtaining formal documentation for the remedial works, together with various related losses. All of these costs – and indeed considerable grief to the clients – could have been avoided had the solicitor simply advised the clients to have a structural engineer check the position.

### Check. Then check again

The solicitor acted for commercial lenders in connection with the refinancing of a complex security and lending package for a developer. The clients' security was to rank behind that of another lender, but ahead of a further loan.

Unfortunately, though the complex security documentation was all drafted, prepared,

signed and registered, the ranking agreement was left on the transaction file, and never sent to Companies House for registration. Following the appointment of administrators to the developer company, the lender clients expected to make a substantial recovery, but discovered instead that the lenders intended to rank behind them would scoop everything not due to the holders of the first security.

A claim was pursued against the solicitor, seeking the hundreds of thousands of pounds which would have been recovered had the ranking agreement been properly registered.

The situation could have been averted by a post-transaction review to ensure proper and effective registration of all of the security documentation.

### Make the date

Business was booming for the solicitor's clients, and the decision was reached to expand into new premises. Suitable premises were identified and secured, and instructions provided to the solicitor to serve a break notice for the existing property. The clients planned to exit the premises five years early, and a break clause in the lease allowed for termination, provided that proper notice was provided at least 12 months

prior to the break date. A break notice was duly prepared by the solicitor, posted first class recorded delivery and received by the landlords' agents. The solicitor then received a letter from solicitors on behalf of the landlords, saying that the break notice was ineffective. It had, they said, been received a day late.

A careful check of the terms of the lease – and a calendar – confirmed the fact: the break notice was a day late, and the clients were now bound into the unwanted lease for a further five years.

The clients argued that they were now bound into their new lease, and that the future of the business was dependent on the expansion. Losses in excess of £1 million were alleged.

It's worth noting that a number of similar claims have been received over the years. Whether acting for landlord or tenant, whether seeking to break a lease or extend it, it is vital to ensure that the notice is served in time to achieve the required notice, in the required format and on the right party. These claims are inevitably expensive, and completely capable of being avoided.

### Check the timeline

The solicitor acted for the purchaser of a flat, part of a substantial flatted development. Regulation of the larger property of which the flat formed a part was governed by a detailed deed of conditions, and the titles to each of the individual flats should have included reference to the deed of conditions.

Unfortunately, some of the flats, including the clients', were sold prior to registration of the deed of conditions, and the titles contained

*"All of these claims could have been avoided by some fairly straightforward checks before completion of the transaction"*



no reference to it. Expert opinion confirmed that the flat was not burdened by the deed, and the proprietors were neither bound to its obligations nor entitled to its benefits.

The clients attempted to sell the property. While it attracted significant interest and several offers were received, a prospective sale fell through on examination of the titles. The absence of any regulation of the common parts was given as a reason for withdrawal.

While there is a sound argument that the title obtained for the clients was "good", the clients alleged in their claim against the solicitor that the abortive sale was *de facto* proof that it was not "marketable". After

some delays, they were forced to reduce the sale price and obtain indemnity insurance in respect of the apparent defect in the title.

A simple check of the timeline and consideration of the titles in advance of purchase could have avoided this situation and the expensive claim it caused.

### Any restrictions on use?

Converted properties can be successful homes and business premises. But it's vital to ensure that the proposed new use is permitted under the titles.

The solicitor acted for a client who planned to operate a hairdressing and beauty salon at the property being purchased.

This had formerly been a bank branch, and like many others was ripe for conversion after closure. Unfortunately, and unnoticed by the solicitor, the title contained a deed of conditions in terms of which use of the premises was restricted to the operation of a bank.

Very substantial costs were incurred in resolving the title position, which in addition massively delayed the opening of the salon. The client then made a claim against the solicitor, alleging losses into six figures as a result.

### Sale under reservation

The clients instructed the solicitor in the sale of a development plot forming part of the family farm. It

was intended that the necessary rights of access etc be preserved for the current use and potential future sale of the farmhouse and other areas of land.

It was only some time later, in connection with a proposed sale of the farmhouse, that it was discovered that no rights had been reserved. The farmhouse was left effectively landlocked, with the obvious resultant impact on its value and saleability.

A claim was made against the solicitor for the difference in the value of the farmhouse with and without appropriate rights of access.

Again it is worth noting that the lead insurers, RSA, have seen numerous variations on this claim over the years. It's vital when acting in the sale of only a part of any property to ensure that the remaining part retains all necessary rights and servitudes.

So what can we take from these examples? Clearly, that very small mistakes can lead to very substantial losses. But perhaps more importantly, that any and all of these claims could have been avoided by some fairly straightforward checks before completion of the transaction. Another set of eyes on the titles, a run through a checklist, a further check at a calendar. And ultimately that any claim, literally any claim, is better avoided than defended. **1**

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

## FROM THE ARCHIVES

### 50 years ago

From "The Assessment of Damages", November 1970: "This proposal [of the English Law Commission, for official actuarial tables for valuing future loss] seems a most valuable one. It avoids the impossibility inherent in a suggestion made some years ago that judges and counsel must familiarise themselves with actuarial techniques (which probably overrates the mathematical ability of some, and certainly overrates the time available to working judges and counsel to study anything), and also the waste of time and expense involved in calling actuaries in a particular case to prove and explain calculations they have made."

### 25 years ago

From "Miscarriages of Justice and Legal Practice", November 1995: "On 14th November the High Court will hear the appeal of James McAuley Anderson against his conviction... In Scotland there has never been any real prospect of an alleged miscarriage of justice being founded on the preparation or presentation skills of the lawyer representing the accused... Setting the level of [any new test would be] extraordinarily difficult, for if it is too high, the distinction from *McCarroll* may be one without a difference. If the test is too low, everyone convicted will complain on the simple view that the lawyer must have been incompetent,... because there has been a conviction."

## Count us out

The public do not think lawyers know enough about business. Are they right? asks Stephen Gold



“

A concern for potential investors is that lawyers are not proven business leaders. Clients frustrated with private-practice lawyers often accuse them of lacking

commercial nous. Because most lawyers spend much of their time peering at small print, big-picture concerns can go unnoticed. Few managing partners know their firm's profit per billable hour, even though that is the main product law firms sell. Cost control is often an afterthought, trailing far behind revenue generation.” Thus *The Economist* in August 2008, in an article entitled, “Should you buy shares in a law firm?”

The jury is out. Shares in listed law firms have declined steeply this year, as they have responded to the pandemic. But it's said this may be more a consequence of their novelty, than a verdict on the quality of their leaders, or a guide to the future. When Facebook listed in 2012, its share price had a torrid time as the market worked out exactly what to make of it. In the last 12 months its value has doubled.

In any event, *The Economist* expresses a widely held view that lawyers and entrepreneurship don't mix. When businesses look for business advice, in general, they turn to their accountants, consultants, bankers, or peers they trust, before their lawyers. For one thing, we are not credited with the right expertise. For another, we might suck our teeth and advise caution. Nothing enrages a fired-up entrepreneur more than a firewall.

In 2017, the issue was researched by Professor

Todd Harrison of Chicago Law School. In an article for *Harvard Business Review*, he concluded that CEOs with legal training were associated with higher firm value, but only in high-growth companies and those likely to attract large amounts of litigation. Otherwise, the effect of CEOs with legal training on firm value was negative. Companies in, say, pharmaceuticals and aviation performed better when run by lawyer CEOs, all else being equal, but in less regulated and risky sectors they performed worse.

### Lawyer on board. (Not)

Currently, fewer than 10% of FTSE chief executives have any legal training. In comparison, 55% have a background in finance, 14% in technology, and 15% in hospitality. Most of the rest come from marketing and engineering. I once interviewed the general counsel of a household name Scottish company, and asked him to define his role. “My role,” he replied, “is to make sure my board don't look like plonkers.” There you have it: “Keep us out of trouble but as for running any part of the business, no thanks.” Incidentally, only 5% of FTSE 100 CEOs are women, 2% in the FTSE 250, so in that dubious sense, the “man of business” (an old-time sobriquet for a Scots lawyer) is thriving. One survey notes that there are more Steves currently in the top job than women.

It has been said that what defines an entrepreneur is the willingness to risk everything to make the impossible happen, and a fanatical belief that it will. On that basis, it may be said that lawyers not being entrepreneurs is just fine. But an entrepreneur is not only a high-wire innovator.

They are simply someone who “organises, manages, and assumes the risks of a business or enterprise”. In that sense, the profession needs quality in depth. There are outstanding law firm leaders, but across the profession the picture is patchy. Partners find themselves promoted to leadership positions because they are regarded as the best lawyer, or the biggest fee earner, without proper consideration of whether they have the strategic, management and personal skills to do the job. Business skills are not always valued as they should be.

Clients will not seek commercial advice from lawyers, if they do not think they understand and respect their world. But here lies an opportunity. Lawyers are constantly searching for ways to differentiate themselves. The lawyer who invests in high quality business education, who becomes fluent in the language of strategy and management, who is able to see, as the *The Economist* puts it, the big picture, will have an edge over “small print” competitors, be they other firms, or internal rivals, as they claw their way up the greasy pole. It may not be an easy choice, nor for everyone, but in more ways than one it holds out the possibility of a rich career. ①

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

# Prepare for the tax due date



As the January tax payment deadline approaches, financial planning is essential for practices still hit by COVID-19 – and a tax loan could be one option to consider

## As

we get to the end of 2020, it is fair to say it has been a very tough start to the new decade.

When we surveyed members back in May to understand the impact the COVID-19 outbreak and subsequent restrictions were having on the financial health of the sector, 90% of private practice firms reported a downturn in new business, with the majority also reporting reduced turnover and cash flow. Since then certain areas, such as residential conveyancing, have experienced a significant and welcome upturn. But for many, while the upturn may be welcome, it is unlikely to be large enough to outweigh the drop in income and strain on cash flow during the full lockdown.

We still find ourselves in very uncertain times, and many firms will be wondering how they can maintain resilience and plan for the coming year. Many firms took advantage of the HMRC support to defer payments, but with January approaching many of our members have growing concerns over meeting payment deadlines in 2021.

Meeting deferred and usual payments is a real challenge, so I asked two of our commercial partners to join me in explaining what options are available to you, either from them or elsewhere in the open market.

### Crucial information

Financial management information is critical to plotting firms' recovery and building up resilience. Lyn Calder, managing partner – Edinburgh from AAB, our accountancy partners, highlights the need for robust financial management, saying: "It has been a challenging time for businesses since lockdown was first announced back in March, and while it may feel like we are slowly turning



a corner, some firms could be about to enter another challenging period.

"With the various Government business support packages coming to an end, there is every possibility that cash could become tighter than it was previously. Therefore, it is essential for firms to have a clear and regular view of their business performance and cash against forecasts.

"Strong financial management has never been more crucial. Firms must have a clear understanding of the KPIs that drive their business, and these must be regularly reviewed along with the two key profit levers – fees and costs.

"We would encourage all firms to ensure that they have the right systems, software and processes in place to provide their decision makers with quality, real time information about their business performance."

### Time for a tax loan?

As part of your financial planning, you should also consider any temporary cash flow support that is still available to law firms.

Every tax season brings its own challenges, but fortunately there are finance options available to both individuals and businesses to help spread the cost of any tax liability.

Aileen Boyle, managing director of our Strategic Partners Braemar Finance, introduces the benefits of a tax loan.


"Tax time can be incredibly stressful for business owners, because no one enjoys the thought of having to deal with the impact that paying out a lump sum to HMRC has on a firm's cash flow. We introduced the Braemar Finance tax loan to help business owners avoid any HMRC penalties and daily



interest charges for late submission.

"Our unsecured tax loan gives professionals and business owners the option of spreading the cost of their tax demand into more affordable monthly payments.

"We view personal, business, corporation, capital gains and crossover tax demands and will consider consolidation of existing agreements. With flexible repayment terms and fixed monthly payments, the payment can be made directly to HMRC or to your bank account by faster payment transfer.

"The application process is very simple – tell us the amount of your tax bill and the term you would prefer, and our in-house specialist underwriters will provide a quick decision. We will then tailor the tax loan to suit circumstances with fixed payments over the agreed repayment period." 

*You can find out more about support available from Braemar Finance and AAB in the member benefits section of the Society's website at [www.lawscof.org.uk/members/member-benefits/](http://www.lawscof.org.uk/members/member-benefits/)*

### Tax loan: the benefits

- Control your cash flow
- Fixed monthly payments
- Flexible repayment terms
- Faster payment transfer
- Protects existing bank facilities
- HMRC receives payment on time
- Quick and simple to arrange



**Paul Mosson**  
is Executive Director of Member Services & Engagement at the Law Society of Scotland

## Help to turn the corner

In the first of a new series, Stephen Vallance shares some advice on wellbeing – and believes that sharing is itself making a comeback



**W**elcome to my little corner of the Journal! Over the next few months I'll be looking at some common issues affecting the profession at large. If any of the topics resonate with you or there is a particular issue that you'd like raised, please contact me at [stephen.vallance@hmconnect.co.uk](mailto:stephen.vallance@hmconnect.co.uk).

I didn't want to start on a downer (particularly given the Eternal Optimist heading), but recently I've become increasingly concerned about stress levels and potential mental health issues within our profession. Placed in context, we have been through real worries about our health, our future and our businesses since lockdown struck. Over the ensuing seven months those not on furlough, principals in particular, have borne the brunt of ensuring that client work continued to be progressed and businesses continued to operate. Today, work for many is at unprecedented levels, yet many fear bringing in new staff lest the new year sees the much heralded recession. Add to that the feelings of isolation that working remotely brings, frustrations with technology and, for me worst of all, the darkening nights as winter approaches, and it is amazing that we have coped so far.

One of the great challenges of our profession is that stress is with us at almost every turn. We are perhaps unique in that we worry both when

quiet and when busy, and seldom take decisive action to address either. We take on vicariously our clients' issues along with our own worries on service, compliance and risk management. Many, like Boxer, the horse in *Animal Farm*, address times of extreme stress by simply saying "I will work harder". While admirable, if taken to the extreme it may have a similar sad ending.

### Keeping in good shape

What tools are there, then, to allow us to deal better with these issues?

- One mechanism for me was my running shoes. My simple mantra was "If I feel I don't have time to run, that's when I most need to run". Build into your day some time away from everything work related. Most importantly, make sure it's ringfenced, non-negotiable non-work time. I was always amazed, when running and not thinking about work challenges, how often solutions just came to me.

- Consider also an adage of an old friend of mine, "Sometimes in life the last thing you need is additional income: sometimes what you need is to build longevity." Perhaps, then, it is OK occasionally to say no to a client when you are too busy, or to refer them to someone else more expert when it's a matter at the edge of your comfort zone. Perhaps taking that time to work on *you*, will lead ultimately to a longer and healthier career.

- Perhaps also take a little time to decide on your personal and business goals, and start to put in place the measures to achieve them. Often regaining that feeling of "control" of your career or your business helps.

So is there a silver lining in all of this? Always, and we have started just by talking about it. There have been times over the last seven months when I've felt low, missing the social interaction that had existed in my "normal" day. That, I know from speaking to many of you, has been a common theme. In itself that helps, just knowing that what we are experiencing is not unusual or unique, a problem shared. I also hear from many quarters of a re-emergence of a much more collegiate spirit within the profession, a sense of "we are all in this together", and that has to be a good thing. The profession overall remains in good shape and is going to weather these times. Let's then look after ourselves to make sure we are all around to share in the better times ahead. 🙌



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

## Notifications

### ENTRANCE CERTIFICATES ISSUED DURING SEPTEMBER/OCTOBER 2020

ANDERSON, Ian Ruaridh  
ASHMORE, Reece McDonald  
ASHRAF, Hamza  
BOLES, Natasha Ann  
BOYD, Laura Frances  
BOYES, Rachael Georgina  
BOYLEN, Lucy Anne  
BRYANT, Gemma Louise  
CARVER, Vikki  
CHALMERS, Georgia Rose  
CLUBB, Megan Louise  
CRANE, Phoebe Ngaio  
DOUGLAS, Molly Fiona  
DUFF, Megan Louise

FRAZER, Karin  
JOHNSTONE, Chloe Cessford  
McCORQUODALE, Anna Catherine  
McKITRICK, Michael Thomas  
MORRISON, Lily  
NEIL, Jenna Marie Craigen  
SALEEM, Haris  
SCOTT, Stephanie  
SMART, Sam  
SMITH, Ailsa Macmillan  
WRIGHT-DAVIES, Shannon Louise  
YOUNG-SMITH, Colomban  
William J O B

### APPLICATIONS FOR ADMISSION SEPTEMBER/OCTOBER 2020

BELL, Caitlin Marie Ferguson

BILSLAND, Rebecca Bridget  
BOENDERMAKER, Simon Alexander  
BOYCE, Amy  
CAREY, Georgia May  
CARSWELL, Christie Rose  
DALGLEISH, Lauren  
DAVIES, Naomi Rhiannon Elspeth  
DRYSDALE, Elspeth Fiona  
FERGUSON, Victoria  
GALLAGHER, Michael Joseph  
GODDARD, James Paul Alexander  
GRACE, Robin Joseph Jesse  
GREEN, Paul  
GREENSHIELDS, Lauren  
HILLS, Anna Alice  
HIRST DAWSON, Alex May  
Patricia

JOHNSTON, Tristan Donald  
JOHNSTONE, Jade  
JORDAN, Emma Louise  
KEENAN, Paul Gerard  
KHALID, Zoheb  
LINDSAY, Rebecca  
McCUAIG, Ryan James  
McGHEE, Lauren Anne  
McIVER, Kerri Anne  
McLAREN, Marcus Robbie  
McLEAN, Danielle  
MACLEOD, Robyn Mairi  
MACNEIL, Robyn Sarah  
MILNE, Natalia Anne  
MURNIN, Marianne Joy Miranda  
NADDELL, Christopher James  
NICHOLL, Emily

O'CONNOR, Scott David  
O'DONNELL, Bryan Michael  
O'DONNELL, Ross John  
OLOFSSON, Elizabeth Megan  
PEACOCK, Emma  
PICKEN, Eleanor Boyd  
POCK, Thea Elizabeth  
PURI, Puneet Kaur  
RAFI, Mudassar  
ROBERTSON, Amy Jennifer  
SCOTT, Lorraine Lennox  
SIMPSON, Rebecca Anne  
SMITH, Christina-Jo Macleod  
THOMSON, Katarijna Bronia  
WADE, Katherine Elizabeth  
WATTS, Andrew  
WHYTE, Iona Mary Staggs





## Ross Paton

**D**undee solicitor Ross Paton, described as the life and soul of any party, has died aged 71. Born James Kinross Paton but known as

Ross, he died suddenly on 13 October 2020 at his adopted home of Insh.

Raised in the West End before later moving to Broughty Ferry, he was educated at the High School of Dundee. He was a member of the school's Combined Cadet Force (CCF) and became Pipe Sergeant. He also played rugby at school and for Dundee HSFP as an adult.

Mr Paton read law at Dundee University. He qualified as a solicitor at Shiell & Small in Dundee before joining J&J Scrimgeour.

In the early 1980s he joined the Fiscal Service, initially in Perth before becoming depute procurator fiscal for Dundee.

Remaining in his post until 1988, he then joined Shield & Kyd as a partner, managing the Arbroath office for 25 years until the merger with Lindsays LLP.

His career took him to the Dundee office on Bank Street and he retired as a partner

in 2013-14, remaining as a consultant until December 2017 in their new Seabraes office.

His military experience saw him rise to become Acting Major in the 51st Highland Volunteers A Company (Black Watch).

He held the role of session clerk at Roseangle Ryehill Church (now Dundee West) on Perth Road for 40 years, retiring in December 2019. He was also in the church choir for 55 years as well as Vice President of Dundee Choral Union for just under 20 years and a member of the choir for 50 years.

He was a past President of both the Dundee Round Table and the High School of Dundee Old Boys Club, as well as a member of Dundee Rotary Club and former chairman of the Tayside Solicitors Property Centre.

Predeceased by his first wife Glenys in 2011, whom he married in 1979, he is survived by children David and Susie, and three grandchildren. His second son, Andrew, died in 1997 aged 13.

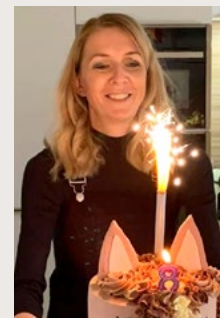
Mr Paton leaves behind second wife Kate, whom he married in 2018.

**David Paton**

## Claire Reilly (Robertson)

*"Life is not about waiting for the storm to pass. It's about learning to dance in the rain."*

Claire Robertson (née Reilly, which she retained professionally), aged just 43, lost her fight on 9 October 2020, having been diagnosed with an aggressive and terminal kidney cancer following the birth of her second daughter in 2014.



I had been employed as cashier at Gray & Gray some 10 years prior to Claire coming on board as a trainee. From the start she displayed a maturity and empathy which went beyond her young years. She quickly learned the ropes of our four partner practice, and was recognised as partnership material, being rewarded quickly with first her associateship, then partner. It was ultimately family law that gained her expertise.

Claire's different approach had an immediate effect. Our busy practice became more inclusive, encouraged in no short measure by Claire's hands-on approach with her support staff. When work pressures impacted on paper filing, she did it herself. There was no standing on ceremony. My personal highlight was in 2014, in preparation for our imminent Law Society inspection. Despite being very heavily pregnant, and having just dealt with a catastrophic office flood, she rose to the challenge, rolled up her sleeves and, as any decent cashroom partner would(!), she got the bank reconciliations done.

But it was in her practice that Claire came into her own. Her work in collaborative family law saw tensions among clients ebb away. I was moved to see how parties *could* stay in touch, *would* negotiate, and *were* prepared to lessen the impact of relationship breakdown on every member of their family.

Claire has left a legacy of collaboration, love and a greater appreciation of what is ultimately most important in this life. Be kind, show compassion, no matter what curveballs life throws at you.

**Tricia McPherson**

### In memory

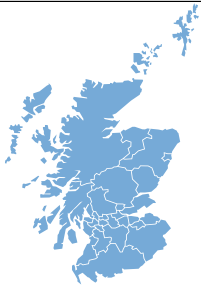
*Throughout Claire's illness, she strove to raise funds for others in the North East affected by cancer, through the charity Friends Of Anchor: [www.friendsofanchor.org/index.php/donate-online](http://www.friendsofanchor.org/index.php/donate-online)*

# Classifieds

## Who owns that land?

Landownership Scotland can find the answer **Call Ann Farmer** on 0131 623 5138 or email [search@landownership-scotland.co.uk](mailto:search@landownership-scotland.co.uk)  
14/2 West Savile Terrace, Edinburgh EH9 3DZ

[www.landownership-scotland.co.uk](http://www.landownership-scotland.co.uk)



## Barbara Beattie Brown or Kinghorn (deceased)

Would any solicitor holding a Will for the late Barbara Beattie Brown or Kinghorn who resided sometime at 22 Campsie Dene Road, Blanefield, Glasgow, thereafter at 163 Clober Road, Milngavie, Glasgow and latterly at Erskine Care Home in Bishopton and who died on 16 September 2020 please contact Thomas McFarlane, Solicitor, International & Domestic Law Practice, 13 Main Street, Milngavie, Glasgow, G62 6BJ (e-mail: [law@idlp.co.uk](mailto:law@idlp.co.uk)).



## Employment issues, Return to Work, Wage Loss, Functional Capacity Assessment and more

75 East Princes Street,  
Helensburgh, G84 7DQ  
Tel: 01436 677767

E-mail: [peter@employconsult.com](mailto:peter@employconsult.com)  
[www.employconsult.com](http://www.employconsult.com)



## Eadie Corporate Solutions Ltd

Former senior police officers with over 30 years experience, providing assistance to the legal profession in:

- Genealogy research
- Tracing investigations
- Litigation assistance

Competitive hourly rates for the highest quality of work.

91 New Street, Musselburgh, East Lothian EH21 6DG  
Telephone: 0131 6532716 Mobile: 07913060908  
Web: [Eadiecs.co.uk](http://Eadiecs.co.uk) Email: [info@eadiecs.co.uk](mailto:info@eadiecs.co.uk)



## DPB Tracing Services Ltd

Trace & Employment Status Reports

Tracing agents to the legal profession.  
Based in South Lanarkshire

Tracing Services available - Beneficiaries, Family Law, Debt Recovery tracing, Missing Persons, Landlord/tenant tracing, Employment tracing.

No trace, no fee. 93% success rate.  
Quick turnaround time.

Contact Douglas Bryden [mail@dpbtracing.co.uk](mailto:mail@dpbtracing.co.uk) or visit [www.dpbtracing.co.uk](http://www.dpbtracing.co.uk)

## Missing Heirs, Wills, Documents & Assets found worldwide

83 Princes Street,  
Edinburgh, EH2 2ER  
Tel: +44 (0)131 278 0552  
Fax: +44 (0)131 278 0548  
Email:  
[contact@findersinternational.co.uk](mailto:contact@findersinternational.co.uk)

**FREEPHONE**  
0800 085 8796

Finders International are founder members of IAPPR - a voluntary regulatory body for elite probate research companies worldwide.

Membership shows a clear commitment to improving standards and ethics. See [www.iappr.org](http://www.iappr.org) for more information.



International Association of Professional Probate Researchers, Genealogists & Heir Hunters

Finders with insurance by **AVIVA**

Finders are approved Aviva Missing Beneficiary Indemnity & Missing Will Insurance agents and are Authorised & Regulated by the Financial Conduct Authority for insurance business.



[www.findersinternational.co.uk](http://www.findersinternational.co.uk)

## TO ADVERTISE HERE, CONTACT

Elliot Whitehead

on 0131 561 0021

[elliott@connectcommunications.co.uk](mailto:elliott@connectcommunications.co.uk)

Celebrating over 24 years as **Scotland's only specialist recruitment company** dedicated to the placement of lawyers

**FWA** | Frasia  
Wright  
Associates



## Qualifying in 2021?

**Our NQ Outlook™ specialist division is focused on NQ lawyers in search of that first post-qualification position.**

At Frasia Wright Associates, our approach is a practical one, designed specifically to advise and guide you through the process with professional integrity and absolute confidentiality

Our aim is to ensure that you make career choices appropriate for you, and that you find the right position at the right time, which may mean staying with your current firm.

Over the past years we have worked on a large number of newly qualified positions with firms and organisations based all over Scotland. We will also

have opportunities in London and the Channel Islands in 2021 so we are well placed to assist and advise you on NQ opportunities wherever your desired location may be!

Each of the Frasia Wright Associates' NQ Outlook™ Specialist Consultants are experts with the NQ placement process and will be able to answer any questions you may have, provide relevant and appropriate advice or, ultimately, assist you in the process of securing the offer which most suits your career aspirations, knowledge and experience.

Please visit [www.frsiawright.com](http://www.frsiawright.com) where our dedicated NQ Centre is packed with lots of useful information, or for an initial and confidential chat, please contact Teddie Wright - [teddie@frsiawright.com](mailto:teddie@frsiawright.com) or Cameron Adrain - [cameron@frsiawright.com](mailto:cameron@frsiawright.com) or on 01294 850501.

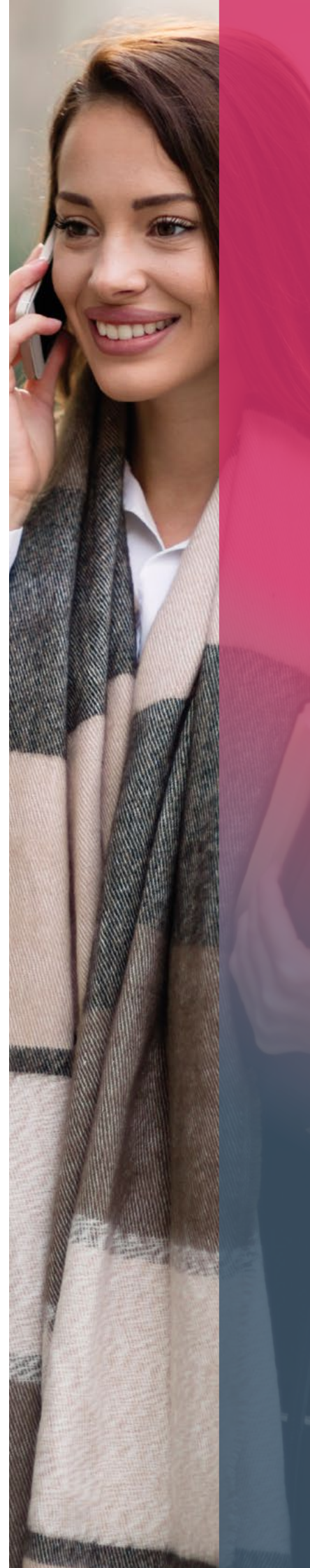


Frasia Wright Associates, The Barn, Stacklawhill,  
By Stewarton, Ayrshire KA3 3EJ  
T: 01294 850501 [www.frsiawright.com](http://www.frsiawright.com)



© FWA (Scotland) Ltd t/a Frasia Wright Associates 2020. FWA (Scotland) Ltd t/a Frasia Wright Associates acts as an employment agency

FWA NQ Outlook™ FWA CareerGateway™ FWA CareerWatch™ FWA PartnerSelection™  
FWA In-house™ FWA InterimSolutions™ FWA PSL™



# Engagement is at the heart of everything we do

From airports to zoos, and everything in between, our talented team helps some of the world's biggest brands to engage with their audiences across multiple channels, timezones and languages. So if your business is looking to get its message across in the best way possible, choose wisely. **Choose Connect.**

[connectmedia.cc](http://connectmedia.cc)



## CONNECT

creative | content | communications  
digital | events | video