Different type of appeal: immigration tribunal tips
P.16

New control regime: short term letting
P.22

First offence guideline: sentencing for road death
P.24

Journal

Journal of the Law Society of Scotland

Volume 67 Number 10 – October 2022

Out in the wide world

Five years on, how life has been for the Scottish offices of two UK and international legal practices

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

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Editorial
Connect Publications (Scotland) Ltd

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

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

Review editor: David J Dickson

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

Other Connect Publications contacts,
telephone 0141 561 0300

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

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Editor

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Changed spots?

The national focus, at time of writing, on the Truss Government's fiscal and spending policies should not distract us from watching carefully for what may be happening on the human rights front.

It appears at least that the Government is not intending to progress the British Bill of Rights Bill, very much a personal project of former Justice Secretary Dominic Raab, and one said not to have enjoyed enthusiastic support even among his colleagues.

Few in the profession will shed tears for a measure which seemed designed to restrict rather than enhance individuals' rights, and certainly would have made their enforcement more difficult. Before rejoicing at seeing off this threat, however, it is worth reminding ourselves that sentiments within the Government about the rule of law and the legal order, domestic and international, are not likely to have changed much from those widely deprecated by lawyers, and others, under the previous Prime Minister.

Despite one or two indicators of a less defiant position vis-à-vis the European Union in relation to the Northern Ireland Protocol, it remains unclear whether attitudes have really changed towards what is a binding international agreement; and ministers seem hell bent on removing all traces of EU law, with its plethora of protections for the individual, from our books. Home Secretary Suella Braverman remains intent on removing refugees to Rwanda, and denying entry to cross-Channel migrants generally; and is avowedly no friend of the European Convention on Human Rights, appearing to regard it as an imposition on our courts rather than an instrument that now has a settled and respected place within the UK's legal systems.

Although it is unlikely that there will be Government support for a policy of withdrawal from the Convention – which would come at a cost of further difficulties with the EU, among other consequences – there were clear pointers in the Prime Minister's conference speech towards a desire to downgrade the its status within the UK's legal systems.

Another thing that may well continue is the steady encroachment on devolved powers. The Johnson Government appeared to have a deliberate aim of legislating for the UK in such a way as to cut across powers or policies of the Scottish and Welsh Governments, powers that had co-existed perfectly well with the EU legal order in pre-Brexit days; and in so doing, going against the claim during the referendum campaign that leaving the EU would mean enhanced devolved powers. Attitudes towards the elected Scottish Government and Parliament were no more respectful during the Conservative leadership campaign, and there is little sign yet of a change of mindset.

The Truss Government attempts to present itself as something different, but continuity with its predecessor exists in many respects. It does not exactly start with a clean slate, and the profession must be ready to stand up for the people's rights.

Contributors

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

Jonathan Deans is an advocate with Arnot Manderson Advocates

Angus (Lord) Glennie is vice chair of the board at the Scottish Arbitration Centre

Caroline Loudon is a partner and licensing specialist at TLT

Elizabeth Rimmer is chief executive of LawCare

Richard Henderson is convener of the Society's Administrative Justice Committee

THE JOURNAL OF THE LAW SOCIETY OF SCOTLAND
VOL.67 NO.10 – OCTOBER 2022

Perspectives

Regulars

Features

Briefings

In practice

Scottish Arbitration Centre: new status and role: Page 20

ONLINE INSIGHT

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

Solicitors risk Equality Act issues: disability survey
Legal Services Agency's research shows an urgent need for reform within the legal sector to improve conditions for those with disabilities and neurodiversity.

International arbitration: where to look for growth
Craig Watt and Ryan Openshaw consider the potential for the growth of international arbitration as a means of dispute resolution across three different sectors.

A Q&A on Spanish law
Lara Graham, who qualified in Spain but now works in Scotland, outlines some of the key differences between the respective legal systems, as regards qualification and court proceedings.

An introductory guide to email account security
With business email the most common attack route for cybercriminals, David Fleming reviews some basics on their aims, their methods and the top 10 countermeasures.

The benefits of passive job searching
In association with Iconic: How working with a trusted recruitment partner can improve your position even if you are currently happy in your work.

OPINION

James Chalmers

The promise of legislation to abolish the not proven verdict should refocus attention on what other changes should happen at the same time, particularly regarding jury size and majority verdicts

The Scottish Government's announcement that it intends to abolish the not proven verdict means that it is time that a debate which has focused too heavily on a rearguard action defending Scotland's third verdict should now consider what other changes might be required to the Scottish jury system.

It is widely thought that abolishing not proven requires a reconsideration of the Scottish practice of allowing verdicts by a simple majority. From a comparative perspective, simple majority verdicts are highly unusual. English-speaking countries generally start from the position that a jury decision should be unanimous, whether for conviction or acquittal. Some systems remain there – Canada, and also the United States, where the Supreme Court decided in 2020 (reversing prior authority) that the constitution requires that verdicts be returned by unanimity. Others have moved away from unanimity by permitting verdicts by majorities of 10:2 or 11:1.

Such jurisdictions have not contemplated more radical change, considering unanimity to be a key feature of the jury, flowing from the requirement of proof beyond reasonable doubt. The concern is often raised that a change in Scotland might introduce the concept of the "hung jury", where the jury is unable to reach any verdict and a retrial is required.

These concerns should not be overstated. Hung juries are rare in other jurisdictions, which is why some have been able to maintain an absolute unanimity requirement. It has been estimated that if Scottish juries were to hang at the same rate as English ones, the number of retrials annually would be in single figures. Nonetheless, there is unlikely to be much appetite for the introduction of hung juries to Scotland. That suggests a middle course, where the current requirement of eight votes for conviction might be moderately increased, but with anything short of a new majority (such as 10 or 12 from 15) being considered an acquittal.

In contrast to the majority question, many commentators seem positive about the size of the Scottish jury, perhaps because it is not perceived as being significantly linked to the likelihood of conviction or acquittal. Ignoring jury size would, however, be a risk. As explained above, there is considerable evidence from elsewhere that unanimity requirements rarely prevent juries reaching decisions. In almost all cases juries are able to reach consensus, whether by complete unanimity or something close to it.

All this evidence, however, comes from systems with a 12 person jury. We have almost no evidence on whether a 15 person jury is similarly effective in reaching a consensus when required. It was striking in the recorded deliberations of the participants in the Scottish Jury Research how much less effective deliberation appeared to be in larger juries, with conversations often running in parallel and jurors talking over each other.

Anyone who has served on a committee will know how groups become less effective the larger they get, a point borne out by more general research on group decision making. Some commentators appear to believe that the question of jury size can be answered by asserting that a larger jury allows for more views to be represented. But additional representation may be meaningless if individuals are silenced by ineffective discussion. And the argument cannot simply be that more is better – why not, then, have juries of 20, 25 or 30? A decision about jury size requires acknowledging a tension between diversity of membership and effectiveness of deliberations.

As an aside, it is noticeable that those who praise viewpoint diversity in this context often ignore the weight that is given to individual views in juries elsewhere. In other countries, individual views are of huge significance. In many systems a single juror can prevent what they consider an unjust conviction; in others they need only make common cause with one or two other jurors. In Scotland, the lone juror is readily outvoted.

The significance of the jury size question should, therefore, depend on the rigour with which it is proposed to address the majority question. Those who wish to argue for a particularly strict majority requirement may find that their case becomes more compelling if they are willing to countenance an accompanying reduction in the jury's size.

A great deal of energy has been spent on defending the not proven verdict, even after its days seemed clearly numbered. This means that little time has been spent discussing changes which its abolition should necessitate. There is now a window of opportunity before legislation is taken through Parliament, which hopefully will not be squandered.

James Chalmers is Regius Professor of Law at the University of Glasgow

VIEWPOINTS

Sex and gender (concluded)

As Gordon Dangerfield states (Journal, September 2022, 6) in reply to my letter (Journal, August 2022, 6), I stated that Stair knew there were persons who did not fit the simplistic "male or female" categorisation. Dangerfield takes issue with my statement, while at the same time acknowledging the existence of what they call a "statistically tiny" number of persons who do not fit the simplistic "male or female" categorisation. So in Dangerfield's view the number of such persons being small, makes a statement that such persons exist false. As Walt Whitman once wrote, "Do I contradict myself? Very well then, I contradict myself (I am large, I contain multitudes." (*Song of Myself*)

Brian Dempsey, lecturer in law, University of Dundee

Brian Dempsey has been good enough to provide me with a copy of his reply to my letter.

The whole point of my letter was that the existence of people born with intersex conditions in no way undermines the two (and only two) human sex categories. I sought to illustrate the point with the analogy of people born with one leg, whose existence in no way undermines the bipedal nature of the human species.

Mr Dempsey believes apparently that having made this point, I then proceeded to negate it by denying the existence of intersex people – and presumably the existence of people with one leg – on which the point is premised.

Any such inexplicable denial by me is, I'm afraid, a figment of his own imagination.

Gordon Dangerfield, solicitor advocate, Glasgow

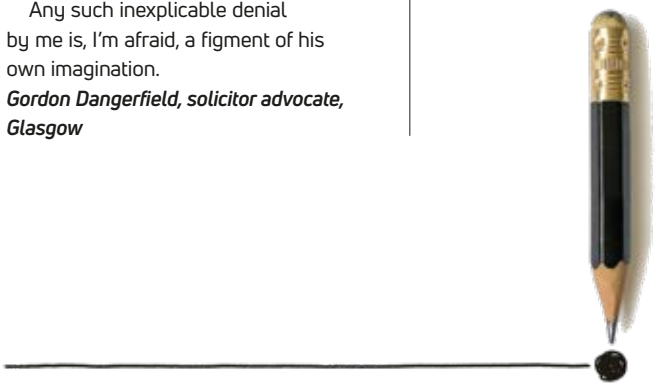
In his previous letter, Gordon Dangerfield stated that I perpetrate two logical fallacies which bring into question my fitness to be a lecturer at Dundee. In my original letter I did indeed point to the existence of persons who do not fit the simplistic either/or, male/female binary and state that the long recognised existence of such persons problematises the simplistic binary. Dangerfield acknowledges that non-binary people exist, but then insists that that does not disturb the either/or binary. Assuming the word "logical" has some content, his position may not merit even the label logical fallacy.

He also falsely asserts that my position was that if the medieval church was wrong on one thing (promoting marriage at 12 for girls), then that is proof that it was wrong in insisting on a simplistic sex and gender binary. My intention in drawing attention to these facts was to encourage sex- and gender-fundamentalists, many of whom say they are feminists, to reflect on at least the irony of the situation.

Clearly I failed miserably to encourage any reflection on the part of your correspondent, but I am nonetheless pleased to say that my position at Dundee does not appear to be in immediate danger.

Brian Dempsey, lecturer in law, University of Dundee

This exchange is now closed. – Editor



BOOK REVIEWS

A Practical Guide to Insane and Non-Insane Automatism in Criminal Law

RAMYA NAGESH
PUBLISHER: LAW BRIEF PUBLISHING
ISBN: 978-1913715892; £49.99

The defence of automatism is advanced in a surprising number of cases, most commonly driving cases and those where the accused has acted apparently irrationally causing criminal harm and it is claimed their drink was spiked.

This short book considers both insane and non-insane automatism. While it addresses the subject from an English law perspective, given the nature of the issues considered it offers helpful insight. It considers the approach practitioners ought to take when presented with someone who seeks to advance such a defence, the burden and standard of proof, and the outcomes available to the court and how they are imposed. There is a handy checklist of issues to consider and evidence to be led.

The book is of interest to Scottish practitioners for the brief chapters where the author considers the "special cases" of non-insane automatism, especially sleepwalking, diabetes, epilepsy, undiagnosed sleep apnoea and pre-menstrual syndrome. He highlights the public policy considerations, with an interesting discussion of the divergent approaches of the House of Lords and the Canadian Supreme Court.

While there is no direct reference to Scots cases, the book offers an appreciation of the approach taken by other jurisdictions to an area of complex law and fact, together with an understanding of the issues for the practitioner.

David J Dickson, solicitor advocate. For a fuller review see bit.ly/3rztxDV

The Mandela Brief: Sydney Kentridge and the Trials of Apartheid

THOMAS GRANT (JOHN MURRAY: £25; E-BOOK £14.99

"In South Africa from the late 1960s on, we see the power and impact of a dedicated trial lawyer in a legal system conceived and constructed to enforce harsh social order."

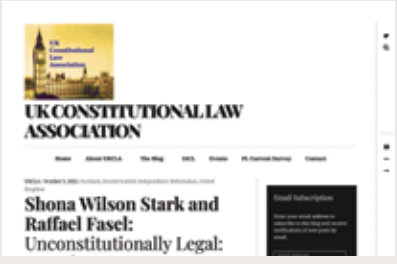
This month's leisure selection is at bit.ly/3rztxDV
The book review editor is David J Dickson

BLOG OF THE MONTH

ukconstitutionallaw.org

Two blogs this month, to mark the Supreme Court hearing on the competence of the proposed Scottish Independence Referendum Bill. Stephen Tierney believes that although the Scotland Act provision is vague, the practical effects of a referendum may well sway the court against the bill. Shona Wilson Stark and Raffael Fraser, however, suggest that whereas legally that may be correct, the court might declare the UK Government's denial of a referendum contrary to constitutional principle, given the amended Act's commitment to Scottish democracy.

The former blog is at bit.ly/3MbaM37; the latter at bit.ly/3SUQHjj



On the knight shift

Tales of test websites unintentionally put live (cont.): Magic Circle firm Freshfields was nabbed by Roll on Friday after it launched its new jobs portal with an array of tempting if unusual roles.

Top billing has to go to the Manchester office, with its quest for a Jedi (job spec: "Use the Force Luke… USE IT!!!!" Oops, too late, we guess.)

But it was Paris that clearly offered the most varied career paths, with openings including apprentice wizard, Corsican pig farmer, and Swedish gym instructor ("Professeur de Gym suédoise") – or does anyone fancy being "Présidente"?

Germany, however, could only offer an associate post comprising "WorkWorkWorkWorkWorkWork". What was that about their sense of humour? Or were they just telling it like it is?

Practices struggling to fill NQ or other posts shouldn't worry unduly about such competition – the copy quickly went offline when interest began. But could some creativity help with real job ads?

PROFILE

Lauren Wright

Lauren Wright is a member of the Society's Trust & Succession Law Committee

1 Tell us about your career so far?

I graduated from the University of Aberdeen in 2010, and following completion of my Diploma, I trained at Wink & Mackenzie in Elgin, in conveyancing and private client matters and became a partner there. In 2019, our firm merged with Harper Macleod where I was also a partner until 2021. I joined another firm before deciding to set up my own law firm, which I opened in July 2022.

2 What drew you to join the Trust & Succession Law Committee?

It has been a wish of mine since the day I started my traineeship to join this committee. Succession law is what I am most passionate about and find the most interesting.

3 What have you gained from being part of the committee?

I very much wanted to be part of the discussions regarding change, developments and guidance in terms of the practical side of the law. Because I have such an interest and passion for this area of law, I believed it would be a very enjoyable group to be part of, and it is!

4 What main issues do you think the Society/ profession should be addressing at the moment?

I believe we should be taking a closer look at people management. For effective change, it would be beneficial for regular training to be undertaken by partners and other people managers in the profession on an annual basis, and consideration given to making it compulsory CPD. While there is a huge amount of regulation in terms of funds, accounts rules etc, I think more awareness is needed around training and supporting partners with people management responsibilities, as they often don't have the experience to deal with staff wellbeing, knowledge of specific aspects of employment law, stress management etc.

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

WORLD WIDE WEIRD

1 Making plans for Nigels

Nearly 400 men called Nigel met up to celebrate their name at a pub in Worcestershire. The landlord, Nigel Smith, launched the event over fears that the name was dying out.
bit.ly/3CxuLG8

2 Wheeler dealer

A man in a wheelchair got up and walked unaided after police sniffer dogs found £1.2m of cocaine hidden in his motorised wheelchair at an airport in Milan.
bit.ly/3rvpUPm

3 Gone astray

Security cameras at a toy store in Brazil caught a stray dog entering and attempting to steal a stuffed toy. It was foiled when the toy got stuck in the doorway as it attempted to leave.
bit.ly/3M6kPqg

TECH OF THE MONTH

Calm

Apple and Android: free

Thinking of giving meditation a try? Then you should download Calm, which is a free app geared toward beginners. It offers short, guided meditation sessions. Sessions focus on various topics, including anxiety reduction, stress management, improved sleep, breaking bad habits, cultivating gratitude, and more.

PRESIDENT

Murray Etherington

The Society could do more than it already does to speak up for the profession; but it also needs to give you, the members, more chance to set its agenda, and I want to hear about your concerns on my visits

I recently attended the Edinburgh Chamber of Commerce's President's Dinner. The guest speaker was Greater Manchester Mayor Andy Burnham. Some of you may have read his comments on independence; but it wasn't his views on our current constitutional situation that struck a chord with me, although I did think it was brave of him to address the elephant in the room. It was two other elements of his speech that inspired me.

The first was his comment about his role to advocate unapologetically for the people of Greater Manchester. I feel that this is how we as a Society should be thinking when it comes to speaking up for our profession as a whole. I think we do a reasonable job, but of course more could, and should, be said. We need to be more positive about our impact on civic life in Scotland, the immensely powerful impact solicitors have in their local communities, and our cooperation and engagement with our various partners in Government, the court services and with other stakeholders. We have a great story to tell: for example, we have hard evidence of the support we have from the general public as a profession and we should not be shy about shouting this from the rooftops.

Andy also talked at length about being in the Westminster "bubble" and about not understanding the strength of feeling around centralised politics – how Westminster politicians do not fully appreciate how disenfranchised the people of Scotland and the north of England feel. I think there are some similar comparisons for those of us in the Law Society of Scotland "bubble". It is easier for Council members and committee members to be aware of the work of the Society, to feel informed about our strategy and what support there is for members. However, when you are in the bubble it can be easy to forget that others may not know as much about what we are working on, and that the information received at committee meetings or in Council may not be common knowledge across the whole profession. It is this "bubble" that I want to pop.

Your agenda

Traditionally, it is Council that sets the agenda – telling you what we think is right for you. Now in the regulatory framework that is, of course, correct but from a members' perspective we need to be engaging more and providing more opportunities for you, our members, to have input into what we do – whether that's at formal meetings such as our upcoming SGM this month or more informal opportunities to discuss our work. This is your Society, and we need your help to shape its present and future.

This is why we encouraged a more involved discourse around the Society's strategic direction earlier this year. We opened that up to a wider group than just Council, and I believe this has helped us to formulate a more inclusive strategy for the next five years. Our new strategy will be launched this month and we are inviting all of our members to join an online session on Thursday, 20 October to present its key aims. There will of course be an opportunity to ask us questions at the meeting about our plans for the future.

The success of our engagement with members on the strategy is the reason I want to continue that discourse throughout my presidential year. This has started with my constituency visits – for most of them you will get the chance to meet our new CEO; you will hear about what the Society has been doing; but it is absolutely crucial that you come along wanting a discussion. I don't want these visits to be a presentation which ends with tumbleweed at the point of "Any questions?" I want it to be a conversation. I want to hear your issues and your concerns. I want to know what you think the Society can do to help you, what we do well at the moment, and where we can improve. So this is a call to action to all of you to come along, get involved and, just maybe, we can make a difference!

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

People on the move

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

ADDLESHAW GODDARD, Edinburgh, Glasgow, Aberdeen and internationally, appointed Fiona Kindness as a partner in its Corporate & Energy team in Aberdeen. She joins from PINSENT MASONS.

Addleshaw Goddard has also appointed Claire Thornber, solicitor advocate, as a partner in its Dispute Resolution team, based in Glasgow. She joins from WEIGHTMANS.

Addleshaw Goddard: Fiona Kindness with co-head of Energy David Ewing

BELL + CRAIG, Solicitors, Stirling and Falkirk, are pleased to announce that Aran Logan Wilson has been appointed as a director of the company as of 1 September 2022.

THE CHAMBER PRACTICE, Dundee, Cupar and Brechin, has appointed Donna Imrie, formerly of ROLLO SOLICITORS, as an associate solicitor based in Cupar. Her arrival coincidences with the impending rebranding of the Chamber Practice-owned WILLIAMS McRAE office in Cupar, following a period of integration which started when the former acquired the latter in 2021.

CULLEN KILSHAW, Scottish Borders, are pleased to announce the assimilation of the firm of STEVENSON & JOHNSTONE, Langholm into their legal and estate agency business, effective from 1 October 2022. Principal Kenneth Hill and his legal support team will transfer to Cullen Kilshaw and continue to practise from their existing offices in Langholm.

Alison Ross Eckford, formerly a partner at PINSENT MASONS LLP, has joined MILLS & REEVE LLP as a partner in the Commercial team in London.

GILLESPIE MACANDREW, Edinburgh, Glasgow and Perth, has appointed five newly qualified solicitors, Anais Banag, Hannah Gaddie, Laura Kirkman, Scott Mackie and Nadia White following their completion of the firm's two-year traineeship programme.

HOLMES MACKILLOP, Glasgow, Johnstone, Giffnock and Milngavie, is merging with MACFARLANE & CO SOLICITORS, Glasgow and Bishopbriggs. Macfarlane & Co's office in St Vincent Street, Glasgow will close, with business transferring to Holmes Mackillop's Glasgow office in Douglas Street; the office in Kenmure Avenue, Bishopbriggs, will become Holmes Mackillop's fifth location. Macfarlane & Co partners Alison Macfarlane and Greig McPhail are retiring; partner April Cuthbert will join Holmes Mackillop as a senior associate in its Johnstone office. Jan Kerr and Heather McQuilken, currently associates in Macfarlane & Co, will also join the merged firm, Ms Kerr remaining in the Bishopbriggs office.

Chris Miller, advocate has joined BLACK CHAMBERS from THEMIS ADVOCATES with effect from 12 September 2022.

J & H MITCHELL WS, Pitlochry, Aberfeldy and Dunkeld, are delighted to announce the promotion of Jenny Temblett to associate.

MY LAWYERS, Alexandria announce that, with effect from 30 September 2022, they have closed their offices at 134 Main Street, Alexandria G83 0NZ. Their new postal address will be My Lawyers, PO Box 11385, Paisley PA3 9GH. The telephone number and email addresses remain unchanged.

SHEPHERD AND WEDDERBURN LLP, Edinburgh, Glasgow, Aberdeen and London, announces that Fraser Mitchell has rejoined the firm as a partner in the Planning team from SHOOSMITHS, where he led the Planning & Environment team in Scotland.

SHOOSMITHS, Edinburgh, Glasgow and UK wide, has made the following appointments to its Corporate team: Kimberley Goh, who joins the Glasgow office from DENTONS, and Jen Paton, who returns to the Edinburgh office after working at SHEPHERD AND WEDDERBURN, become legal directors; and Morgan Trigg, qualified at the New York bar and in England, and Aadil Anwar, from THORNTONS, Dundee, are both joining the Edinburgh office as associates.

Shoosmiths' Kimberley Goh (l) and Jen Paton (r) with team leader Alison Gilson

denovo

Changing the legal aid game

Denovo's CaseLoad platform now integrates with SLAB Online

We would love to tell you that we are announcing that your legal aid payments are going to increase significantly for all your hard work. However, we believe this might be the next best thing… maybe!

We are delighted to announce that SLAB Online now integrates with our legal case management software platform, CaseLoad. This has taken a lot of hard work from both Denovo and the Scottish Legal Aid Board to make this happen, and finally, it's here.

We are confident that many of the frustrations legal aid lawyers find when uploading files to SLAB will now be a thing of the past. With immediate effect, SLAB Online will now accept an account as a case management option. Within our CaseLoad software platform, we have introduced a new method of submitting a legal aid account to SLAB. Using the SLAB integration option, you can submit work items from time recorded entries in CaseLoad directly to SLAB and request payment. How good is that!

All it takes is four easy steps:

1. Record your time entries in CaseLoad as normal to create your work in progress.
2. Using the SLAB integration option, you can submit work items to SLAB and request payment.
3. SLAB will assess the account and respond with an offer of payment.
4. The option is there to negotiate or accept the offer from SLAB.

Putting the integration to the test

We have been trialling the integration with some of our key legal aid clients, all of whom have welcomed the integration with open arms.

Leila Katani, office manager at Katani & Co Solicitors said (very enthusiastically!): "When we heard the SLAB integration with Denovo was ready, it really made our day. We had a short demo and to be honest it was so simple I really did think it was too good to be true, but it is just that simple to use. Manually inputting accounts can be extremely time consuming and a drain on resource, so the fact that we can automate the process using our case management system, CaseLoad, with the upload feature, really is a game changer for us. We still rerecord our time entries in CaseLoad as normal to create our work in progress. But, now using the SLAB integration option we can submit work items to SLAB direct from CaseLoad and request payment, reducing a huge amount of duplication in work. I would genuinely go as far to say that this is one of the most significant timesaving software features that Denovo have ever introduced for legal aid firms."

Euan MacKay, partner at McGlashan MacKay Solicitors added: "The SLAB integration with CaseLoad means that the days of copying and pasting work items on to SLAB Online are finally over. For large files, we would spend almost a full day going through a pretty laborious admin process. Having the ability to raise the fee straight over has changed a full day's work into literally a few minutes. This type of integration with our case management system has been a long time coming and we are delighted it's finally here."

We couldn't have said it better ourselves!

We are honestly delighted at the reaction so far. We will continue to roll out the integration to our existing legal aid law firm partners, and look forward to sharing the time saving benefits and efficiencies with many more Scottish law firms. Plus, we are going to continue to work closely with the Scottish Legal Aid Board to make lawyers' lives even easier.

Breaking ground

We can't control the Legal Aid Board or any challenges you face there. We're not here to break down barriers either. But we are here to introduce groundbreaking features within our software that can streamline your processes. And SLAB have been very supportive in helping us make this integration the best it can be.

We're in the business of supporting you to run your firm, so you can spend more time doing what you do best – representing your clients and being the best lawyer you can be.

In short, our software, CaseLoad, provides a set of tools for the fee earners and support staff to undertake administrative tasks more effectively. This includes time recording and billing, court diary management, case bundle preparation, document production, document management, legal accounts, outsourced Cashroom and at last, an integration with SLAB Online.

Having the right, user friendly, software in place provides you with the financial and administrative tools needed to manage cases and make life that little bit easier.

If you're a legal aid lawyer and would like to talk to us about how you can utilise CaseLoad to improve your practice performance, get in touch with grant@denovobi.com, visit denovobi.com or call us on 0141 331 5290.

IT'S FINALLY HERE!

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Scottish Legal Aid Board

SLAB Online now integrates with our Case Management Software.

We are delighted to introduce a new method of submitting a Legal Aid Account to SLAB. SLAB online will now accept an account as a Case Management option. Using the SLAB integration option, you can submit Work Items from Time Recorded entries in CaseLoad directly to SLAB and Request Payment.

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Five years and growing

This year, 2022, has seen two fifth anniversaries of international legal firms moving into Scotland. Addleshaw Goddard did so through a merger with HBJ; Womble Bond Dickinson started more or less from scratch with a small office in Edinburgh. The Journal reports on how each has fared compared to initial expectations – and on how the Scottish arm of each firm sees its own identity.

Strength in merger: Addleshaw Goddard

"We could have stayed on our own; but we thought this was the best way and we were right."

David Kirchin, Scotland head at Addleshaw Goddard ("AG"), was "almost man and boy" at HBJ, and a partner when the decision was taken to split with Gateley as the latter was preparing to float. The choices that faced HBJ are described by then senior partner Malcolm McPherson in our interview at Journal, June 2017, 16. In the event the firm eschewed a looser "verein" arrangement with Gateley in favour of a full merger with AG, which was then seeking an entry route to the Scottish market as clients increasingly sought a presence both sides of the border.

What difference has it made, being part of AG as opposed to Gateley? Kirchin is clear that they are very different firms. "Here everyone is working for a common endeavour, a common goal, so you're working together as a team whether you're sitting in Glasgow or Manchester or London. It's a much bigger, international firm with all that brings, so a stronger partner to decide to combine with, for sure."

> "The teams in different locations know each other and work. The COVID period aside, we regularly see colleagues from across our business in Scotland. It's a combined business"

In terms of career for Kirchin and his colleagues, it has brought significant new opportunities, whether in work within Scotland or further afield. "A concrete example: one of the Corporate team is working for a client doing the repowering of renewable energy businesses in Europe. It's UK/German work (with a US fund), working with colleagues in Germany. We wouldn't have been as likely to do that as HBJ Gateley."

So the Scottish arm is very much integrated with the whole business, and involved with its projects? "Yes, the teams have just combined completely and that's why I'm talking to you from London today. The teams in different locations know each other and work. The COVID period aside, we regularly see colleagues from across our business in Scotland. It's a combined business."

More junior colleagues can choose to advance in Scotland or try moving elsewhere. "We've got three people from Scotland in Dubai at the moment, one in banking, one in corporate, one in litigation; we've had people previously in Hong Kong; we've got a trainee currently in Singapore; one of the Employment team started her career in Glasgow and is in London now. All those possibilities are there for them. And I'm really excited about the impact they make outside Scotland, and about the prospect of them coming back to Scotland. Not all of them will, but I'm sure some of them will, and bring all their experiences back into our marketplace in Scotland."

Still Scottish?

It is easy to assume that a smaller Scottish operation merging with a larger UK or international one (AG has more than 2,300 people, and almost 350 partners) would mean the imposition of a uniform culture and a loss of Scottish identity. Kirchin doesn't recognise such a picture. "We want to make sure that every bit of Scotland feels tapped into the rest of the business, the wider business. But equally, if we're in a market we need to be relevant to that market. If you're in Aberdeen you should be talking to the local advisory community in Aberdeen, out talking to businesses in Aberdeen, and you should be looking to bring what you have that is distinct to that market, bringing all of AG to the client.

"So, many of the deals we are doing are Scottish deals with Scottish folk, Scottish qualified, and that part of it is the same today as five years ago, but it just offers wider opportunities and interests for people to countenance without changing firms. To say the culture is the same as it was five years ago can't be right – it's developed and moved on, but very much building on what was there. If we had our managing partner on this call I think he would say the entrepreneurial spirit that sat within the Scottish business pushes into the wider business, and we want to encourage that."

Integrated or not, to Kirchin it very much makes sense still to talk in terms of its Scottish arm. "Oh definitely. Our business in Scotland finds its way on to the board table as an exciting, interesting place we should grow and develop, so it's viewed as an excellent merger, a really strong combination, and has proper support to continue to grow." With turnover having doubled since the merger, the market is seen as having further growth potential, "and the firm wants to support that: not naming any names but we have different partners

from across our marketplace joining us or talking to us right now, five or six conversations going. Some of them will happen, some won't".

Turbulent times

As with most practices, the pandemic has had lasting effects. From a business angle, the initial shock of the lockdown – "an incredibly taxing and very difficult time" – was followed in the ensuing months by an increasing realisation that "trade was still happening: some sectors were really booming; others were an absolute challenge, but all of those businesses needed legal support so things came back strongly from late summer onwards".

Hybrid working, however, is here to stay, and that happens firm-wide. "It's important that people have that flexibility: it definitely works for people. But we also like it that people come into the office, and I see the teams get something from being with each other; that contact and ability to work together in person is important."

As for the current economic turbulence, "It's a moving picture; it's very hard to bring any concluded thoughts. What we do know is that it has been a period of strong trading here, and the indicators are that there are still plenty of things going on. You can't help but wonder what lies ahead, but we've a well hedged business both in Scotland and more widely, geographically and sectorally, across specialisms, and with some fantastic clients, so you've got to stay close to them, close to the things you're doing and we'll see what unfolds. It's incredibly challenging times to figure out."

However AG does not have all its eggs in the UK basket. Its first overseas office opened in 2012; more have followed, increasingly so in the last five years – most recently in Dublin, where the Irish firm Eugene F Collins was persuaded to come on board after looking in particular at the HBJ experience. "We firmly believe that an international footprint is the future of this firm," Kirchin states, "and we've got conversations ongoing with different firms across different jurisdictions. So to be sure, the trajectory and path that we're on is one that we'll stick with."

I finish by asking what advice he would give to anyone starting out as NQ now. "I don't know that I'm a great one to be giving advice," he laughs. "None of my children want to pick up my choice of profession, so I don't know whether anyone's going to listen! But it's a brilliantly challenging career to embark on, and I think there has never been more opportunity for different types of experiences. Whether you choose to work in private practice or in-house, there are excellent opportunities across both; in private practice you've got really broad choices across different disciplines and types of law, but also you can really distinguish between the firms – those with one location in Scotland, multiple locations in Scotland only, UK only, international, more niche firms, all of those are there.

"So I would just encourage anyone who's embarking on or thinking about a career in law, to try it – make sure they think really carefully about the kind of experience they want, but there are loads of good opportunities."

Growth from startup: Womble Bond Dickinson

Partner and head of Litigation, Philip

> "Our business in Scotland finds its way on to the board table as an exciting, interesting place we should grow and develop"

David Kirchin: a well hedged business

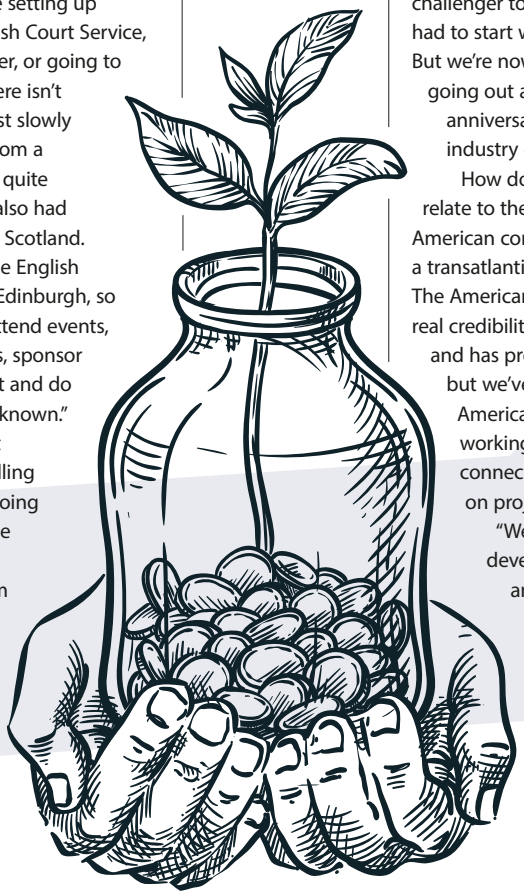
Philip Knight: an energy to grow

Knight thought he was joining UK practice Bond Dickinson on the opening of its Edinburgh office in September 2017 – until, on the day he started, its merger was announced with US firm Womble Carlyle Sandridge & Rice, leading to his taking a fair bit of teasing from lawyer friends over the name that resulted.

What was the attraction of a Scottish presence to the newly created Womble Bond Dickinson ("WBD")? "The main opportunities initially were the financial sector, retail and real estate sectors", Knight answers. "That has worked out quite well." From three or four people in a top floor "greenhouse" of an office looking across to the castle, WBD has seen organic growth to its headcount since moving to new purpose built offices on Semple Street. "It's been hard because initially we were one of those challenger brands that not many people knew about; we were having to go out and tell people what WBD is and get them interested in coming to join us."

What was the hardest thing about starting up like that? "Personally for me, it was moving from the support infrastructure of a big office and having to go back to basics, like setting up accounts with the Scottish Court Service, not having a court runner, or going to buy a gown because there isn't one in the office, and just slowly building up a practice from a standing start. So it was quite hard to begin with. We also had to build the brand up in Scotland. We are well known in the English marketplace but not in Edinburgh, so we had to go out and attend events, join sector organisations, sponsor conferences, just get out and do things to get the brand known."

Similarly from a client perspective, it meant selling themselves internally, "doing the roadshows round the different offices across the UK and getting them to have conversations with their clients when they had historically referred matters to established Scottish firms. So it was internal and external brand recognition."



"We're quite a young and vibrant office – there are no dinosaurs!"

Young and free

You might think that a new start office of an international firm would be particularly subject to external influence. Not so, says Knight. "We've all come from different firms across Edinburgh and Scotland. I would say we're quite a young and vibrant office – there are no dinosaurs! We've created quite a good culture, and we've had a lot of autonomy because we have to get out there and get ourselves known. It has been hard work but also lots of fun."

It seems to have worked. Practice areas have expanded into construction and employment, private wealth, finance, banking and financial services, and numerous cross-border deals – "so we've gone from offering not much to almost being full service in the space of five years. It's been an exciting journey though difficult at times".

COVID was a setback, putting a halt to the marketing and networking approach. "In year 3 when we were just moving premises and becoming a real challenger to other firms, we suddenly had to start working from home. But we're now getting back up there, going out and about for our fifth anniversary, starting to attend industry events again."

How does the Scottish office relate to the wider firm in terms of the American connection? "We really are a transatlantic law firm close to home. The American connection gives us a real credibility when speaking to clients and has provided great opportunities, but we've not suddenly become an American law firm – it's more about working together and trying to find connections and collaborating on projects.

"We're very much left to develop and grow ourselves and given the path to do that. We have the autonomy to get out and about and do things, which for us is brilliant. People sometimes think that because we're part of a huge American law firm we don't have autonomy, but I certainly have much more autonomy than at my previous firm."

Wider working

It sounds like colleagues haven't been leaving to work in the wider firm? "No, none of that, and I think because we've been bringing people in it's been quite good for everyone's career progression. We've just promoted four partners internally, and quite a number of people have been brought in with a view to promotion. Everyone is reasonably senior and I think that's what happens to begin with when you create an office from nothing; then you start bringing in other resource. We're trying to do that now that we've established a strong presence in Edinburgh.

What are their selling points when trying to recruit in Scotland? "In terms of the culture it's a place where people enjoy working. But while it's smaller, because of hybrid working now and with the offices working together more it's very much a one piece firm. We've got construction associates in Edinburgh doing work for the London office; banking associates doing exciting work across the whole of the UK, which I suppose traditionally you might not have got; and genuinely it's a friendly place to work at because we've all come from different firms bringing fresh ideas and an energy to grow."

By year 10 WBD hopes to double its Scottish turnover again, despite the current economic climate. "From a firm perspective clients are still needing legal advice; we're still exceptionally busy, and we don't immediately see it having any effect on our business."

As the firm's training manager, what is his career advice for anyone starting out now? Noting how much more complicated the process of securing a place is than in his time, with screening, interviews, summer placements and then hopefully a traineeship, Knight comments: "It's really a case of being persistent, getting your applications into firms. We're seeing some great candidates coming through and there's a lot of competition, so it's just sticking in there and keeping at it."

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Immigration appeals: a case apart

Presenting a case at an immigration tribunal differs from appearing in other courts and tribunals, says Jonathan Deans, who offers eight tips for best practice when conducting such an appeal

Immigration law is a complex specialist field, one with which practitioners who do not work in the area are unlikely to be familiar. To the author's knowledge, most of the universities in Scotland do not teach an immigration law course on the LLB, and none do so on the Diploma in Professional Legal Practice. This is unfortunate, as preparing for and conducting an immigration tribunal is a materially different experience than conducting a case in the civil courts, or even in the other First-tier Tribunals. It is hoped that the following tips will provide helpful guidance to people starting a practice, or contemplating one, in immigration law.

Preparing the case

1. Writing a skeleton argument

In the ordinary course of events, the First-tier Tribunal will direct the appellant to lodge a skeleton argument. Even if this has not been directed, a skeleton argument will assist the immigration judge at the hearing and should always be prepared.

A good skeleton argument will start with an overview of the basis of the appeal and then provide a brief factual summary. Following this, the skeleton argument should provide a "schedule of issues" for the tribunal to determine. These should be as succinct as possible, while still allowing the immigration judge to clearly discern the matters in dispute. Reference should be made to all the legal and factual arguments that the tribunal is required to determine in order to decide the appeal, but not to each fact which the tribunal needs to make a finding on.

After the schedule, brief submissions on each issue should be provided. All authorities which will be relied upon should be clearly referred to in the appeal skeleton argument, in a way which makes clear what proposition is being taken from the case. The author has seen skeleton arguments running to over a dozen issues, which is unlikely to be required in all but the most complex appeals. The author has also seen skeleton arguments where the only issue listed for the tribunal to determine was "Should the appellant succeed in their appeal?" This provides no benefit to the immigration judge.

2. Preparing the bundle

All the documents relied on by the appellant, including authorities, should be lodged in a paginated electronic bundle. An index of the documents contained in the bundle is essential, and some thought should be given to the structure. A proposed structure is to start with the witness statements, then any expert reports, followed by any evidence in support of the appellant's account, a section for objective country evidence, and then concluding with the authorities relied on.

Paragraph 7.5(ii) of the Practice Directions recommends a "schedule identifying the relevant passages". It may be useful to provide more than one schedule. For example, a schedule of key passages should be included at the end of the objective country evidence, and a separate schedule of key passages should be included at the end of the authorities. The key passages should be highlighted where they arise in the text of the documents.

Paragraph 7.5(iv) also recommends that a chronology of events is lodged, which appears to happen infrequently in practice.

3. Identifying objective evidence

The immigration tribunal is often critical of the volume of country information which is lodged in support of an appeal. It is not appropriate to create a "generic" bundle containing human rights reports on every issue arising in a certain country. Thought should be given to identifying which reports support the appellant's case for each of the issues in the appeal.

For country evidence, the Home Office relies on its Country Policy and Information Notes. The relevant CPINs should be read to determine where the appellant's case is not supported by the CPIN, and objective evidence should be used to justify the tribunal departing from the guidance in the CPIN. If the appellant's case is supported by the CPIN, this should be relied on. For example, if a CPIN or a recent country guidance decision accepts that torture of detained prisoners is widespread in a country, there is no need to include other evidence to establish this point.

4. Bring your cases

In the immigration tribunal, cases which have not been lodged are frequently referred to in submissions. This is rarely objected to, as para 2(d) of the tribunal's rules requires the immigration judge to use their special expertise. If the case is familiar to the judge, they are likely

to accept reference to it without having the case in front of them.

However, this does not override the obligation to give fair notice to the other side, or the desirability of being able to refer the immigration judge to the relevant passages in the case. If a case is going to be referred to, it is best practice to include it in the bundle. If a case which has not been lodged has to be referred to in submissions, the representative should offer to make this case available to the tribunal.

Conducting the case

5. Informal – to a point

Paragraph 2(b) of the tribunal's rules requires the immigration judge to avoid unnecessary formality in proceedings. Representatives remain seated throughout the hearing and the judge is more likely to allow discussion between the representatives during the hearing.

However, the hearing is still an official process which should be conducted with dignity. The judge should be referred to as "sir" or "ma'am". Representatives should stand when the judge is standing, unless asked to sit, and should also bow to the judge if leaving the courtroom while the judge is on the bench. Any discussion should cease when the judge enters the room.

6. Communicating through interpreters

Many immigration hearings require a court-appointed interpreter to translate the proceedings for the appellant. Careful effort should be taken to identify not only the language which is required, but also the specific dialect. For example, appellants who speak Pakistani Pashto may not be understood by an Afghani Pashto interpreter, as Urdu words are incorporated into the Pakistani dialect.

When asking questions through an interpreter, the questions should be directed at the witness. Any clarification required should be obtained through asking further questions of the witness, instead of asking the interpreter what was meant by an answer.

When delivering submissions, representatives will need to be acutely aware of how fast they are speaking, and make frequent pauses for the interpreter to translate. The time taken for translation will also have to be factored into any estimated timings which the judge may ask for.

7. Structuring submissions

In the immigration tribunal, submissions are delivered first by the Home Office representative, and then by the representative for the appellant. It is common practice for those representing the appellant to make a rebuttal of the Home Office argument at the end of their submissions.

However, the author suggests that the rebuttal argument should come first, after a brief introduction. The Home Office argument is fresh in the judge's mind and should be addressed before moving on to new points which assist the appellant. This also allows the appellant's submissions to finish on a positive note stressing their case, instead of ending with the points made by the Home Office.

Submissions should not rehearse the objective evidence, but the tribunal should be taken to relevant passages with a clear explanation of what proposition should be taken from them in respect of the appellant's position. Internal and external consistencies in the appellant's account should be stressed.

8. Devaseelan

A common type of immigration appeal is a "Devaseelan appeal", named after the Upper Tribunal case of Devaseelan (Second Appeals, ECHR, Extra-Territorial Effect) [2002] UKIAT 702. This case explained the approach which the First-tier Tribunal is to take when dealing with further submissions which have been made following an unsuccessful appeal.

The main principle of Devaseelan is that the decision in the first appeal is the "starting point", but can be departed from where new evidence, which was not before the original tribunal, justifies departing from its findings.

Secretary of State for the Home Department v BK (Afghanistan) [2019] EWCA Civ 1358 is also a useful case on this type of appeal and should be read by practitioners.

When delivering submissions in a Devaseelan appeal, it is important to identify which parts of the original First-tier Tribunal decision should be departed from, and which new evidence entitles the later tribunal to do so. The later tribunal cannot merely rehear the appeal and come to a different conclusion. It must provide reasons for departing from the previous determination. It is the appellant's representative's role to provide these reasons in submissions.

It is important to note that this is not an appeal against the original determination. Submissions that the previous judge was wrong are unlikely to be successful. Instead, it should be argued that new material has come forward or circumstances have changed which render the previous decision untenable.

Conclusion

Preparing for and conducting an immigration tribunal is likely to be an unfamiliar experience for practitioners used to the proceedings in other civil courts. An understanding of how to prepare and lodge appeal skeleton arguments and prepare a bundle of materials relied on is essential. Useful guidance can be found in the practice directions. When appearing in the immigration tribunal, practitioners should be mindful that the relative informality of the proceedings does not diminish the solemnity of the process, be aware of the proper way of putting questions to a witness through a translator, and consider where best in their submissions to place a rebuttal of the Home Office argument.

Jonathan Deans is an advocate who called in 2022. His stable is Arnot Manderson Advocates. He frequently appears in the First-tier Immigration Tribunal for the Home Office and for appellants.


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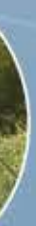
It is a bit of a no brainer really!

Kieran Fitzpatrick,
Partner at MHD Law LLP

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

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

Carole McAlpine-Scott,
Partner at MacRoberts LLP



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Scottish arbitration: a new era

Having hosted the global ICCA Congress in Edinburgh, the Scottish Arbitration Centre has published its own arbitration rules, making it an institution able to administer international arbitration cases

Scotland has just played host to its largest ever law conference, thanks to the Scottish Arbitration Centre, which last month delivered the International Council for Commercial Arbitration ("ICCA") 25th Congress in Edinburgh. The event involved more than 1,400 participants from across the world, making it the largest congress in ICCA's 70-year history.

The congress saw engagement from various Scottish firms and practitioners, and shone a spotlight on Scotland as a legal and dispute resolution jurisdiction. We also estimate that the event itself was worth over £5 million to the Scottish economy. I take this opportunity to congratulate Brandon Malone, chair of the board at the Centre, and Andrew Mackenzie, chief executive, the driving forces behind ICCA Edinburgh, on the success of the congress and the resulting legacy for Scotland.

The Centre also took the opportunity, as host of this prestigious international arbitration event, to make several announcements and to signal a new era for Scotland and our arbitration industry.

Progressive rules

We published our arbitration rules for institutional arbitration, meaning that the Centre will now administer arbitration cases. This is the first time a Scottish-based organisation has offered this service, the London Court of International Arbitration being the main organisation providing this service in the UK. The hope is that those in Scotland and elsewhere looking to use institutional arbitration will now consider selecting the Centre to administer their arbitrations.

The Centre will continue to promote arbitration and Scotland as a seat and venue, provide an arbitral appointments service for ad hoc matters, offer arbitral hearing suites at our new base in Haymarket, and deliver training to the arbitration community. However, moving to administer cases is a significant milestone in its history.

Angus Glennie (the Hon Lord Glennie) is vice chair of the board at the Scottish Arbitration Centre

Drawing on input from dozens of practitioners around the world, the Scottish Arbitration Centre Rules seek to build on the experiences of other arbitral institutions while striving to address some of the more pressing contemporary issues in international arbitration. They feature specific provisions encouraging greener arbitration and promoting diversity in the selection of arbitrators, and enshrine a commitment to data protection and cybersecurity.

Court supervision

Cases administered under the rules will be overseen by the newly formed Court of the Scottish Arbitration Centre. The President of the Court is Lady Sarah Wolffe KC, former Senator of the College of Justice, and the Vice President is Elie Kleiman, partner in International Arbitration at Jones Day in Paris. The other members of the court are Eliana Baraldi, Kaj Hober, Joyce Cullen, Norman Fiddes and Alice Leggat.

We also appointed Duncan Bagshaw, barrister and head of International Arbitration at Howard Kennedy in London, as our registrar. With the benefit of his extensive experience working for arbitral institutions, including as registrar for LCIA-MIAC in Mauritius, Duncan will fulfil the role of registrar under the rules, seconded from his day-to-day role as a leading practitioner in the field, and supported by Howard Kennedy's specialist international arbitration team. Duncan will support the Centre and our executive to ensure that we can offer services to the standards of responsiveness and expertise expected by international users and arbitrators, immediately on opening and while it develops its caseload.

Case management solution

The Centre also launched Unicorn, its innovative electronic case management system for arbitration centres developed in partnership with Opus 2. Unicorn, named after Scotland's national animal, will provide a centrally connected space for the case from the outset, giving users a secure, efficient and consistent way to access and share all case-related information and materials. Claimants, respondents, the tribunal and the institution can securely manage the exchange of all documents and notices via a connected portal, with built-in audit trails providing greater transparency and control. The new system streamlines onboarding and handover, automates manual administrative tasks, and provides analytics that enable the Centre to deliver its services efficiently and offer a modern connected experience to its end clients.

The Centre selected Opus 2 as developer given the firm's track record in the field and its multi-award-winning technology. In 2021 Opus 2 supported over 400 international arbitration cases involving law firms, clients and other participants from more than 75 countries, and its solutions have also been used by more than 700 leading arbitrators globally. Now that we have the rules and an administrative infrastructure to deal with cases, we want to deliver our clients an innovative, efficient and first-class experience – and a solution that has cybersecurity at its heart and enables us to put our commitment to greener arbitrations into practice.

New chair

Brandon Malone has confirmed he will stand down as chair at the next board meeting. On behalf of the board and executive, I thank him for his tireless work to develop the Centre and put Scotland on the international arbitration map. Although his are large shoes to fill, I very much look forward to leading the Centre into this new era for arbitration in Scotland, and hope that solicitors will ensure clients understand the benefits of arbitration, including institutional arbitration administered by the Centre.

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Short term lets: a new dawn

People wanting to add to their income via Airbnb-type lets now have to comply with a new regime to control the growth of such use, involving licensing and perhaps also planning applications. Caroline Loudon explains what may be required

From a fairly basic start in 2007 in San Francisco, when two roommates who needed to raise money quickly decided to add three air mattresses to their loft floor for conference delegates, Airbnb has grown to become a phenomenal global success and is now a multi-billion-pound industry. The short term let ("STL") platform could claim (as at September 2021) to have served more than 1 billion guests globally, and as at December 2020 was valued at $75 billion.

Walking down the High Street in Edinburgh, it is near impossible not to be aware of the key safe boxes affixed to decades-old stone masonry. This time last year, Edinburgh had about 5,288 properties to let on a short term basis, with the highest concentration located in the city centre and Leith Walk. Reports of negative outcomes from STLs including safety of guests, congestion effects (traffic, people, litter, waste and noise), plus fragmentation of communities, inflation of the longer-term rental market, reduced housing availability and affordability, together with much associated disruption through the churn of short term use, led to calls for regulation of this type of accommodation.

In 2017, the Scottish Government set up an expert panel to address the growing concerns. In 2019, the Government undertook a consultation on the regulatory framework of STLs in Scotland and drafted further reports on their impacts on communities. In 2020, proposals were announced (1) to establish a new licensing regime for STLs using powers under the Civic Government (Scotland) Act 1982; (2) to give local authorities the ability to introduce STL planning control areas under the Planning (Scotland) Act 2019; and (3) to undertake a review of the tax treatment of STLs.

The Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) Order 2022 came into force on 1 March 2022, underpinning a new and controversial licensing regime of STLs commencing on 1 October – a new regulatory framework bringing STLs into the scope of the 1982 Act. Each local authority in Scotland is required to introduce a new licensing scheme (including the creation of new licensing policies), and to consider their STL control areas in terms of planning.

Definition and exemptions

What is an STL in terms of the 2022 Order? The definition is set out in full in the panel, but if you let out residential accommodation in the course of a business to a guest, and the guest (1) does not use the accommodation as their only or principal home and is not an immediate family member of the host, or sharing the accommodation as part of their education, or an owner or part owner of the accommodation; and (2) is not providing work or services to the host (or household), this is likely to be an STL and requires a short term let licence. Interestingly, there is not a defined time which constitutes a "short term". The legal definition lies in whether the accommodation is the guest's only or principal home.

STL licences are split into "types", including:

- secondary letting (accommodation which is not, nor part of the licence holder's principal home – a second home);
- home letting (using part or all of the host's only or principal home while they are absent);
- home sharing (using part or all of the host's only or principal home while they are there); and
- home letting and home sharing (a mix of the previous two types).

Any accommodation let on this basis and in accordance with the criteria above will require a new licence. There are two specific exemptions:

- in terms of the 2022 Order, sched 1, accommodation which includes premises where a premises licence has effect and accommodation is provided in accordance with activity on the licence; hotels/hostels/aparthotels; student accommodation; a residential school/college or training centre; a traditional bothy; and hospitals/nursing homes;
- tenancies such as protected or short assured tenancies, a croft tenancy or a Scottish secure tenancy, as well as others.

While 1 October marks the commencement of the regime and the first date for applications for an STL licence, there are other key dates to note. Existing STL owners who can evidence "use" can rely on transitional provisions and continue trading, but must make their application by 1 April 2023. Any person seeking to enter the STL market must make their licence application from 1 October and cannot take bookings/deposits until it has been granted, which could take months. If an application is refused, the operation of the STL must cease within 28 days. By 1 July 2024, all hosts must hold a licence.

More paperwork

Each local authority will have an STL policy, will administer the application process and decide whether licences are to be granted for one or three years. Each can set its own reasonable fee levels in terms of applications, changes to licences, inspections of premises and other administrative tasks. Estimated fees to be charged by local authorities range from low hundreds to thousands, with the onus being to ensure that the total amount of fees received is sufficient to meet expenses. Many are setting up new teams to process this new stream of work. They will outline the application forms, layout plans, and supporting papers/certifications that will

need to be submitted to meet the conditions set out in sched 3 to the 2022 Order.

Annual gas safety certificates, current electrical installation condition reports, portable appliance test certificates, as well as risk assessments for fire safety, legionella and proof of insurance for buildings and public liability, will also be needed. It is important to note that additional local conditions and restrictions can be applied to the licence which are more specific to the property or led by local knowledge. Only the holder of the STL licence can carry out day-to-day management of the premises.

Where the accommodation is situated within an STL planning control area ("PCA"), and the application is for a secondary letting, additional evidence is required. That is, planning permission for use of the premises as an STL, proof of an application having been made for a certificate of lawfulness. Currently, there is only one PCA: one for the City of Edinburgh (the whole city, which came into force on 5 September 2022), but another is being considered in Highland for the Badenoch & Strathspey area. The Edinburgh PCA invokes use of the Edinburgh Local Development Plan Policy Hou 7 – Inappropriate Uses in Residential Areas, which prohibits changes of use where this would have a materially detrimental impact on nearby residents.

The application itself follows the usual licensing process detailed by the 1982 Act, in that the application is publicised and circulated to relevant authorities and a site notice must be displayed for 21 days. This will detail the type of licence applied for, who has made the application, the person responsible for the day-to-day management of the accommodation, and the number of bedrooms and occupancy, as well as the name and address of the owner (if not the applicant). Objections (which must be made in writing and lodged within 28 days of the application being advertised) and representations can be received, and the named parties are subject to the "fit and proper" test which runs through the Act. This means that any relevant offences, concerns about the suitability of the accommodation for an STL, and any previous issues with noise, antisocial behaviour or other complaints become directly relevant and grounds for refusal.

Local policies

Careful review of each local authority's STL policy will be key for all in making an application for an STL licence. One specific point to note, which comes from the draft Edinburgh STL policy, is the position on tenement/shared main door accommodation. The council has long pushed for regulation of STLs and a new licensing regime, which has been achieved. It remains concerned about the suitability of tenement accommodation, saying it believes this is "unsuitable for secondary STL due to its character, location and risk of creating undue nuisance". Within the Edinburgh policy, there is a rebuttable presumption against the grant of a secondary STL licence for accommodation within tenements. It remains to be seen if that rebuttable presumption can be eased by an applicant providing evidence of consent from all other owners/occupiers of the tenement in question (something which is used already in relation to applications for late hours catering licences).

The potential impact of this new regime on some parts of Scotland should not be underestimated. Much of the STL accommodation in Edinburgh is likely to fall foul of the local development plan. If successful in terms of planning permission, many will face the policy hurdle of being within a tenement. It is likely that we will see a large decrease in the numbers of STLs. This will no doubt impact the local property market in terms of sale values and also rental costs. Some will argue that this will be a positive impact for those who seek permanent homes. Others will see personal income from investment properties bought as retirement funds cut overnight. It remains to be seen whether these commercial impacts and market changes will create the benefits for community and neighbourhood that were so keenly sought.

The 2022 Order definition of "short term let" reads:

"'short-term let' means the use of residential accommodation provided by a host in the course of business to a guest, where all of the following criteria are met –

(a) the guest does not use the accommodation as their only or principal home,

(b) the short-term let is entered into for commercial consideration,

(c) the guest is not – (i) an immediate family member of the host, (ii) sharing the accommodation with the host for the principal purpose of advancing the guest's education as part of an arrangement made or approved by a school, college, or further or higher educational institution, or (iii) an owner or part-owner of the accommodation,

(d) the accommodation is not provided for the principal purpose of facilitating the provision of work or services by the guest to the host or to another member of the host's household,

(e) the accommodation is not excluded accommodation (see schedule 1), and

(f) the short-term let does not constitute an excluded tenancy (see schedule 1), 'short-term let licence' means a licence granted for the activity designated in article 4" (a short term let on or after 1 October 2022).

Caroline Loudon is a partner and licensing specialist at TLT

Success: time to reframe

Marking World Mental Health Day this month, LawCare highlights the pressures driving many away from their career in the law, and the importance of supporting wellbeing

For many in the law, success is viewed as synonymous with position and salary. There is an expectation that begins as a law student that you will give up much of your life to study, train and work hard in the law, resulting in money and eventually a greater level of autonomy.

The legal professional model is largely built on this view of success, but for many it simply doesn't work and is problematic. Some never really feel like they've achieved success and remain disillusioned and unsatisfied, or struggle with imposter syndrome. For some people in the law, they will only feel they have "made it" when they become a partner, or sometimes when they retire or exit the profession with the money they have saved. By the time they have reached the level they aspired to, they are often exhausted and disenchanted, and do little to improve the profession for those coming into it. And so the cycle continues.

On the LawCare support service we hear from many lawyers, particularly at the junior end of the profession, who say law just isn't working for them as a career. Around 65% of those who contact us are under 45, and many are frustrated with the competitive, hierarchical, long hours culture. They have no time to spend with family and friends or pursue hobbies or other interests, and this can significantly affect their mental health and wellbeing. They are often perfectionists, putting huge amounts of pressure on themselves, and are terrified of making mistakes. They have spent years and lots of money studying, fought off competition to get a training contract, and sometimes moved far from home, only to feel that life in the law doesn't suit them. Many are getting to a stage of burnout, and they are leaving the profession in their droves.

A report published earlier this year by the International Bar Association revealed that one in five young lawyers were thinking about leaving the profession completely. Our 2021 Life in the Law research found that legal professionals are at high risk of burnout, worn down by constant pressure, client demands and workload. Do we need to reframe what a successful career in law looks like, to attract and retain people in the profession?

Can't buy happiness

Success might be traditionally viewed in terms of money and power, but we know that this is not what makes people happy. Research shows that happiness is found from human connection, gratitude, performing acts of kindness to others, an investment in experiences not things, and surrounding yourself with positive people.

In terms of earnings, a 2010 study found that once people had met an earning threshold of around £54,000 (about £65,000 in today's money), their happiness stayed the same or began to decrease. Often the kneejerk response to the recruitment problem is to raise salaries, but if this doesn't increase people's happiness, it won't solve the problem. Organisational psychologist Adam Grant says: "In burnout cultures, people are judged by the sacrifices they make. Hobbies, vacations, and even family time are viewed as distractions to penalise. In healthy cultures, people are judged by the commitments they keep. Interests outside work are seen as passions to celebrate."

For firms wanting to keep staff and attract new blood, ask people what is important to them and use the data to develop a new set of policies that support wellbeing. It might be acknowledging the importance of rest from work by introducing a ban on emailing people on annual leave, or a recognised time off in lieu policy. For those feeling like they've lost their way, ask yourself what a different version of success could look like for you? Look to find a role in the law that meets your values and what you consider to be important in life, whether that's a firm that is family friendly, or prioritises the wellbeing of its staff, or has a strong commitment to a particular environmental or social issue. It could be looking at changing department or specialism, or using your legal skills in a different setting. Ultimately a successful lawyer is happy, healthy, thriving and doing their best work – there is no requirement to follow a set path through the profession in order to achieve this.

LawCare: here for you

You can contact LawCare for support on 0800 279 6888, email support@lawcare.org.uk or access online live chat and other resources at www.lawcare.org.uk

Join our Tell Ten campaign for World Mental Health Day, and tag 10 colleagues or friends on social media or send an email or text, to let them know about the free, confidential service LawCare offers everyone working in the law. You never know when someone might need us.

Elizabeth Rimmer is chief executive of LawCare

Death by driving: the quest for justice

As consultation on its first offence guideline takes place, the Scottish Sentencing Council explains how it hopes to promote consistency, and public understanding, in the sentencing of the statutory offences of causing death by driving

The Scottish Sentencing Council has launched a public consultation on Scotland's first offence guideline, which is on statutory offences of causing death by driving.

This draft guideline is intended to be read alongside the Council's three general guidelines on the principles and purposes of sentencing, on the process of deciding sentences and on sentencing young people.

It covers the statutory offences of causing death by dangerous driving; causing death by careless driving when under the influence of drink or drugs; causing death by careless or inconsiderate driving; and causing death by driving: unlicensed, uninsured, or disqualified drivers.

Support at each step

The structure of the draft guideline follows the initial steps of the Council's guideline on the sentencing process. For easy reference, tables are provided for each offence. A table at step 1 lists features to help the sentencer determine which level of seriousness a case falls into: A, B or C. For the offence of causing death by careless driving when under the influence of drink or drugs, a second table at this step addresses the level of alcohol and drug consumption.

Further tables at step 2 set out sentencing ranges for each level of seriousness, and at step 3 the factors which may aggravate or mitigate the seriousness of the offence, such as previous convictions, or a previously good driving record. In some cases these may move the headline sentence outside the range selected at step 2.

As an example, in relation to the offence of causing death by dangerous driving, level A seriousness would include prolonged and deliberate bad driving with a disregard for the danger being caused to others; level B would include driving that created a substantial risk of danger to others; and level C would include a single dangerous manoeuvre which created significant risk of danger to others. The table at step 2 provides sentencing ranges for this offence of seven to 12 years' imprisonment at level A, four to seven years' imprisonment at level B, and two to five years' imprisonment at level C.

Plea for responses

The Council decided to prepare its first offence guideline on these statutory offences to assist both the courts and the public. By setting out the sentencing process, the factors taken into account, and the sentencing ranges, the guideline will help people to better understand how sentences are reached. It will also increase the predictability of the sentence in a case for all involved. The guideline is intended to be as concise, accessible, and easy to understand as possible.

For the courts, the sentencing ranges will assist those on the bench in selecting the appropriate disposal. These sentencing decisions can be challenging, particularly where there is a significant difference between the level of harm caused (death) and the level of culpability. An example of this might be a death by careless driving case where an offender with a previously good driving record and no prior convictions has caused a fatal accident through a moment of inattention.

As this guideline will serve as a template for future offence guidelines, the Council is consulting on its structure and format, as well as on the content of the guidance.

It is vital that we hear the views of the profession to ensure that the document is fit for purpose, and the Council encourages you to respond to the consultation. Once we have carefully considered and analysed all of the responses received, we will make any appropriate changes to the draft, before submitting it to the High Court for approval.

Sentencers must have regard to all relevant guidelines approved by the High Court. If they do not follow a guideline, they must give their reasons.

The draft guideline, draft impact assessment, and a consultation paper are available on the Council's website. The consultation closes on Tuesday, 22 November 2022.

Justice: seeking a guiding hand

Can a principles-based approach be developed to the vast range of decisions affecting the public that are covered by the administrative justice system? The Society is seeking members' help to achieve just that, as Richard Henderson explains

The administrative justice system touches the lives of all citizens across Scotland. It does so far more than the civil and criminal justice systems – social security, mental health, school placements and exclusions, criminal injuries compensation, immigration and asylum, taxation, parking, valuation, employment disputes – yet is a policy area that receives significantly less attention than other areas of the justice system.

With the publication of a discussion paper on a principles-based approach to administrative justice, the Law Society of Scotland hopes that this will change. We are consulting through the autumn, and are keen to hear views from our members, and from across civic Scotland about whether there is the scope across this wide range of different areas for a shared set of principles.

Shared principles?

The scope of administrative justice is broad. It covers, in particular, the variety of different dispute resolution processes after a decision has been made, for instance tribunals, courts and ombudsmen. It can also include the processes and procedures by which initial decisions are actually made, and the review processes undertaken after that stage, such as the use of mandatory reconsideration in social security disputes. Indeed, in terms of first instance decision-making, there has been much focus in recent years around the need to get these initial decisions right first time, to avoid the time and cost of the processes that otherwise follow. An accurate assessment of a person's eligibility for social security, for instance, avoids the time and cost of a further review process, or a tribunal hearing, and the cost and anxiety to the person affected by that decision.

There should be expectations for what interaction with the administrative justice system involves, so that people know how they will be treated if they raise an issue with a decision by a public body. The consequences of these decisions often have a significant impact on a person. We believe that it is crucial that this system has to be founded on principles, otherwise it risks lacking coherence, equity and fairness. However broad the system may be, we believe that an approach based on shared principles can be adopted.

The task may not be straightforward. The number of public bodies involved, and the way in which these bodies operate in either reserved or devolved areas, add significant complexity. Devolution means we have two distinct systems working simultaneously within administrative justice in Scotland. Our discussion paper focuses on devolved areas of competence, suggesting that a new, distinctly Scottish approach could be adopted.

The number of bodies involved in the administrative justice system is also huge. In order to operate effectively, these systems and organisations must work together in harmony, and that means there has to be clarity about the principles involved. Given the range of different interactions throughout the administrative justice system, and the different ways in which administrative justice disputes are resolved – from courts and tribunals to ombudsman services – ensuring that these principles are holistic will require creativity and innovation.

Trends

A principles-based approach will need to address current and future trends. The growing use of automated decision-making by public bodies, the move towards online applications and the outsourcing of key public services are among the many reasons why we need to be clear about the principles on which our administrative justice system is to work.

Because of the breadth of the system, embedding principles through cultural change or voluntary adoption is likely to be a difficult and necessarily gradual process. The Scottish Government, for instance, has looked to embed "right first time" principles into decision-making across public bodies, to ensure better quality decisions and to reduce the number of instances where people need to challenge or appeal these decisions. The benefit to the public and the cost savings for organisations are clear.

However, embedding principles across the administrative justice system may be helped by legislation. There have been examples of this in other jurisdictions, where principles of fairness and procedural standards have been implemented in law. There have also been examples closer to home, such as the principles-based approach taken for devolved social security in Scotland, recognising social security benefits and the entitlement to them as a human right and essential to the achievement of other human rights.

The Society's Principles paper is aimed at kickstarting a discussion around the development of principles, and we look forward to hearing views. Our consultation is open until 21 November, the discussion paper is available online (access via the Society's news page (26 September)), and views can be provided by email to policy@lawscot.org.uk or using our online survey: www.surveymonkey.co.uk/r/7JQ598D.

Richard Henderson is convener of the Administrative Justice Committee

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Dealing with delay

Have two appeal decisions, not yet published, departed from the traditional approach to allowing extensions of time? This month's criminal court briefing considers the effect of developments in recent times

Criminal Court

FRANK CROWE, SHERIFF AT EDINBURGH

Swift and Early RIP?

These two oxymoronic cases about delay (the latter a full bench decision of five judges) have been sidestepped by a three judge opinion which, while running to 11 pages, does not tell the full story.

Lords Carloway and Pentland, who sat on the appeal Barr v HM Advocate, High Court, 28 July 2022 (see next article), will remember the bad old days in the 1980s and 90s when they were advocates depute, and the High Court, previously a Court of Session backwater, came under pressure with the exponential growth of drug trafficking cases.

Those fiscals who precognosced and reported promptly to Crown Office a rape case where the accused was on bail saw the case repeatedly adjourned, with the complainer repeatedly cited and cancelled until close to time bar.

A line was drawn across the sitting list of those cases of custody or bail which had to be dealt with, and the others were often not looked at by counsel. Early pleas by section letter were discouraged by hefty sentences. Discounts were not offered in the High Court, following Strawhorn v McLeod 1987 SCCR 413, but about half the sheriffs ignored that decision as contrary to common sense, and a plea in a jury sitting, even in the High Court, was usually rewarded by a reasonable sentence, such was the pressure the sitting judges were under.

After Bonomy

Fast forward to the Bonomy reforms introduced in 2004, which led to the rapid reduction in the bow-wave of adjourned cases, thanks to sentencing discounts (courtesy of Du Plooy v HM Advocate 2003 SCCR 640, before s 196 of the Criminal Procedure (Scotland) Act 1995 was amended to catch up in 2004), reasonable pleas being offered by the Crown, and the legal aid system being tweaked towards early preparation leading to resolution.

An "early plea" at solemn level might come months after an appearance on petition, as long as it was tendered before the Crown issued a full indictment with lists of witnesses and productions. By contrast it was a brave soul who ascended from the cells to the sheriff summary custody court and pled guilty with a sore head to events which had taken place the night before. Usually the only time the same level of discount was secured in those circumstances was when the accused was what the Americans call a "frequent flyer", and the inevitable Crown opposition to bail was likely to be successful.

This disjunction between High Court and sheriff court proceedings continued and still continues in the wake of the decision in Barr and the similar cases of Sinclair and Appleby. I accept that the cases remain outstanding, but they contain important matters of principle and procedure which have nothing to do with their merits. As with other decisions initially known to the Crown and those counsel involved, but not in the sheriff court at judicial, administrative and practitioner level – the most notorious example being HM Advocate v Ashif [2015] HCJAC 100, about statements of uncontroversial evidence, decided in March 2014 but not published until October 2016 – why not anonymise the judgment so that all of the profession and all courts can follow the law as currently determined?

Sheriff court disconnect

As part of the COVID recovery team I had empanelled a jury last week to start one of these cases, but an accused tested positive overnight and it had to be further adjourned on defence motion until next year.

While the High Court pressed on with the Bonomy reforms and aimed to have as few preliminary hearings as possible, sight I fear was lost of one of the main objectives – to stop the repeated citation of witnesses until absolutely necessary. Indeed in the immediate wake of the Bonomy initiative, significant numbers of staff whose job it had been to cite, cancel and recite witnesses could be redeployed elsewhere on more important tasks. Fifty per cent of High Court cases were disposed of before trial diets had to be organised.

In the sheriff court, however, some jury cases dragged on for years pre-trial, often due to delays in the Crown being able to produce crucial evidence such as drug reports and road traffic accident analysis. Skeleton indictments were fleshed out by a string of s 67 notices before a trial could be countenanced. Eventually it was thought a good idea to develop a Bonomy approach to sheriff and jury cases. The Bowen report was published in June 2010, but not implemented until August 2017. Apart from Glasgow, where specialist jury sheriffs have sat for many years, most sheriffs undertake sittings of one to four weeks, and their diaries are filled months ahead with other work: proofs including significant cases diverted from the Court of Session, family cases, extraditions etc. Many sheriffs have been called away to act as temporary High Court judges, and problems arise as one sitting ends and another, to be presided over by a different sheriff, is due to begin.

A further disconnect can be found in the operation of the Judiciary and Courts (Scotland) Act 2008. A board was formed with a large presence of senators and relatively few shrieval representatives, despite sheriffs being involved in 95% of the case work.

Management meetings are held from time to time, chaired by the Lord President, to discuss changes with the senators, but meetings of the sheriffs principal are chaired by an official and as a result edicts issued from time to time by the Lord President have had little or no "trickle down" to sheriffs or the sheriff court.

Tales from practice

Barr mentions the importance of Uruk 2014 SCCR 369, but this opinion was issued at a time prior to the Bowen reforms being implemented, when, as it had always done, the Crown led pre-trial and it, rather than the clerk of court, offered adjourned diets if a case could not proceed then and there.

Apart from those sheriffs immediately affected by the latest decisions, no one else knew. The sheriff clerks still have to be instructed to have sufficient jurors available for all of the jury sitting, so that cases can be indicted on the last day to spill into the next sitting.

By happenstance one week we actually had that availability in my court. The previous week I was prepared to proceed on a Friday, having refused an adjournment, but when told the Crown was prepared to go to trial I was forced to adjourn ex proprio motu due to lack of court time when I found I had no jurors left to empanel – fortunately without being appealed. Given the age of the case, doubts as to whether it was truly of sheriff and jury standard and problems over the repeated failure of the male complainer to appear, his female partner being the alleged assailant, I was tempted to consider the

> "As far as I can see, the result of Barr et al is to move away from the two stage test laid down in Swift and Early"

nuclear option of deserting the proceedings pro loco et tempore, leaving it to the Crown to re-raise this problematic case, which had been clogging up the court, at a later date at summary level if so advised. That gambit will no doubt become an appellate matter at a later time!

As we have seen in HM Advocate v Graham 2022 SCCR 68, COVID delays in proceedings add to the trauma faced by complainers and can lead to witness attrition. An experienced sheriff could see the signs, and the successful Crown appeal to extend the time bar and hear the trial at an adjourned date proved to be a Pyrrhic victory.

As far as I can see, the result of Barr et al is to move away from the two stage test laid down in Swift and Early to a "balancing of the interests of justice, the interests of the accused in being brought to trial within the statutory time limit, with those of the complainer and the public in general in allowing the system of justice to determine the charges on their substantive merits as opposed to on grounds that are essentially procedural in nature. If the interests of justice dictate that the time bar ought to be extended, cause to do so will have to be shown".

Summary practitioners may recognise this modern approach is essentially the formula which was laid down in Tudhope v Lawrie 1979 JC 44, Lord Cameron at 49.

Pre-recorded evidence

Good progress has been made at High Court level to hold commissions pre-trial to lock in and have available the complainer's evidence. Special suites have been built to accommodate this procedure and transcripts are available to jurors to assist their consideration of this crucial evidence. This approach was recommended at para 20 in the Graham opinion, dealing with a sheriff and jury case.

Sadly, the example I and the jury saw of commission evidence in one sheriff court case recently consisted of a single camera fixed on the witness, largely inaudible and invisible questioning from the depute fiscal, and barely audible replies from the witness. Only the defence agent, also unseen, could be heard asking a few questions in cross. Needless to say, it being a sheriff and jury case, no transcript was proffered by the Crown, leaving the jury to assess this evidence as best they could.

There has been jury research undertaken recently using cases based on real ones, with Lord Bonomy presiding. Before there is a rush to innovate further, perhaps there needs to be consideration of the modern jury's task in presiding over multi-media evidence gathered at different times and played with recordings of varying quality.

Early on in the police investigation there is an interview of the accused by police where various impact questions are put. The camera angle is unflattering and often the accused is obscured by the inset camera showing the room in wider shot. At the commission evidence stage, which is taken later, parties may still not be in possession of the full facts. Fingerprint, DNA and medical evidence are often reduced to an anodyne joint minute lacking any expert commentary; other vulnerable witness evidence is heard online from austere settings, devoid of curtains, where the echoes produced test those in court to tune the equipment to clear and audible levels.

In the final analysis the jury deploys a qualitative assessment over all of this, and sometimes the Crown, like many football teams, lacks quality in the final third in presenting the case to best advantage.

Sentencing discounts: the latest

One area I am all in favour of is reducing sentences of imprisonment for all but the most dangerous and unmanageable. In the conjoined sentence appeals of McDonald and Milligan v HM Advocate [2022] HCJAC 34 (30 August 2022), McDonald pled guilty at an early stage to a charge of causing death by careless driving contrary to s 2B of the Road Traffic Act 1988.

His car had run into the back of a car being driven by a young mother. She had slowed her car in anticipation of a vehicle pulling out and the appellant, who was speaking on a hands free phone call, did not react quickly enough and stuck her vehicle when travelling about 46-49 mph in a 60 mph limit. The other motorist had been driving about 20 mph slower at the time. The collision propelled her car into the path of an oncoming van. She sustained multiple injuries and died at the scene.

The sheriff concluded that the appellant had been distracted by the phone call and had failed in his duty to maintain a sufficient distance between the vehicles. The appellant was a first offender, had expressed genuine remorse and the sheriff considered a community service order with the maximum 300 hours of unpaid work, together with a disqualification, was sufficient.

Both appeals seemed to have been mounted on the risky basis of questioning whether it was possible to reflect the early plea by imposing a non-custodial sentence. The sheriff in his report indicated he would have imposed a sentence of 12 months' imprisonment less a discount for pleading guilty.

The sheriff had rejected the submission that the level of carelessness had not been of the highest, but decided on the non-custodial sentence. Had he reduced the number of hours imposed in view of the early plea, this would have amounted to a double discount. The appeal was refused.

Milligan's appeal was dealt with in a similar way. It followed a plea of guilty to having sex with a 14 year old girl when he was 17. The judge considered a long period of community service would be of benefit to this young offender.

Criminal Court

JUSTICIARY OFFICE BRIEFING

Sinclair v HM Advocate; Barr v HM Advocate

Practitioners may wish to be aware of the opinions of the High Court in Sinclair v HM Advocate, 5 August 2022 and Barr v HM Advocate, 28 July 2022. These opinions have not yet been published on the Scotcourts website because the trial proceedings have not been concluded.

In Sinclair, the appellant appealed against the sheriff's decision to extend the 12 month time bar under s 65(3) of the Criminal Procedure (Scotland) Act 1995. The court commented adversely on the number of first diets and the apparent lack of "ownership" of the case by both the court and the Crown. The first diet was intended to be the end of the preparation stage of a case and continuations should be the exception rather than the rule (HM Advocate v Forrester 2007 SCCR 216 at para 17). In terms of s 71B of the 1995 Act, the court must fix a trial diet at the first diet, having dealt with any preliminary pleas and issues. The procedure adopted had disregarded the statutory provisions.

Although the court refused the appeal, it was critical both of the trial diet being called in the absence of the accused and his agent, and its adjournment for the second time when the accused was a child.

Barr was also an appeal against the extension of the 12 month time bar. The charges concerned domestic abuse. A trial had been adjourned when the complainer, who had been cited, failed to appear. The Crown had sought, and been granted, a warrant to arrest the complainer, but the warrant had not been executed. The court commented adversely on the potential arrest of complainers in domestic abuse cases.

In refusing the appeal, the court took the

opportunity to explain, under reference to HM Advocate v Graham 2022 SCCR 68 and Uruk v HM Advocate 2014 SCCR 369, that the language used in s 65(3), whereby an extension of the time bar could be granted "on cause shown", did not impose a high test. The modern approach, contrary to some interpretations of HM Advocate v Swift 1984 JC 83 as explained in Early v HM Advocate 2007 JC 50, was not to apply a two stage test but to ask whether an extension was in the interests of justice, having regard to the rights of the accused and the complainer and to the public interest in determining cases on their substantive merits rather than on what are essentially procedural grounds. The court adopted this approach in Sinclair.

Appleby v HM Advocate

Practitioners may wish to be aware of the opinion of the Appeal Court in Appleby v HM Advocate, 19 August 2022. The opinion has not yet been published on the Scotcourts website because the trial proceedings have not been concluded.

In Appleby, the Crown had failed to arrange for the appellant, who was in custody in England, to be brought to Scotland for his trial in the High Court along with four others on serious charges of being concerned in the supplying of class A drugs. The Crown was aware that the appellant was in custody on other matters in England. The problem arose because of an administrative mistake by the case preparer. As a result the trial could not proceed and had to be adjourned for several months. The Crown's motion to extend the 12 month time bar in respect of the appellant was opposed, but granted by the temporary High Court judge.

Lord Pentland delivered the opinion of the Appeal Court. The court followed the decisions in HM Advocate v Graham 2022 SCCR 68 and Barr v HM Advocate, 28 July 2022, noted above. It held that the circumstances were not similar to those in Swift v HM Advocate 1984 JC 83 and Early v HM Advocate 2006 SCCR 583.

Following the modern approach authoritatively explained in Graham and Barr, it was not appropriate to apply a two stage test to the extension of the 12 month time limit, especially where the Crown had brought the case to a trial diet within 12 months. The "cause shown" test for extending the 12 month time bar was not a high one, and had to be viewed in light of the reasonable time requirement under the ECHR. The correct approach to "cause shown" is to consider whether it is in the interests of justice to extend the time bar.

The court held that there was no prejudice to the appellant in extending the time limit, beyond the delay in the resolution of the case against him. He was in custody in England awaiting sentence on other matters, had never been in custody for the present case and there had been a single inadvertent mistake. The court refused the appeal, stating that it could not be said that the judge had erred in granting an extension to the time bar.

Any further enquiries can be made to the appeals manager at amckay@scotcourts.gov.uk

Licensing

AUDREY JUNNER,
PARTNER, MILLER
SAMUEL HILL BROWN

The end of September marked the expiry of the Coronavirus (Scotland) Act 2020, a piece of emergency legislation which remained with us far longer than anyone could have anticipated.

Its scope was necessarily wide, but in the licensing context there were a few important provisions which allowed licensing board business to continue during the early days of the pandemic. This included the invaluable authorisation to hold both civic and liquor licensing hearings remotely, and extended timescales for various applications.

While the option to hold hearings remotely has been made permanent by the Coronavirus (Recovery and Reform) (Scotland) Act 2022, which commenced on 1 October, all other licensing provisions have now ceased to apply. This is undoubtedly a positive step forward in the recovery process, but it is important that operators and their advisers are not left exposed where timescales have reverted to the pre-pandemic rules. One area where this is particularly important in the current climate is in relation to the licensing process following an insolvency.

The licensed trade, and especially the on-trade hospitality industry, has arguably suffered more than any other sector over the past two years. The threat of insolvency is sadly very real for many businesses struggling to survive post-pandemic and in the current cost of living crisis. Despite recent Government interventions on energy and VAT, the hospitality sector is considered to be at breaking point. Combine this with the financial threat posed by the raft of new measures and schemes on the horizon, including the lack of business rates relief, the proposal for single use cup charges, the Deposit Return Scheme, short term let legislation and the uncertainly over planning permission for external areas, and you sadly have the perfect storm.

"The licensed trade, and especially the on-trade hospitality industry, has arguably suffered more than any other sector over the past two years. The threat of insolvency is sadly very real for many businesses"

Minefield

Where a business, partnership or individual holding a premises licence is deemed to be insolvent, s 34 of the Licensing (Scotland) Act 2005 provides that a transfer to an insolvency practitioner ("IP") must be lodged within 28 days. Insolvency is defined by s 28 and includes a creditors' voluntary agreement, which we see being used more and more frequently to assist businesses in trading out of their position. The temporary extension which permitted a late application on grounds associated with coronavirus is no more, and the amended provisions due to be brought forward by the Air Weapons and Licensing (Scotland) Act 2015 are unlikely ever to see the light of day, at least in their current form. (Many will argue this is no bad thing.)

Having reverted to the pre-pandemic position, if the application for transfer is not submitted timeously the licence once again ceases to have effect. Licences have a value which an IP has a duty to realise, but in some recent cases the late submission of applications (absent a coronavirus related reason) has meant they have been rejected and that value has been instantly stripped out.

With an increased number of insolvencies, more unusual scenarios are emerging, and the straightforward back-to-back transfer from insolvent licenceholding company, to IP, on to new operator is becoming less common. IPs are understandably cautious about holding licences for extended periods, and with buyers not always easy to come by, the deployment of temporary licenceholding companies is becoming more frequent.

There is nothing wrong with this practice in principle, but it occasionally leads to questions about liability during the 28 day and transfer processing periods. A company which is insolvent cannot be liable, but the holding company hasn't taken on the risk at that point. In a recent case a sitting tenant saw this as a prime opportunity to take advantage, and the licence was put at risk as a result.

Tenants bring an additional dimension to transfers. The property owning company may have been liquidated, but the tenant holds the premises licence despite no longer having a right to occupy the building following the termination of their lease. How does an IP realise the value in a property where they

have no control over the licence? Many historic leases have minimal or no licensing provisions. How does a clerk approach this where there is no consent from the licence holder to transfer the licence but the bank requires the asset to be sold? It has even been argued that were the licensing board to act without consent, it would breach article 1 of Protocol 1 to the European Convention on Human Rights. Conversely, what about an insolvent licenceholding tenant, leading to a competent transfer to an IP, leaving a landlord with no control? Unravelling a complex debt, lease and licensing puzzle can be an absolute minefield.

The transfer provisions continue to be far from perfect, and only workable due to the goodwill and pragmatic thinking of licensing board clerks. The Scottish licensed trade needs support and there have to be measures put in place which raise confidence in Scotland and the industry. Until then, we deal with insolvency in licensing in the only way we know how – with a focus on the timescales and with our fingers crossed!

Insolvency

ANDREW FOYLE, SOLICITOR ADVOCATE AND JOINT HEAD OF LITIGATION, SHOOSMITHS IN SCOTLAND

The ability of parties to request a review of certain decisions made by the Accountant in Bankruptcy (AiB) has been considered in previous briefings (Journal, July 2019, 34 and Journal, July 2022, 29). In each of the cases considered in those columns, the sheriff ruled that the AiB's role in a review was to consider matters ab initio, meaning that they can consider the full materials that were before the original decision maker, and any fresh material put before them.

Both of those cases were decided in the context of the provisions in the Bankruptcy (Scotland) Act 2016, namely ss 139 (debtor discharge) and 127 (adjudication of claims). In both cases the sheriff held that any appeal from the AiB was an appeal against a discretionary decision. Therefore, it required to be either on a point of law or on the very limited grounds that an appellate court might interfere with a discretionary decision, such as procedural irregularity or irrelevant considerations.

On 11 August 2022 the judgment of the sheriff in Crawford v Accountant in Bankruptcy [2022] SC EDIN 20 was published. It considers the AiB's powers of review in the context of the Debt Arrangement Scheme (Scotland) Regulations 2011.

Challenged revocation

The case was an appeal by the debtor from the AiB's decision to revoke a debt payment programme ("DPP") set up under the 2011 Regulations. A creditor (HMRC) requested revocation on the basis that the debtor was not meeting his ongoing liabilities, which is a condition of a DPP. The AiB agreed. The debtor sought a review, following which the AiB adhered to their original decision to revoke the DPP. In the course of the review, HMRC submitted further representations to the AiB. Those representations were not shared with the debtor.

The questions for the court were threefold:

1. What is the nature of a review?
2. What information can the AiB consider on review?; and
3. Do representations made by one party require to be intimated to other parties?

Whereas the provisions of the 2016 Act do not set out any restrictions on the grounds of review, the sheriff in Crawford identified that the 2011 Regulations contain a potentially important qualification. Regulation 47 provides that the specified parties may "on any ground which may be raised in an appeal" apply for a review of the determination of the AiB. As the only ground of appeal contained in the 2011 Regulations is an appeal on a point of law, a strict interpretation of this provision would severely restrict the right of review.

The sheriff determined that the restrictive interpretation could not have been intended by the Parliament. He held that the nature of a review in the context of the 2011 Regulations is broadly the same as that under the 2016 Act – i.e. for the AiB to consider the matter anew. It follows from this that the AiB is entitled to consider all material put before them on review.

Unfairness

However, it is the third question that is significant. The sheriff in Crawford identified that there is a lacuna in the 2011 Regulations, in that they do not deal with the process that the AiB must follow on receipt of representations and other materials from parties as part of the review. The 2016 Act similarly has no such guidance. The question therefore arose as to the correct process where the AiB is provided with additional material in the course of the review.

It was common ground that any procedure adopted by the AiB must be fair. In the absence of any statutory provision or guidance, the sheriff held that the common law must step in. Fairness in the context of a review requires that where a party lodges material with the AiB, the other parties to that review should see that material and have the opportunity to comment before any decision is made. In reaching this conclusion, the sheriff recognised that there are statutory timescales within which the AiB must determine a review. He considered that this may be overcome by the AiB setting out clear timescales for representations at the outset and for any comments thereon.

In this particular case the AiB had not passed HMRC's representations to the debtor, but had referred to them in their decision. This was not considered to be a fair process. Consequently the sheriff allowed the appeal, quashed the decision and sent the matter back to the AiB to reconsider.

Tax

ZITA DEMPSEY, SOLICITOR, PINSENT MASONS LLP

The new Chancellor, Kwasi Kwarteng, presented his "mini-budget" on 23 September. Described by the Government as "The Growth Plan 2022", many of the Chancellor's announcements were merely a reversal of changes made by his predecessors, but described as being part of an effort to "support investment, innovation and economic growth" in the UK.

Described by some commentators as a budget to support the wealthy, and immediately having a negative impact on the value of the pound, the "mini-budget" was anything but mini. There are a number of changes that both individuals and businesses should be aware of.

Individuals

Income tax and NI contributions

It was announced that from April 2023, the additional 45% rate of income tax would be removed in England, Wales and Northern Ireland and replaced by a single higher rate of income tax of 40%. The additional rate applies to individuals with income of more than £150,000, and so would have cut income tax for around 660,000 of the highest earning individuals in England, Wales and Northern Ireland. Income tax rates and bands are devolved in Scotland and Nicola Sturgeon had announced there were no plans for the Scottish Government to follow suit. There was huge public backlash, and on 3 October a U-turn was announced, and the proposal was scrapped.

The Government has reversed the 1.25% increase to national insurance from 6 November

2022. The increased contributions only came into effect on 6 April 2022 after being introduced by previous Chancellor Rishi Sunak. This reversal will benefit all national insurance paying employees and employers, including those in Scotland.

Stamp duty land tax

With effect from budget date, the Chancellor announced a doubling of the stamp duty nil rate band from £125,000 to £250,000, meaning that residential property buyers in England and Northern Ireland will not be required to pay stamp duty on the first £250,000 of a property's value. The threshold for first-time buyers has also been increased from £300,000 to £425,000.

Again, these changes do not apply to the equivalent land and buildings transaction tax in Scotland, and it will be interesting to see if the Scottish Government provides similar changes to residential LBTT tax rates.

Businesses

Corporation tax

The most notable corporation tax change announced by the Chancellor was the cancellation of the planned corporation tax increase, meaning that corporation tax will remain at 19%. The Chancellor also cancelled the reduction in the annual investment allowance, meaning that businesses will now benefit from full tax relief on the first £1 million spent on qualifying plant and machinery each year.

The Government's hope is that these tax savings will encourage greater UK investment spend – it remains to be seen whether the amount of investment generated matches the amount of tax saved by business in the UK.

Employment tax

Again, the Chancellor announced a reversal of previous changes made to the off-payroll working (IR35) rules. The IR35 rules require that employment taxes be paid by a person who provides services to a business through an intermediary if that person would otherwise have been regarded for tax purposes as an employee of the engaging business.

From 6 April 2021, engaging private sector businesses, rather than the engaged individuals, became liable for determining whether the IR35 rules apply, operating PAYE and paying employers' national insurance contributions for contractors falling within the scope of the rules. The IR35 regime is not being repealed, but liability for determining whether the rules apply and to pay any employment taxes will be shifted back to the individual's intermediary from April 2023. Although this is a positive change for engaging businesses, there is likely to be frustration at the amount of time and expense spent in complying with the rule change initially. The Government has also noted that it is keeping IR35 compliance under review, so there may be further changes.

Conclusion

Although the measures announced in the mini-budget have promised billions of pounds of tax savings to promote UK growth, the Government is expected to borrow billions of pounds to pay for these savings. As a result, shortly after the budget was delivered, the pound fell to a record low against the dollar and in a bid to seek to restore market stability and avoid further interest rate rises, the Bank of England engaged in a short-term measure of buying gilts. Mortgage interest rates are also at a 14 year high following the mini-budget. At going to press, the Chancellor is due to deliver his medium-term fiscal plan on 23 November but has faced calls to bring this forward. Time will tell whether he remains committed to delivering further tax cuts as part of that plan.

Immigration

MEGAN ANDERSON,
TRAINEE SOLICITOR,
LATTA & CO

In August 2022, the "Scale-up Worker Visa" was announced. It is part of the UK Government's Innovation Strategy, which is to make the country a global hub for innovation. The hope is that it will boost investment in the UK's private sector and bring economic prosperity following both Brexit and the COVID-19 pandemic. This visa route will enable high-growth businesses to employ highly skilled individuals who have the ability to help the business to continue growing.

What is a scale-up business?

In order for a UK business to qualify as a scale-up sponsor under this route, the business will need to demonstrate that it has had an average growth of 20% annually for the last three years in terms of turnover or employment. Businesses will also be required to have at least 10 employees at the start of the qualifying three year period. Businesses will need to apply for the new scale-up licence in order to sponsor individuals under this route. There is also an exemption from the immigration skills charge which is payable on other similar visas. Therefore, this licence is somewhat more attractive to eligible businesses as it can prove more cost effective.

What workers qualify?

To qualify as a scale-up worker, an individual must have an offer of employment from a scale-up UK business, and that job must be skilled to Regulation Qualification Framework ("RQF") 6 or equivalent. Therefore, the applicant must be sponsored for a job listed in the Appendix Skilled Occupations. In terms of salary requirements, the applicant must be paid a minimum of £33,000 per year or the Appendix rate for the occupation code under which they are applying, whichever is the higher amount. Scale-up workers must meet the English language requirement as well as the financial requirement if they have been in the UK for less than 12 months.

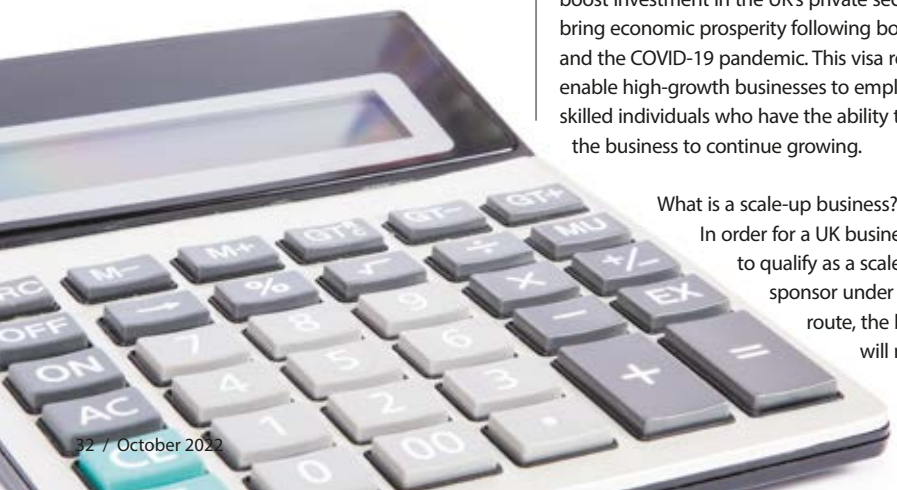
Those eligible under this route can also bring their partner and children as dependants. If an individual makes a successful sponsored application, they will be granted entry clearance or permission to stay for two years. An unsponsored applicant will be permitted entry clearance or permission to stay for three years. This is a route to settlement after five years for applicants and their dependants.

How does this differ from the skilled worker route?

As standard, both routes require applicants to meet the English language as well as the financial requirements, although in both cases the sponsor can assist with maintaining and accommodating the applicant to an amount up to the requirement of £1,270.

However, there are a number of differences between the skilled worker and scale-up worker routes. In order to qualify on the skilled worker route, there is a requirement for the position to meet RQF 3 or equivalent. Turning next to the salary conditions, the minimum flat rate is lower for a skilled worker, at £25,600. Further, it is not possible to reduce the minimum salary requirement on the scale-up route to allow for positions on the shortage occupation list.

The key difference between the two routes, however, is that the scale-up visa offers the individual two years' leave to remain in the UK, with only six months' sponsorship. This offers applicants more flexibility and it is hoped that it will encourage highly skilled individuals to remain working in the UK. Workers will also be



"The scale-up visa offers the individual two years' leave to remain in the UK, with only six months' sponsorship"

able to swap to an employer without sponsorship at the end of the initial six months, becoming an unsponsored worker. This will allow businesses that do not hold sponsorship licences to employ workers whom they would be unable to recruit from abroad. The short sponsorship, coupled with the lack of immigration skills charge, also means that it will be more financially viable for businesses to employ skilled workers.

The UK Government has noted the importance of "scaling up", and is keen to encourage businesses to continue growing, which will in turn boost the economy. The intention is that the scale-up route will offer businesses and applicants more flexibility while working alongside both the skilled worker and global business mobility visa options. Although it is likely that the skilled worker route will remain the most popular, the scale-up visa is a welcome addition to the growing number of options for businesses looking to employ workers from outside the UK.

Scottish Solicitors' Discipline Tribunal

WWW.SSDT.ORG.UK

Ronald Grant Fulton

A complaint was made by the Council of the Law Society of Scotland against Ronald Grant Fulton, solicitor, Glasgow. The Tribunal found the respondent guilty of professional misconduct in that he breached rules B1.2, B1.4, B1.7, B1.9 and B1.10 of the Law Society of Scotland Practice Rules 2011. The Tribunal censured the respondent and fined him £1,500.

The respondent failed to advise the secondary complainer of the loss of an original deed of variation, and of the potential consequences of that loss. He did not let her know that there was potential for a conflict to arise and that she might have a claim for damages against his firm. He did not tell her to get independent advice. He did not explain the legal consequences or validity of a second deed of variation. He incorrectly dated the testing clause. He did not, as he ought to have done, provide a letter of affidavit setting out what had happened. He did not provide any advice regarding alternative remedies.

Solicitors must be trustworthy and act honestly at all times so that their integrity is beyond question (rule B1.2). They must act in the best interests of their clients. They must not permit their own personal interests to influence their actions or advice (rule B1.4). They must not act for any client where there is a conflict between their own interests and the client's interests (rule B1.7). They must communicate effectively with their clients (rule B1.9). They must only act in matters where they are competent to do so, exercising the appropriate level of skill (rule B1.10).

The Tribunal was satisfied that the respondent's conduct represented a serious and reprehensible departure from the standards of competent and reputable solicitors. He was therefore guilty of professional misconduct. In failing to advise the secondary complainer appropriately, preparing another deed for signature and completing and signing the testing clause which was backdated, the respondent had shown a lack of integrity.

IN FOCUS

...the point is to change it

Brian Dempsey's monthly survey of legal-related consultations

Justice sector spending

The Scottish Parliament's Justice Committee seek views on "the difficult spending decisions ahead for the justice sector in the next few years". There are fears that inflation will render planned spending a significant cut in real terms. See www.parliament.scot/about/news/news-listing/msps-seek-views-on-difficult-spending-decisions-ahead-for-justice-sector-in-next-few-years
Respond by 21 October.

Green consumer protection

The Competition & Markets Authority seeks information on consumer protection in the green heating and insulation sector. Its review is focusing on the sale of heat pumps, home solar, insulation, biomass boilers and hydrogen-ready boilers. See www.gov.uk/government/consultations/consumer-protection-in-green-heating-and-insulation-sector-a-call-for-information
Respond by 1 November.

Data protection and media

The Information Commissioner's Office is conducting a second consultation on its draft Data Protection and Journalism code of practice. See ico.org.uk/about-the-ico/ico-and-stakeholder-consultations/ico-second-consultation-on-the-draft-data-protection-and-journalism-code-of-practice/
Respond by 16 November.

Gaelic and Scots languages

The Scottish Government is committed to the support and promotion of the Gaelic and Scots languages, including by legislation if necessary. See consult.gov.scot/education-reform/gaelic-and-scots-scottish-languages-bill/
Respond by 17 November.

Scottish agriculture vision

In a context of acute food security concerns thanks to climate change, Brexit and the invasion of Ukraine, the Scottish Government intends to position Scotland as a leader in sustainable and regenerative agriculture. Views are sought on its "Vision for Agriculture". See consult.gov.scot/agriculture-and-rural-economy/proposals-for-a-new-agriculture-bill/
Respond by 21 November.

Building materials tax

Since the Scotland Act 2016, the Scottish Parliament has the power to replace the UK aggregates levy with a specifically Scottish tax on the commercial exploitation of aggregates. The Scottish Government seeks views on the structure and operation of such a tax. See consult.gov.scot/taxation-and-fiscal-sustainability/scottish-aggregates-tax/
Respond by 4 December.

And finally…

As noted in the August edition, but now with an extended submission deadline, the Scottish Government seeks views on its planned Land Reform (Net Zero) Bill (see consult.gov.scot/agriculture-and-rural-economy/land-reform-net-zero-scotland/ and respond by 30 October). As noted in September's edition, the Office of Tax Simplification seeks evidence in relation to the taxation of cross-border and home working (see gov.uk/government/consultations/review-of-hybrid-and-distance-working-call-for-evidence and respond by 25 November).

New homes codes: setting the record straight

What solicitors and conveyancers need to know about changes in consumer protection for new build home buyers, in the continuing absence of a single statutory code

Property

NOEL HUNTER, CHAIRMAN, CONSUMER CODE FOR HOME BUILDERS

When the Government embarked on plans to strengthen consumer redress in the new build homes market, many of us expected a mandated single code and New Homes Ombudsman to be phased in, replacing the numerous codes currently operating. In some respects, this would have made life easier for consumers and their advisers, since there would be one set of requirements for developers to follow, and a single scheme for redress. But only if that one scheme was as good as or better than the existing codes.

As things currently stand, though, there is no statutory code or statutory ombudsman, although provision has been made for both. So where does that leave new build home buyers, and what do you, as solicitors and conveyancers, need to know to best support your clients?

Seeking stronger redress

In 2019, the Government consulted on plans to strengthen redress for consumers buying new build homes. This decision followed a report from the All Party Parliamentary Group in June 2018, which identified a number of shortcomings or gaps in the protection afforded to consumers at the time.

The Consumer Code for Home Builders is the largest and most established voluntary new homes code, having been in existence for more than 12 years and currently covering 95% of the new homes market across the UK. In that time, we have helped to drive up standards by setting clear requirements, providing tools designed to make the process of buying a home fairer and more transparent, and helped the industry learn from past mistakes through a mixture of training, information and sanctions.

But we have always recognised there were gaps, not least due to the complexity of the home buying process. Even for solicitors who deal with the process on behalf of buyers daily, it can be challenging to gain an in-depth understanding of the different cover offered by codes and warranty policies and the consumer protection afforded to their clients.

We therefore welcome the Government's move to strengthen redress and simplify protection for consumers. However, we are still a long way away from a single, statutory approach. In the meantime, the setting up of a new code and new homes ombudsman has led to confusion, with some developers mistakenly under the impression that these are new mandatory arrangements they must switch to. In the short term, this could compromise the protection available to consumers now, which is why it's important to be clear on the facts.

Ahead of legislation

The Government has made provision in the Building Safety Act 2022 for a statutory new homes ombudsman and single code to help strengthen redress for consumers buying new build homes. However, these both need secondary legislation. In the current political environment, it seems unlikely that this will be brought forward in the short term, so how and when these changes will be implemented remains unclear.

In anticipation of the proposed legislative changes, a new not for profit company called the New Homes Quality Board set itself up to develop a new code, the New Homes Quality Code ("NHQC"), designed to plug gaps in consumer protection. The draft NHQC was developed in partnership with the Consumer Code for Home Builders and the Consumer Code for New Homes. Described further at Journal, March 2022, 34, the NHQC was consulted on in late 2021 and is due for launch in autumn 2022.

> "The Consumer Code for Home Builders is the largest and most established voluntary new homes code"

Therefore, as things currently stand, all existing codes, including the Consumer Code for Home Builders, New Homes Quality Code (when operational), and Consumer Code for New Homes remain voluntary. Developers are free to choose which code they comply with, subject to any restrictions imposed by their warranty provider.

New Homes Ombudsman

A voluntary new homes ombudsman was commissioned earlier this year by the New Homes Quality Board as part of its redress mechanism and will provide independent dispute resolution for consumers protected by the New Homes Quality Code, once launched. It is not a statutory body and its remit, like any other ombudsman, will be limited to consumer redress rather than sanctions on builders. Consumers protected by other codes will continue to have access to existing alternative dispute resolution schemes, such as the CTSI-approved scheme operated on behalf of the Consumer Code for Home Builders by the Centre for Effective Dispute Resolution (CEDR).

Which code?

In the absence of a statutory code or ombudsman, it is incumbent on those of us providing consumer protection to make this transitional phase as clear as possible and ensure that consumers are given the best support.

With that in mind, we are currently reviewing the Consumer Code for Home Builders and inviting input from a wide range of interested parties. The intention is to bring our code in line with the New Homes Quality Code where it makes sense to do so, reducing complexity for consumers, developers and advisers alike. However, whether you are acting for a developer or home buyer, it will be important to understand which code applies in each case so that the right advice and route to redress are provided from day one. This is

something we are keen to make as clear and simple as possible – both for professional advisers and home buyers. As things currently stand, home builders currently registered with NHBC, LABC Warranty, Premier Guarantee or Checkmate must comply with the Consumer Code for Home Builders unless they voluntarily seek to change to the New Homes Quality Code.

Quality drive

But just as important as clarity is the need to maintain focus on driving up the quality of new build homes. Codes of practice are an essential tool in this process, but true effectiveness comes when this is supported with training, continuous learning, and sanctions. This has been a cornerstone of our work over the past 12 years and was instrumental in achieving accreditation by the CTSI Consumer Codes Approval Scheme, operated by the Chartered Trading Standards Institute.

As the new build homes market develops and new codes come on stream, maintaining that focus on improving quality and customer service at the outset is what will make the biggest difference to consumer outcomes. Solicitors and conveyancers have a role here too. By familiarising yourselves with the codes of practice, and using the resources provided (consumercode.co.uk/resources/#solicitors), for example reservation agreements and contracts, you can help both your developer clients to comply and your home buyers to receive the right information at the right time.

Towards 2023

2023 will see the launch of the updated Consumer Code for Home Builders, following the current review, and will likely see the New Homes Quality Code and the voluntary ombudsman become fully operational.

As these changes come into force, one of the priorities for our board and, we hope, other new homes codes, will be to provide clear signposting for all those involved in the buying and selling of new build homes. We want advisers, developers and consumers to know where to go to get the information that applies to their plot, and new build home buyers to feel well informed and supported from the moment they reserve a property until two years after moving in.

Furthermore, all codes should continue to work collaboratively with the industry to improve the service homebuyers receive, and strengthen the protection available to consumers should things go wrong.

Further updates on changes to consumer protection and code compliance will be published on www.consumercode.co.uk when available.

In Scots law, what makes a contract into a lease?

Mike Blair introduces an online paper where he has addressed this question

Have you sometimes wondered how to tell whether a deal you wish to document, or a document which you are examining, amounts to a lease or not? Usually it is clear, but not always. There are examples of contracts safely in the Land Register that say "lease" on "the tin", but in reality are not leases at all.

We the profession, and the Registers, need to distinguish clearly what does, and does not, amount to a lease. There may be some agents out there who imagine that because it broadly looks like a lease, and describes itself as such, it is. That is not always so. There will be potential for quite a lot of professional risk associated with this subject.

In 2013, and out of the blue, I found myself brought into working with the late Professor Robert Rennie and his colleagues both academic and practitioner, Professors Brymer, Mullen and McCarthy, to produce the SULI book on Leases which was published in 2015. I well remember Professor Rennie saying to me that he hesitated to provide yet another attempt to define what was a lease, and had contented himself with setting out what earlier authors had written. My own experience, primarily in the rural field, shows me that there are attempts at "double think", where solicitors have tried to call their contract a lease, but properly analysed, it wasn't. I have therefore put my head above the parapet, and offer an analysis which I hope anyone who is involved in leasing, whether in a rural or an urban setting, will find helpful, or at least interesting.

Like most authors, I think my analysis is correct. Without specifically endorsing it, as the errors are mine, Professors Rennie and Brymer thought enough of the earlier drafts to be kind enough to say that it was worth consideration. It might not be correct, but if it is wrong, then I think we have some problems with the law of leases, which will have important uncertainties in it, and which the Scottish Law Commission would need to consider.

The link www.gillespiemacandrew.co.uk/thescotslawofleases is to an approximately 7,000 word document, which I hope is worth your CPD time in reading through.

Mike Blair is a partner in the Land & Rural Business team at Gillespie Macandrew

How to become O shaped

Three in-house lawyers who have adopted the O Shaped Lawyer programme explain what it involves and how it has benefited their teams

In-house

HOPE CRAIG, IN-HOUSE LAWYERS' COMMITTEE MEMBER

Those of you who attended this year's In-house Lawyers Annual Conference will have heard Gill Rust, data protection officer and deputy head of Legal & Risk at People's Postcode Lottery, speak about her experiences of introducing the O Shaped programme to her team. Curious to find out more, I spoke to Gill, as well as to Neil Campbell, managing legal counsel in the Outsourcing, Technology & IP team at NatWest, and Greg Bargeton, who runs a legal and business consultancy called The Emerson Partnership, to learn about how we can all become more O shaped.

Before we begin, can you tell me a little about your background please?

GB: After spending 25 years practising law, mostly in-house in the drinks industry, I now run a legal consultancy. I get to work for interesting clients that inspire me, and contribute towards their success.

GR: I started my traineeship 30 years ago and I have worked all but my traineeship in-house, including 20 years at Standard Life (now known as Abrdn), and The Chartered Banker Institute, before moving to People's Postcode Lottery ("PPL").


Greg Bargeton

NC: I am a technology lawyer at NatWest. Before joining NatWest 15 years ago, I had a variety of roles in both private practice and in-house, in the UK and in Australia, working in various sectors including energy, telecoms and financial services.

What is the O Shaped Lawyer and how did it come about?

NC: The purpose of the O Shape is to make the legal profession better – for those who are in it, those using it and those who are entering it. Dan Kayne, former GC at Network Rail, founded the O Shaped Lawyer, because he believed the legal profession has for too long focused on technical legal skills at the expense of a more rounded development. Dan recognised there is a gap between the technical legal skills that we gain from university and training, and the more human-centric skills which are necessary to do our jobs well. Dan, along with the O Shaped steering group, developed the 5 Os Framework which contains the five elements of the O Shaped mindset – a mindset for change (see graphic above right).

How and why did you get involved in the O?

GB: Something is not quite right in the legal profession, particularly in how we measure success and what we think a "good" lawyer is. The O Shape is a platform that speaks about things that I'd thought about but had not been able to articulate quite as well. The platform gives people the opportunity to explore the gaps, opportunities and challenges and go on a journey of development.

NC: I have been interested since it kicked off in 2019 and I'm now part of the O Shaped Steering Group. The common denominator of the group is that they really care about the profession. We recognise lawyers need more than technical legal competence. For example, if you are line managing people, you need the skills to lead and develop people. So many of us have had to develop these skills through trial and error, and to me the O Shaped Lawyer is designed to do something about that.

GR: An article on LinkedIn that Dan Kayne had put up caught my eye. The Legal & Risk team at PPL were looking for something to help develop soft skills and improve our ability to work better with our business. So I got in touch with Dan and we started developing a programme specifically for our team at PPL.


Gill Rust

Why do you feel the O Shaped Lawyer is necessary?

GB: There are two sides to this. One is a pessimistic view – we're probably all doomed if we carry on the way we are. Change is needed within the profession. There is a lot of legal tech now that can deliver the technical expertise that we have in our heads more efficiently and cheaply. We need to react to where the modern profession is.

More optimistically, we are just not tapping into the true potential of people in the profession. There is a huge amount to be done to get the best out of people so that our clients get the best. We need to deliver a more rounded service, because when you can collaborate with clients on a broader level you get unbelievable results and a real sense of value added beyond technical knowledge and expertise.

Who is the O Shaped Lawyer relevant to?

GR: Everyone! Within our Legal & Risk team, everyone, not just the legal professionals, went through the programme because everyone in our team can learn from this. If we can build better relationships within PPL and show how we are creating value, we can work together on matters so that we get the best solution for everyone. It's about saying this is how we can work with law and regulations that govern what we do, to ensure we can deliver something that works for the business.

What is the O Shaped Lawyer programme doing?

NC: The 5 Os framework was followed by the 12 O Shaped attributes. These represent the competencies of an O Shaped lawyer and are centred round three pillars: building relationships, creating value and being adaptable (see graphic opposite). We have being raising awareness of the message and have created a forum for all parts of the legal system (in-house, law firms, students, legal educators, etc) to come together and discuss how can we change the profession, as no one group can make that change on its own.

There are two distinct workstreams. One is the education workstream, where we work

with universities and law schools to help shape the future of legal education. The other is the practice workstream, which works with in-house teams and law firms to understand the needs of the profession and to demonstrate how powerful the O Shaped attributes are in real-world relationships. There is a very practical side too, because it has created a forum of O Shaped champions who have come together and are sharing their experiences, which in turn is leading to some very interesting materials coming out. For example, we are looking at developing materials for including the O Shape in legal tenders and materials to help identify and recruit more O Shaped personnel.

The O Shaped Lawyer talks about "People First" – what does this mean?

GB: It means different things to different people. But for me, lawyering is all about relationships. You can have all the technical skills in the world, but without creativity, without empathy, without a mindset that leads towards collaboration, you won't make the value added contribution. The O Shape puts legal practice into a much broader context and brings to the fore this range of skills that can hopefully result in a more impactful contribution.


Neil Campbell

How have you used the O Shaped Lawyer to help your team? How has your wider organisation benefited?

GR: The O Shaped Lawyer delivered bespoke workshops for PPL and then we set ourselves goals based on what we had learned. As a young company with a fairly recent in-house legal team, we used the O Shaped programme to get to know not just the business, but also ourselves. It has helped the business understand the importance of having a Legal & Risk team, and helped change the mindset within the team.

For the "creating value" attribute, we sought to increase board awareness. We want the board to understand that when we're invested, it helps create success and we are enablers. By getting us involved at the start of a process, it helps speed the process up. In addition, we have set ourselves the task of looking for opportunities. For example, PPL recently increased their marketing, which in turn led to an increase in deletion requests. So we established a cross-departmental project to review proactively our process for handling deletion requests. This resulted in PPL's ability to respond to requesters within 24 hours, instead of the previous average of 20 days. Interestingly, our own team, Legal & Risk, did not really benefit from the reduction in times but our colleagues did, and so by applying our O Shaped values we've done something that's improved the lives of other teams.

The emotional intelligence element of the O Shaped programme gives us a skillset to be able to build relationships internally, helping us to become more trusted advisers. By taking the time to focus on those skills, it has made us feel more empowered to start building those relationships and put all of that work into practice.

The important thing to remember is that this is a continuous improvement piece – we are not sitting and resting on our laurels. We regularly review and update our goals and add new goals as appropriate.

How have you used the O Shaped Lawyer to help develop your relationship with law firms?

NC: Our team was involved with an O Shaped Lawyer pilot with a law firm and it enabled us to work through the attributes and unpack the relationship; to have an honest conversation and build the relationship and trust up again. We really wanted our external lawyers to be an extension of our team, and through the O Shaped sessions, we are now closer, enabling us to have more honest dialogue and give better feedback. It also encourages us to share information with one another beyond technical expertise, e.g. understanding legal technology tools. Of course, we need to keep feeding the relationship and keep communication going to maintain this.

How can I get involved?

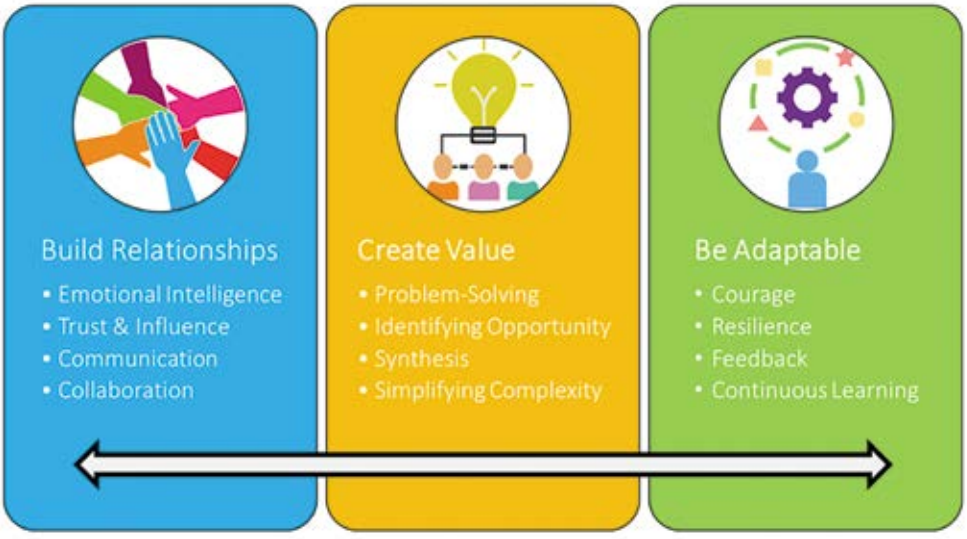
GR: We got involved by reaching out to the founder to express interest in the programme.

GB: Me too. Even if you don't have time to contribute to any of the workstreams, if the good material that is out there resonates with you, which I think it will with a lot of people, then just spread the word!

NC: I agree. You can take the O Shaped approach back to your team and discuss whether there is anything from it that you can apply to improve yourself and the team. We also have an O Shaped Future Board which is made up of students, trainees and junior lawyers and which is active on social media.

They have lots of ideas and it is worth linking up with them. If people are very keen, they can become an O Shaped champion, join the discussion and support various initiatives that are going on.

If you would like to find out more about the work of the O Shaped Lawyer and how you can get involved, visit their website: www.oshapedlawyer.com or join their LinkedIn group (www.linkedin.com/groups/8863379).



This list has been developed in consultation with 18 GCs from FTSE 350 companies.

In practice

Special general meeting 2022

A special general meeting of the Law Society of Scotland will be held via audio and video conference on Wednesday, 26 October 2022 at 5.30pm. There will be no in-person meeting and only those who register in advance will receive joining instructions for the meeting.

To register, please email member.registration@lawscot.org.uk by 12 noon, Friday 21 October.

At the meeting the draft Law Society of Scotland Practice Rules (Amendment Rules) 2022 will be presented for discussion. The amendments include:

- a new rule B1.17: standards of conduct, to clarify and emphasise that solicitors have duties in relation to the Scottish Legal Complaints Commission, including a duty to comply with statutory notices issued under the Legal Profession and Legal Aid (Scotland) Act 2007, and should co-operate with the SLCC, so as to allow the SLCC properly to exercise its functions under that Act; and
- changes to the accounts rules, to modernise the 2011 rules, address identified weaknesses and where possible, simplify requirements placed on members while ensuring continued high professional standards and robust protection for the public. The proposals include the introduction of an ability to set assessments for cashroom managers regarding their knowledge of the accounts rules, and additional requirements on the management of client accounts.

The formal agenda and full terms of the draft amendments can be found at www.lawscot.org.uk/about-us/strategy-reports-plans/general-meetings/

David Mair, Council member

All of us at the Law Society of Scotland are deeply saddened by the news of the death of our friend and Council member, David Mair.

President Murray Etherington said: "David was truly part of the fabric of the Society. Serving on our Council, Board, Regulatory Committee and Public Policy Committee, few worked more broadly than David in the service of the Scottish solicitor profession.

"A skilled in-house lawyer, David was passionate about a successful legal sector and the importance of the Society's role within it. We will miss his friendship, his good humour, his dedication and insight.

"All our thoughts are with David's family and friends as well as his colleagues at Glasgow City Council at this sad time."

Appeal to join Dundee Legal Walk

Members of the legal profession in the Dundee area and their families and friends are invited to join the Dundee Legal Walk, on Sunday 23 October from 2pm, setting off from the Lemmings statue, Perth Road.

The walk will go through Magdalen Green and along Riverside, finishing outside the V&A Museum. All are welcome, including dogs, and walkers are invited to an informal reception at Thorntons, Yeaman Shore afterwards.

Registration is at register.enthuse.com/ps/event/2022DundeeLegalWalk. Contact is Libby Findlay, Law School, University of Dundee: e.findlay@dundee.ac.uk

Legal Walks are held in aid of the Access to Justice Foundation, which supports legal advice agencies across the UK. Edinburgh and Glasgow have recently held their annual Legal Walks and it is hoped that Dundee can also support such an event.

Society seeks legal aid package regulations

The Scottish Government's proposed rise in legal aid fees is a step in the right direction, but further action is urgently needed to resolve the long-term crisis in the sector, the Law Society of Scotland has said.

Its comments came in a response to the Government on its proposed £11 million increase in spending, offered in July. The offer left scope for how the additional money should be shared out between the different categories of legal aid, civil and criminal, but stated that there was "no scope for further immediate increases" beyond the total sum (see Journal, July 2022, 14).

The Government costed the Society's proposals, including an across the board 15% fee increase and a £750 summary criminal fee, at £27 million per annum.

In its letter the Society states: "While this new offer will not

Land Reform in a Net Zero Nation: the Society's view

The Society recently responded to the Scottish Government's consultation on proposals for a new Land Reform Bill, Land Reform in a Net Zero Nation. The consultation considered a number of potentially significant proposals in relation to the use of and practices around land ownership in Scotland, with a focus on diversifying land ownership and strengthening the role of communities.

While the ambitions to diversify land ownership, encourage community engagement and increase transparency in land ownership were broadly supported, the response noted that it is important to recognise the particular context of land ownership in Scotland, including the reasons for Scotland's current pattern of land ownership; challenges around the use, quality and value of land; and relevant economic factors such as economies of scale and the nature and availability of public funding (both historically and plans for the future). The multiplicity of rights which can be held in the land as a form of diversification was highlighted, including agricultural and smallholding tenancies, crofting rights, common grazing rights, and shared rights in hill grazing.

A risk was noted that the additional burdens created by many of the proposals act to discourage economic investment in land in Scotland. It is important that ambitions to diversify ownership of land and enhance community engagement are balanced with other factors, such as climate and biodiversity goals, food and energy security, and economic stability and resilience, particularly post-COVID.

A key proposal in the consultation is the creation of a public interest test for the transfer of large scale land holdings. The Society's response stressed that careful consideration of this proposal is needed: at this stage, there is insufficient detail provided as to how such a

test might be delivered. It is important to ensure compliance with the European Convention on Human Rights, and a number of practicalities require thought, including the interpretation of "public interest", the process and length of time for a determination, the details of an appeal process, and the position of lenders.

The response agreed, in principle, with the proposal to create a duty on large-scale landowners to publish management plans in the interests of transparency and public interest and engagement, while noting concerns about the proposed eligibility requirement that all land, regardless of size, must be registered in the Land Register of Scotland for landowners to receive public funding for land-based activity, highlighting that the costs and efforts required for voluntary registration would be prohibitive for many landowners and may have the effect of negating the value of available funding.

On the criteria for large-scale landholdings, it noted that "one size does not fit all" in terms of classifying landholdings. The benefits, in principle, of creating a duty on large-scale landowners to comply with the Land Rights and Responsibility Statement and its associated protocols were recognised; however, this could be difficult to translate into law which is accessible, intelligible, clear and consistent.

Alison McNab, policy manager,
The Law Society of Scotland

solve the chronic problems we see in the legal aid system, we recognise the new proposals go some way towards addressing our concerns. It is important that the necessary regulations implementing these increases are tabled as soon as is practicable and it would be helpful to understand more about the timetable to do this."

It regrets that the Government has chosen not to decouple the immediate increases from structural fee reforms, as the Society had strongly pressed for, but believes that "the revised increase in fees allows us to move the debate forward onto the promised fee review mechanism which the Cabinet Secretary himself recognised as critical to the long-term sustainability of the legal aid sector".

The letter concludes: "It is crucial that regulations are implemented without delay. We await confirmation from you around the timescale for the implementation of these regulations and the milestones for the fee review mechanism."

Access the letter via the Society's news web page (3 October).

OBITUARIES

Ranald Wilson Bruce

On 10 July 2022, Ranald Wilson Bruce, formerly a partner with Taylor Bruce & Co, Selkirk and latterly employed by Iain Smith & Partners WS, Galashiels
AGE: 68
ADMITTED: 1978

John Morton Ballantine, Edinburgh
On 29 August 2022, John Morton Ballantine, formerly of HM Revenue & Customs.
AGE: 65
ADMITTED: 1981

James Andrew Graham, Linlithgow
On 5 September 2022, James Andrew Graham, formerly of the Crown Office & Procurator Fiscal Service.
AGE: 77
ADMITTED: 1972

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/

Administrative justice

The Society has launched a consultation calling for views from the legal profession, stakeholders across the justice system and members of the public on proposals for a principles-based approach to administrative justice in Scotland. See feature on p 26.

Mental health law review

The Society welcomed the publication of the Scottish Mental Health Law Review final report. Having engaged extensively with the review, it was particularly pleased to note the report's alignment with and direct link to its Advance Choices paper.

The Report recommends both that reform of the Adults with Incapacity Act should be a priority for Scottish Government, and that a legislative solution to potentially unlawful deprivations of liberty should be taken forward as a short-term recommendation. The Society has previously highlighted the need for urgent reform in both these areas, and has added its voice to the calls for the Government to address these issues in early course.

It also encourages the Government to consider the recommendations of the whole report and move swiftly to the next phase of law reform, for the benefit of patients and their families, carers, doctors, lawyers and all those affected by the legislation. In the meantime the Society will carefully consider the report's content and recommendations.

National Care Service

The National Care Service Working Group submitted written evidence in response to calls for views from Scottish Parliament committees on the National Care Service (Scotland) Bill. It highlighted the current complex legislative landscape for social care, and that a further layer of complexity should be avoided. The bill's success in achieving its purpose of improving quality and consistency of social work and social care services would depend on details of implementation, which were not yet available. The bill could be strengthened in areas including rights and duties, consultation and co-design, conflicts of interest, transfer of staff and of property and liabilities, health and social care information, procurement and entrustment, intervention powers, and interactions with existing statutory provisions and definitions.

It was further suggested that high level issues based on fundamental rights and existing regulatory frameworks should be addressed in primary rather than secondary legislation, to ensure full parliamentary scrutiny; this was not inconsistent with ensuring responsiveness and adaptability via secondary legislation. The submission welcomed the involvement of people who access and deliver social care in a co-design process, but highlighted that scrutinising the bill in advance of this limited the potential for effective scrutiny.

Drugs death prevention

Scottish Labour MSP Paul Sweeney launched the Proposed Drugs Death Prevention (Scotland) Bill in May 2022. It sought to enable overdose prevention centres ("OPCs") in Scotland within a licensing framework, and create a new body to oversee drug policy tasked with improving public health, and reducing drug use and drug related deaths.

The Criminal Law, Licensing Law and Health & Medical Law Committees considered and responded to the proposed bill. The response acknowledged that the issues surrounding drug misuse are complex and require a multi-faceted approach including education, healthcare, and justice considerations. Further detail and consideration would be required as the proposals state that the operation of OPCs would rely on the Lord Advocate's prosecutorial discretion. The proposals would require amendment to the Misuse of Drugs Act 1971, a reserved matter, so unless the UK Parliament legislates to allow OPCs in Scotland, concerns remain that criminal offences may occur in their provision.

Bail and release from custody

The Bail and Release from Custody (Scotland) Bill was introduced in June. Part 1 relates to decisions about granting bail and aims to ensure that as far as possible, the use of custody for remand is a last resort; part 2 relates to arrangements for the release of some prisoners and the support provided to those leaving prison. It aims to give a greater focus on provision of rehabilitation and reintegration.

Responding, the Criminal Law Committee welcomed the proposals as containing some significant improvements to the current arrangements, in particular the provision of written reasons for refusing bail, albeit this would create additional time and pressure constraints on custody courts. It also welcomed proposals in relation to electronic monitoring of bail, and moves to support individuals on release by "throughcare" services.
See the website for more about the Policy Team's work with its network of volunteers to influence the law and policy.

ACCREDITED SPECIALISTS

Child law
VICTORIA JANET STRAITON, Clan Childlaw (accredited 5 September 2022).

Family law
GRANT SIMON HASSAN, Harper Macleod (accredited 5 September 2022).
Re-accredited: LESLEY DOWDALLS, Mackintosh & Wylie LLP (accredited 18 June 1997); NINA ARIELLA SALICATH TAYLOR, Lindsays LLP (accredited 21 August 2012).

Family mediation
MORVEN JEAN KILPATRICK DOUGLAS, BTO Solicitors LLP (accredited 5 September 2022); ELAINE MARY SYM, Thorntons Law LLP (accredited 29 September 2022).
Re-accredited: JUDITH MEIL, Taggart Meil Mathers (accredited 13 December 1993).

Planning law
VICTORIA MILLER LANE, Brodies LLP (accredited 26 September 2022).
Over 600 solicitors are accredited as specialists across 33 diverse legal areas. If you are interested in developing your career as an accredited specialist see www.lawscot.org.uk/specialisms to find out more. To contact the Specialist Accreditation team email specialistaccreditation@lawscot.org.uk

ACCREDITED PARALEGALS

Residential conveyancing

ANDREA FERGUSSON, Pollock & McLean; EILIDH ROBERTS, Melrose & Porteous Ltd.

Wills and executries
REBECCA LINDSAY, Cullen Kilshaw; GAIL MACPHERSON, Corrigall Black.

CERTIFICATION COURSES

The following have been certified by the Law Society of Scotland in Anti-Money Laundering:

PETER BRASH, Grigor & Young; CAROLINE CLARK, Bellwether Green; MARTHA CLARK, McSherry Halliday; ANTONIA CRAWFORD, Beltrami & Co Ltd; DEREK DUNCAN, Lindsays; NATASHA EDGECOMBE, Vialex WS; STRUAN FERGUSON, Blackwood & Smith; LYDIA FOTHERINGHAM, Anderson Beaton Lamond; KENNETH GERBER, Mitchells Roberton; ALASTAIR GRAY, Rradar (Scotland); FIONA HANNAY, Thomas Duncan Solicitor; JUDITH MARSHALL, MooreMarshall; LAURA McDOWALL, Blackadders; DUNCAN McFADZEAN, ELP Arbuthnott McClanachan; MARY PAT McFARLANE, VMH Solicitors; MICHAEL RAMSAY, Ramsay & Co Solicitors; PHILIPPE RONDEPIERRE, The Chamber Practice; HELEN STRACHAN, Burnett & Reid; DOUGLAS WILLIAMSON, Warners Solicitors.

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Inclusion: where to begin?

How do you create an inclusive culture? Start from where you are, Rupa Mooker advises, take stock with the help of the people you want to feel included, and move forward from there

I was on a panel at the CIPD Scotland Annual Conference last month where the topic was "From action to awareness: What does it mean to create a truly inclusive culture in your organisation?" Some attendees commented that it can be overwhelming knowing where to start in this area. As someone who embarked on this journey not all that long ago, I agree 100%.

There has been a huge shift in the dynamic between employers and employees in the workplace of today. As I wrote in my last column ("Know people, know business", Journal, July 2022, 44), individuals are increasingly interrogating their employer's ESG (environmental, social and governance) focus. Intertwined with the "social" piece of this is the concept of inclusion, which, in my view, should be a fundamental pillar of every organisation's culture. For while it is now well established that diversity is good for business, the job isn't done once you have a diverse team. Instead, employers should try and lead with inclusion – diversity will naturally follow. Only by being inclusive can you ensure that employees are happy, engaged and productive.

But how do we create workplaces where everyone feels welcome and individuals feel they belong and are valued? After all, any workplace is only as good as the people within it.

Essential information

"Start where you are, use what you have, do what you can." – Arthur Ashe

Different organisations will have different resources, people power and budgets to help them build an inclusive culture – it is a simple fact that there is no "one size fits all". And while it can be tempting to jump right in with "let's implement this initiative, hold that event and introduce ALL the policies" (all important things, by the way!), it may be better to stop and take stock of where you are: what does your organisation currently look like (literally and otherwise), and where would you like to be? Ask yourself what your workplace culture feels like – does it feel inclusive? From recruitment to retention to daily working practices, are your processes fair, accessible and open to all?

For example, do your meetings allow everyone to input and share thoughts, or is it always only the same people that are engaging? If it's the latter, consider why the others aren't contributing – it may well be that they don't feel included and that their opinion isn't worth anything. One of my fellow panellists, Lutfur Ali, summed it up perfectly when he said: "Culture is how employees feel on a Sunday night about coming into work on Monday." The ultimate measure of your organisation's brand is what your current, past and potential employees, as well as your clients and competitors, say about you in casual conversations with their friends and colleagues.

The first step towards building a truly inclusive culture in our firm was information gathering, and this is where our biggest assets – our people – were invaluable. Communication is key, and asking those who work for an organisation what they think about the culture will provide an honest assessment of the areas a business is performing well in and where improvement is required. Using surveys (anonymous if necessary), holding round tables and asking for feedback is all vital intel that will highlight where the focus should be going forward.

Once the vision, strategy, budget and goals have been formulated based on that feedback, organisations should consider sharing those openly with staff. Not only does that make employers accountable, it provides a great opportunity for employees to input, share their thoughts and concerns as well as celebrate the wins and educate their colleagues. Providing space for employees to be heard, seen and valued as individuals, and to share their lived experiences, helps to develop an authentic, inclusive culture even further.

These micro moments of inclusion are just as important, if not more so, as rolling out big, fancy initiatives.

> "The first step towards building a truly inclusive culture in our firm was information gathering, and this is where our biggest assets – our people – were invaluable"

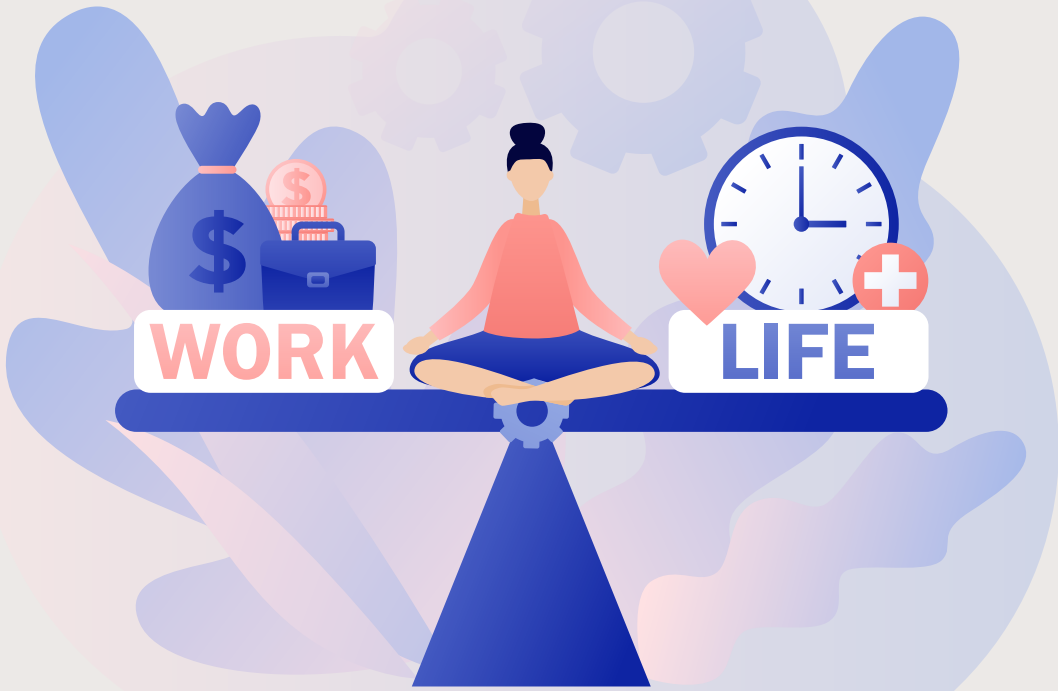
Inclusion: not just for others

It is also necessary for managers and leaders to take individual responsibility on these matters, investing their time and energy to establish what is necessary and sustainable in their teams. Far from being an "HR thing", diversity, equity and inclusion ("DEI") is an everyone thing. Ensuring that leaders are vocal supporters of DEI work drives home the message that building an inclusive culture is a serious priority.

There is no shortcut to building a truly inclusive culture – it's a continuous journey and many mistakes may be made along the way. However, the rewards from creating an authentic, inclusive workplace far outweigh any bumps in the road – happier employees, better retention rates, fewer absences, and increased productivity and profits are absolutely worth it.

Rupa Mooker is Director of People & Development with MacRoberts

Clio



Is work-life balance achievable in the law?

Secure legal technology can be the catalyst

Work-life balance – finding the ideal balance between time spent at work and time spent doing things you enjoy and with loved ones – is an increasingly hot topic.

Often, finding that healthy balance can seem like something of a rarity in the legal industry.

Using the above definition, many lawyers and other legal professionals might find they aren't achieving the balance they want. The legal profession has carved out a reputation for its "knuckle down and get on with it" nature – especially among top corporate firms.

Lawyers are notorious for their long hours and demanding workload. According to the Law Society of Scotland's 2018 *Profile of the Profession* survey, one factor that led more than half of respondents to consider leaving the profession in the previous five years was work-life balance; a third who replied counted it as their most important career goal for the five years ahead.

It's not surprising that the legal industry is especially vulnerable to the pressures of time. Time in the office can be eaten up rapidly, preparing for a trial or meeting clients, commuting, in meetings and conferences, waiting for court, and more, all while trying to stay on top of admin and bill for hours. With often long working days involved, it can feel like your time is never truly your own – and even when you find some personal time, it's not enough.

One thing that can help lawyers to find a greater balance in their workday is legal technology. By freeing solicitors from time-consuming and repetitive administrative tasks (such as tallying up billable hours for the month), legal software can allow them to spend their days on high-value tasks that genuinely move the needle, like meeting with clients and reviewing contacts.

Choosing a legal software with secure mobile capabilities, such as Clio, also means that legal professionals can use waiting times before court and while commuting to update and share documents without worrying about a data breach.

They can automate repetitive tasks to free up time for billable work and grow the firm more efficiently. With 90+ UK integrations, Clio reduces double entry between the vital software solutions law firms use every day, such as calendaring, email, and accounting software.

Of course, technology alone won't change a firm's culture. However, it can be the catalyst for providing solicitors with increased work-life balance, allowing them to be more efficient at what they do in a fraction of the time.

To see how Clio helps with remote/hybrid working, Law Society of Scotland members can take advantage of a 7-day free trial.
See: clio.com/uk/lawscot-free

RISK MANAGEMENT

New register, new risks

Matthew Thomson from Lockton discusses the new Register of Overseas Entities and some of the risk implications for solicitors

The Register of Overseas Entities ("ROE") was introduced by the Economic Crime (Transparency and Enforcement) Act 2022 and is held by Companies House. The entities to be registered in it are those which are governed by the law of a country or territory outside the United Kingdom and which own land or property in the UK.

From 5 September 2022, the Keeper is required by sched 4 to reject any application to register a deed in favour of such an entity which does not contain an ROE registration number, and from 1 February 2023 to reject any deed granted by such an entity without a registration number.

In order to be registered, an entity must submit information about itself and its property transactions, but must also provide evidence of verification of identity. This verification is covered separately from the Act, in the Register of Overseas Entities (Verification and Provision of Information) Regulations 2022. Subject to some exceptions, those permitted to carry out such verification are the same as provided for in the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, which includes solicitors.

Much has been written by legal firms and regulators north and south of the border about the introduction of the ROE and the verification process, so the purpose of this article is to focus on the risks that introduction of the register presents and provide some practical suggestions to help firms ensure compliance and manage client expectations.

1. What are the key risks for solicitors?

There are significant risks around the new verification process. Solicitors who don't get up to speed with the new rules could potentially face Master Policy claims from clients. Failure by a client to register in the ROE could mean that the client is unable to dispose of (or deal effectively with) property, and where such failure was caused by a solicitor's advice (or lack thereof) the client could make a claim against that solicitor for the financial loss suffered as a result.

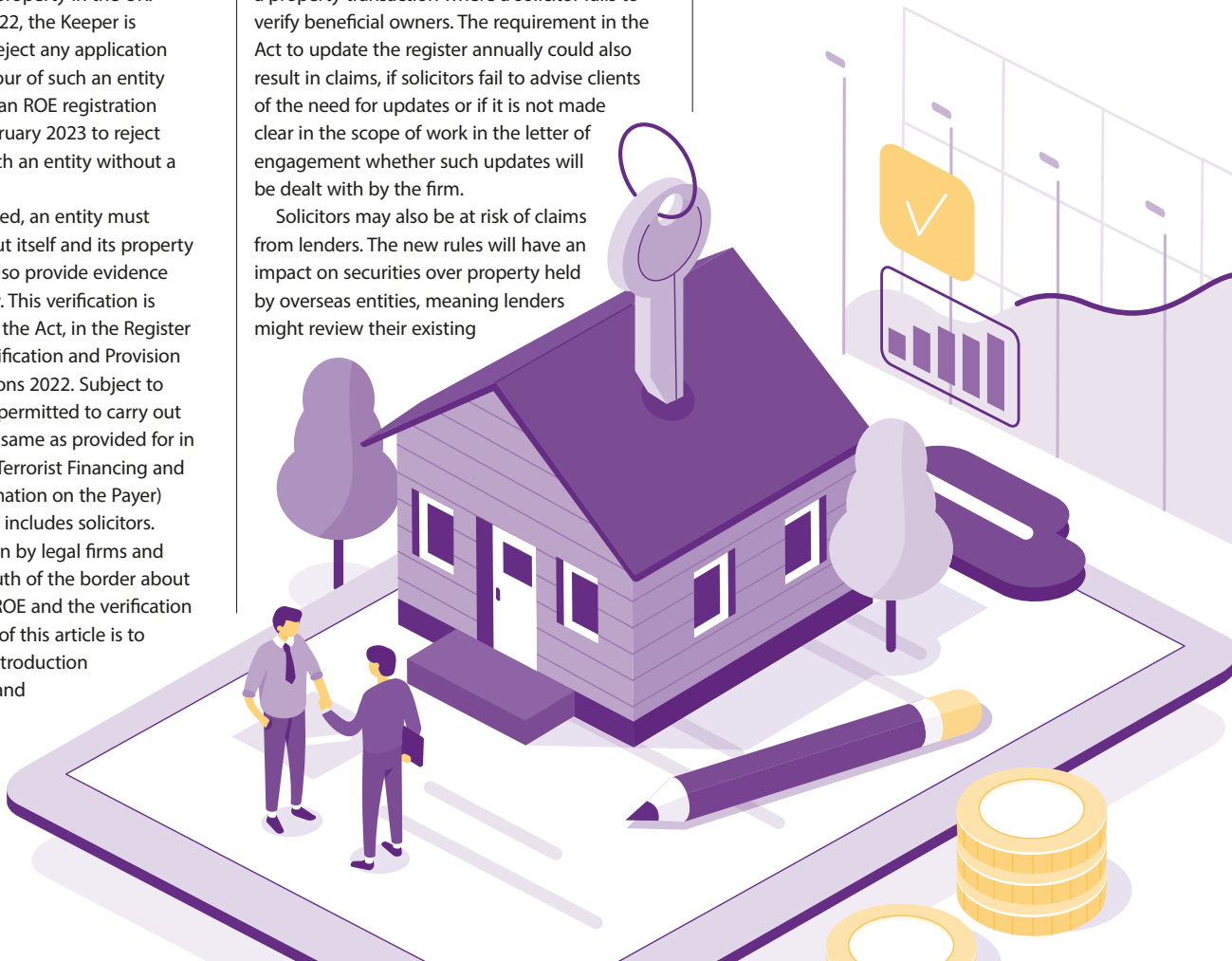
There might also be a risk of claims for loss of a chance or the loss of a potential profit on a property transaction where a solicitor fails to verify beneficial owners. The requirement in the Act to update the register annually could also result in claims, if solicitors fail to advise clients of the need for updates or if it is not made clear in the scope of work in the letter of engagement whether such updates will be dealt with by the firm.

Solicitors may also be at risk of claims from lenders. The new rules will have an impact on securities over property held by overseas entities, meaning lenders might review their existing portfolios (as well as their back book, given that the Act has retrospective effect), and take steps to ensure borrowers have registered in the ROE where required to. This could potentially result in claims against solicitors if they have failed to ensure compliance with the new rules.

In addition, solicitors may be exposed to criminal and regulatory proceedings where they fail to comply with the strict requirements of the verification process, so great care should be taken in this regard.

2. What do solicitors need to do?

It is critical that solicitors understand the requirement to register beneficial owners, and



firms should review the legislation thoroughly and make appropriate arrangements for how they intend to deal with the changes. Companies House issued guidance on the registration and verification requirements for overseas companies on 1 August. The Law Society of Scotland has published information bringing the ROE to the attention of the profession, and signposting the articles of guidance by the UK Government. It would be sensible for solicitors to familiarise themselves with the guidance from the UK Government and any of their own internal policies on the ROE and verification. It is worth noting that the steps to be taken for overseas entity verification go beyond what solicitors may be used to in relation to AML requirements, so it is not simply a case of replicating the checks already carried out.

As existing property registration processes are usually completed by solicitors, there might be an expectation on the part of clients that the solicitor will deal with ROE requirements too. Some firms currently offer a corporate director or trustee service, and they may decide to include this verification process as part of their offering.

As always, effective client communication will be critical – a law firm will need to be clear about whether it will carry out the ROE verification process, what it will need from the client in order to do so and what it will charge. Solicitors might be interested to note that the Law Society of England & Wales's guidance on ROE states: "We anticipate that many firms will conclude that they are unable or unwilling to conduct ROE verification."

Firms should also consider the requirement for annual updates to the ROE, similar to the three-yearly LBTT reporting requirement for leases, and consider whether they are prepared to take on the responsibility of diarising and complying with that requirement. Where firms are not prepared to take that on, they should consider explaining that position clearly to the client and explicitly exclude such updates from the scope of work in the letter of engagement.

> "Regardless of the area of practice, firms will need to keep up to date with how the changes might affect their clients."

It is likely that law firms will want to write to relevant clients regarding the requirements and obligations.

The practical steps that solicitors will take might well depend on the area of practice:

- Commercial property solicitors (and indeed any property solicitors acting for clients based overseas) will want to consider how their clients' transactions will achieve compliance with the Act. They might want to consider writing to any clients with property transactions that are caught by the legislation, identifying the registration requirements and obligations. They should also think about the potential impact of the legislation on leases and subleases.
- Solicitors that work in areas of private client and tax might need to review their transactions against the new rules and contact any client that might be affected.
- For solicitors involved in corporate M&A transactions, specific drafting and due diligence might be required where deals involve the acquisition or disposal of properties by overseas entities. Great care should be taken in relation to the independent verification of the information about registered beneficial owners and in relation to the corporate filings at Companies House.

Regardless of the area of practice, firms will need to keep up to date with how the changes might affect their clients. In all cases, firms should be clear with their clients about the scope of a piece of work and whether that includes ROE verification. Above all, caution should be exercised before a firm chooses to carry out verification, and the circumstances of each request should be considered individually.

Handle with care

The ROE was introduced recently with the intention of increasing transparency on who owns or controls overseas entities owning property in the UK. The new rules are likely to have significant implications for law firms over the next few months. Great care will need to be taken by solicitors verifying identity, operating corporate filings at Companies House and acting in property transactions, to ensure compliance and to avoid penalties, Master Policy claims and potential criminal exposure.

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 Need for Legal Services", October 1972: "The obvious and increasing trend south of the border, and some small beginnings are being made in Scotland, is for further voluntary Legal Advice Centres to be established… The only qualification one feels in applauding such efforts is that such part-time Centres are unlikely to be enough… it is doubtful whether the newly established Centres… will be able to satisfy the existing demand and the true needs for legal advice and assistance. That is why there is an increasing body of opinion that full-time Legal Advice Centres must be set up."

25 years ago

From "Financial Planning", October 1997: "September was a month of the unexpected, notably in the deaths of Diana, Princess of Wales, and her companion. Visiting London after the funeral for the meeting, I was astounded and moved at the miles of flowers, cards and gifts surrounding the palaces. Some psychologists and agony aunts were convinced that this was not only an outpouring of emotion by the British public… but also reflective of their own outlook on the personal tragedies that affect each of us and our circle of friends, relatives and clients in everyday life."

Challenge of the written word

Dyslexia is not a barrier to entering the legal profession, but greater understanding is needed to help those with the condition overcome it, says Tom McGovern, as he describes his own experiences to date

Dyslexia is defined by the British Dyslexia Association as "A learning difficulty that primarily affects the skills involved in accurate and fluent word reading and spelling. Characteristic features of dyslexia are difficulties in phonological awareness, verbal memory and verbal processing speed".

Approximately one in 10 people in Britain are dyslexic and I was formally diagnosed at the age of seven. I received specialist help at school, including referral to a language unit outwith my primary school. However as I progressed through school, the pattern of support in real terms was restricted to extra time during exams. This concession didn't really address phonological awareness or verbal memory problems. In short, if you're not getting it and can't remember obvious cues, more time does not make much difference.

Law school: unforgiving

University was more of the same, notwithstanding that all the templates were in place through Disability Services. While the literature set out all the right messages, there were two main issues. First was the strong demand for such services with a focus, correctly, directed at the acute cases of deteriorating mental wellbeing. Secondly, at least in the Law School, there was a deficit of understanding among some staff members about exactly what disabilities a dyslexic had and what support was needed.

One notable incident was when, at the start of a new semester, the tutor in a particular module insisted on students using pen and paper and expressly forbade laptops, citing studies of improved concentration with this method (we were never shown the studies). This was and is a big problem for me, as my handwriting bears strong resemblance to the eye of a hurricane and I cannot function without a laptop as an aid. The tutor agreed that I could use one, but when the class started she asked me to identify myself, and when I sheepishly did so, she

explained that I had special permission not to use pen and paper.

The crassness and insensitivity of this approach was not lost on my fellow students, some of whom expressed sympathies to me. I would later ask her about it, her position being that the other students had a right to know. Unfortunately I didn't have the right to know why she thought that.

The challenges of engaging in a degree course as analytical and literate as law with a learning difficulty manifesting in frequent spelling and grammar errors are self-evident. In my degree assignments, markers' comments focused disproportionately on spelling and grammar errors. When I challenged the appropriateness of this approach as someone registered with a disability, corrections to the marking sometimes followed.

Frankly, my law undergraduate experience was a stressful and unforgiving one. During one significant appeal process, I received a letter from a law school examiner who commented that he found it strange that I had chosen law as a course of study given my dyslexic diagnosis. I no longer have access to this letter due to it being sent via an internal email system, otherwise it would be sitting framed in my office.

Training: challenges

I did therefore enter the profession with some trepidation. The problems of a dyslexic person can be masked and managed, but they are ever present and sometimes simply beyond your control. Support for disabilities is a priority for the Law Society of Scotland and much of the legal profession. However this has yet to be translated into appropriate support in a working environment. This support involves empathetic understanding from your principals in the firm, and technology which alleviates the more obvious spelling and grammar issues.

I've found that unlike school and university, a key skill as a trainee solicitor is verbal communication by phone or in person. This is something that I enjoy and have been complimented on from my employers. Talking to clients is something I get a lot out of... how much they get out of it depends on your view of my personality.

Most of my training is in criminal court work, and it didn't take me long to realise the enormous challenges in the work environment caused by the current legal aid rates that are beyond a joke. I consider myself very fortunate that my firm uses a server style filing system which can be accessed at court via an iPad. This type of resource is very rare in my field and I'm indebted to the firm for providing such support.

Resources

During advocacy appearances, I use the "Notes" app on my phone to list the key issues I wish to address the court on. My handwriting simply wouldn't allow for a reliable record. As a court novice, colleagues are enormously helpful and sheriffs seem happy to be addressed by a defence agent who isn't middle aged. I have had one sheriff criticise me for using my phone to address the court. He stated that I was "being unprofessional". I decided in an open busy court to explain to him my disability, the problems it posed and the steps needed to manage it. Having heard this, the sheriff retreated, somewhat embarrassed at my robust response.

The resources provided by my employers only work if the court system has a working IT system to support them. Sadly in 2022, there are court facilities that don't offer basic mobile data provision. The serious point is that it is totally unacceptable that the court complex in the basement of one of the busiest courts in Europe doesn't offer defence agents 4G. If this article is able to bring about the delivery of mobile data in the basement of Glasgow Sheriff Court, I will be able to retire content and satisfied.

I have tools for support in my IT devices, and employers who know my background and the support that I need.

Sadly, I am in a small minority training in criminal court work as most firms don't operate with the same resources as have been made available to me. I can only assume this is due to legal aid underfunding. That issue strikes me as more than unfortunate. Most of the people I act for are vulnerable to some degree or another, and that's something I can empathise with.

However there will be very few opportunities in the field of legal aid work for lawyers with my background if resources are as scarce as they seem to be.

Don't be discouraged

Training to be a solicitor is a demanding exercise, but unlike university, the personnel, fellow defence agents, fiscals, clerks and sheriffs are understanding and supportive. Anyone with a disability which may not be an obvious one, nurtures the real fear of exposure and embarrassment in public. Ultimately this way of thinking isn't one I subscribe to. A lot of younger lawyers are, rightly, concerned at making "mistakes". My attitude, developed with a lifetime of having a learning difficulty in an environment where my contemporaries don't, is that this is immaterial.

Working over the years alongside people with dyslexia, I've observed them to be more self-conscious than others, perhaps because of this or just in general being different. I see this as a strength and a badge of honour, hence the reason I'm writing this piece.

My main purpose in doing so is to encourage other dyslexic sufferers contemplating either the study of law or entering into the legal profession, that you are not alone, and support personal and technological is available. Highlighting the issue reduces the opportunity for ignorance or prejudice to undermine those of us determined to pursue our careers, even if we can't quite spell it out. J

Thomas McGovern
is a trainee solicitor

Notifications

ENTRANCE CERTIFICATES ISSUED 29 JULY-6 SEPT 2022

ACHAMPON, Samantha Jemma
ADAMSKA-PATERSON, Katarzyna Anna
AIZPURU, Kristy Kate
AKRAM, Haarisa Sarwar
AMOS, Andrew George
ANDERSON, Jennifer Irene
ANDERSON, Thomas Scott
ANDROUTSOS, Sokratis Panagiotis
ARMSTRONG, Kathryn Wallace
ASHTON, Kristofer
ATIQ, Salma
ATTARZADEH YAZDI, Arina
BASILE, Giorgio
BAXTER, Carol
BEGUM, Forida
BENTON, Jack Stephen Cranston
BILON, Harkirit Singh
BINGHAM, Samuel David John
BOROWICZ, Marta
BOYLE, Matthew Alan
BOYS, Katarina Anna
BRANNIGAN, Neil Baxter
BROWN, Lynne Carol
BROWN, Rachel Amy
BROWN, Rebecca Evelyn
BRUCE, Kathleen Anna
BRYSON, Hannah Clare
CALDWELL, Chloe Frances
CALDWELL, Rebecca Irene
CAMERON, Ruairidh Fraser
CARMICHAEL, Ellie Jane
CARR, Lauren Ann
CHRISTIE, Ewan Alastair
CODONA, Carla
COLEMAN, Stuart Edward Peter
COOPER, Sophie Henderson
CORR, Nathan James
COWIE, Daniel Alexander
CRAIB, Sam
CRILLEY, Lauren Jayne
CUTHBERTSON, Jack Alexander
DAY, Jacqueline Sarah Maureen
DEANE, Isobel Alison
DEAYTON, Hannah
DEMBELE, Macoula
DICK, Rachel Pleszkan
DICKSON, Katie
DYSON, Michael Fionnbharr McHugh
ELLIS, Rebecca Jennifer
ESDAILE, Hannah Morley
EVELYN, Skye Oliver
EWING, Connor William
FENTON, Courtney Elizabeth
FERGUSON, Thomas Alexander
FERRIE, Robert Lee
FINLAYSON, Ellen Mary
FLETT, Tia Inez
FOCKLER, Alanna Mary Victoria
FORDE, Nicola Catherine
FRANCHI, Monica
FULTON, Laura Margaret
GALBRAITH, Daisy Lesmoir Sheila
GESHEVA, Simona Ivanova
GIBSON, Hope Rebekah Maclean
GLASS, Joel
GOW, Ellen Grace
GRAHAM, Daniel Peter
GRAHAM, Ewan Findlay
GRANT, Natasha Sophie
GRAY, Joanna Margaret
GULLEN, Cian
HAMILTON, Rona Margaret
HANNAH, Christi Quinn
HASTINGS, Annemarie Elizabeth
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LESLIE, Callum
LESLIE, Rosalind Alexandra
LINTON, Isabella Kit Gordon
LLEWELLYN, Ethan James
LOGAN, Catriona Sara
McALLISTER, Emma Susan
McARTHUR, Kirsty Marion Lena
McCANN, Craig Thomas
MACCOLL, Katherine Louisa
McCUSKER, Eve
McGOWAN, Ciaran
McGUIRE, Mark John
McINALLY, Rory Mark
McINTOSH, Kate
MACINTOSH, Keir Jon William
MACIVER, Kirsty Fiona
MACKENZIE, Roman David Daren
McKILLOP, Evan
McLEAN, Alexander Thom
McLEAN, Carrie Elizabeth
McLENNAN, Struan Ross Domhnull
MACLEOD, Finlay Grant
MACLEOD, Luciana Maria Ross
McNALLY, Jeraldine Cyrena
McQUILLAN, Rebecca Susan
McSHERRY, Morgan Margaret Malloy
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MARTIN, Lucy Jane
MILLAR, Rebecca Anne
MISACAS, Maria
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MITCHELL, Sophie Elizabeth
MITCHELL-WHYTE, Archie Alexander
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MORRISON, Katie Macpherson
MORTON, Rebecca Cathleen Iona
MUIR, Christopher Iain
MURRAY, Ailsa
MURRAY, Anne Clare
NEELY, Lauren Hannah
NEVILLE, Laura May
NICOL, Emma Louise
O'BYRNE, Lyndsey
O'CONNELL, Emer Winifred
O'NEILL, Jack Charles
PATERSON, Aiden James
PATON, Hannah Claire
PEDDIE, Ross Mitchell
PERRIE, Erin Mary Alison
PERRY, Alice May
PRESTON, Caitlin Ann
QADIR, Iqra
QUIGLEY, Jennifer
QUINN, Lewis Anthony
RAE, Olivia Helen
RAMSAY, Fraser John
RASKIN, Judith Tilly
RASUL, Sarah
REID, Alix Jane
REID, Argyll Kate
REID, Steven Campbell
REID-McCONNELL, Katrina
RENNEBOOG, Hannah
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ROSS, Stephanie
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ROWAN, John James
SCOTT, Annabel
SCOTT, Jordan
SHEERIN, Taylor Rose
SHIELDS, Joseph Francis McCrory
SIMS, Kirsten Louise
SINCLAIR, Rona Gillian
SLOAN, Samantha Elizabeth
SMART, Gregory Francis
SMITH, Craig Laurence
SMITH, Flora Bella
SMITH, Megan Elizabeth
SMITH, Natalie Colette
SMYTH, Jacob Paul
STEVENSON, Olivia Skye
STOBIE, Charmaine Elizabeth
STOICA, Diana Elena
STRAIN, Dana
THOMSON, Isla Rose
THOMSON, Joanna Claire
TURNBULL, Elise Audrey
TYLER, Meghan Jane
VAZQUEZ SCORTTI, Irene
VERNEL, Aidan
WARNER, Fergus Richard
WARREN, Patrick James
WATSON, Amy Alexandra
WAYTH, Jenna Rose
WEBSTER, Zoe
WESTHEAD, James Simon
WHEELER, Christopher David
WILSON-McKAY, Ewan
WITHERS, Eilidh Jean
WROBLEWSKA, Joanna Natalia
WYMAN, Sam Michael
YOUNG, Aidan

APPLICATIONS FOR ADMISSION 29 JULY-6 SEP 2022

AHMAD, Attika
AHMED, Faiza Zreen
ALCORN, Paul Donald
ALLARDICE, William Robb Anderson
ALLISON, Ruaridh John
AL-MIDANI, Samia Naomi
ASHRAF, Hamza
BARCLAY, Gemma
BENNETT, Ainslie Marie
BENNETT, Angela
BIRRELL-MURRAY, Doreen Karen Janice
BLYTH, Ross MacKenzie
BRACELAND, Elisa Maria
BREMNER, Laura May
BRUCE, Emma
BRYCE, Ronald Colin Gavin
CAMERON, Jack Alexander Millar
CAUNT, Rebekah Elizabeth
CLARK, Amy Louisa Campbell
COWIE, Stephanie Catherine
CURLEY, Michael Thomas
DALLING, Fiona
DANDO, James Alexander
DARROCH, Rhea Jane
DEVOY, Lewis
DI CARLO, Sara
DONAGHY, Lynne Catherine
DUHERIC, Hana Vera
FAGAN, Catherine Jane
FAIRLEY, Sarah Valerie
FAZELI, Amal
FERGUSON, Rachel Nicole
FIDELO, Luisa Astoria
FLYNN, Lauralyne Kathleen Moyra Hannah
FRASER, Euan Kennedy
FULTON, Craig John William
GILCHRIST, Eve Elizabeth
GILL, Najeeb Javed
GRANT, Jamie
GRAY, Harriet Hazel
GREEN, Clare Louise
GREEN, Megan O'Dowd
GREIG, Adam James Vernal
GUTHRIE, Christy Nicole
HUNTER, Craig Peter
HUNTER, Joanne Elizabeth
INGLIS, Christopher Fairley
JACK, Megan Louise
JOHNSTON, Beth Carrie Grace
JOHNSTON, Elliot Iain
JOHNSTONE, Chloe Cessford
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KING, Deborah Louise
KROLL, Sarah Hornung
LITTLE, Karen Jane
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MACLEOD, Kathleen Christina
MACLEOD, Katie Mary Margaret
MANSON, Emma Mackenzie
MARTIN, Leeanna Francis Toni
MATHER, Catriona Anne
MATHIESON, Iain Thomas
MILLER, Gemma Jane
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MUNRO, Alexandra Mairi
MURPHY, Euan Jack
MURRAY, Danielle Louise
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SMITH, Lucy Elizabeth
STEWART, Claire
STORIE, Danielle
SWAN, Finlay Kenneth
TAIT, James Fyfe
TARBET, Emily Jane
TAYLOR, Frances Ellen Wilton
WALKER, David Daniel
WALKER, Jonathan William
WOODHOUSE, Katharina Jane
YOUNG-SMITH, Colomban William Jamus Olivier Burgess

Not quite Boston Legal

In our new quarterly series, a solicitor tells of the realities they found in practice compared to their expectations as a law student, and the effects on them and their career

Picture the scene: it's second year of university studying law. I have some free time in between lectures, so I have taken the opportunity to watch one more episode of Boston Legal. It shows shiny glass offices with sliding doors and plush boardroom seats, not to mention all the beautiful, fresh looking cakes, pastries and snacks next to the state-of-the-art coffee machine.

I had visions of all law offices being similar – solicitors meeting on the balcony for a brandy at the end of the day to discuss the cases won earlier that day. It looked like such fun! I was in awe of these solicitors – in court, they could turn their hand and knowledge to any subject at the drop of a hat. As well as that, Denny Crane could win cases simply by showing up and saying his name repeatedly!

Television is rarely ever realistic, but with university life being all about having your head in the books, is it any wonder I looked up now and then to watch an idyllic version of what I hoped life in the law would be like?

Unaltered reality

The reality was buildings with significant cracks up the walls, where it was literally a case of painting over them. Offices full of papers piled high – GDPR breaches, trip hazards and fire safety risks galore. Passive aggressive anonymous notes in the staff areas stating that kettles should only be boiled with the amount of water necessary for one or two cups, and that all staff should clear up after themselves: "You wouldn't leave your home in a mess, so don't do it here!" Clients treated like faceless numbers and fees. Solicitors with unrealistic and unachievable fee targets on their backs – you had failed the second you walked through the door and were set up on a hamster wheel of chasing a target to please your bosses, trying to get up the career ladder and maybe being awarded a bonus. The criteria for achieving said bonus were never set out clearly; the bonus "depended on performance", which is lawyerspeak for "we will decide what we want to give you based on undetermined factors but it won't be the full bonus, no matter what you have achieved".

Was I wrong to assume that real life as a solicitor would resemble Boston Legal? Absolutely. Did I expect to end up mentally in pieces after a relatively short time into my career in the law? Absolutely not.

Life as a solicitor is full of "unsaid" rules and assumptions that employers and partners are fully aware cannot be verbally expressed, but can be inferred, which are taken on board by trainees, newly qualified solicitors and those who wish to climb the corporate ladder. No one talks about this openly: it would be like lifting the lid on the secrets of a magician. For example, there is a strong assumption that the hours you should put in as a solicitor far exceed 9am-5pm if you want to succeed in your career. To this end, your work-life balance suffers as well as your friendships, relationships and your physical as well as mental health. Who has time to get in their 10,000 steps a day, attend a gym class or meet a friend for coffee when they have work to do to meet their targets?

What they assume

In many law firms – big and small, chains and independent firms – there is an assumption that you really should be working at weekends and taking work home when you do leave the office. There is an assumption that as solicitors, the law is our life and to take any time away from the office or from work is somehow something to feel guilty about or something we really need to justify. I have seen plenty of solicitors over the years actually emailing clients or other solicitors oversharing as to why they cannot see them that day or the next day. For example, "I'm terribly sorry, Mr Smith, but I can't see you tomorrow to sign your will as it's my father's funeral. But I will see you at 9am the following day."

As solicitors, we are assumed to be constantly switched on in work mode – even to the point that we are expected to answer legal questions that strangers ask us while we are waiting for a train.

It is my belief that these assumptions have been handed down by generations of old fashioned solicitors who had little regard for the wellbeing of their staff, but, more importantly, themselves. There was very little value placed on the wellbeing of staff for productivity.

This column is the story of the biggest unsolved case across Scots law in terms of modern life in the legal profession: Expectation v Reality. What you can expect are stories about intense work pressure, severe lack of sleep, steady decline of mental health and the biggest heartbreak of all: falling out of love with the law. But I'm still there… J

The Unloved Lawyer is a practising solicitor

ASK ASH

Issues over unsolicited help

My new colleague is too keen to impress as respects my work

Dear Ash,

A new colleague has joined our team recently and she seems intent on being overly helpful, to the point that I can't even do my own job without her confirming that she has already drafted my client letter or an outline of my key documents. She also seems to ensure that a senior manager is within earshot when she confirms she's carried out the task too; and before I can challenge her actions, the managers look to compliment her efficiency and speed. I'm not an inefficient person, but prefer to consider and prioritise my key tasks. However at this rate she will be taking on my job.

Ash replies:

It seems that your colleague is certainly out to impress and doesn't seem to either appreciate it or indeed care if her actions make you look bad. Indeed, this may be a deliberate ploy on her behalf if she does feel insecure by your role?

However, if we give her the benefit of the doubt, she may be looking to illustrate her efficiency to both you and senior management. Nevertheless, she does need to be reined in, as no matter how helpful she thinks she is being, it is clearly causing you upset.

I suggest that next time she is in a meeting with you, and future actions are being discussed, you make very clear what you expect her to handle and what you will specifically address. Also outline the timelines for the tasks and make clear the need for prioritisation in order to meet future expectations.

If you find that she still does not adhere to such clear parameters, then I suggest you have a one to one informal meeting with her to confirm why it is important that she focuses on her own tasks list. Essentially highlight to her that if her actions continue, she may actually make senior management question whether she is busy enough in her own right if she has time to do the work of others. They may then also question whether there is sufficient work available to justify her ongoing position – basically, she is making a rod for her own back by piggybacking on to others' tasks. This may be sufficient for her to consider perhaps backing off!

Send your queries to Ash

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

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

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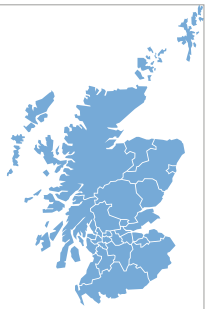

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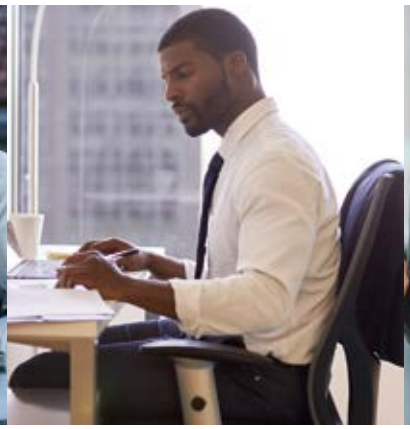

Prosperous Partner Positions

We have found that law firms are continuing to invest in senior level hires and we see this set to continue. A good firm will often create an opening for a prospective Senior Associate or Partner of the right calibre who will help to grow its business or take it in a new direction. Our relationships at decision-making level ensures that we are able to present you to the appropriate people at the relevant firms at the right time.

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

Commercial Litigation Partner
Edinburgh or Glasgow

Fantastic opportunity for an ambitious Partner to join this successful law firm. You will join the busy Commercial Litigation Team and will specialise in dispute resolutions. You will be involved in a range of high-profile work which will include advising on disputes relating to corporate transactions such as misrepresentation, fraud and bribery issues. You will also be involved in banking and energy disputes. If you are an ambitious partner, with at least 15 years' PQE, looking to join a high-profile team, then this is the role for you! (Assignment 13782)

Commercial Property Legal Director/Partner
Edinburgh or Glasgow

This established law firm is currently recruiting a Legal Director or Partner to join to help grow its busy Commercial Property Team. The team advise on all aspects of commercial property including construction, development, environmental, house builders, investment, joint venture, landlord and tenant, planning, property finance, renewable energy and retails. The firm is keen to hear from candidates' with strong commercial property experience and a following. (Assignment 14019)

Corporate Partner
Edinburgh

This international corporate and commercial firm has a newly created position within its Scottish corporate practice. The team in Edinburgh's work focuses on mergers and acquisitions, with occasional energy-related work. Interested candidates should currently be at partner level and have a strong following, or be operating at legal director level with a clear focus to making partner. The firm can offer a competitive salary and benefits package. (Assignment 13893)

Private Client Partner
Ayr

Due to succession planning this busy firm is currently recruiting a Private Client Partner to lead the team. The team advise on all aspects of private client work relating to Wills, Trusts, Estate Planning, administration of estates, Powers of Attorney and Guardianship. To be considered for this position you should be an ambitious solicitor with strong private client experience. (Assignment 14222)

Private Client Partner
Glasgow

This established firm is currently recruiting a Partner to help grow its Private Client Team in Glasgow. You will be involved in all aspects of private client work which will include helping individuals, families, charities, family businesses and others over a full range of estate planning, succession and related work. This is a fantastic opportunity to join a firm who will support and encourages your growth. (Assignment 14035)

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

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