issue 1 • Spring 2015

Leicestershire Law Society

magazine

LAUNCH ISSUE

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WELCOME/CONTENTS
SPRING 2015

Editor's Intro

Name Your Magazine!

It is with immense pleasure that I welcome you to the inaugural LLS Magazine. We would like you to contribute to the publication and what better way than to name the magazine itself! The best suggestion will win a prize and be announced at the LLS Annual Dinner & Legal Awards held at Athena on 15th May 2015. Please email your suggestions to me by 8 May 2015. The magazine is entirely for the benefit of the Society's membership so do also get in contact if you wish to make the next edition even better by contributing your own news, views, articles or announcements.

Manbir Thandi, Editor
manbir.thandi@weightmans.com

LLS est 1860
www.leicestershirelawsociety.org.uk

On the front cover – our President with Nicky Morgan MP at the LLS Civic Dinner

PRESIDENT'S REPORT

As I write this, my first President's Report, I am already in the last quarter of my Presidential year. The diary has been full and the officers of LLS have been busy in focussing our efforts to maintain the involvement of our members in the various events that have been organised, as well as promoting Leicester as a centre of legal excellence and strengthening our existing relationships with the local universities, other professional bodies and the business community in our county and city.

For me, the highlight of my Presidential year to date was the Civic Dinner held at the City Rooms on 30th January 2015. Attended by approximately 80 guests, my fears that the snowfall forecast for the day would thwart the event were unfounded. The occasion is the most 'formal' in the LLS diary but I hope that I was able to achieve a degree of 'relaxed informality' amongst our guests chosen from the local civic, parliamentary, professional, business and education communities. This year's guest speaker was the Rt. Hon. Nicky Morgan, MP. At the time of her acceptance of my invitation, she was Minister for Women and Equalities but, by the time of the dinner, she had become the Secretary of State for Education. She spoke on the role of women in the profession and I was grateful for her time in what is clearly a busy pre-election ministerial schedule.

As a committee, other highlights have included the School Courts Competition which was held on 31st January 2015. Organised by Helen Johnson and Mary Prior (on behalf of the Midland Bar Association) and their committee this has become a annual event in the LLS diary and is a great success thanks to the hard work of the organisers and the time so generously given by members of the local judiciary, Bar the local schools involved and the many staff of our members.

Committee members also met some of our Parliamentarians from both Houses at Westminster in November to discuss some of the issues that confront us in our daily professional lives. Access to justice remains a burning issue. As I write this, the outcome of the Appeal against the High Court's dismissal of the application by the Law Society and practitioner groups for Judicial Review is unknown. Historically millions have benefitted from fair and equal access to justice which has set our legal system apart from others by assisting those who are most vulnerable and marginalised. The Law Society President, Andrew Caplen, has stated that cuts in Legal Aid are a false economy, as the costs are transferred due to the increased court time being needed where parties are unrepresented. We await the outcome of the Appeal.

For those of us with High Street conveyancing practices we now have the imminent introduction of Veyo, the conveyancing portal. A joint venture between the Law Society and Mastek UK, a global technology solutions provider, it sets out to streamline conveyancing processes with clients being provided with access to information regarding their own case. The price structure was announced at the beginning of March and with no set-up fees, it is hoped that firms will be able to achieve 'greater efficiencies that will yield cost savings on administration as well as enabling higher standards of client care'. Watch this space!

The success of Veyo will clearly be determined by the volume of uptake by the conveyancing profession. As a local Society, LLS was pleased to have had the opportunity of organising a discussion for its members about Veyo with Jonathan Smithers, Vice President of the Law Society earlier in January to air their views and to obtain some first-hand information about the portal.

Other CPD courses have been organised by the Education and Training Sub Board throughout this year and full details of future events can be found on our website. LLS continues its arrangement with the provider CLT whereby our members can attend CLT seminars organised in conjunction with LLS at the CLT membership rate. LLS has also hosted an Equality and Diversity event in February and throughout the year Committee members and Sub Boards have responded to consultations received from the Law Society and SRA on behalf of the membership.

During my Presidency I have continued the provision of networking events with other organisations. We have celebrated the warmer weather with a Summer Drinks Party which this year was spent almost exclusively in the garden at Trinity House with some of the invited company enjoying games of croquet into the evening! We have also held networking events with JLD, MALA and, more recently, LANSCA (the accountants) and a food bank collection for Leicester Charity Link, a local charity working in our community with individuals and families in need.

None of this can be achieved without the commitment of your Committee Members and the members of the various Sub Boards, the hard work of the LLS manager Kauser Patel and her assistant, Aminah Begum and the financial support of the 5 LLS patrons: Aon, Handelsbanken, finance Lab, Severn Trent Services, and RHMA as well as the individual event sponsors. To all of them, I proffer my sincere thanks.

Our next social events are all in connection with the Annual Dinner and Legal Awards on 15th May 2015. That event will be one of the last of my tenure and I hope you will all continue to support my successor, Mehmooda Duke in her year.

Steve Swanton

magazine **contact**

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A GLASS CEILING IS MADE TO BE BROKEN

Ranjit Thaliwal,
immediate Past President of Leicestershire Law Society,
talks about career progession for black and ethnic minority solicitors.

My name is Ranjit Thaliwal and I am a mental health law solicitor based in Leicester at Thaliwal & Co Solicitors. We provide representation to those in psychiatric units and in the mental health field within the Midlands.

In May 2013 I was honoured to be given the prestigious title of President of the Leicestershire Law Society, which was a matter of great personal pride to me particularly being a Leicester lad born and bred. Leicester continues to enjoy a rich diversity with its mix of residents, and from my part it has been a fantastic place to live. In 2014 I was also shortlisted in the national 'Law Society Excellence Awards' in the category of 'Solicitor of the Year – Private Practice', which was a huge honour for myself and the firm.

One lesson I learnt early on was that it is sometimes *'not what you know but who you know'*. The example was around a placement when my interest at that stage was primarily in criminal law. During that placement I was trying to do a lot of the office junior work as well as trying to soak up legal experience, such as criminal visits and interviews. Ironically, the senior partner had a 1 week placement who seemed to be a son of a close contact. In the week that he was there he had a 'VIP' schedule, doing all the things that I expected to do in the entire placement. It didn't make me angry but merely enforced my commitment and drive to map out the career that I wanted.

I moved up to branch manager level in a medium sized, classic high street practice with some really good colleagues. An important lesson for me was to pick up and learn from those around me and their good practices, in terms of work as well as managerial style.

Just over 11 years ago I started my own firm in the niche area of mental health law. The experiences that I gained during that decade have allowed me to shape the firm the way that I wanted to. The independence has been fantastic and the staff team here have been excellent.

The question arises about progressing through to partnership level, particularly for those in BME groups and women, which in the profession is not replicated by percentage at a partnership level. *Figures indicate that 49% of new entrants into the legal profession are women, but only 21% reach partner level. Likewise, 12% of entrants into the legal profession are from BME communities, but only 4% gain partnership status. This remains important in terms of entering the legal profession and then progressing through the hierarchy to partner status.*

There is also a significant pay gap between ethnic minority groups and white solicitors, which is a difference of 24.5%. Likewise, there is a 26% difference between male and female solicitors.

From my experience and trends that I have noticed recently, at a certain stage in their career many BAME solicitors decide that partnership is not for them and they then often leave and create a fresh start, allowing them the ability to fill their ambition. This perhaps explains why, in certain areas, there are a disproportionate number of smaller firms with a BME ownership.

In reality, all progression is going to be based on your quality, work ethic, customer service, empathy and vision. Often, if these skills are present, progression will occur either within your existing organisation or within a new entity. Therefore, it is important not to lose sight of these core values as without those, ultimately, your progression will be hindered.

In conclusion, being a Leicester lad has probably supported me as the diverse mix in my home city is so great. Many from the community have done remarkably and progressed up the hierarchy of firms. Glass ceilings can be broken. Ultimately solicitors must always stay positive, driven, quality focused and client centred. This will mean that all things are attainable. So, in reality progression and success should be based on *what you know, not who you know!*

CASTE OR NO CASTE?

Chandhok v Tirkey
EAT decision : 19 December 2014
By Dr Mirza Ahmad LLD (Hon), LLM, Barrister

The President of the EAT, The Honourable Mr Justice Langstaff, handed down an important judgement before Christmas, which helps to clarify certain aspects of the Equality Act 2010 relating to caste discrimination, but it also sends out a massive 'direct effect' warning to the State and the various emanations of the State – such as central government departments, local authorities, NHS Trusts, Schools and other similar public bodies.

In summary:-

1. The case involved private individuals and a domestic worker who claimed she had been treated badly and in a demeaning manner by the employer, in part (following an amendment of the ET1), because of her low caste status;

2. The employer sought to strike out the amendment on the basis that the Equalities Act 2010 did not recognise caste discrimination, as a protected characteristic under 'race', and that this was obvious from the language of the 2010 Act and reference, specifically, in section 9(5) (along with an amendment to it), which was of the effect that the Government intended to review caste discrimination in the future;

3. It was held that, whilst the parties had clearly presented a lot of material - including an intervener from the Equality & Human Rights Commission - the EAT's role, jurisdictionally, was only one of being asked to determine a narrow point - whether or not the judge was right, at the first instance, to refuse the strike out of the amendment to the ET1 - and it was not being asked to finally adjudicate on whether or not caste discrimination was or was not covered by the Equality Act 2010 or in this case;

4. In the final analysis, the EAT held that the judge was right, in terms of the tests applicable at the strike out stage, to reject the strike out application of the employer as discrimination cases are, on the whole, fact sensitive and difficult to strike out without full consideration of the evidence at trial and, more importantly, it was rightly arguable that 'caste':

(i) should be a matter to be determined at the trial after hearing all the factual evidence and the evidence being tested under cross – examination; and

(ii) caste could, based on the available evidence (and other evidence, no doubt, to be adduced at trial), be capable of forming part of the 'ethnic origins' in the definition of 'race' under section 9(1)(c) of the Equality Act 2010;

5. The EAT noted, quite rightly, that the International Convention on the Elimination of All Forms of Racial Discrimination and its principles had been adopted by the EU Race Framework Directive and that both instruments were much wider in their application and effect then the Equality Act 2010; in that, they did cover, explicitly, caste discrimination, unlike the 2010 Act (save in so far as stated in the last paragraph, 'indirectly' under 'ethnic origins' of the race definition);

6. Accordingly, as far as private individuals and other non-public entities were concerned in the UK, they would only be able to have the benefit, at this moment, of the Equality Act 2010 and not the International Convention or the full application of the EU Race Directive; and

7. The EAT did, however, make the point, in passing, that because of how EU legal principles work in practice, the EU Directive did have 'direct effect' in so far as the State and emanations of the State were concerned. Accordingly, employees of such public bodies were able to rely upon the EU Directive provisions in the UK, even though the current position under the Equality Act 2010 and its future review of caste discrimination by the UK Government makes it, currently for private individuals, of only 'indirect' effect (as indicated above via 'ethnic origins').

In conclusion, public body employers are effectively placed 'on notice' that they should be careful to ensure, so far as is possible, that there is no caste discrimination of their employees, contractors or customers. In time, it is hoped that UK domestic law on caste discrimination will be brought more into line with EU law for all.

TRAINING / EDUCATION

JUNE

Criminal Law Update
12 June 2015
2pm-5pm
Location: Nelsons, 37 New Walk, Leicester, LE1 6TU
Speakers: Olwen M Davies solicitor- advocate *and others*

Richard III Court Case - 36BR
26-Jun
Location: TBC

JULY

Family Law Update
02-Jul
Location: Nelsons Solicitors

SEPTEMBER

Criminal Law Update
11 September 2015
2pm-5pm
Location: Nelsons, 37 New Walk, Leicester LE1 6TU
Speakers: Olwen M Davies solicitor- advocate *and others*

Compliance Training
24-Sep
Location: Weightmans,
Peat House, 1 Waterloo Way, Leicester, LE1 6LP

OCTOBER

CLT Course - Wills and Probate Update
1 October 2015
10am-3pm
Location: TBC
Speakers: TBC

Criminal Law Update
9 October 2015
2pm-5pm
Location: Nelsons, 37 New Walk, Leicester, LE1 6TU
Speakers: Olwen M Davies solicitor- advocate *and others*

CLT Course - Conveyancing Update
28 October 2015
10am - 3pm
Location: TBC
Speakers: TBC

Please visit www.leicestershirelawsociety.org.uk for further details

PHOTOGRAPHIC EVIDENCE

LLS CIVIC DINNER JAN 2015, THE CITY ROOMS, LEICESTER





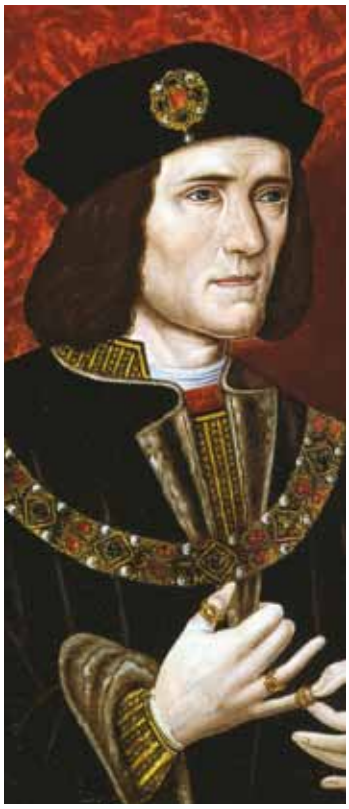






THE KING IN THE CAR PARK
AND THE GHOSTS OF LEGAL LEICESTER

Following the reinterment of Richard III Christl Hughes looks back.



Richard III was born in 1452 and killed in the Battle of Bosworth on 22nd August 1485. His body was slung over a horse, brought back to Leicester where it was publicly displayed for 3 days, probably in churches, and then buried (hastily - there was no refrigeration in 1485!) in the church within the Grey Friars Friary. The Friary, a religious house whose members undertook good works within the wider community, had been established in Leicester in 1254, occupying a large section of land within the medieval town. It was home to the Friars Minor (Franciscan) Order also known as the Grey Friars after the colour of their habits. The church and other buildings belonging to the Friary were in due course demolished during the 16th century dissolution of the monasteries and other religious houses and there then followed various uses of the land until the 18th century when a new owner, Thomas Noble, erected a magnificent row of Georgian mansions along a new dividing road named as New Street.

On Saturday 25th August 2012, the University of Leicester began an excavation of a small section of the site of the former Friary. The selected area was beneath the car park of Leicester City Council Social Services department, itself situated between the street named Grey Friars after the Friary and the northern end of New St. The archaeologists, not even knowing the location of the church, had estimated that there was no realistic possibility of finding the King's remains and the mathematicians estimated the chances at less than 1%. Other well meaning people advised the team to relocate the search to the River Soar in the belief that when the Friary was dissolved in 1538 the King's bones had then been exhumed and thrown into the river.

Despite all the scepticism on that very first day an adult male skeleton was found with spinal curvature and indications of a violent death. On 12th September the University issued a press release stating "We are NOT saying that we have found Richard III" but of course they had as DNA and other tests were to conclusively prove.

Over the years the houses in New Street, originally grand family residences, have latterly served as a Barristers' Chambers, the Coroners Court, various offices, student accommodation and now the former premises of solicitors Freer Bouskell is to be converted into luxury flats. But what of the past history of these buildings? Are they haunted?

There is a story that when what is now 2 New Street Chambers was a family home a nursemaid was murdered there and counsel reported hearing a sudden inexplicable rush of cold wind.....!

At Freer Bouskell there also were frequent sightings of a past President of Leicestershire Law Society, William Napier Reeve, holder of the office in 1868. On occasions he was also seen at Harding & Barnett, somehow

traversing through the partitioning wall. On the day Freer Bouskell finally vacated the building he appeared once more and was seen to bow gracefully and sadly. Will he welcome the new residents with such an appearance?

No. 16 New Street, known as The Hollins, is opposite the back entrance to the car park burial site. In the 19th century it was the home of Dr. Johnson of Leicester the public health pioneer who, following the Leicester cholera epidemic in 1849 was instrumental in setting up piped water and the first local sewage works (although it was a long time before the homes of the poor were connected.)

Thereafter during the second half of the 20th century the building became a solicitors' office. By then the back stairs had been removed and what had been the kitchen was used as the post room. I joined the firm then known as Denham Foxon & Watchorn in 1984 and occupied what had been a small servant's room at the back of the building until the business relocated in 1998. For solicitors a lot happened during this time - the setting up of the Solicitors Complaints Bureau, for example (one of the first steps separating the representation and disciplinary functions of the Law Society), the 1988 residential conveyancing boom and the start of the Save Legal Aid campaign. The initial specialist accreditation panels were being set up and there was the first talk of multi disciplinary partnerships. In 1990 just 23% of admissions to the Roll of Solicitors were women and some of the old male "characters" were still in evidence. Whatever happened to them?

And there were ghosts - stories of sightings of shadows of monks in grey habits wandering through the premises and one dark, wet, windy winter night I was alone in the premises dictating and the waste paper basket moved. Mice perhaps - or something more sinister? Was it King Richard in search of sound legal advice? Did he have something to confess? Was it he who killed or set up the murder of his two young nephews, King Edward V and Richard of York, last observed in July 1483 playing happily in the gardens of the Tower of London but never seen again?

Answers on a postcard, please!

Christl Hughes is a Past President and current Committee Member of Leicestershire Law Society.

CHARITY LINK: HELPING LOCAL INDIVIDUALS AND FAMILIES IN POVERTY, HARDSHIP OR CRISIS, WITH THE SUPPORT OF LEICESTERSHIRE LAW SOCIETY

Charity Link

tackling poverty – changing lives

Charity Link is delighted to have been chosen as Leicestershire Law Society's Charity of the Year for the past two years.

Charity Link has been supporting local people in poverty, hardship or crisis for nearly 140 years. We help people of all ages and backgrounds, including the elderly, those with chronic health conditions or mental health problems, the victims of domestic violence, those facing homelessness, carers and the disabled.

Last year we supported over 8,000 vulnerable individuals and families in Leicester, Leicestershire and Rutland by providing essential items that the majority of us take for granted. Items such as beds, cookers, fridges and clothing. We also provide help with the cost of utilities and, in emergencies, food. Our food bank, based at St Martins House (by Leicester Cathedral), distributed over 6,000 food parcels to those in desperate need during its first year and demand continues to grow.

With the help of Leicestershire Law Society and its many members and friends, over £5,000 has been raised in the past two years. Thank you so much to everyone who has supported the partnership by giving a donation or by supporting our fundraising activity at previous Leicestershire Law Society events.

Due to the unique way in which we work (accessing grants via charitable trusts, which enables Charity Link to turn a £10 donation into £50 for vulnerable local individuals and families), from this support we have been able to provide over £25,000 worth of items for people in need.

PEOPLE LIKE STACEY AND MARY:

Stacey has lived with her disabled grandmother since her mum died shortly after her birth. The family relied on disability and child benefits but no funds were available to replace Stacey's broken bed so she slept on the floor. Charity Link bought a bed and bedding. Just £165 made a huge difference.

At 78 years old Mary had lived alone for some years following the death of her husband. Many household items were in need of replacement – including her cooker meaning she'd not eaten a hot meal for weeks - but living on a state pension she didn't have the funds. Charity Link bought a cooker and other items to enable Mary to stay in her home.

A shocking reality is that since April 2013, when the first major changes to social welfare were implemented, Charity Link has witnessed a 40% increase in the number of people coming to us for help. **Support for our work is needed now more than ever.**

To find out more about Charity Link and how you can offer your support:

Visit our website: www.charity-link.org
Call us: 0116 222 2200
Email: info@charity-link.org
Write to us: 20a Millstone Lane, Leicester, LE1 5JN.

Registered charity, no: 107871, and a company limited by guarantee, no. 3761954

GET THE **WHOLE** PICTURE

SEVERN TRENT SEARCHES
a part of SEVERN TRENT SERVICES

"IF THE WATER BILL SAYS IT'S CONNECTED WHY DO I NEED A SEARCH?"

"IF I CAN FLUSH THE TOILET AND IT GOES SOMEWHERE THERE'S NO ISSUE."

"THERE'S A MANHOLE OUTSIDE THE PROPERTY. IT MUST BE CONNECTED."

You might think that establishing information about a property's water and drainage systems is straightforward. We've heard all of the statements above given as reasons why a drainage and water search isn't necessary. Unfortunately, it isn't always that simple. Our years of experience have taught us that assumptions like these can lead to trouble. To be safe, you need the whole picture. A comprehensive picture

That's why the CON29DW contains more. Much more. Compiled directly from Severn Trent Water's records, the search shows if a property is connected, information relating to charges and water meters, the location of nearby sewer and water mains, details of legal agreements, water quality and pressure data, nearby assets that could disrupt the property and much more.

Any of these can have an effect on a property – for example, water companies will occasionally need to access assets within property boundaries, whereas low water quality or pressure can seriously disrupt enjoyment of your home. Water meters may be costly to large families, or save money for properties with few occupants. Assets like pumping stations or pressurised mains can be disruptive, and the presence (or otherwise) of build over or adoption agreements can cause numerous headaches. All of this information is important to a homeowner, and little of it is easy to obtain outside of the CON29DW.

PEACE OF MIND

Unfortunately, even with access to Severn Trent Water's records, a search can still be incorrect. The age of many water and sewer connections, coupled with the vast number of properties covered by water companies – over three million in the Severn Trent region - means that unfortunately on occasion there can be errors in the records, which will be reflected in the search. This could potentially have costly implications for homeowners. Here's one real life example that came to our attention recently.

The house in question was located in XXX. The new owner had moved in believing everything to be normal. The property was billed for drainage by Severn Trent Water. Sewer records showed a public sewer nearby. The previous owner had reported that they believed it to be connected, and that the property had no history of drainage problems.

It turned out that, unaware to both the new and previous owners, as well as Severn Trent Water, that the property drained not to a public sewer, but a cess pit located in the garden. The issue came to light shortly after the new owner moved in and a problem developed with the pit, which began to overflow.

The property required a connection to the public sewer, something that would cost several thousand pounds. Would the new owner be responsible for the costs? Would the previous owner who was also unaware? Or would the solicitor who'd informed the buyer there were no drainage problems?

Fortunately, in this instance, the solicitor had undertaken a CON29DW. As the connection information in the search was based on water company records, this had also incorrectly stated that the property was connected to the public sewer. However, when we get a search wrong, we'll do everything we can to put things right. In this case, it meant that we arranged for the property to be connected to the public system, at our expense, avoiding a potentially protracted process and a claim for negligence against the solicitor.

GET THE FULL PICTURE

No other search offers the comprehensive information and protection of the CON29DW. Recommended by The Law Society, it offers the most comprehensive drainage and water information available, along with our guarantee that if the worst should happen, we'll do everything we can to put things right. Complete peace of mind for only £40 + VAT.

Owen Davies
Severn Trent Searches

LEICESTERSHIRE LAW SOCIETY EDUCATION AND TRAINING SUB-BOARD

Rosemary Hamilton
Chair – Education and Training Sub-Board

The Education and Training Sub-Board organise professional training courses for LLS Members and Non-Members providing a service, rather than being a revenue raising body.

Firstly, jointly with CLT we plan a number of locally held courses throughout the year. These tend to be Up-Date Courses as we find these to be the most popular amongst our Members. Don't forget LLS Members receive CLT discounted rates, even if not CLT Members.

We have a profit share arrangement with CLT if numbers are above set limits so your attendance on our CLT/LLS Courses helps our balance sheet as well as offering you competitively priced training.

Secondly, LLS with the help of our Administrator, Kauser Patel, plan and organise our own courses, using external Lecturers and local experts, both lawyers and associated professionals. We try to make these courses practical and relevant to our Members. They are often held over lunchtime, to minimise time out of the office, and include a buffet lunch. Our aim is to provide good training at competitive prices in the Leicester area. Again LLS Members receive discounted rates. It is also a great opportunity for LLS Members to socalise and network.

As most will be aware, the Legal Services Board has approved the abolition of the mandatory annual requirement for 16 hours of CPD each year. This does not mean that Solicitors do not have to do any further CPD training, but that it "permits Solicitors and firms to determine training and development according to their specific needs and learning styles" so stated Julie Brannan SRA Director of Education and Training. She continued "it is a much more rigorous approach than at present as Solicitors will need to think hard about what they need to do on a regular basis to ensure they remain competent to practice ".

Accordingly, LLS Education and Training Sub-Board feel that their role to locally provide good quality training is essential. Don't forget that LLS Members receive discounted rates on both our CLT/LLS Courses and our LLS provided courses.

If you have any suggestions for new courses, please get in touch with Kauser Patel.

FORTHCOMING **EVENTS**

The AGM of the Society will be held at 4.30pm on 21 May 2015 at Nelsons Solicitors, Provincial House, 37 New Walk, Leicester LE1 6TU and you are warmly invited to attend.

We have always encouraged Leicestershire's legal practices to participate at the AGM and have representation on the Main Committee to help shape the ongoing work of the Society. There continues to be many challenges to the East Midlands legal community and we firmly believe that these can best be met by us continuing to work together through the Leicestershire Law Society. This year, there will be a number of vacancies on Main Committee and we invite you to put forward a representative from your firm whom you know would be interested in actively contributing to the Society. The initial term is one year and re-election is possible thereafter. We would welcome a nomination from all levels of practice from the new entrants to the senior members of the profession. By having a good mix of experience and legal background we feel that we are a stronger Society reflecting the needs of our members.

As you will know we are a progressive Society that seeks to promote Leicestershire and the East Midlands as a centre of legal excellence and expertise. We wish to attract members who are prepared to attend our Main Committee meetings on a regular basis (now normally 10 monthly meetings annually) and contribute strategically to the development of the Society.

We aim for diversity of representation from amongst the profession and we look forward to hearing from you.

If you have any queries please contact the office by email: *office@leicestershirelawsociety.org.uk* or by phone: **0116 2546883**

Leicestershire Law Society Legal Awards and Annual Dinner 2015

The annual sell out event is the highlight of the region's legal sector calendar, with more than 400 people attending the ceremony every year – and this year promises to be no different.

Held at the Athena on Friday 15 May 2015, the Leicestershire Law Society Legal Awards will showcase the very best that the East Midlands Legal Sector has to offer.

From sharp trainees to brilliant barristers, the awards recognise and award the achievement of both firms and individuals over the past 12 months.

As well as the awards, the event is an opportunity for the region's legal sector to join together for an evening of celebration over a fantastic three course dinner. There will be entertainment so join us for what promises to be a fantastic evening.

SCHOOL COMPETITION AT **LEICESTER CROWN COURT**

SAT JAN 31 2015

The 3rd Leicestershire Schools' Court Competition took place at Leicester Crown Court on Saturday 31st January 2015. The event is organised by the Leicestershire Law Society and The Midland Bar Circuit.

Twelve state schools from the county participated in teams of 13, 2 advocates, 2 witnesses, a court official, a witness care officer, a press reporter and 6 jurors. Barristers and Solicitors acted as mentors to the schools in advance of the competition.

They enacted a crown court trial in front of real crown court judges including Leicester Crown Court's resident Judge Nick Dean QC.

At the end of the day trophies were presented to the following winners:

BEST JUROR sponsored by The Grand Hotel
Abby Kelwin
from Market Bosworth School

BEST COURT OFFICIAL sponsored by Bray & Bray
Shivangi Valland
from Rushey Mead School

BEST WITNESS CARE OFFICER sponsored by No1 High Pavement Chambers
Phoebe Raleigh *from Sir Jonathan North School*

BEST WITNESS sponsored by ZMS Solicitors
Kaitlin Moud
from John Ferneley College

BEST PRESS REPORTER sponsored by The Mercury
Erin Lisser
from St Pauls Catholic School

EXCEPTIONAL ABILITY sponsored By Emery Johnson Astills
Feduna Abdi
from Rushey Mead School

BEST ADVOCATE sponsored by Weightmans LLP
Isabella Guzy-Kirkden
from Sir Jonathan North School

BEST SCHOOL BRONZE
sponsored by No1 High Pavement chambers
St. Paul's Catholic school

BEST SCHOOL SILVER
sponsored by Cummins Solicitors
John Ferneley College

BEST SCHOOL GOLD
sponsored by 36 Bedford Row chambers
Sir Jonathan North School

The sponsorship of the event enabled us to donate £500 to local charity Warning Zone which educates young people about the risks associated with criminal and anti-social behaviour in an engaging and interactive way and which is about to open a new zone concentrating on the internet/social media and the associated risks.

Costs Budgets - The Emperor's New Clothes

ROPEWALK CHAMBERS

The CPR sets out the serious consequences of giving insufficient thought to costs issues at the costs management stage of proceedings. That said, in the absence of a crystal ball it can be virtually impossible to foresee with any certainty what issues may come to light during the course of litigation.

The recent case of *Excelerate Technology Ltd v Cumberbatch & Ors [2015] EWHC 204 (QB)* confirmed the Court's approach in approving (or not) a claim for further costs not initially included within the original costs budget. HHJ Brown said that a Court could not retrospectively 'approve' an increase to a budget if the costs had already been incurred. Here, a costs budget had been approved by consent at the pre-trial review which made no provision for contingencies. Following the trial, the Claimant sought to increase their budget on three bases: first, that two extra days were required at trial as a result of the defendants having dispensed with their legal representation and subsequently putting the Claimant to proof on everything; secondly to cover the costs of joining an additional defendant and thirdly to cover the costs of associated litigation.

The Claimant had made no application for variance until the costs had already been incurred. At that stage, said the Court, it was too late for it to approve the increased 'budget'.

The Judge sympathised with the Claimant and accepted that the costs sought to be added to the budget 'were quite properly incurred and were not remotely foreseeable'. He accepted that it had not been practicable or viable to apply for variance or agree the proposed revised budgets with litigants in person shortly before trial.

Given the particular circumstances of the case, the Judge was prepared to record a supportive note upon the 'reasonableness' and 'proportionality' of the additional costs incurred for the purposes of any Detailed Assessment. No doubt support of the Claimant's position was justified given that the Trial Judge stated in a strongly worded attack that the Defendants conduct had been reprehensible and their defence was based on a falsity.

The comments of HHJ Freedman in *Havenga v Gateshead NHS Foundation Trust & Anor. [2014] EWHC B25 (QB)* further demonstrates the uphill battle that parties may face in attempting to vary their previously approved costs budget. In this case, the Claimant appealed against a decision to reduce his costs budget from £769,854 to £463,915. HHJ Freedman, reaffirming the high threshold needing to be reached to demonstrate that a costs management decision was wrong, held that the District Judge had not exceeded his discretion. He held that the approved revised budget fell within the range of what was reasonable and proportionate, even though he would perhaps have been more generous himself.

The case also demonstrates the scrutiny which may be applied to larger costs budgets. It seems to be the case, both from the personal experience of the writer and anecdotally, that some judges continue to 'approve' hourly rates when dealing with a costs management order, despite this not being the approach suggested by PD 3E 7.3.

However, it may be the case that such an approach has received some recent judicial support as demonstrated in the case of *Yeo v Times Newspapers Ltd [2015] EWHC 209 (QB).* Warby J stated that while the issues of reasonableness and proportionality are the primary criterion, the process was intended to be "swift, economical and somewhat impressionistic". Although the court was not conducting a detailed assessment, it might have to consider rates and estimated hours. The approach would have to be tailored to the case.

The Court further considered what was intended to be regarded as a 'recoverable contingency' within a costs budget. Warby J held that a contingency must (i) include work that would not fall within any of the main categories of Precedent H, (ii) be clearly identifiable and, perhaps more controversially, (iii) such work must be foreseen as "more likely than not to be required".

No doubt, those objecting to an attempt to revise a previously approved budget will argue that such costs could, indeed should, have been foreseen and provided for at an early stage.

Alas, like the Emperor's New Clothes, it can be difficult to see what is not there.

The key is to ensure the costs budget is accompanied by a clear outline of the envisaged litigation and detailed 'assumptions'. This will assist in supporting any subsequently necessary argument that the basis for the revision to the budget was not foreseeable at an earlier stage. It is worthy to note that by PD 3E 7.6, there is in fact a positive and mandatory duty: "Each party **shall** revise its budget in respect of future costs upwards or downwards if significant developments in the litigation warrant such revisions." Again, a clearly recorded statement of assumptions will be invaluable as an aide memoire.

The Courts remain keen to encourage parties to co-operate and agree costs budgets between themselves wherever possible. Justice Warby in Yeo went on to say that as the system becomes more fully established he expected parties to agree to costs budgeting without a hearing and, where practicable, costs management conferences should be conducted by telephone or in writing.

We are certain to see a move to this more streamlined approach to costs budgeting in the very near future.

Shilpa Shah
Barrister,
Ropewalk Chambers

NEW LEXCEL STANDARD LAUNCHED

Sixteen years after its launch, version 6 of Lexcel was unveiled, after much speculation, at the Law Society's Lexcel conference in October 2014. The decision to make Lexcel an international standard four years ago severed the close links that had existed historically between the Standard and the profession's regulatory obligations. Version 5 was launched before the 2011 SRA handbook went live. Since then the SRA's handbook has been updated 12 times.

What is Lexcel?

Lexcel is the Law Society's legal practice quality mark for excellence in legal practice management and client care. The Standard focuses on seven key areas: structure and strategy, financial management, information management, people management, risk management, client care, and file and case management.

OVERVIEW OF CHANGES

In the latest version, the Law Society recognises that the standard cannot keep pace with changes in compliance obligations when it says that meeting the Standard does not guarantee compliance 'with local laws', (a slightly odd turn of phrase). Although it will help considerably, firms cannot assume that meeting the Standard will keep them on the right side of the SRA.

Separate standards have been introduced for private practice and in-house legal departments, with the old version 5 being kept as the Standard for international firms.

Version 6 sees some long standing requirements dropped. As you would expect, there are also new requirements but a major aim of the latest revision was to remove inconsistencies and overlaps.

DROPPED FROM VERSION 6

The Standard now has one less section, with the requirements that were in Section 1 (Structures and policies) now found elsewhere.

Firms may be surprised that they no longer need an office manual, although it is unlikely that any firms seeking Lexcel will dispense with theirs. Instead firms must have a register identifying all of the Standard's plans, policies and procedures, the named individual responsible for each and a procedure for annual review.

Another surprise is that firms no longer need one person designated as the overall risk manager.

Don't be misled by the Law Society's comparison document which states that the need for a risk management policy has been dropped. Firms do still need such a policy, although the requirements in section 5.1 have changed significantly.

NEW TO VERSION 6

GLOSSARY

The new Standard includes a glossary. This reflects the Law Society's aim to standardise its approach across accreditation schemes as the Conveyancing Quality Scheme and the Wills and Inheritance Quality Scheme already include glossaries.

TERMINOLOGY

Of the 222 changes to the Standard, 176 result in no change in the meaning of the requirement. So for example as 'must' is now a defined term in the glossary, there are numerous examples of 'will' being changed to 'must' to meet the new definition.

There are 33 new requirements which are helpfully highlighted in red in a cross-mapping comparison document. The most significant of them are in sections 2, 3, 4 and 5, with no new requirements in client care and file and case management.

TRAINING

It is assumed that the new scheme rules, as yet unpublished, will include a requirement for accredited firms to appoint a senior responsible officer (SRO) who must complete mandatory Lexcel training within six months of the firm gaining accreditation or re-accreditation.

Guidance is awaited in the scheme rules as to standard expected and the consequences of failing to sit or pass the training. (Lexcel Assessors will also be required to complete an online assessment to demonstrate their understanding of the changes).

The SRO can nominate another relevant person within the practice to complete the training, so long as that person has responsibility for areas covered by the course.

Training may focus on interpreting specific requirements and guidelines contained in the Lexcel Standard or provide best practice training in areas related to the Standard, such as client feedback programmes, strategy and business planning, or assessing risk on new matters.

The training course will be available before 1 May 2015 and will be delivered online via the Law Society's CPD centre at a cost of £40 +VAT.

TIMESCALES

In the past, the Lexcel office has phased in new versions allowing firms some flexibility as to when they migrate to the new version. This time around there is no flexibility. Firms facing assessments up until 30 April 2015 will be assessed against version 5, those facing assessments thereafter against version 6.

UNCERTAINTIES

The Lexcel assessment bodies do not receive advance training on the new Standard so firms will be unable to gain much guidance from them or their assessors until that has been rolled out.

New scheme rules which outline the design, principles and governance processes of the scheme are yet to be published.

There will be general and specific guidance notes for different sized practices to help firms implement the changes but these have not been published either.

Two Lexcel toolkits (People management and Financial Management) will be updated in Spring 2015. For the others, firms must rely on the Law Society's comparison cross-mapping document.

Ryan Senior,
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COUNCIL MEMBER'S REPORT APRIL 2015

Linda Lee is the Law Society Council Member for Leicestershire, Northamptonshire and Rutland. As a Council Member she is also the elected Chair of the Regulatory Affairs Board and a member of the Audit Committee, Regulatory Processes Committee and the Access to Justice Committee. Her pro bono work extends to the Solicitors Assistance Scheme. She has recently been elected as the new chair of that scheme. Linda attends all Leicestershire Law Society Council meetings and is a member of the Non-contentious sub-committee as an advisor on regulatory matters.

ACCESS TO JUSTICE: CRIMINAL LEGAL AID AND CIVIL COURT FEES

On 3rd Of December 2014 the Lords Constitution Committee published its 6th Report, 'The office of Lord Chancellor' [i]

The Report considered whether or not it was essential that the Lord Chancellor have a legal qualification given his role in upholding the Rule of Law. Unsurprisingly the current Lord Chancellor, Chris Grayling, the first non lawyer to hold the post for at least 440 years went further: "My view is that it is a positive benefit for the Lord Chancellor not to be a lawyer."

The report seeks to define the Rule of Law and endorsed the late Lord Bingham of Cornhill's eight principles of the rule of law:

1. **The Accessibility of the Law:** The law must be accessible and so far as possible intelligible, clear and predictable.

2. **Law not Discretion:** Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.

3. **Equality before the Law:** The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.

4. **The Exercise of Power:** Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.

5. **Human Rights:** The law must afford adequate protection of fundamental human rights.

6. **Dispute Resolution:** Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve.

7. **A Fair Trial:** Adjudicative procedures provided by the state should be fair.

8. **The Rule of Law in the International Legal Order:** The rule of law requires compliance by the state with its obligations in international law as in national law.

Although the Report recognised the importance of a legal qualification for a Lord Chancellor, it did not go so far as to state that a legal qualification should be mandatory but it expressed a nervousness that it was possible for neither the Lord Chancellor nor his principal advisor to be legally qualified.

The report went on to invite the Government to agree that 'the rule of law extends beyond judicial independence and compliance with domestic and international law. It includes the tenet that the Government should seek to govern in accordance with constitutional principles, as well as the letter of the law.'

Regrettably we are now suffering the impact of the decision to appoint a non-lawyer and I suggest a failure to fully appreciate the fundamentals of the Rule of Law.

At the time of writing this article the Legal Aid Agency has set new deadlines for crime duty tender contracts following the Court of Appeal decision to dismiss a challenge by the Law Society and practitioner groups to the tender process -notwithstanding the Labour party's new pledge to abandon the two tier system should it be elected.

To fully understand the mischief of the new contract – not only for criminal legal aid firms - many of whom will be forced to close if they do not get a contract and some of whom will no doubt - because of the commercial unreality of the contract- be forced to close even if they do, I quote a criminal practitioner I spoke to on the day the news was announced. She said, 'I cannot continue to practice as a criminal lawyer because even if I win a contract, I cannot operate a system where I am paid more if I persuade a client to plead guilty. That isn't why I became a lawyer'.

Because we are so diverse in the work we do and the ways we do our work, it has been said that solicitors no longer can be considered as part of one profession and that we have little in common.

I disagree. No matter what our area of practice, or our practice models, we share an ethical code, a sense of justice that is not easily understood by non-lawyers. Our ethical code has always required us to put our clients' interests before our own.

We cannot act if there is a conflict or there is a significant risk of conflict with our own interests. Lawyers understand the importance of this principle; sadly because it is not central to what they do non-lawyers do not readily do so.

At the December Council meeting, I brought a Council Member's motion requiring the President and the Law Society to offer financial support to practitioner groups and to bring its own challenge to the criminal legal aid tender. Notwithstanding initial success but finally adverse outcome, I believe it was the right thing to do. We must stand shoulder to shoulder with criminal solicitors no matter what our area of practice as one profession because we recognise that we must fight for the rule of law when others will not.

Despite widespread criticism, The Lord Chancellor has also introduced new civil court fees which will set access to justice beyond the reach of many. The fee for issuing a money claim worth more than £10,000 will be increased to 5% of the sum claimed, subject to a maximum fee of £10,000 - for a claim of £250,000.

A petition was launched around the same time as the 'Bring Back Clarkson' petition (which it is alleged attracted nearly one million signatures), sadly the petition to 'Reverse the decision to increase court fees by over 600%- attracted a mere 7,500 signatories. However one of the most telling comments was posted by Helena Cameron of Chester. She said, 'I act for many clients affected by asbestos diseases. For many the court fee will increase to £10,000. Lord Foulks believes that litigation is "very much an optional activity". I would very much like him to meet my clients who have suffered from asbestos related mesothelioma, an always fatal cancer, and explain that to them.'

Despite criticism from many, including the senior judiciary, the new fees were introduced. The Law Society has started legal action. In the meantime I would urge all litigators to consider the under used Remission system. [ii]

Given the increase in fees far more clients will be eligible. There are leaflets and a fee remissions contribution calculator.

Both of these policies by the Lord Chancellor display at best a misunderstanding of the Rule of Law and we must continue to actively challenge where possible.

REGULATION: CONSUMER CREDIT REGULATIONS

The SRA proposed to cease to regulate solicitors who undertake consumer credit work. Under new arrangements, the Financial Conduct Authority (FCA) requires significantly more onerous requirements on regulators with delegated regulatory authority. The SRA's consultation closed on 15th December 2014.

The Law Society's Regulatory Affairs Board -which I am chair -unanimously opposed this proposal and rejected the SRA's reasoning as set out in the consultation document as did many others –including local law societies.

We argued that it was not desirable that the profession should be compelled to incur the cost and burden of being regulated by different regulators with differing standards and reporting requirements.

In addition:

- It was not clear exactly what activities are covered and, therefore, when firms may need to register with the Financial Conduct Authority (FCA)
- There is no evidence that the FCA's approach is appropriate for solicitors – solicitors are not the problem that the regime is seeking to address and, where there have been problems, there is no evidence that the SRA has not been able to deal with them appropriately.
- It would be a potentially significant additional burden for firms at a time when Government is looking to reduce the burdens on business.

We lobbied the FCA and other influential bodies to look again at the provisions with a view to reducing the requirement that they would impose on the SRA and to address concerns about the extent of the provisions.

Subsequently, the Law Society, the Solicitors Regulation Authority and the FCA have been liaising to clarify the position with regard to Solicitors and to try to avoid dual regulation. Negotiations continue and it remains our position that delegation of regulatory powers by FCA to the SRA will continue. Statutory Instruments have been drafted to clarify the position regarding solicitors:

The Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2015: extends the contentious business exclusions [iii]

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2015: increases from four to twelve the maximum number of repayments under a credit agreement which constitute an exempt agreement. [iv]

These will reduce the scope of regulation. I will report further as we continue to monitor the situation.

NEW CHIEF EXECUTIVE OF THE LAW SOCIETY –CATHERINE DIXON

On the 5th of January, Catherine Dixon became the new Chief Executive. [v]

As anticipated, Catherine has commenced a reform of the management structure and has pledged to ensure that the Society is focussed on the needs of its members. She has formed a strategy group which will be consulting with the profession over the coming months. I am a member of that strategy group and will ensure that your needs and wants are made clear. If you would like to give me your views, I can be contacted by email at lindakhlee@aol.com. I will be happy as always to hear from you on this or any other matter. However please do engage directly yourself with the consultation the details will be published soon or email me if you wish me to help you get involved.

[i] *http://www.publications.parliament.uk/pa/ld201415/ldselect/ldconst/75/7502.htm*
[ii] *https://www.justice.gov.uk/courts/fees*
[iii] *http://www.legislation.gov.uk/ukdsi/2015/9780111128695/contents?page=9*
[iv] *http://www.legislation.gov.uk/ukdsi/2015/9780111128237/contents*
[v] *http://www.lawsociety.org.uk/about-us/chief-executive-office-holders*

HOW TO DEAL WITH A WORKPLACE 'FRACAS'

Jeremy Clarkson has (allegedly) done it again. His notoriety reached new height last month following a 'fracas' with a producer at Top Gear, during which he reportedly punched a colleague.

Much of the debate so far has centred around how the BBC should deal with the issue. On the one hand, Clarkson is a hugely valuable asset to the corporation, which makes millions from Top Gear each year. On the other hand, Clarkson's rap sheet of offensive jokes and outrageous behaviour culminated in what was described as a 'final warning' last year following one episode of the show.

I'm pretty sure plenty of employers will have faced a similar problem; a high-performing, extremely-valuable member of staff who has a track record of bad behaviour. There's an understandable quandary between preserving that value as far as possible, and being a responsible employer.

So here's the nub of the issue. Employers need to behave consistently. There can be no favour shown to valuable players who can't behave appropriately in the workplace. If we take the example of offensive jokes, there's a risk of lowering the bar of what is acceptable which can create a very unpleasant environment at work. And going down that road can place employers at great risk of discrimination claims if the culture is one where racial slurs or other offensive behaviour is tacitly tolerated. Employers can also sometimes be held liable for the actions for their employees even where there is a one-off incident of harassment in the workplace.

Hopefully it's very rare that physical violence is ever an issue in any workplace, but let's say a disagreement escalates to the point where your top performer punches a colleague.

Possible criminal sanctions aside, most employers will want to suspend the individual concerned, but it's important that suspension is not seen as an end in itself. It should be used to remove the potential for further trouble while a thorough investigation is carried out, and preferably as quickly as possible.

Employers shouldn't jump to conclusions however and should look into both sides of the story and then hold a disciplinary hearing, chaired by a manager with no involvement in the case. The employee concerned should be given the chance to put across his or her point of view, with a union rep or colleague present and any mitigating factors should be taken into account. After the conclusion of the meeting, a decision in writing should be issued (giving reasons for the decision) and providing the right of appeal to a more senior manager, who again should have had no prior involvement with the case.

The bottom line is that what applies to one employee usually should apply to all, regardless of their status within or importance to the organisation. Failure to act consistently across all staff damages morale, puts the business at risk of employment claims, lowers standards of behaviour and suggests weakness on the part of management.

Sarah Gilzean
HBJ Gateley

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I would like to thank the LLS manager Kauser Patel and her assistant, Aminah Begum for all their hard work.

We also extend our thanks to the panel of judges who have generously given their time:

Vera Stamenkovich *(District Judge Leicester County Court)*
David Monk *(Barrister)*
Sheree Peeple *(Head of Law School De Montfort University)*
David Sims *(Managing Director, Leicester Mercury)*
Stephen Evans *(Solicitor University of Leicester Law School)*

Congratulations to all those finalists who are shortlisted in the Awards and the very best of luck to you all for tonight.

Steve Swanton,
President LLS

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THE KAFKAESQUE FAMILY JUSTICE SYSTEM

I am honoured to have been invited to contribute to this issue on behalf of Northampton Chambers. Having completed my pupillage at Northampton Chambers during 2014, I experienced first hand how the recent and dramatic changes to the family law landscape have impacted upon the impecunious and vulnerable. I aim to briefly present my thoughts as I embark on my career as a family law barrister at Northampton Chambers.

It is a long established principle that the overriding objective of the family court is to deal with cases justly, expeditiously and fairly. The well publicised Children and Families Law Act 2014 (CFA) came into force on the 22 April 2014 with the intention of amplifying this objective within both private and public matters relating to children. Upon its implementation, the Family Justice and Civil Liberties Minister, Simon Hughes, boldly stated that: 'We are making sure the welfare of children is at the heart of the family justice system.' In my experience, this has been far from the case, particularly in private children law matters. What is less well known is the impact these changes have had on the provision of court services, which finds itself painfully juxtaposed between speedy justice and the administration of justice.

Although there has been a relentless steer towards encouraging individuals towards resolving matters through arbitration or mediation, it is clear that many complex cases can not possibly be resolved in this way. It is this ruthless steer that has been wedded to the virtually complete eradication of legal aid, which has subsequently undermined the principles of the overriding objective. This is because litigants are not able to achieve fair, just and expeditious outcomes without the assistance of able professionals that public funding would have otherwise provided. The resulting significant decline in legal representation has caused an increase in the length of court hearings and a rise in erroneous applications. Further, it has created a prejudicial platform over the impecunious and vulnerable who are not eligible for legal aid and who cannot afford representation. Most importantly, it creates an inherently unhealthy environment in which the interests of the child in question are decided upon.

Judges now commonly deal with cases involving litigants in person, which has caused a number of difficulties. An incorrect application may have been made, the court may not have the power to deal with the matter, directions may not have been complied with and the level of animosity between the parties may be to the extent that the child is being used as a 'weapon' to hurt the other parent. Even if one side is represented, the litigant in person often considers the other party's representative with a degree of apprehension and may feel as if there is a strong bias against them as they are unrepresented.

The figures relating to legal representation that were recently published by the ministry of justice make for stark reading:[1]

OBSERVED CASES BY REPRESENTATION TYPE IN 2014

REPRESENTATION	NUMBER	PERCENTAGE
Fully represented	37	25%
Semi-represented*	75	50%
Neither represented	34	23%
Ex parte represented	1	1%
Ex parte in person	4	3%
Total[2]	151	102%

Where once judges could rely upon both sides to be well represented, irrespective of their finances, now nearly 75% of family cases in 2014 resulted in one or all parties representing themselves and things look like they will only get worse.

Whilst the dawn of a new era was heralded when the CFA was implemented, the statistics are damning. Where the CFA's intention was to place the welfare of children at its very heart, this intention has its hands tied due to its Kafkaesque paradox with the severe cuts in legal aid. These cuts were meant to reduce costs that were being spent on legal services, and instead have only resulted in those costs being reallocated in making the administration of justice costlier, which has translated into the quality and effectiveness of the administration of justice poorer.

It was in October 2014, only six months since the changes came into forces, that the President of the Family Law Division, Sir James Munby, launched a scathing attack on the government by accusing them of washing its hands of the problem it had created by failing to provide legal aid for parents in private children cases (Re D (A child) [2014] EWFC 39). For the CFA to truly succeed in its aim in putting children at the very heart of the family justice system by ensuring the overriding objective is met, then there must be a u-turn on legal aid. Broadening the scope for public funding eligibility would promote access to fair and expeditious justice. This, and only this, will ensure that children's interests are securely fixed at the heart of the family justice system. In the words of Franz Kafka himself: 'believing in progress does not mean believing that progress has yet been made.'[3]

[1] *(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380479/litigants-in-person-in-private-family-law-cases.pdf)*

[2] *Franz Kafka, The Third Notebook, December 4, 1917*

[3] *Includes 3 cases in which the unrepresented party or parties were intervenors. Percentages add up to more than 100 due to rounding.*

Sanjay Roy
Barrister and Family Mediator
Northampton Chambers

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RESTRICTIVE COVENANTS: A BRIEF OVERVIEW

Restrictive covenants can have a serious impact upon the potential for development of a piece of land. In some cases the development will fail completely. Simon Wood, Barrister within the Commercial Litigation department at law firm Hart Brown, summarises how restrictive covenants work and how they may be circumvented.

The first point for the developer to appreciate is that planning permission does not override the covenant. The planning authority will usually only consider the application in respect of its planning merits and will not consider the private rights as between the respective parties. This can also often be a source of confusion to the person who has the benefit of the covenant and who is intending to object to the planning application.

The developer should then check that the covenant still affects the land. Usually, this can be confirmed at the Land Registry where extant covenants will be recorded in the Office Copy Entry for the property. If the land is unregistered it may be more difficult to establish whether the covenant still has effect especially if it was granted many years in the past.

The developer should then find out who may have the benefit of the covenant: anybody who currently owns any part of the land originally benefitted by the covenant will be able to enforce the covenant provided they can show that the covenant benefits or preserves the value of that land.

The developer should certainly not simply proceed with the proposed development without considering the possible consequences. This is because any beneficiary of a restrictive covenant can apply to the courts to have any threatened breach (e.g. the building of another property on the land) stopped by an injunction, and/or they can claim damages.

Nevertheless, the developer has several options to circumvent this potential stumbling-block.

The first is to try and negotiate the release or variation of the restrictive covenant. This will only be effective and should only be attempted where the full extent of the land that benefits from the restrictive covenant can be ascertained and all of the owners of the benefiting land can be identified and located. The developer should be prepared to make some payment for any release or variation of the covenant. However, this need not be unreasonable if the developer has done his or her homework and can show what effect the new development would have on the value of the land with the benefit of the covenant.

Secondly, it is possible to obtain indemnity insurance to protect against the risk of a person with the benefit of a restrictive covenant seeking to enforce it. However, it is unlikely to be available in circumstances where beneficiaries of the covenant have made it clear that they will seek to enforce the covenant.

Finally, the developer can make an application to the Upper Tribunal ("UT") (formerly the Lands Tribunal) for the modification or discharge of the restrictive covenant pursuant to section 84 of the Law of Property Act 1925.

The UT can discharge or modify the restriction if satisfied that one of the following grounds apply:

- *the covenant is obsolete because of changes in the character of the land and/or changes in the character of the neighbourhood or other material circumstances;*
- *the covenant impedes some reasonable use of the land. If planning permission has been obtained, this may assist in proving that the covenant impedes some reasonable use of the land;*
- *the beneficiaries expressly or impliedly agree.*

It should be noted that the UT has power to order the applicant to pay compensation to the person or persons entitled to the benefit of the covenant, either for any loss or disadvantage suffered as a result of the discharge or modification of the covenant, or to make up for any reduction in the price originally received for the land on account of the imposition of the restriction.

In conclusion, restrictive covenants can have a serious impact upon the potential for development of a piece of land and the grant of planning permission cannot override their effect. Nevertheless, there are measures which the developer can take in order to sidestep the problem; the likelihood is that they will involve additional expenditure.

Simon Wood is a Barrister within the Commercial Litigation department based at Hart Brown's Guildford office. He was called to the Bar in 1987. He was a tenant in chambers in Middle Temple for 10 years where he had a broad practice in general commercial and civil litigation before specialising in property litigation.

CONVEYANCING SOLICITORS URGED TO ADDRESS CAPITAL ALLOWANCES IN COMMERCIAL PROPERTY TRANSACTIONS

CATAX SOLUTIONS ESTIMATE £1.6BILLION IN CAPITAL ALLOWANCES WENT UNCLAIMED BETWEEN 1 APRIL TO 31 DECEMBER 2014

SOLICITORS SHOULD PLAY A KEY ROLE IN SECURING ALLOWANCES FOR CLIENTS, UNDER NEW LEGISLATION

FIRMS COULD SEE MYRIAD BENEFITS FROM CAPITAL ALLOWANCES

Research by the Law Society and Catax Solutions has found that solicitors take an inconsistent approach towards capital allowances, which could leave them open to risks ranging from loss of income to client complaints and litigation.

Investigating the impact of legislation that came into force last year, in particular its effect on transactions and the extent to which solicitors are compliant, this research concluded that solicitors have scope to pick up the pace on capital allowances for the benefit of both their firm and their clients.

Full results have been published in a report, available for free online, but headline findings are:

- *Seventy per cent of solicitors would like to know more about capital allowances. In particular, not all solicitors realise their duty of care towards clients and many see capital allowances as an issue for accountants.*
- *Those solicitors who embrace capital allowances relief can expect it to position them as trusted advisors, drive increased customer satisfaction and be lucrative for both themselves and their clients.*
- *Although 53 per cent of respondents predicted a growth in transaction volume over the next 12 months, those who were more complacent about capital allowances were more likely to expect a slowing growth rate in the future.*

Ian White, chair of the Law Society's Property Section committee, said: *'To a large extent this recent research confirms what the profession has always known, namely that our understanding of capital allowances has been sadly lacking. We should take steps to ensure that we are advising our clients fully and properly in these areas and that clients and ourselves as practitioners benefit from ensuring best practice. The Property Section is committed to ensuring that the education which the research shows to be necessary is promoted and that this important area of our work is highlighted.'*

Capital allowances are available to any business incurring capital expenditure from buying commercial property. Commercial property owners are entitled to a tax relief in the form of capital allowances on qualifying items. Solicitors have been obliged to raise the issue of capital allowances relief since April 2014.

Solicitors have a duty to provide advice to clients on capital allowances. The Law Society endorses Catax Solutions, which advises solicitors and provides support on fully understanding and addressing responsibilities in the property transaction process.

Mark Tighe, managing director at capital allowances specialists Catax Solutions, said: *'There is no doubt that there is an acute need for a greater awareness of this complex tax area, and in particular its effect on transactions and the extent to which solicitors are compliant.*

Solicitors have a specialist role just as GPs have a duty of care towards their patients. As the legal counsel, a solicitor plays a pivotal role in guiding a client when intending to buy or sell a commercial property. This means the solicitor has a duty to be aware of capital allowances. Remaining silent, and failing to alert clients of these new rules, could certainly bring their professionalism at disrepute.'

See more at: https://www.lawsociety.org.uk/news/press-releases/capital-allowances-in-commercial-property-transactions/#sthash.YZhlJ9mq.dpuf

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MORE HEAT THAN LIGHT: IMPORTANT NEW RULES AFFECTING LANDLORDS OF MULTI-LET BUILDINGS

Stephen Boyle, from law firm Hart Brown, comments on the new regulations.

Just as EU energy efficiency regulators have recently outlawed traditional light bulbs, high powered vacuum cleaners and the £4 coffee maker, so they have now focused their attention upon landlords of multi-let buildings. The time honoured system of dividing the cost of supplying heating, hot water and (where available) air conditioning by the number of tenants and charging them an equal share through the service charge is set to become a criminal offence following the introduction of the Heat Network (Metering and Billing) Regulations 2014.

Landlords of such buildings, whether commercial or residential, must register with the National Measurement Office not later than 30 April, 2015, and must install individual meters, or cost allocators in EU speak, in each unit by 31 December, 2016. Failure to do so can result in criminal as well as civil penalties.

This is a wake-up call for landlords of any kind of multi-let building where the cost of heat, hot water and air conditioning is not separately metered. First of all, they must get themselves registered and, secondly, they must survey their properties to assess the cost and feasibility of installing individual meters. There is an exemption where it is not cost effective or practical to install meters, but the case has to be made for this. If the rapid demise of our favourite domestic appliances is anything to go by, the regulators will be pretty hard to persuade.

Hart Brown, a leading law firm with offices throughout Surrey and in London, has been offering a full range of legal and financial investment services to businesses and individuals for the past 90 years. With 15 partners, more than 110 staff, six offices and a reputation for delivering high quality service, Hart Brown is committed to building long-term relationships with its clients.

In particular, the firm puts great emphasis on regular communication with clients, as well as the need for efficiency and value for money in order to deliver a high-quality service. Hart Brown currently operates from offices located in Cobham, Cranleigh, Godalming, Guildford, Wimbledon Village and Woking. For more information please visit www.hartbrown.co.uk

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PAST PRESIDENT CONGRATULATES DARING DUO ABSEILING FOR SBA

Christl Hughes, Past President of Leicestershire Law Society and current Vice Chair of SBA, was at London's Olympic Park recently to cheer on two intrepid lawyers who free-abseiled down the UK's tallest sculpture. Will Cowell and Grace Brass (yes, it really was Will and Grace) from Cambridgeshire & District Law Society, successfully completed a dizzying 270 feet descent from the top of the Arcelor Mittal Orbit in just a matter of minutes.

The event was in aid of SBA The Solicitors' Charity, the benevolent association that has been at the heart of the legal profession for nearly 160 years. Christl has acted as SBA's Area Representative for the last five years, so she knows at first hand just what kind of positive impact it can have on solicitors past and present, and their families. "SBA exists to ensure that no solicitor is unsupported in times of need or crisis," she says. "Solicitors in Leicester and Leicestershire have been particularly badly affected by recent changes in all aspects of practice. I have been very pleased the charity has been able to help local colleagues in need of assistance at this critical time."

The clouds look dark for many in the legal profession, but you can help SBA to help solicitors and their families towards a brighter future. Visit Will's JustGiving page at https://www.justgiving.com/Will-Cowell. To find out more about SBA, visit www.sba.org.uk.

The Law Society

Junior Lawyers Leicestershire

Leicestershire Junior Lawyers Division (LJLD) is part of the national Junior Lawyers Division which is a division of the Law Society that aims to give a voice to junior lawyers. The role the division plays is significant, with the Junior Lawyers being the largest Law Society Community.

The LJLD offer the chance for members to socialise and network with like-minded people at an early stage in their legal career. It is a fantastic means to discuss issues concerning you and others in the same position and learn more about the profession. We organise all sorts of events and talks aimed at enhancing member's future careers by giving training and advice, making contact with a wide variety of people in the industry and raising money for charity.

If you are interested in becoming a member, please visit *http://www/ljld.co.wuk/lawyer/* for more information, upcoming events, blogs and articles. Membership is free and open to university students, postgraduates, undergraduates, paralegals, trainee solicitors and solicitors with up to 5 years PQE.

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THE STURM UND DRANG OF PARTNERSHIPS

ACCREDITED FORENSIC ACCOUNTANT & EXPERT WITNESS

"Partnership is the relation which subsists between persons carrying on a business in common with a view of profit." – Partnership Act 1890, Section 1(1).

Sounds easy, doesn't it? A group of like-minded people putting all their skills and enthusiasms into running an enterprise – a legal practice, say – and sharing the fruits of their efforts.

If it works, it can be very satisfying and remunerative. If not – if the partners put more effort into Storm and Passion than into earning fees – it can be an expensive disaster. I've seen both, as a partner and managing partner myself, and as a mediator, expert determiner and expert witness. When things go wrong they can be horrible, and the partners can end up destroying the very business over which they are fighting.

In this article we look briefly at how to avoid difficulties in future, and what to do if things go wrong.

Preaching the obvious, every partnership should have a written and legally binding partnership agreement. Identify the partners, their titles and functions, their responsibilities, voting procedures, majorities necessary for certain decisions, and so on. I was once in an old-established partnership where the agreement required a 100% vote both to admit and to dismiss a partner; a pathetically inadequate partner could not be required to leave because turkeys don't vote for Christmas. That was plainly stupid. And it is surprising how many practices have an agreement which was never signed or even completed. As solicitors well know, a partnership agreement does always exist, whether in the form of a written agreement, a verbal agreement or as evidenced by the custom and practice of the partners; and a written agreement may be changed by the actions of the partners. But the written agreement should cover all eventualities, and it should be amended in writing when circumstances change.

When all is sweetness and light – a group of people setting up together, or a new partner being admitted to an established firm – make sure you deal with the awkward subjects: is goodwill to be valued? How? If groups of clients are to be taken over, how are they to be valued? How to value debtors and WIP on a dissolution? Is the partnership to be for a fixed period? Is there to be a barring out term imposed on a partner who leaves? What about gardening leave? Is there to be a fixed retirement date (take care with age discrimination)? Who takes on each member of staff, and their TUPE responsibility? and so on.

It is also worthwhile to have a dispute resolution clause in the agreement. These are commonplace in, for instance, a company share/purchase agreement, so why not in a partnership agreement?

If a partnership does go wrong, what next? With a good partnership agreement and a DR clause, it may be relatively easy to bring matters to a conclusion, and that is so important: the partners have responsibilities to their clients, their staff, their families and their own professional reputation and financial well-being. So any dispute between partners should be resolved promptly and confidentially.

Here are examples from my own experience of how to deal with partnership disputes, and how not to.

The first is a bad one. In a 3-man legal firm, the senior partner had retired and the amount of his entitlement could not be agreed. As well as the usual arguments over goodwill and WIP, the values of the law library, the computers, the boardroom furniture were all at large. The partners appointed a very senior arbitrator, but his fees were almost as much as the amounts being argued, and his findings were merely on matters of principle. I was then appointed to make an expert determination of the quantum of each item in dispute. Thus matters were concluded, but at substantial expense, and my impression was that the dispute could have been settled at a mediation, in a day, two years earlier, and at about one-tenth of the cost.

Example two started badly, but got better. In a 7-man accountancy practice, one partner had simply left without notice and taken a group of clients and some key staff. Litigation had started, and I was appointed as SJE to express my opinions on goodwill, debtor and WIP values. I had to take oral submissions from all parties. I developed such respect from the parties that I felt confident that I could help them to settle if I acted as their mediator. Solicitors on both sides were interested, but nervous that, if the mediation failed, they would have to start again with a new SJE, since a mediator cannot take part in any subsequent litigation. So instead I was appointed expert determiner, I was able to issue a determination of goodwill, debtor and WIP values etc, and so the dispute was resolved, speedily and relatively cheaply.

The third and final example worked well. I was in a regional practice and we planned to merge into a national practice. The deal-breaker was that one of our partners didn't fit into the national firm's strategy, but wasn't prepared to walk away. Our managing partner asked me what we should do. As a then freshly-qualified mediator, I told him that mediation was the answer. It worked: all partners but one joined the national firm, and the one left behind was given his clients and WIP on easy terms, a period of rent-free office space, and so on. He was so pleased with the deal that he then qualified as a mediator himself!

So to conclude: partnerships are a huge power for good, but not if they go wrong. Take the most careful steps to agree a set of rules at the outset, and stick to them. But if things go wrong, it can be very difficult negotiating with your erstwhile friends, and it is sensible to enlist the help of an independent professional whom all sides respect.

Chris Makin
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www.chrismakin.co.uk

Chris Makin has practised as a forensic accountant and expert witness for 23 years, latterly as Head of Litigation Support at a national firm. He has been party expert, SJE, Court appointed expert and expert adviser in hundreds of cases, and given expert evidence about 70 times. He also performs expert determinations.

Chris is a fellow of the Institute of Chartered Accountants where he serves on the Forensic Committee, and as an ethical counsellor; he is a fellow of the Chartered Management Institute, a fellow of the Academy of Experts where he serves on the Investigations Committee, and an accredited mediator. He is also an accredited forensic accountant and expert witness.

He practises as an expert witness and mediator from West Yorkshire and his rooms at 3 Gray's Inn Square, London WC1R 5AH. He has mediated a vast range of cases, with a settlement rate to date of 80%.

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The Argyll Energy and Infrastructure search has been a popular addition to the Geodesys product range since we introduced it last year. As potential energy and infrastructure risks are flagged by the Search Alert tool on the Geodesys website, our clients are given clear guidance on whether they ought to be ordering the search as part of their due diligence.

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- Cross Rail
- Yorkshire and Humber CCS Pipeline

New improved content

To keep up with the ever-changing world of new energy and infrastructure projects, a new version of the report is now available. The updated search now comes with the following enhancements:

- Brand new data on the location of Renewable Energy Plants including Anaerobic Digestion, Biomass, Co-Firing, Heat Pumps, Hot Dry Rocks, Landfill Gas, Muncipal Solid Waste Combustion and Sewage Sludge Digestion.
- Clearer explanation of technical content making it easier for you and the homebuyer (or commercial purchaser) to get the full picture. The nature of the risk, the potential impact and what can be done about it are all covered in plain English.
- The inclusion of planning application data for wind and solar farms. This means you can inform your clients if there's a an application approved for a wind or solar farm near to their proposed purchase. Previously the search has only identified existing wind and solar sites and those under construction.
- A number of additional new datasets including HS2 depots and stations, crossrail safeguarding limits, oil and gas exploration blocks and drilling locations, Yorkshire and Humber CCS pipeline,
- An additional next steps/recommendations section at the beginning of the report.

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A sense of **self...**

Both the Commons and the House of Lords have recently voted for the UK to be the first to accept the creation of a baby using DNA originating from three different people. This IVF (in vitro fertilization) technique is known as mitochondrial replacement therapy and concerns the prevention of certain genetic diseases, which could potentially assist up to 2,500 women of reproductive age in the UK. The popular press, perhaps unfortunately, coined the phrase "three parent babies", which immediately upped the ante in the debate and brought forth intense discussion involving church and pro-life groups. In particular this has concerned the ethics of this procedure, set against long held fears of designer babies and eugenics. Safety concerns have also surfaced and there have been warnings that any children of this technique could be born sterile or be at risk of cancer and premature aging. There has also been international condemnation where authors have commented that, because these children would have heritable genetic changes, that there are significant risks to the health of future generations.

Mitochondria are present to generate energy for the cell. They come from the mother and have their own genetic material, which sits alongside the germ line DNA of the "conventional" mother and father. The thought that this DNA might constitute parentage (i.e. the third parent) brings forth some interesting legal points. Parenthood has both a genetic and social meaning, although the former is regarded as the fundamental tie between parent and child. This contribution must be both direct and immediate. To clarify, grandparents provide a quarter of a child's DNA but are not accorded the status of "half" genetic parents. The recent proliferation of assisted reproductive technologies has of course complicated matters and given that the donor of the mitochondria is making a direct and immediate contribution of generic material, then in my view, we have a new biological parent. In preparation of this article, I have found it difficult to make the counter argument. Pertinent to this of course, is now the fact that the new (third) parent is a second female parent. Avoiding this issue by trying to claim mitochondrial donation is merely a tissue donation is not adequate. Others may say that the contribution of the third parent to the child's DNA is low, less than 0.1%, but in the world of genetics, where we are examining disease-causing changes which occur at a frequency of one in three thousand million (the size to the human genome), this is significant. We simply do not know enough to say that the mitochondrial DNA will have no material effect on the characteristics of the child.

In the UK, the mother is the person who carried the child and gave birth, the father is the man who provided the sperm. So what could be the status of the donor of the mitochondria? Is it that they have the same status as a donor of an egg or sperm for IVF or perhaps the status of those who donate blood, organs or bone marrow? Egg or sperm donation is in effect normal reproduction from a genetic point of view but the donation of mitochondrial DNA does not fall into that category; it may create a set of unique parental rights. Equally, mitochondrial donation cannot be considered simply as a tissue donation; there is an impact on future generations as the DNA will be passed on.

Since the courts quite rightly take the view that a child should "know" its biological parents, the second female parent may well wish to take an interest in the child (via appropriate application of her Parental Responsibility rights) or they may wish to give up Parental Rights. Their view may change over time; how the donor feels at the time of donation could be very different to how she feels once the child is born. Current provisions under the Human Fertilisation and Embryology Act 2008 do not cover this situation adequately. For example, a Parental Order as it relates to surrogacy (to gain or relinquish parental rights) can only be granted after a child has been born (and then for a fixed period only), not at the point of conception. Perhaps the mitochondrial donor will be able to gain Parental Responsibility via a court order or a formal 'parental responsibility agreement' with the child's birth mother (let us presume that she is the egg donor as well...it gets even more complicated if she is not!).

If the premise of the second female parent is accepted, which I believe it should be, then we are in new legal territory as it relates to assisted reproduction and it is likely that several legislative amendments will be required to provide for mitochondrial donation.

Dr Neil Sullivan is General Manager of Complement Genomics Ltd, which provides the dadcheckgold service for parentage testing. He is a PhD level molecular biologist with a LLM in commercial law and has a particular interest in consent.

Using Alternative Dispute Resolution for Commercial Disputes

Alternative Dispute Resolution encompasses resolving disputes by Arbitration or Expert Determination, or encouraging the parties to settle by Mediation. These processes are encouraged by the Courts, and are sometimes referred to as Private Dispute Resolution because of the privacy and confidentiality provided to the parties.

With my background as an accountant and adviser to numerous SMEs, and many years' experience in dispute resolution, I can provide these services to resolve commercial disputes. I can also offer a hybrid of Med/Arb which starts as a Mediation and evolves into Arbitration if the parties are unable to settle. This is very cost-effective as there is no need to find a second neutral appointee.

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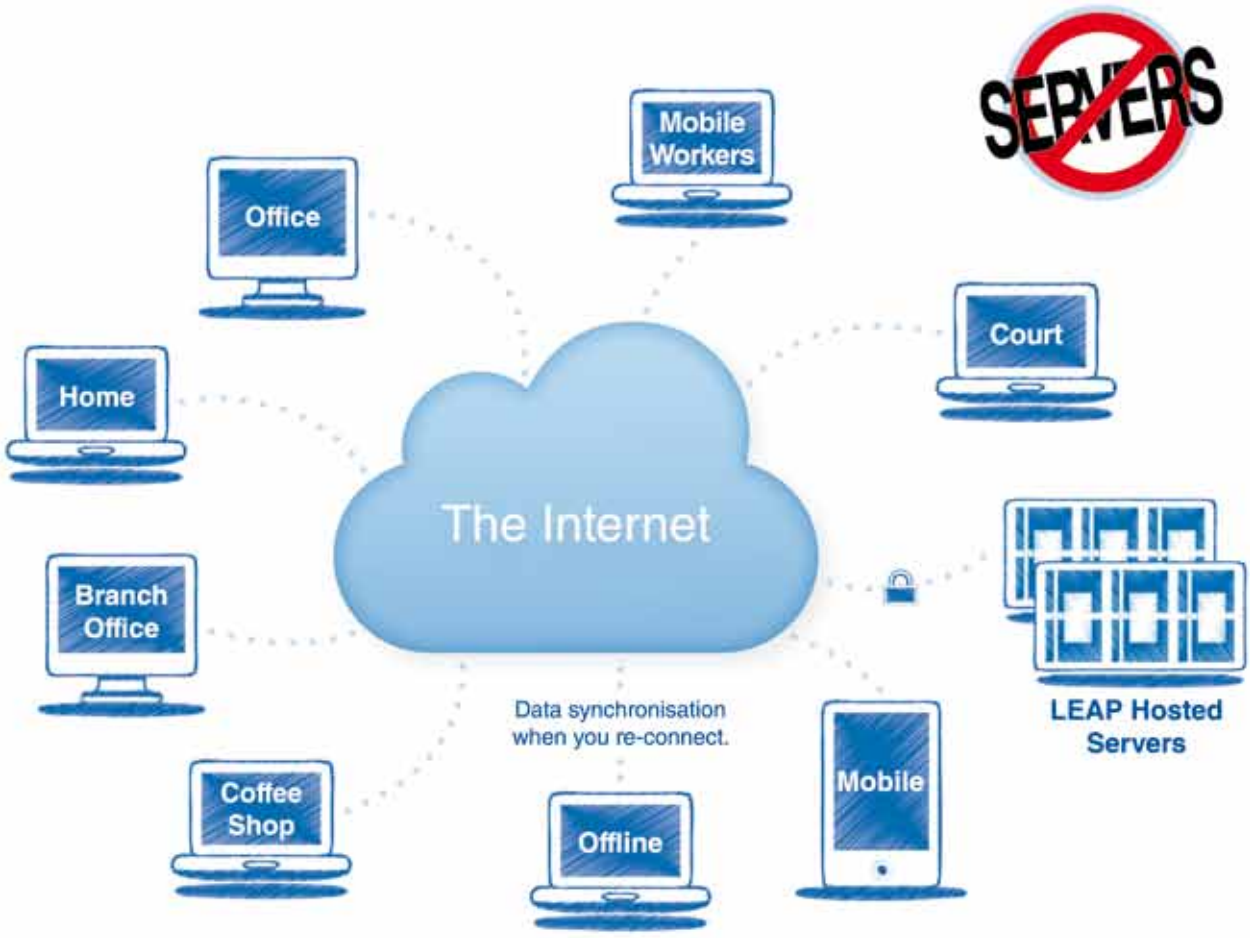

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