issue 3 • Winter 2015

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Leicestershire Law Society magazine

GOING THE EXTRA MILE

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WELCOME/CONTENTS
WINTER 2015

Manager's Intro

Welcome to the third edition of the LLS magazine, I am pleased to be introducing yet another fantastic magazine. Thanks as always go out to our Editor, Manbir Thandi, from Weightmans and the Media Sub Board for their immense amount of work. It is thanks to their hard work and the submissions from our members that we are able to continue to produce the magazine for our members and partners alike.

As we come to the end of 2015, I can't believe we are already half way through our current President Mehmooda Duke's term, how the year is steamrolling ahead. With the re-launch of the Newly Qualified Event, the introduction of four new Patrons, the revival of the Sub Boards and now the enormous expansion of the LLS Legal Awards 2016, there's no stopping her!

Look out for more exciting times ahead and I hope you enjoy reading all about it in our magazine. We always look forward in receiving any feedback and hope to continue to improve the services provided to you.

Regards

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PRESIDENT'S REPORT

What a busy few months for Leicestershire Law Society! Just a snippet below of what we have been doing.

We have walked and collected Spit Samples for the Rik Basra Leukaemia Campaign, had 'Afternoon Tea' at the Belmont Hotel, and lunch at More with the Accountants; partied at the City Rooms and celebrated the success of Newly Qualified Solicitors.

We have abseiled down the 100ft Gateway building for Spark Arts and danced at the Awards launch party; we have lunched with and lobbied MPs, responded to consultations and worked with Chancery Lane.

We continue to have the support of our patrons, AON, Handelsbanken, RHMA, Severn Trent Services, Finance Lab, Leicester High School for Girls, Burcher Jennings, Jonstar Energy Brokers, University of Leicester and De Montfort University.

A massive thank you to all of the Sub Boards and to Kauser who have all worked tirelessly for our members.

In 2016 we have the following to look forward to:

- **School Court's Competition** – 6 February
- **Half Day Education and Training Event / Time Management and Leadership** – 18 Feb
- **Awards Short Listing** - 9 March
- **Awards Dinner 'Strictly Phantom'** – 13 May
- **Women's Event - Afternoon Tea** - TBC
- **Richard III Event** - TBC

This year the plan for the Awards is a bit different. Watch this space!

Mehmooda Duke
President, LLS

Mehmooda and Krishna Kotecha were judges in the University of Leicester Fourth Inter Varsity Mooting Competition with HHJ Nicholas Green, Bradley Martin and Henry Witcombe

Mehmooda doing the Sparks Charity Abseil

Mehmooda presenting prizes to students from Leicester High at the LLS and Fosse Breakfast Business Club Pre-Christmas Ball

The 10 mile walkers meeting outside MDS Solicitors

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Published by:
EAST PARK COMMUNICATIONS Ltd.
Maritime House,
Balls Road,
Birkenhead,
Wirral
CH43 5RE

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Published
December
2015

Handelsbanken

IS A RATE RISE ON THE CARDS?

Interest rates have been at an historic low of 0.5% for more than six years now, but recently there has been much talk over whether a rate rise is just around the corner.

While the long period of very low rates and the subsequent ongoing era of cheap mortgages may have understandably lulled some homeowners into a false sense of security, historically the base rate is typically several percent higher than it is today, at around 5 – 5.5%. In November 1979 it even reached a high of 17%.

While millions of savers would welcome a return to higher rates, the impact for borrowers would be far less welcome. But what is really likely to happen in the coming months, when it comes to interest rates?

Currently the picture seems to change weekly, sometimes even daily. Just this week (4 November) the Bank of England Monetary Policy Committee voted, by a margin of 8 to 1, to keep rates at 0.5%. In the latest Bank of England inflation report, also published this week, Mark Carney, Governor of the Bank of England suggested that the base rate could remain at a record low for much of next year, as a result of global uncertainty.

However, as recently as July of this year Carney was quoted as suggesting that the base rate could begin to rise from early next year, 2016, to reach 2.25%. Also this week, prior to the publication of the latest inflation report, the National Institute of Economic and Social Research (NIESR) said that it expected the Bank of England to begin raising rates from February of next year, and predicted rates would rise to 2% by 2018.

On the surface the fact that the economy is in good shape seems to underline the case for a rise in interest rates in the near future. The UK's manufacturing output rose by 0.8% in September, which was the biggest increase recorded since April 2014. Meanwhile the UK economy grew by 0.5% in the third quarter of this year, according to figures published by the Office for National Statistics.

Another factor that can typically drive an increase in the BoE base rate is a rise in average wages paid across the UK. The latest ONS figures show average pay across the UK economy rose 3% in the three months to July, compared to the previous year. This is the fastest level since 2009. Wages are now outstripping inflation.

Meanwhile an asset bubble could also lead to a hike in interest rates, as a tool to cool down whichever over-inflated market needs subduing. Yet while UK house prices are continuing to rise, the imbalance between supply and demand means it is likely to stay strong and is not generally considered a bubble at present.

But there are also many factors which could ensure rates remain low for some time. These include the August "Black Monday" crash, which wiped billions off stock markets around the world and hit consumer confidence hard, falling commodity prices globally, thanks in large part to reduced demand from China, the world's largest consumer of commodities, and in the UK, a negative inflation rate of -0.1% (as of September) compared to the Government's inflation target of 2%.

David Hotton, Head of UK Treasury at Handelsbanken, said: "Rates have been 'about to rise' for the past five years, but have not done so and there are currently lots of factors helping to keep them down, not just in the UK but globally. There is no historical precedent for where we are now."

So the UK economy still appears to have some way to go before rates begin to rise steadily, something which is good news for millions of homeowners and businesses with debt in terms of accessing very low rates, but less welcome for the millions of savers hoping for higher returns.

However, it is always wise to be prepared for a rise in rates and the potential impact on mortgage payments and other financial debt, as well as looking for the best places to home savings.

In his speech on the inflation report Mark Carney this week said the following: 'All members agree that, given the likely persistence of the headwinds weighing on the economy, when the bank rate does begin to rise, it's expected to do so more gradually, and to a lower level than in recent cycles.

However, as he added: 'This guidance is an expectation, not a promise'. Borrowers take note.

John Clay
Leicester New Walk Branch
Handelsbanken

I CAN'T GET NO RELIEF – FROM FORFEITURE

WINDFALL RETURNS AND THE DECISION IN FREIFIELD V WEST KENSINGTON COURT LIMITED [2015] EWCA CIV 806

This article is possibly not the right forum for this confession but, I am quite obsessive when it comes to the right to forfeit a lease and any relief application that is made on the back of it. For that reason I found myself waiting impatiently over the summer for the Court of Appeal to hand down their judgment in the case of *Freifield v West Kensington Court Limited [2015] EWCA Civ 806,* a commercial property case dealing with the right to claim relief from forfeiture where there has been an intentional breach of covenant and where the leasehold interest still has significant value and would represent an uncovenanted windfall to the landlord should relief from forfeiture be refused.

In Freifield the Appellants had appeared before HHJ Gerald in Central London County Court as far back as December 2013 seeking relief from forfeiture in respect of the head lease of seven commercial retail units.

The head lease had been granted in 1982 for a term of 99 years, acquired at a premium and no money passing rent was payable under its terms and the rack rent achievable by subletting the units was in the region of £133,000.00. Putting it as succinctly as possible, the head lease had significant value.

In December 2011 the Appellants had, in breach of the alienation provision contained in the head lease, deliberately sub-let to a Chinese restaurant whose management style was described in the Court of Appeal as *'controversial'*.

HHJ Gerald made some rather scathing findings about the Appellant's conduct surrounding the grant of the lease to the Chinese restaurant... *'conscious and deliberate decision to grant the future lease... wilfully failed to take any steps to remedy that breach... In acting the way they have, it seems to me and I find that the Freifields demonstrated a cynical disregard for their own obligations under their lease...'*

Summing up HHJ Gerald found that the Appellants *'faced a vertiginous but not necessarily impossible climb to the summit of relief made, it has to be said, more difficult by their historic failure to properly manage the demise and discharge their contractual obligations.. In my judgment, the Freifields have failed to adduce any or any sufficient evidence upon which the court could properly grant relief from forfeiture'.*

A second bite at relief was taken in December 2013 on a new basis, namely that relief be granted conditional on the sale of the head lease within six months, the head lease was after all worth between £1 million and £2 million and in the absence of any relief the landlord stood to benefit handsomely. However, the application was refused, the view from the bench was that the Freifields were *"simply reaping what they have sowed"*.

The appeal came before the Court of Appeal in July. Arden LJ giving the lead judgment took the opportunity to restate the clear principle that the exercise of the Court's wide discretion should not enable the landlord to take advantage of a breach by which he is not irreparably damaged. Arden LJ went on to quote Patten LJ in *Magnic Ltd v Mahmood Ul-Hassan [2015] EWCA Civ 224 at [50]:*

"The starting point for the exercise of our discretion has to be to remind ourselves that the purpose of the reservation of a right of re-entry in the event of unpaid rent or a breach of covenant is to provide the landlord with some security for the performance of the tenant's covenants. The risk of forfeiture is not intended to operate as an additional penalty for breach. It is an ultimate sanction designed to protect the landlord's reversion from continuing breaches of covenant which remain unremedied and to secure performance of the covenants... There may, of course, be breaches which are so serious and irremediable as to justify the refusal of relief: for example, an unlawful sub-letting. But in most cases relief will be granted on the breach being remedied and on terms as to costs."

The Court of Appeal found that the 'windfall point' was one of proportionality and once it had been appreciated that the value of the leasehold interest was an advantage which the Respondent would obtain from the forfeiture, then it had to be thrown into the balance for consideration. HHJ Gerald had failed to do this and furthermore he went on to misdirect himself and value the leasehold interest as nil because he refused relief.

In allowing the appeal the Court of Appeal granted relief from forfeiture conditional upon the sale of the head lease within six months failing which the application for relief would be dismissed.

Where do practitioners go from here? *Freifield* has potentially demonstrated how (1) relief may still be granted in circumstances where there has been a deliberate breach, (2) a landlord should not be entitled to keep a windfall where there was no lasting damage to him, (3) the conduct of a tenant remains a relevant consideration but when it comes to depriving the tenant of a valuable asset such a refusal to grant relief must be proportionate.

In *Freifield* the epilogue was left to Briggs LJ at [68]:

"This conclusion should not be misinterpreted as conferring carte blanche on tenants to disregard their covenants, wherever there is value in their leasehold interest which would be lost by an unrelieved forfeiture. In every case a balance will have to be struck, and there may well be cases where even substantial value has to be passed to the landlord, if no other way of securing the performance of the tenants' covenants can be found."

By Jonathon Rushton
36 Bedford Row

Finance LAB
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Are You Funding Your Retirement On Hope?

When you retire your financial life reduces to one binary question:

Will you outlive your money, or will your money outlive you?

Most people are not only unsure what the answer is, they don't realise that's the question!

Can you answer this question with any level of confidence?

'Yes' - Fantastic! You'll probably enjoy a long and fulfilling retirement.

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- Ultimately, the strategy and decisions being made are based on your desired outcomes - not theoretical investment projections stated on a piece of paper.

We, at The Finance Lab Ltd have been providing our clients' with this ***'sense of future***' by way of our *outcome based* financial planning service for Company Owners/Directors and Senior Executives successfully for a number of years. It works because we answer all the questions listed above (plus many more besides), with confidence.

So the next time you sit down and review your financial circumstances, ask yourself ***'am I planning with confidence or am I planning on hope?*** If it's the latter, demand better of your financial adviser because 'hope' is not a strategy to base 30 years of your life on.

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RIP: SOLICITOR **TILAK RAJ JOHAR** 10th August 1929 – 8th August 2015

Tilak Raj Johar was born in India and moved to Kenya when he was three years old. He was one of 11 siblings and the son of a successful shop keeper. In the 1940's there was a demand for engineers and he was sent by his father to study engineering at Huddersfield Polytechnic. His father was forward thinking but did not realise that Tilak's passion was law. Tilak, equally forward thinking, switched to studying law mid-way through his course, but without telling his father in case his monthly allowance was stopped!

He proceeded to qualify from Lincoln's Inn as a barrister of the English Bar in 1954 and from June 1955 practiced as an advocate of the High Court of Kenya.

He founded Johar & Company Solicitors then, and then set up in Leicester in 1975. The firm has this year celebrated 40 years in Leicester and 20 years in Nairobi, Kenya, and continues to thrive.

Tilak was in the early 1980's an ex-Vice Chairman of the Equal Opportunities Committee of the Law Society and had been an active member of the Legal Aid Area Appeals Committee (as it then was). He was a larger than life figure known for his charismatic smile, endless stories and light hearted anecdotes. He was an old school advocate and an established figure in the Leicester legal fraternity in the 1970's and 1980's. He leaves behind a wife and three children, and a legacy that continues with his son, grandson, and granddaughter all in the legal profession.

Switching from Legal Aid to CFA **under the spotlight**

BURCHER / JENNINGS
LEGAL PRICING & COSTS CONSULTANTS

There have been two cases this year in which the issue of whether it was reasonable for a Claimant to change its funding arrangement from legal aid to a conditional fee agreement (CFA) backed by after-the-event insurance was examined. Both cases were decided by Master Rowley in the Senior Court Costs Office and the costs arose from clinical negligence claims.

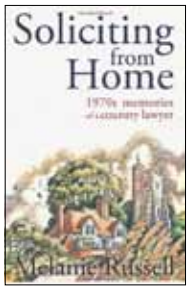
In Hyde v Milton Keynes Hospital NHS Foundation Trust [2015] EWHC B17 (Costs) the Claimant's Solicitor had applied for an extension of the financial limit on the Claimant's Funding Certificate which was denied. The Solicitor therefore entered into a CFA with the client backed by an ATE policy but did not seek a discharge of the Funding Certificate. The Defendant argued that the Claimant could not recover the costs incurred under the CFA inter partes. Master Rowley found that even though the Funding Certificate had not been discharged, "where a party exhausted the costs under a certificate so that it is 'spent', they can in principle establish a discharge by conduct in the same manner as certificates in which all of the work up to a limitation of scope has been carried out. The effect of that discharge is to end the services funded by the LSC and enable a private retainer to fund the remainder of the proceedings". Master Rowley encouraged parties to consider their legal aid spend prospectively and concluded that it must be reasonable to change funding whether it was clear that public funding was insufficient.

In the later case of Surrey v Barnet & Chase Farm Hospitals NHS Trust [2015] EWHC B16 (Costs), the Claimant's Solicitor had decided that the client would be in a better position if there was a change in funding from legal aid to a CFA prior to the introduction of the LASPO reforms. The Defendant argued that this decision was not reasonable. Master Rowley considered the strongest argument to support the change of funding was that the Claimant would have to pay a costs shortfall under legal aid. However, the issue was the apparent failure of the Claimant's Solicitor to advise on certain factors and crucially the Simmons 10% increase in general damages for claims that settle without CFA or ATE funding, "In the absence of being informed of these issues it seems to me impossible to say that the claimant can have made a reasonable choice to change funding arrangements. Consequently, I find that the additional liabilities flowing from the new arrangements are unreasonably incurred and as such are not recoverable from the defendant".

Melanie Homersham is a Costs Lawyer with Burcher Jennings Costs Consultants. Burcher Jennings, as well as providing traditional costs drafting services, also provides pricing and funding solutions for Solicitors.

Melanie Homersham
Costs Lawyer,
Burcher Jennings

BOOK **REVIEW**



SOLICITING FROM HOME - 1970'S MEMORIES OF A COUNTRY LAWYER

By Melanie Russell
Available in Paperback and Kindle
ISBN 978 1499646122

Melanie Russell was admitted as a solicitor in 1973 and practised mainly in the traditional High St until retirement in 2004. "Soliciting from Home" is her fictionalised memoir of the challenges of setting up in practice on her own almost 40 years ago.

For those of us who can recall 1976, that hottest summer ever recorded, this is a highly nostalgic account of a young novice setting up in an established world. Although the speed of life even then would have been faster in the cities, the leisurely pace in rural Oldchurch, Romney Marsh is to be envied by any current professional. That said many tasks for the solicitor remain the same - the need to establish strong 'community links' with the local estate agent, bank manager and Clerk to the Justices for example, at a time when the only advertising permitted was the brass plate on the office front door. I think all this would now come under a modern firm's 'marketing, development and networking' budget.

And then of course there are the other enduring issues such as domestic violence, disputes over property and awkward customers. This is a very readable and enjoyable account of how it used to be.

Christl Hughes

THE 10 MILE WALK – SUPPORTING THE RIK BASRA LEUKAEMIA CAMPAIGN

On Saturday 26 September a record 80 members of Fosse BBC and LLS walked through the Peak District to raise funds for a worthwhile cause. Risk and Kas Basra waved off the intrepid walkers at 9am on Saturday morning after Rik gave a heart rending but inspiring few words of encouragement. A staggering £12,000 has been raised through the walk and thank you goes to all who walked and everyone who has donated.

A special thanks to LLS President Mehmooda Duke in leading the organisation of the walk from start to finish, Hitz Rao for capturing the wonderful memories on camera, LLS Past President Ranjit Thaliwal for keeping the event on track, Martin Cullen from Rockstar Promotions for arranging the transport and fabulous t-shirts and not to forget the morale boosting fancy dress efforts from Finance Lab, the University of Leicester and Celerica.

Can you spot Snow White?

The walk was organised in collaboration with

FOSSE BUSINESS BREAKFAST CLUB

FAMILY LAW **ROUND-UP**

The world of family finance is never without cases provoking curiosity. Here is a short round up of recent cases of particular interest.

"(What's the story) Morning Glory?"

Liam Gallagher, (the non guitar playing brother) from band, "Oasis" is divorced from his former wife, Nicole Appleton. Whilst some minimal details have been reported, an order was granted some time ago imposing reporting restrictions which meant the financial details could not be revealed.

That order was challenged in recent weeks and following judgement in September 2015, the existing report restrictions were varied to allow only the naming of other parties involved in the case, excluding the children's names (Appleton v Gallagher [2015] All ER (D) 131 (Sep)). So whilst we may hear details of their previous, current, and future partners, it's unlikely we will learn what, "Some Might Say" is the most interesting aspect of the case or the financial details of their "Champagne Supernova" lifestyle (sorry, I couldn't resist the last one).

"Don't Look Back In Anger"

Can financial orders be revisited? It depends, but in the case of fraudulently dishonest disclosure, the answer, somewhat unsurprisingly, would appear to be yes.

The Supreme Court recently provided judgements in the cases of Gohil v Gohil [2015] UKSC 61 and Sharland v Sharland [2015] UKSC 60. Both cases considered Mrs Sharland's and Mrs Gohil's appeals after the Court of Appeal refused to set aside final financial orders on divorce, following their former husband's fraudulent non-disclosure. In both cases, the Supreme Court has remitted both cases back for re-trials, allowing the wives' appeals.

Mr Sharland had a two-thirds shareholding in AppSense Ltd, a company which his expert valued at £50 million, and Mrs Sharland's valued at £75 million, on the basis there was no plan for a public sale. The couple reached an agreement in July 2012. Mrs Sharland was due to receive over £10 million in cash and properties, a further lump sum of £1.7 million, and a percentage of the proceeds of sale when Mr Sharland's shares did ultimately sell. Mr Sharland was to receive £5.5 million of the assets, and retain the remaining proceeds of sale of the shares. Following a contested trial, that agreement was embodied in a final order. It was discovered Mr Sharland had intentionally failed to disclose he had been actively preparing to float AppSense Ltd prior to their original agreement, reportedly for $750 million-$1 billion.

Perhaps not surprisingly, Mrs Sharland applied to overturn that order, stating she would not have agreed terms had she known of the proposed sale. Her perseverance has (hopefully) ultimately paid off as the case has been remitted for retrial by the Supreme Court.

Mrs Gohil had a similar experience, compromising her case for the considerably more modest sum, by comparison, of £270,000, against overall assets of £300,000. However, it was noted within the order that she believed her former husband had not provided full financial disclosure.

Three years later her former husband was convicted of fraud and money laundering to the extent of £25 million, and sentenced to ten years imprisonment. She applied to set aside the original order, and this case has also been remitted for retrial.

Both wives now have the opportunity for a full hearing, taking account of the clear and full landscape, as it is now known in both cases, to establish what orders should be made.

"Little By Little"

Another cautionary tale for cohabitees, in the form of the case of Rupert Ashmore and Kim Woodward. When Ms Woodward was aged 19, she began a relationship with Mr Ashmore, then 36. Their relationship spanned 25 years, and they had a son, before separating in 2010. They never married.

They shared a house valued at £700,000, having moved up the property ladder and investing income from their design business. The property was owned in Mr Ashmore's sole name. As they were not married, the claims which Kim Woodward could make were limited, and her claims against the property they had shared (which in a marital situation would have been without question) had to be spelt out by her contributions invested "Little by little" over the years. After a two year legal battle, Ms Woodward accepted Mr Ashmore's offer of £275,000. The result could, in some peoples view, strengthen the need for a formal framework of claims to be established for cohabitees, many of whom simply do not realise or appreciate their vulnerable position, until a relationship ends.

Katherine Marshall
Legal Director
Shakespeare Martineau

LOCAL FIRMS SUPPORT 'PASS IT ON'

Manbir Thandi and Joanna-Louise Hector volunteered to support one of Leicestershire Law Society's nominated charities, the Rik Basra Leukaemia Campaign, with their own Pass It On Leicester Law event aiming to increase the number of registered stem cell donors on the Anthony Nolan register. Rik Basra's life was saved by a volunteer stem cell donor and his campaign, involving an amazing roadshow throughout the whole of September, was taken up by the Leicestershire Law Society; our volunteers took this one step further by running their own donor roadshow. Manbir and Joanna visited the Weightmans, Freeths and Shakespeare Martineau offices; Manbir also ran a solo session in the Weightmans Birmingham office and is helping the charity run an event at Wreake Valley Academy in January.

By holding donor session across these offices, Leicestershire Law Society may have helped the plight of many people with Leukaemia for whom a stem cell transplant will be their only chance to survive but many of these desperately ill patients will never find a match. Increasing the numbers of donors on the register will help increase survival rates and the Society is proud to have done their bit!

Thanks go to Harjit Saund (Freeths) and Katherine Marshall (Shakespeare Martineau) for facilitating

ENERGY – THE CHALLENGES AHEAD

The energy industry is being disrupted. The future is unclear. The only certainty is that a wide range of stakeholders will face new challenges that will affect us all and the legal sector will play an important role.

The World Meteorological Organization recently stated that climate change has broken "symbolic thresholds," just days before international climate talks in Paris. It is clear that we are on the cusp of a critical period, the decisions made by global leaders and industry will have far reaching ramifications for us all and, in particular, our future generations.

Legal firms that operate in the energy and investment markets will need to skilfully navigate some huge challenges on behalf of their clients. The energy sector has been receiving a battering, causing a prick in the ear of Wall Street, as reported recently in Business Insider. They report that a number of oil and gas companies are under pressure and edging towards default and big banks are reducing their appetite to lend within the industry. Michael Sage, co-chair of Dechert LLP's business restructuring and reorganization practice said "We're seeing more restructuring, already."

Back in the UK, there are fears that Britain is facing an energy crisis with blackouts and energy losses possibly being a reality this winter. National Grid published its winter outlook in October; their figures show that the gap between supply and demand was the smallest in a decade, as low as 1.2% during peak times; they did state that emergency measures are in place but not everyone is convinced.

In an interview with the Financial Times prior to the release of the National Grid data, the boss of Scottish Power, Keith Anderson, warned that National Grid would "start going to various industries or large users at certain times of the year or on certain days, or at certain times of the day", requesting they "switch off energy please, because we don't have enough."

For the sake of the planet and our children's future, it is clear that we all have a responsibility to use energy more efficiently. However, often of more pressing concern to many households businesses, is the cost of gas and electricity.

The prices that we pay are affected by the wholesale price of energy, which is the cost to companies in respect of the gas or electricity they sell on to the end user.

Aiming to protect against volatility in the international markets and secure enough energy to feed our ever expanding needs, energy companies buy a proportion of their supplies ahead of time. Purchasing ahead like this is called hedging.

International events fluctuate unexpectedly, with a big impact on energy prices. Companies buy wholesale energy weeks, months or years in advance and even the day of use.

Electricity is traded on different platforms depending on the date of delivery. Most of the trading for longer-term delivery is done via brokers: intermediaries who match buyers and sellers.

When choosing the right package and supplier for your business energy it can be frustrating and complicated trying to navigate the modern fluid energy market. The good news is that changes are underway to simplify the market and regulators are working hard to drive good practice. Many businesses dedicate resources and time to research and source their own supply, many others prefer to employ a reputable energy broker to help them achieve a competitive advantage.

During a time when climate change and efficient use of the planet's resources has never been more relevant, let's hope that, for all of our sakes, global leaders make good decisions. There is hope, as evidenced by examples of smaller nations achieving magnificent feats of energy efficiency. For example Costa Rica met the full demand of its nation's power usage, purely relying on renewable energy for 75 days straight earlier this year.

Jonathan Harris,
Director,
Jonstar Energy

STRICTLY PHANTOM

– COMING SOON TO AN AWARDS DINNER NEAR YOU!

COMMITTEE 2016

We will have four vacancies on our Main Committee for 2016. This is a fantastic opportunity to gain new skills, make new friends and put something positive on your CV. The following Sub Boards roles are available:

1. Education and Training (two positions)
2. Equality and Diversity
3. Media

More about the Sub Boards can be found at *http://www.leicestershirelawsociety.org.uk/about-lls/sub-boards/*

Anyone member living and/or working in Leicestershire can apply to join. Committee members are required to attend monthly meetings, Sub Board meetings as and when they are scheduled and attend our events.

If you would like to apply please send an email application of no more than around 300 words answering the following 4 questions:

1. Provide your name and the name of your firm;
2. Which role(s) are you applying for? (max two roles, listed in order of preference);
3. Why are you are well suited to the role? (max 150 words per role applied for); and
4. What will you bring to the Committee? (max 150 words per role applied for).

Please email your applications direct to our Manager, Kauser Patel, at *kauser.patel@leicestershirelawsociety.org.uk* by 5pm on 29 January 2016.
Also please feel free to email her before applying if you have any questions.

PASS IT ON!

September was blood cancer awareness month and remarkably the local community have now made Leicester and Leicestershire second only to London for stem cell recruitment in the whole of the UK. We wanted to celebrate this local generosity and give even more people the chance to get involved. The Rik Basra Leukaemia Campaign co-opted the support of 31 local organisations and community groups to help sign-up even more lifesavers to the UK Stem Cell Register. There were 31 events in 30 days, each one was unique and raised awareness of the donor shortage to a whole new level and an amazing 2078 people added their name to the register.

A TASTY TALE ON TOUR

Leicestershire Law Society is proud to support the Spark Arts for Children as their second nominated charity for this year.

As a taste of our pioneering approach to work in libraries The Spark is touring 'A Tasty Tale' into libraries in Leicester and Nottinghamshire this Christmas.

This is based on the story of Hansel and Gretel and is aimed at families and children aged 7 and over.

You can see this production on 19th December at 11am at Leicester Central Library and 2.30pm at Beaumont Leys Library.
http://thesparkarts.co.uk/events,347.html

In 2014 and 2015 we placed artists in residence to spend a year working in two deprived areas of Leicester to support storytelling as a medium to promote reading for pleasure and language development. An incredibly successful first year paved the way to an exciting second year in two new libraries. By early 2016 four Leicester libraries will have hosted over 5,000 hours of arts participation and performance work which engaged and developed up to 20,000 local readers, writers, story makers/tellers and audience members.

"Having an artist in residence has enhanced the work between schools and libraries in a manner that I could not have contemplated or achieved."

Tracey Inchley, Senior Librarian at the Brite Centre.

The Spark Arts for Children is a Leicester based charity working with children aged between 0-13 years. We exist to enable children to enjoy the opportunities for discovery offered by the arts as audiences, learners and as creators of their own art.

Visit our website:
www.thesparkarts.co.uk
Telephone: 0116 261 6893
Email: carrie@thesparkarts.co.uk
Registered charity number 1106952, and a company limited by guarantee no. 1106952.

On 17 November LLS President Mehmooda Duke, Krishna Kotecha and Samantha Freeman from Moosa -Duke Solicitors, Kauser Patel from Leicestershire Law Society and Glynis Wright from Glynis Wright Solicitors abseiled down the 100ft Gateway building despite the high winds from 'Gale Barney'. A superb fundraising effort was made by all 5 ladies raising a total of £2,420 between them. 'This was the scariest thing that I have ever done' said the LLS President who was terrified as she came down the 6 storey building. Carrie Carruthers from Sparks said that she was delighted to have the support of the LLS.

COUNCIL MEMBER'S REPORT NOVEMBER 2015

Linda Lee has been Council Member for Leicestershire, Northamptonshire and Rutland since 2003. She is a past President of the Law Society of England and Wales and is the current Chair of the Regulatory Affairs Board and a member of the Regulatory Process Committee, Access to Justice Committee and the Audit Committee. She is current Chair of the Solicitors Assistance Scheme. She is contactable at linda.lee@rlb-law.com

This November we celebrated the 14th Annual Pro bono week.

A recent survey by the Law Society showed that 65 per cent of solicitors have undertaken pro bono work at sometime in their careers. The average number of pro bono hours worked by solicitors performing pro bono work was 52 hours and that equates to 22 hours per solicitor. The number of pro bono hours worked by individual solicitors ranged from one hour to over 350 hours per year.

However, pro bono work must never be seen as replacement for a properly funded public system to provide access to justice and thus access to the courts.

Since 1949 legal aid has been an integral part of the British justice system but recent years has seen its decline. In 2010 the annual budget then stood at £2bn per year - roughly equivalent to the cost of running the NHS for a fortnight. It was argued that the legal aid system was the most expensive in the world and needed reform. Plans were made to take £320m out of the annual legal aid budget, and plans to remove a further £220m each year until 2018 were put in place.

In April 2013, the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) came into force, it aimed to cut the civil legal aid budget by a quarter, that is, by £320m within a year. The bill was defeated 14 times in the House of Lords, eventually passing by a very narrow margin. It removed legal aid for the majority of cases of divorce, welfare benefits, clinical negligence and child contact. It also removed legal aid from all immigration cases apart from asylum, and from a range of housing cases.

Once a popular choice amongst trainees, a recent survey by the Junior Lawyers division showed that now only 4% of young lawyers are interested in legal aid work.

The Response of the Judicial Executive Board to the Justice Committee Inquiry: Civil Legal Aid Written evidence submitted to MPs by the Judicial Executive Board, the most senior judges in the jurisdiction, indicated:

- a large increase in the number of cases where one or both parties do not have legal representation – particularly in family
- lack of representation has an adverse impact upon the courts' administration and efficiency -cases take longer and cost more
- cases which may never have been brought or been compromised at an early stage are now often fully contested, requiring significantly more judicial involvement and causing consequential delays across the civil, family and tribunals justice systems.
- The courts have seen an increase in unmeritorious claims and, almost certainly, some meritorious cases never being brought.

None of these findings are surprising, indeed I remember giving evidence to a Select Committee prior to the introduction of LASPO predicting that this would be the impact. Further it was predicated that savings in the Ministry of Justice's budget simply moved an even greater cost to someone else's budget. An example would be clinical negligence: clinical negligence was removed from scope for all cases other than for neurological injury to children, if the negligence resulted in severe disability, occurred during pregnancy or occurred within 8 weeks of birth (essentially cerebral palsy cases) or in the very rare cases where a significant wider public interest test is met. The NHSLA Annual Review Report and accounts 2013/14 stated that "Changes to the legal market, in particular changes to claimant's legal funding arrangements, had a significant impact on our work" and indeed costs had dramatically increased a position confirmed in the 2014/15 report. This has now resulted in a plan to cap fees recoverable by Claimants for cases worth up to £250,000, further details of which are awaited.

Another reaction by the Ministry of Justice (MoJ) has been to try to use the justice system to raise revenue.

The introduction of enhanced court fees – that is "fees that are set above the costs of the proceedings to which they relate" - have been brought in for monetary claims, in order to raise additional income of £120 million for the MoJ. Undoubtedly these 'enhanced' court fees act as a barrier to many individuals who need to use the civil justice system

The impact of fees has already been recorded following the introduction of fees in the employment tribunal, Statistics published by the MoJ in March 2014 revealed that in the first full quarter following the introduction of fees, the overall number of employment tribunals fell by 79 per cent.

Another means of raising money, the criminal courts charge has attracted widespread criticism since it was introduced in April. More than 50 magistrates have resigned in protest against the charge and critics argue it is encouraging innocent people to plead guilty to avoid higher costs.

There have now been some indications that the Lord Chancellor might be looking at ending the charge but the Lord Chancellor has suggested that it could be replaced by a plan to impose a levy on City firms to replace any revenue lost.

91 per cent of large firms (26+ partners) reported undertaking pro bono work and many city firms also assist in funding pro bono organisations, such as LawWorks; the likelihood is that if a tax is introduced they will not be willing to pay for both. It is also possible that England and Wales' status as the jurisdiction of choice may be lost as global firms may seek a less hostile environment to base their operations.

This highlights a fundamental flaw of the reforms, a failure to understand the impact of changes, and to recognise that some cost savings cause higher costs elsewhere.

The latest injury to the legal aid system has been inflicted by the introduction of the two tier contract in crime. A whistleblower came forward to expose the flaws in the tender process. He stated

that approximately 1,000 bids were made, each containing 17 questions sub-divided into three or four parts leading to a total of around 50,000 answers some of which were to be assessed by temporary staff from the Brook Street agency. The staff had no experience of legal aid and had little training. The staff were put under pressure to complete the assessments, it is alleged they were told that unless they assessed 35 questions a day, they would not be retained. Undoubtedly mistakes have been made thus throwing the process into doubt. Litigation will follow, leaving uncertainty for both the unsuccessful and the successful firms.

There has been a raft of publications by the regulators.

Version 15 of the Handbook was published on 1 November 2015. It is not the radical reform promised some time ago but there are a number of significant changes such as changes to the separate business rule (Chapter 12).

A separate business can offer unreserved legal services (other than immigration) through an entity not regulated by the Solicitors Regulation Authority (SRA). As a solicitor, you can be a manager or employee of a separate business but you cannot practice as a solicitor in that entity, except as permitted by Rule 4 relating to an In-house practice. As clients of a separate business will not receive the same level of protection as those of a legal firm, this must be drawn to the attention of the clients.

Permitting structures of this sort will lead to a fundamental shift in the way legal services are offered and the impact on clients, the profession and even then regulator have not yet been fully worked through by the SRA. The SRA has indicated that it may review the operation of the new separate business rule in a few years' time though considerable damage may well have been done by then.

Although the Legal Services Act was intended to produce competition between regulators, there has been little evidence of this in the market. Firms may now restructure to place income beyond the reach of the SRA and find a less intrusive and less costly regulator for those areas where necessary and this is likely to correspond to an increase in cost for those who remain regulated by the SRA and less work for qualified solicitors.

The Legal Service Board (LSB) has published research it has financed from its budget 'The legal needs of small businesses - An analysis of small businesses' experience of legal problems, capacity and attitudes' by the Small Business Research Centre at Kingston University. This shows that small businesses have limited engagement with law firms and that greater engagement with accountants has led to small businesses seeking legal advice from accountants on matters such as employment law. The report found that, 'the number of legal problems faced by small firms reduced significantly over the last two years reflecting better trading conditions. The most common problems related to trading, employment and taxation.' However use of both solicitors and accountants fell in the previous 12 months – solicitors 20% to almost 10%; and accountants from over 60% to just over 49%.

The SRA has published *'Innovation and growth in legal services'*. The SRA is keen to encourage innovation but like all agencies it struggles with a definition of what innovation is. It accepts that there is no simple definition but offers the following possibilities:

'You can be innovating if you:

• Are delivering a new or improved service.

• Have introduced a new or improved way of delivering a service.

• Have introduced a new service or mode of delivery before your competitors.

• Are finding new ways to structure, manage or market your law firm.'

It cites its changes to the separate business rules as an opportunity for innovation but the driver for this change is probably revealed in the following example of *'innovation'*:

'An example would be if you start offering a new, affordable service to vulnerable clients in a region where it's never been available before'

And thus we end where we began; essentially the regulators are under pressure to come up with a solution to the unmet need caused by the introduction of changes such as LASPO. Sadly the most likely conclusion will be a set of new problems and complications caused by ill thought out changes.

Magna Carta service on 13th Sept hosted by the High Sheriff

Mehmooda Duke joins the High Sheriff's Legal Procession

VISHING: FIRMS MUST REMAIN VIGILANT

Nam Qureshi,
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The Solicitors Regulation Authority (SRA) maintains its call for vigilance after firms continue to become victims of telephone bank scammers, some losing a significant amount of money in the process.

Robert Loughlin, SRA Executive Director of Operations & Quality, said "We are very concerned about this continuing activity. The fraudsters are highly sophisticated in their approach and their script makes them sound as though they are genuinely who they say they are.

"Solicitors throughout England and Wales are raising this serious issue as one of their major concerns in general discussions with us. We are aware of firms of all sizes receiving calls; this isn't something that affects just one sector of the profession.

"All firms should ensure that their own internal systems for guarding against scams are up-to-date and that staff know how to implement them".

This type of crime is commonly described as social engineering which, according to Financial Fraud Action UK (FFAUK), the financial services industry fraud prevention co-ordinator, is the practice of the manipulation of people with the intention of persuading them to reveal confidential information.

CERT-UK, the UK National Computer Emergency Response Team, states that social engineering is "one of the most prolific and effective means of gaining access to secure systems and obtaining sensitive information, yet requires minimal technical knowledge".

In this context, social engineering takes the form of "Vishing". FFAUK state that Vishing is being used increasingly by criminals to deceive businesses into revealing company financial information or to encourage the transfer of funds into a bank account held by the criminal. Posing as a company supplier, a police officer or a member of staff from a bank or building society, the criminal will make an attempt either to obtain your bank account details or will ask for bank payee details to be altered so that payments are made into a fraudulent account.

The SRA has produced an extensive paper called "Spiders in the Web: The Risks of Online Crime to Legal Business" on cyber crime, which sets out practical examples of Vishing and provides a range of measures firms can take to protect themselves (http://www.sra.org.uk/risk/resources/online-crime-legal-business.page) One important goal is to ensure that there is a level of awareness about this threat throughout the practice. FFAUK has produced a brochure that can be downloaded, printed and displayed in prominent locations such as staff bulletin boards which will help you maximise staff awareness (http://www.financialfraudaction.org.uk/downloads.asp?genre=retailer&page=2).

The SRA's announcement that it will review the rules relating to client accounts over the next two years points towards a concerted effort on behalf of the regulator to reduce fraud risk. In the meantime, it's up to firms to be on their guard.

For more information on this, please contact:

Nam Qureshi,
Associate Director, Aon UK Limited
On 0121 253 3294

Cyber Crime – A Fast Growing Crime With No Borders

The world is increasingly interconnected and we all live more and more of our lives online and in cyberspace. That trend will only continue. By 2020 it is estimated that there will be 30 billion internet connected devices compared to around 10 billion today. Technology is irrevocably embedded in both our professional and personal lives and thus more and more crime is being committed either entirely or partially online.

The ONS included cyber crime and online fraud in their statistics for UK crime for the first time in October this year. The scale of the threat is obvious; the ONS figures showed 2.5 million cyber crime offences and 5.1 million instances of online fraud out of a total of 11.6 million crimes. Consequently it comes as no surprise that the government classifies cyber crime as a Tier One threat to national security, up there with a major

global conflict and international terrorism.

Law firms are a tempting target for cyber fraudsters. They see firms as having large client account balances and to put it mildly, outdated attitudes to security.

What are the threats? Well broadly, they fall into four categories

(a) Sophisticated and technical "hacks" by outside individuals or agencies against websites

(b) Confidence tricks that rely on "social engineering" techniques where information is collected from an individual's social media and web profile which enables the scammer to build up rapport with the victim before abusing their trust.

(c) Phishing scams- confidential data being compromised through malware introduced by unsuspecting users clicking on links, .exe, and zip files in spam emails and websites

(d) Attacks by rogue and former employees - those who have or had legitimate access to confidential data or systems but who use that access inappropriately, perhaps by stealing the data or by introducing a destructive virus.

As we have seen in a number of cases, not least the recent Talk Talk attacks data breaches can be high profile and carry severe consequences for organisations both financially and in adverse publicity. It is no exaggeration to say that a data breach or a successful scam on a firm's client account could be careful.

Ultimately, the vast majority of attacks rely not on the sophistication of the hacker but on the weakness of the victim. In the main, they can be avoided relatively easily and cheaply. Effective defences are actually simple and common sense measures such as regularly changing passwords and enforcing policies on password strength. Firms can protect themselves by having a data security conscious culture and ensuring that staff are taught to avoid basic errors like opening phishing emails, or to giving out passwords or other bank details over the phone.

Gary Broadfield
Solicitor Cartwright King

INTRODUCING THE CON29DW FLOOD+

Severn Trent Searches are working with Landmark to bring you the most complete drainage and water search available.

At Severn Trent Searches, we've always aimed to provide customers with the most thorough, accurate information available. To date however, the information in the CON29DW has been limited to those areas where water companies are responsible, namely fresh water supply and sewage disposal.

Now, working alongside Landmark Information Group, we're pleased to be able to offer flooding information in the CON29DW Flood+. This unique search, which includes all the current 23 questions from the CON29DW, now also includes an additional five questions flooding, utilising Landmark's environmental data.

Three of the new questions relate to various types of flooding and state whether the property is located in an area deemed at risk. The two most high profile types of flooding, from rivers and the sea are included, as is surface water and groundwater.

The final two questions relate to flood defences and insurance claims in the vicinity of the property. Between them, these five questions help build up an invaluable picture of flood risk.

The search utilises flood data from sources such as The Environment Agency and British Geological Survey – the same trusted resources used for Landmark's established flood searches.

Whilst the CON29DW Flood+ does not contain the same detailed level of flooding information contained in a specialist report, it nonetheless provides an effective initial screening method. *"Our report isn't designed to replace dedicated flood searches"* say **Mark Jarvis**, Operations Director of Severn Trent Searches. *"The information it contains is comparable to environmental reports, and likewise is designed to flag up whether flooding might be an issue at a property."*

In addition to the new questions, the search has had a complete redesign, giving it a more modern feel, as well as making it easier to find and interpret important information.

There's also two other important new additions. A front page summary has been added, indicating whether there are any problems with either the CON29DW or flood elements of the search, and client care letters are now included where necessary. This extra information for homebuyers covers a variety of issues such as sewer adoptions, public assets within property boundaries and unconnected properties.

"Severn Trent Searches and Landmark are two of the most trusted search providers in the market" says Mark. *"By combining CON29DW and flood information into one search, we're convinced this unique collaboration will prove an invaluable method for helping conveyancers assess risk."*

The CON29DW Flood+ is coming soon, exclusively from Severn Trent Searches, priced £53.00 + VAT. For further information, please visit **www.severntrentsearches.com** or call us on **0115 971 3550**.

Owen Davies
Searches Business Development Manager,
Severn Trent Services

Congratulations to Helen Johnson - Winner of Solicitor Advocate of the Year

The Law Society

THE LAW SOCIETY EXCELLENCE AWARDS 2015
CELEBRATING BRILLIANCE
#lawsocawards

On 22 October, The Law Society celebrated some of the very best work in the legal profession at their national Excellence Awards ceremony in London. Former President of Leicestershire Law Society, Helen Johnson, impressed the judges with her sound judgment and breadth of experience. Aged just 29, Helen founded Emery Johnson Astills and achieved her higher rights of audience in 2007. Since then she has demonstrated her outstanding advocacy skills and commitment to nurture the next generation of solicitor advocates.

Commenting on the award, Helen said *"I am delighted to have achieved this award which coincides with the 20th anniversary of my practice. Developing my advocacy skills in the Crown Court over a number of years has been a challenging but rewarding experience. I feel strongly that clients benefit from being represented by a solicitor advocate who provide continuity of representation and client focussed care".*

Probate: Doing the work Profitably

Do you know the Gross Profit Margin of your Private Client Department?

How do you best ensure the profitability of your probate work? Surprisingly, most law firms do not appear to know the gross profit margin of their probate department. Let me put that differently. Of the 150 firms who use our probate software (Isokon), the majority declined to answer our questions about their profit margin for this area of work.

We were not able to assess whether they did not actually know the answer to the question or whether they were simply being discreet. The firms that were willing to discuss their profitability, all revealed that their gross profit margin is consistently in excess of 70%.

The key question is: how have these high margin firms managed to achieve this level of profitability? What distinguishes them from the low margin firms? In the one instance in which the firm was willing to discuss their success openly, the formula appeared to be relatively straightforward. Profitability is a mixture of effective software combined with judicious organisation. Let us examine that in more detail, since both parts are equally important.

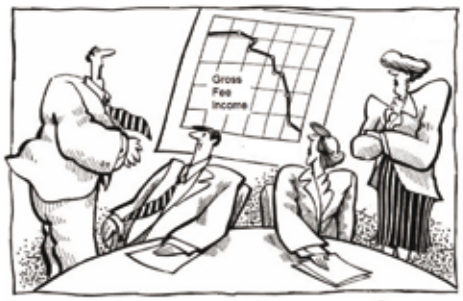
The software is an accounting database designed specifically for probate (and trust) work with the ability to easily record the variety of financial data of the deceased estate, including such items as business and agricultural relief, ISAS and PEPS, net or gross taxation of domestic and foreign equities, including double taxation agreements, separating capital and income, post probate adjustments, and abatement of assets, in instances where the estate is more than just a bank account and a house.

Profitability is a mixture of effective software combined with judicious organisation.

The software enables estate accounts and IHT forms to be produced with a single click. The software includes a case management component that consists of a workflow with task management, a log of events, and a mailmerge facility that enable a range of standard letters to extract data from the accounting database. The latter enables a range of letters and emails to be produced and sent to banks, building societies, funeral directors, utility companies, executors, beneficiaries, and other related parties. Letters to these parties can be produced at the proverbial click of a mouse, and often more than one letter at a time, each of which can be billed at the rate of one unit of time for each individual output.

Do you know the Gross Profit Margin of your Private Client Department?

It is axiomatic that having the software technology available does not inevitably result in the level of profitability achieved by the firm in question. To repeat the key question, how do those customers consistently achieve a gross profit margin in excess of 70%.



We still have time to re-organise! ☺

In one of those firms the team is led by the head of the probate administration team, who holds morning meetings with the four team leaders. The tasks for the day are examined and discussed, as shown in the software case management window, the text on the screen in front of them, to ensure that the team leaders understand the nature of each task, even though most tasks are fairly straightforward. Where a complex task requires the professional skill of the partner in charge, she might allocate a complex task to herself by a simple switch in the software.

Once satisfied, the team leaders head off to their respective teams each consisting of three, four or five paralegals or former secretaries, all of whom have received a thorough training in the use of the software. Towards the end of the working day, the head of the probate team looks at the log of tasks in the software to ensure that all tasks have been completed. This method of organisation is simple, straightforward and effective.

Quote from the Head of the Probate Department

"Our probate department has achieved a 72% level of profitability. We are the most profitable department in the firm."

Advice from Charles Christian - the Doyen of Legal Technology

An important adjunct to ensure success is training. To quote Charles Christian the doyen of legal technology in his chapter on 'Computer and Technology Issues' in the Probate Practitioner's Handbook: *"... computer systems are just tools whose value derives from how they are used. It therefore follows that if people are not trained in how to use them properly, the firm will not see a satisfactory return on its IT investments."*

The second component of success is organisational discipline. To quote Charles Christian again: *"... it helps to have a senior member of the firm in overall charge of the implementation, so that they can compel the fee earners to attend [the training]"* and self-evidently to actually use the software. The extreme converse of our profitable firm is where practitioners are permitted to go their own way and revert back to a more manual method of doing the work. Working as a cohesive team appears to be fundamental to success and profitability in this area of work.

Profitability Testimonial

"I am extremely happy with Isokon and don't know how I accomplished the work properly before using Isokon. I can now under-take double the quantity of Probate work than was possible before adopting Isokon."
Peter Cox, Partner, WBW Solicitors (Exeter, Torquay, Newton Abbot)

Isokon

For further information please contact: Gregory van Dyk Watson, Managing Director of Isokon Limited.
Email: **gregory@isokon.com** or call **020 7482 6555**. Alternatively visit **www.isokon.com**

Isokon was founded by Gregory van Dyk Watson in 1999. The company has invested 44,000 man hours in development of the product over the last 16 years.

The company is currently the leading supplier of software for Probate and Private Client work. It is used by 40% of law firms who do private client work. It is used by more than 2,000 individual users. Isokon is used for the most complex estates, as well as basic estates.

Isokon is based on an accounting database engine with an integrated Isokon case management component.

SBA – A GOOD FRIEND IN TIMES OF NEED

SBA The Solicitors' Charity has been working at the heart of the profession for over 150 years to ensure that no solicitor is unsupported in times of need or crisis. Many Leicestershire lawyers have known about the charity since the day they were admitted but for others, news that the profession has its own benevolent fund, run by and for solicitors and their families, is a complete surprise.

£37,000 to Leicestershire lawyers and their families

SBA's core purpose is to relieve the financial hardship of solicitors, former solicitors and their dependants. In the last five years, SBA has distributed over £37,000 in outright grants and interest-free loans (usually secured) to Leicestershire lawyers and their families.

Awards cover a wide range of essential everyday needs, including help with the basics, such as food, clothing and heating. SBA can also help with one-off items, when boilers break down or roofs need repairing. On occasion, we can take care of priority debts, if clearing them will bring household finances back on to a permanently even keel.

Help with career transition

SBA now offers help with career transition as well as financial support. Solicitors who qualify under the financial criteria can join a three-month programme which offers holistic career, job search and wellbeing support via a professional consultancy. This is an e-learning, portal-based service, backed up with one-to-one skype and telephone coaching. Where appropriate, SBA can also provide financial support during the programme, so that participants can really focus on their job search, rather than worry about day-to-day household finances.

Help spread the word

Despite being one of the best known of the legal charities, general awareness of what SBA can do to help – especially amongst younger solicitors and HR professionals – is still too low and we need our colleagues in Leicestershire to help spread the word. If you know someone who is finding it hard to cope, please mention SBA. If we can help, we will.

A legacy to the profession

A gift in your Will can help SBA transform the future for many solicitors and their families. Loved ones come first but a gift in your Will means you can leave a lasting legacy of support for those whose lives in the law have been spent helping other people.

Visit www.sba.org.uk for more information, telephone us in confidence on 020 8675 6440 or email sec@sba.org.uk.

BOOK REVIEW

EMPLOYMENT LAW - An adviser's handbook, 11th edition

An appreciation by **Phillip Taylor MBE** and **Elizabeth Taylor** of Richmond Green Chambers

By Tamara Lewis
ISBN: 978 1 90840 762 7 (paperback)
978 1 90840 763 4 (ebook)

LEGAL ACTION GROUP
The access to justice charity
www.lag.org.uk

NOW IN A NEW ELEVENTH EDITION FROM LAG: THE DEFINITIVE TEXT FOR THE ADVISER ON EMPLOYMENT LAW

As author Tamara Lewis explains, this brand new edition of the highly regarded Employment Law Handbook covers 'the wide range of employment problems in a clear and practical form'.

The aim, she adds, is to identify the relevant legal and evidential issues, thereby providing a self-contained guide to the conduct and procedures pertaining to unfair dismissal and discrimination cases – hence the emphasis throughout on evidence, precedents and checklists.

Note that this particular guide comes from the estimable Legal Action Group, which seeks to redress where possible any form of injustice against the vulnerable. The book therefore centres on advice that would be most useful to low paid workers and their advisers. As the focus is on the claimant, the approach is practical and the language is clear.

Employment law is, of course, a huge subject which over the last decade or so has expanded quite astonishingly, largely as a result of EU influence. So it should come as no surprise that this eleventh edition of well over 900 pages is now twice the size of the first edition although, as the expert author explains, it is impossible to cover the whole of employment law in one volume.

Nonetheless, the effort has been made to include all the changes and new developments in this area of law, including 'a completely new set of employment tribunal procedural rules.' The end result is what has been rightly referred to as 'the definitive text on employment law for the adviser'.

With lay readers as well as practitioners clearly in mind, the organisation of the book to is logical and therefore timesaving. Each chapter starts with a summary of the main points, with extensive cross-referencing throughout. There are over 80 pages of tables of cases, statutes, statutory instruments and of European and international legislation. The no less than six appendices include useful forms and a bibliography of further sources, including website information. The detailed table of contents and index at the back are invaluable aids to navigation.

Here, then, in one compact volume, is an outstandingly useful and up-to-date resource for anyone grappling with the increasingly diverse and complex area of employment law, from lawyers and claimant advisers, to trades union representatives and officials. If you fit into any one of these or related categories, you need this book.

The law is stated as known at 1 July 2015.

A TALE OF A TUB? EXPERT WITNESSES CONFER AT THE CUTTING EDGE

Elizabeth Robson Taylor and **Phillip Taylor MBE** of Richmond Green Chambers review the 2015 EWI Conference held in September at Church House, Westminster.

When 'Gulliver's Travels' author and satirist Jonathan Swift wrote 'A Tale of a Tub', little did he realise the iconographic power of this somewhat homely image; a tub being a rather lumpen object. However with lawyers from time to time singled out as the victims of his satirical jibes, it's not too hard to imagine what he might have thought of that voguish term: 'hot tubbing'.

For a number of reasons, however, 'hot tubbing' has now become a hot topic, especially so at the recent Annual Conference of the Expert Witness Institute (EWI) held on 24th September 2015 in Central London, where it frequently emerged as the prevailing theme to which much discussion turned.

The conference focused on the essential role of the expert witness, who ideally provides a reassuring help in trouble for the barrister or solicitor dealing with a complicated case. The expert witness is he, or she, who is charged with the often complex task of putting forward reliable and accurate evidence that, more often than not, may determine the outcome of a case.

Magna Carta

'Hot tubbing' certainly featured in many of the discussions and debates. In this 800th anniversary year of Magna Carta, it was brought into play as a means of launching the conference, with the suggestion that the confrontation of the dissolute King John with the aggrieved barons at Runnymede might be, in a number of respects, a 'hot tub.' Well, er – not really -- unless you are tempted to point out facetiously that King John had got himself into hot water.

In the modern context a 'hot tub' is fundamentally, an inquisitorial (rather than adversarial) discussion if you will, held usually in court with possibly the judge eliciting information from the advocates, and parties in a dispute, as well as, yes, the expert witnesses.

As King John was confronted by twenty-five barons attended, by some two thousand armed knights, the king's many previous opportunities for discussion had long since passed. As he was an illiterate despot, reasoned debate was not exactly his strong suit – so the notion that the events at Runnymede were some sort of medieval version of hot tubbing is whimsical at best. But it's a thought – and it was rather an effective way, as it happened, to kick off what was to be an important conference.

Insight and controversy

Chaired by Amanda Stevens, the Conference proceeded apace, with speaker after speaker imparting much useful, insightful and sometimes controversial comment on the future of the justice system in general and the varied role of the expert witness in particular. The Conference as a whole was distinguished in particular by useful, organized and high quality debate.

What emerged as the keynote speech was delivered by Dr John Sorabji. As Senior Fellow UCL, Judicial Institute -- and Principal Legal Adviser to the Lord Chief Justice and the Master of the Rolls, he covered a number of important points. The first centred on the problem of Litigants in Person (LIPs) whose numbers have proliferated as an unintended consequence of LASPO. As litigants continue in droves to appear in court without the legal representation they cannot afford, court procedures have had to evolve and adapt in response. The role of judges has therefore undergone gradual change, and so has the use of experts.

Judges now find themselves participating more actively in proceedings, with a correspondingly more active role for expert witnesses. The overall objective is to adapt court procedures in line with CPR 3.1A which concerns case management and unrepresented parties, i.e. where at least one party is unrepresented. The Rule includes the stipulation that 'the court must adopt such procedure at any hearing as it considers appropriate to further the overriding objective.

What experts really think

With all this in mind, there were comments by Stephen Webber of the Society of Clinical Injury Lawyers on 'what solicitors really think of experts'. Other comments related to what experts think of solicitors, particularly the quality -- or sometimes the lack of it -- in the matter of solicitors' instructions. 'Pitiful' was one of the terms used. Generally, greater attention to precision, detail and accuracy was called for.

'We are flourishing!'

Another highlight of the Conference included the EWI Chair's address by Sir Anthony Hooper, which focused on the fact that there is still no formal certification procedure in place for expert witnesses. The matter however, has already been reviewed via a pilot study at University College London, anticipating the day when a proper system of certification is set up (and possibly a corresponding rise in fee levels for exerts!). 'We are flourishing,' stressed Sir Anthony, elaborating in detail on the essential role of expert witnesses -- and the vital contribution they make to the justice system and to justice itself.

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Drainage and Water

Are you getting the full picture?

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When considering a property, home buyers don't usually give the highest priority to drainage assets and water pipes. Hidden below ground and out of sight, it's really easy to overlook their importance. A property's value, title and maintenance costs, however, can be directly and in some cases, adversely, impacted by issues relating to these assets.

Geodesys offers the CON29DW for all properties in England and Wales, so we are well aware of the costly oversights that could have been identified, had purchasers used a CON29DW search instead of alternative water and drainage searches, commonly known as Personal or Regulated Drainage and Water Searches.

CON29DW: setting the standard

The Law Society introduced the CON29DW to provide a nationally uniform approach to the provision of property-specific water and drainage information. With 23 standard questions it is the only drainage and water search mentioned by the Law Society in its handbook and is supported by a robust and underwritten guarantee that protects home purchasers and their legal advisor(s).

CON29DW: key benefits

- ✔ Unlimited liability on residential property transactions
- ✔ Updated as soon as drainage and water legislation changes
- ✔ Regular legislation and product updates keep users up to date with improvements and legislation changes
- ✔ Monitored by the Drainage and Water Searches Network alongside The Law Society
- ✔ Swift turnaround – Personal Searches can take up to five days longer!
- ✔ Drainage and water expertise provided at no extra cost to investigate issues arising from a CON29DW, both pre- and post-sale

Should I choose a CON29DW or a Personal Search?

Can your clients afford the cost, time and disruption to deal with drainage and water issues? Personal Searches do not tend to include answers to all 23 of The Law Society questions, and instead offer insurance to cover unanswered questions. As issues only tend to come to light once the buyer has moved in, the new owner then has all the difficulties of dealing with the problem retrospectively.

In contrast to other drainage and water searches, choosing the CON29DW gives the FULL picture. You have all the facts up-front ensuring that transactions can proceed in the full knowledge that any risks have been properly identified.

What's the risk?

A CON29DW search indicated that the property was connected to the public sewer. In reality, there was no sewer connection and sewage drained into an old septic tank. This was only discovered when the tank backed up causing nasty leakage into the homeowner's garden! Resolving the issue and connection to the public sewer would have cost the owner around £10,000.

Fortunately, the underwritten guarantee on the CON29DW meant that Geodesys arranged and paid for connection to the public sewer, as well as removal of the old tank and waste, and re-landscaping of the garden.

If you are not ordering a CON29DW on behalf of your clients, we strongly advise you to check the level of liability provided by your search provider and how their insurance works regarding unanswered questions in the search.

Would you want an overflowing septic tank in your garden?

Call in the Geodesys experts!

At Geodesys, our internal experts are dedicated to producing the most accurate picture they can for you and your clients. If questions regarding the location of assets are raised either during our checking process or after you receive the search, we do our utmost to find out what's really going on, including visits to the property.

Geodesys offers the CON29DW throughout England and Wales, turn around over 95% of CON29DW searches within three days and offer in-house training/CPD on drainage and water.

For more information contact Paul Smith, Geodesys Client Account Executive on 07764 987259 or paul.smith@geodesys.com and start getting the full picture!
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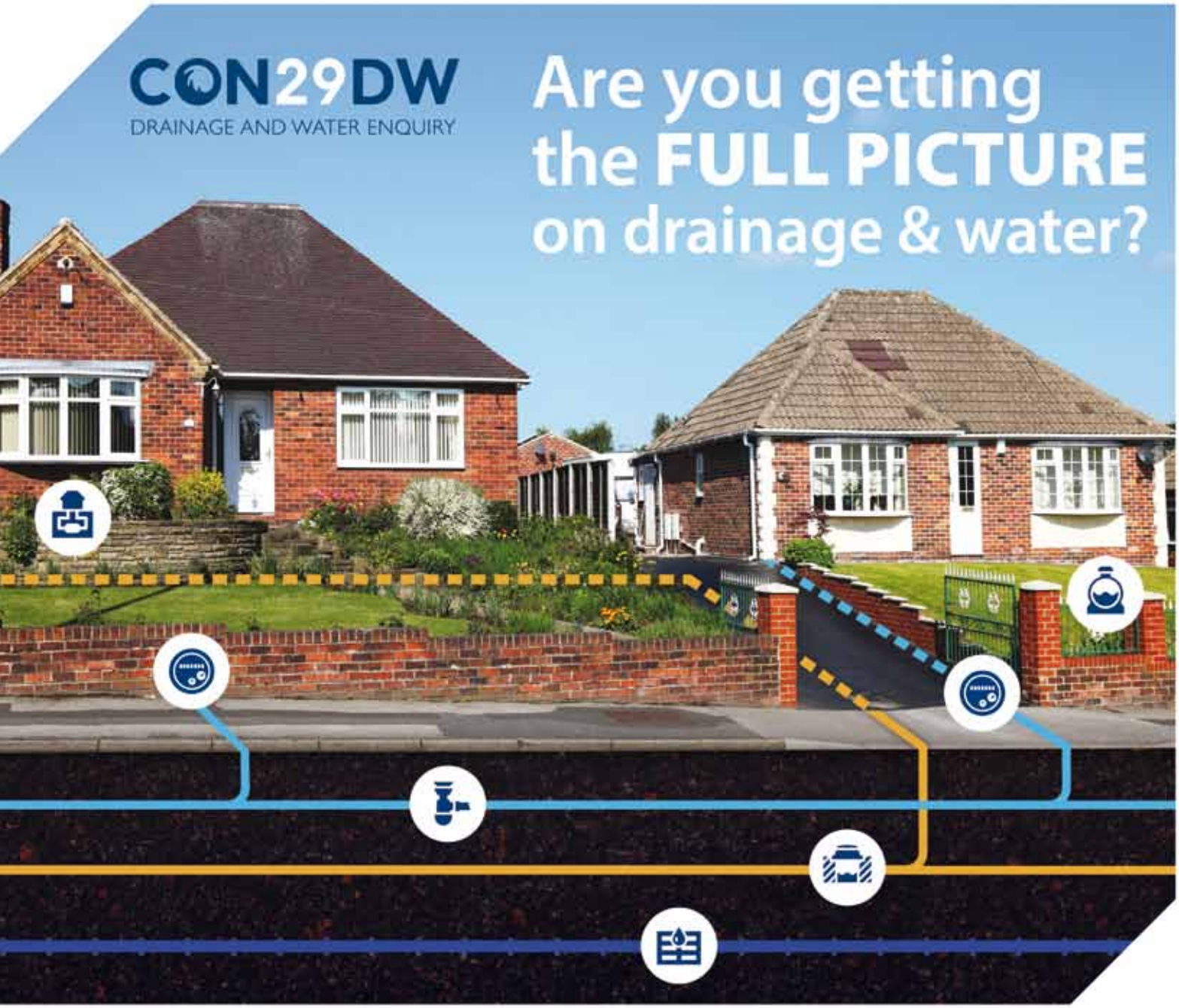

Foul Sewer

Foul Sewer within property boundary

Surface Water Sewer

Water Main

Septic Tank

Water Meter

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A Fighting Chance (Part 1)

Are prospective kinship carers (also known as 'connected persons') afforded proper access to justice in public law proceedings?

It is trite law that in public law cases, the relevant local authority is under a duty first to assess whether or not it is in each child's best interests to remain within their natural family. If that is not achievable, the authority is obliged to look at kinship carers and then, only as the third and final option, to consider adoption or placement in long-term foster care. Practice Direction 12A - the Public Law Proceedings Guide to Case Management: April 2010, makes clear that the identification of kinship carers (usually the natural parent's extended family and friends) is one of the directions to be "considered" at the First Appointment which, should be held within 6 days of the issue of proceedings.

Once identified, these individuals undergo an initial viability assessment. If this assessment is positive, a more thorough and detailed 'Connected Persons Assessment' is conducted. The local authority is generally responsible for the completion of both assessments. If these are positive and the local authority's plan then becomes one of placement of the children within their care, they are provided with financial and practical support and limited legal assistance.

The situation is very different if one of these assessments is negative and the local authority discounts these individuals as potential long-term carers. The kinship carers are then left with two options. First, a natural parent that is a party to proceedings can seek to challenge the assessments on their behalf and/or can make a Part 25 application for an independent social worker to conduct a further assessment of their ability to care. As natural parents are generally entitled to legal aid, the costs of this assessment can generally be born upon their legal aid certificate.

Secondly, and if a natural parent does not support a child's placement with them, they are faced with the prospect of challenging these assessments in court and/or sourcing an independent social worker assessment in their own right. As they are not the natural parents or carers of the children, they are not generally entitled to any legal aid whatsoever. Inevitably, this can only result in a bill for legal and/or assessment fees reaching into the thousands of pounds. If this is not an option that they can afford, then the prospective kinship carers face the daunting prospect of having to challenge the assessment and enter the legal arena as a litigant in person. The result of this can only be that, in such circumstances, kinship carers are likely to be reluctant to put themselves in the position of having to challenge the local authority's evidence against them. This could potentially result in a child missing out on the opportunity to be raised within its extended family and enjoy the social and developmental benefits associated therewith.

What impact does this have on a child's rights as enshrined within the Human Rights Act 1998? Are they being given a proper opportunity to be raised by a member of their extended family? What impact too does it have on the prospective carers rights to a family life? Are their rights to access to justice being appropriately protected?

These questions will be explored in greater detail in Part 2 of this article. If anyone, both practitioners and lay readers, have been affected by or had experience of such cases, Northampton Chambers would be keen to hear from you.

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