

Leicestershire Law Society magazine

AWARDS ISSUE

STRICTLY PHANTOM,
SOCIETY AWARDS 2016

PAGEs 14-18



CYBER RISKS -
PROTECTING YOUR FIRM
& CLIENTS

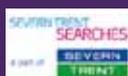
PAGE 8



MENTAL HEALTH
UPDATE

PAGE 6

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WELCOME/CONTENTS SPRING 2016



Editor's Intro

Welcome to the summer and post awards edition of the LLS Magazine. We had a fabulous night in a refreshing new venue as you will see from the feature showcasing the gala event; well done to Mehmooda, Kauser and the events team as well as the numerous others involved. I am pleased to announce that I pass on my editorship to Adam Markillie after getting the project off the ground and keeping it afloat. I would like to give particular thanks to the publishers, David Coffey and Simon Castell, of East Park Communications for the excellent work they have done to give the features an extra sparkle. We are a vibrant society with lots going on which I am sure will be justly featured in the editions to come edited by Adam.

Regards

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- 4 President's Report
- 6 Mental Health Event
- 8 Cyber Risks
- 9 Leicester Legal Walk
- 12 Council Member's Report
- 14 Strictly Phantom dance class
- 16 Strictly Phantom LLS Legal Awards 2016
- 18 Pulled Both Ways
- 21 Best practice & procedure...
- 23 LLSA Appointment
- 24 From eternity to paternity
- 28 Expert Witnesses in a complex age
- 30 The Hidden Legacy of UK Mineral Extraction



May I take this opportunity to thank Manbir for all the help in guiding me through this edition of the Summer Issue. I am so looking forward to taking over the reigns for the next edition. We welcome our new President, Imogen Cox. As we go to print we enter a world of uncertainty in regard to the UK leaving Europe. How this will affect the laws of the UK is yet to be seen.

This could all make for a very interesting year.

Please keep your ideas for your magazine and your suggestions coming in and my email address is below

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PRESIDENT'S REPORT



For those of you who do not know me, I am a Leicester girl and what a brilliant time it has been for my home town in the last few years. This means that it is extra special to me that I have been chosen to represent you as Leicestershire Law Society President.

My ties to my home city are made even stronger by the fact that I did all my studying in Leicester too, rather than taking the traditional route to law by going away to University at 18. I think it is important to say at this stage that I do actually leave Leicester occasionally though - I promise!

I left school at 16 years old with the grand total of 3 O' Levels. I had no interest in going to University, so started job hunting.

As time moved on, I became an office junior for a solicitor's firm called Parsons Waite then run by Max Waite and his son John, with Steve Morris as their criminal lawyer.

I enrolled at Leicester Polytechnic for a part time law degree. I had no idea what I was letting myself in for - I had not studied for so long - or frankly at all! Talk about in at the deep end!

I graduated and completed my LPC at De Montfort University. John Waite offered me a Training Contract at his firm, now called Spearing Waite. I am forever indebted to him. I qualified in 1998 and have specialised in crime ever since.

I became partner in my own firm and in 2007 that firm merged with Cartwright King where I have been ever since.

So what to expect this year?

I am proud to be an Ambassador for the charity LOROS, the Leicestershire Organisation for the Relief of Suffering, and they are my chosen charity this year.

This is an amazing organisation, which I have been a supporter of since my lovely friend Claire died there in 2008.

I loved the afternoon tea that Mehmooda put on last year so much that I am going to copy this idea and have my own event on 12th July! It will be at Marco Pierre White's restaurant at that iconic Leicester building The Grand Hotel. This will be for Women in Business and Law and will be an excellent networking opportunity, as well as good fun. It has a fashion theme and our guest speakers are Jenny Cross of Niche Magazine and Cleo Lacey of Demi Couture who is a wardrobe consultant and personal shopper. If anyone is interested in sponsoring the event then please contact Kauser Patel

In between those events will be summer drinks and networking and I am also working in conjunction with 36 Bedford Row and Helen Johnson at Emery Johnson Astills to organise a re enactment of the trial of Richard IIIrd. It is a logistical nightmare currently just to get a date but we are getting there.

The formal civic dinner is a very important part of the Law Society calendar as are the awards and the dinner in May. Both were fabulous this year and will be a hard act to follow. The events team, Kauser and Mehmooda put on two superb events and the theme of Strictly Phantom was inspired

I have arranged a lunch early in July to meet with all the Patrons currently standing at 9. AON, Severn Trent Searches, Finance Lab, Jonstar, Burcher Jennings, De Montfort University, University of Leicester, Leicester High School for Girls and RHMA to thank them for their support and to talk to them to ask them what we can do to for them in the year ahead.

Mehmooda Duke will be a very hard act to follow. I would like to thank her and the rest of the committee for helping me this year to get me ready for this important job and I know I will continue to be supported this year by them and Kauser Patel the Law Society Manager.

I look forward to a challenging and prosperous year as President.

Imogen Cox
President, LLS



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"ALL I REALLY WANT TO DO IS KILL MYSELF..." AN UPDATE ON THE AREA OF MENTAL HEALTH



As a specialist Mental Health Law Solicitor who provides representation on a day to day basis to those detained under the Mental Health Act it is always

excellent to have the opportunity to try to raise awareness of this area and the impact that it can have upon people in their lives.

"All I really want to do is kill myself" was a comment that I recently heard from a client that I recently attended and demonstrates the level of despair, hopelessness, stress and anxiety that can be felt by those experiencing Mental Health issues. Quite simply wanting to end your life, encapsulates just how difficult a place a person must be in, and their state of mind.



Supporting Mental Health Awareness Week

The party here was making attempts to ligature themselves and even a simple enjoyment such as listening to music was affected by health and safety issues as they were not allowed leads or cords in their room so safeguard against this risk and even CDs had a risk of being snapped and used to cut themselves. Therefore it leads to a scenario where the person finds themselves in difficult circumstances but of course the team will continue to work to try to help them overcome this situation by way of ongoing support and medication. Therefore hope remains and ultimately the issue of support is a key factor in this area.

Mental Health remains an area filled with uncertainty, misinformation, ignorance and stigma. I have always thought of it as a 'Cinderella' area as it does not get the attention deserving to such an important issue. More recently this has started to alter.

In broad terms one in four people are said to suffer from Mental Health difficulties in some form and therefore that is a very far ranging and significant statistic. Recent figures indicate that Dementia is on the rise and with an ageing population again this particular sector of people will increase thus leading to more individuals in the community with Mental Health difficulties and the requirement for bespoke support.

The reality is that Mental Health issues are much more widespread than individuals believe with the one in four figure being quoted regularly in terms of people suffering from Mental Health issues at some time. Other recent figures indicate that 50,408 people (source: The Mental Health Network NHS Confederation) are detained under the Mental Health Act and 1.6 Million people were in contact with specialist Mental Health services. Recent figures also indicate that the total number of outpatients in the community where contacts and visits were completed was over 21.7 Million in the year 2013/2014. This shows the level of interaction with the Mental Health services that continues. Likewise the newer innovation of Community Treatment Orders which came into place a few years ago has been used regularly with Orders totalling in the region of 4600.

The extent and range of the above figures shows how significant Mental Health issues are within the mainstream community. Support and resources should obviously be at a proportionate and appropriate level.

The struggle with Mental Health difficulties is a difficult one and ultimately some lose the battle in the most significant way namely by the loss of life.

Recent figures indicate that there were 6708 suicides in the UK and Ireland (Source: suicide statistics report 2015 – Samaritans). The figure indeed is significant and does not take into account those who attempt to take their lives and are unsuccessful.

In relation to those suffering from Mental Health issues early diagnosis would obviously be beneficial and the way to overcome the problems are multi-layered. It is a myth to say that having Mental Health issues has to be a lifelong condition and is untreatable in all cases. There are many other myths which permeate through including the idea that Mental Health problems are 'uncommon', that they are purely biological or genetic in nature; and even that those with Mental Health problems should be able to handle and resolve matters themselves as otherwise they are weak! The latter is clearly both unfair and inaccurate.

The treatment can include medication, input from support team members including approved Mental Health Act professionals, Social Workers, CPNs, Assertive Outreach members, GPs and community based recreational groups. It can be seen that the support is potentially very extensive and can act as a wrap around to buffer, protect and help those overcome the Mental Health problems that they are encountering.

Resources of course are always an issue in the NHS and statutory sector but hopefully this does not act as a blockage for those to get the support that they truly need.

Awareness is ultimately the key and there has been a lot more proactive information available including the Time to Change campaign which has done some fantastic work in raising the profile and helping to break stigma (www.time-to-change.org.uk).

Other National charities such as MIND, Rethink etc. continue to do some brilliant work in terms of awareness and fundraising efforts as well.

As a firm we host an annual fundraising event in Leicester and this year's event was well attended with a presence from the Leicester branch of Time to Change. The event acted as a great forum for discussion, sharing information and making people aware of the importance of Mental Health and perhaps some of the support mechanisms that are out there.

The area of Mental Health ultimately remains challenging and difficult and the needs of those suffering these difficulties cannot be emphasised strongly enough. Together we can break down the issue of stigma and do our bit to provide support as ultimately support is a



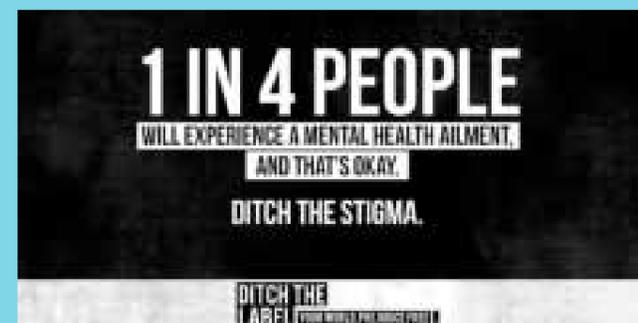
Thaliwal & Co Solicitors' Mental Health Fundraising Event

holistic responsible of all, not just the statutory sector or specialist Mental Health charities.

- Some of the things that would be valuable include the following:- Spending some time in trying to support a National Mental Health charity by becoming a member, supporting fundraising activities etc. e.g. MIND (www.mind.org.uk), Rethink (www.rethink.org), Alzheimer's Society (www.alzheimers.org), The Samaritans (www.samaritans.org). There are of course many other fantastic Mental Health charities.
- Some amazing work is done by local Mental Health support groups and again the opportunity to get involved here remains open to all by volunteering, fundraising and raising awareness of the work that they do locally.
- The Time to Change campaign has done some amazing work and supporting their efforts on social media and events which take place nationally would be invaluable (www.time-to-change.org.uk).
- Look at supporting somebody with Mental Health difficulties that you may know personally or through local voluntary services as opportunities no doubt will be available. Helping somebody at this time of need can make an amazing difference.

The above are suggestions but clearly there are other ways that help can be provided in this area. There is no doubt that Mental Health issues are going to remain a significant factor going forward within our community nationally and I would reiterate that awareness and support will remain key issues. Lets see if we can all continue to breakdown the barriers and stigma which exist in the area of Mental Health.

Ranjit Thaliwal
Specialist Mental Health Law Solicitor
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CYBER RISKS; PROTECTING YOUR FIRM AND YOUR CLIENTS



The media has recognised the newsworthiness of financial crime and, in particular, criminals' attraction to law firms and their client accounts. As a consequence, TV time and column inches have been dedicated to the plight of solicitors falling victim to scams. Banks are also playing their part through prominent TV advertising campaigns alerting their customers to the risk of financial crime.

Insurers welcome the increased awareness generated by this publicity but, unfortunately, ongoing claims notifications demonstrate that the profession is still firmly in the fraudsters crosshairs. It's all too easy to assume that fraud is yesterday's problem and that fraudsters will have moved on to different victims, perhaps even in different countries but this is not the case.

To put the enduring nature of this problem into context, one Participating Insurer has recently announced its exit from the Solicitors' Professional Indemnity market citing client account fraud as one of its key motivators and predicting that this type of fraud is unlikely to abate.

One only has to look at the scale of cyber-crime in the UK to empathise with the pessimistic views that are being expressed. BBC's Moneybox reported there were 7.6 million reports of cybercrime in the last 12 months. In the first 6 months of 2015, financial crime in the UK rose by 6% to £325m, with losses arising from telephone fraud rising by 95% to £14.4m in the same period according to Financial Fraud Action UK. Property-related man-in-the-middle attacks have cost firms and their clients £10m over recent months warns the Telegraph.

Law firms hold significant sums of money in their client accounts, particularly if they handle property, estate administration, trusts or high value personal injury and clinical negligence claims. Those sums are very attractive to fraudsters.

Any successful fraud is a threat to your practice. The consequences vary from reputational damage to negligence claims, regulatory investigation, intervention and worse. If your business failed as a result and you were made bankrupt, you wouldn't be the first solicitor to face such a bleak outcome. The consequences for your clients can be as serious if they end up losing a deposit saved up over several years.

Partners should be sending strong leadership messages, at least annually, to all personnel about the risks of fraud and the threat it represents to the firm. Underlying this message should be written fraud prevention and awareness training policies and supporting procedures to which all personnel are required to adhere strictly. These policies and procedures, and the adequacy of their performance, should be under ongoing review by a member of senior management, executive committee or similar senior team.

The Institute of Risk Management defines cyber risk as any risk of financial loss, disruption or damage to the reputation of an

organisation from some sort of failure of its information technology systems. The Solicitors Regulation Authority use cyber risks as a convenient label to describe the current wave of frauds even though many of them do not fit easily within this definition. A more common threat arises from social engineering risk.

Social engineering is a low-tech but still highly effective scam where fraudsters raid information from social media and intercepted emails. Using this to make themselves appear convincing and trustworthy, they manipulate their victims into sharing confidential information or transferring funds. LinkedIn is as vulnerable to attack as other types of social networking.

According to the City of London Police (confusingly for law firms known by the initials COLP), the two most common types of social engineering involve email (77%) and phone calls (12%), the remainder being made up of text messages, mobile phone calls and post.

Vishing attacks are telephone calls which aim to obtain personal or financial information in order to commit fraud or identity theft. Do not underestimate how convincing fraudsters can sound, playing on their victims' fears and persuading them to transfer significant sums to 'safe' accounts to protect them from attack. Five vishing attacks are reported to the SRA every week. One resulted in transfers totalling £1.9m after 3 hours on the phone. ActionFraud (www.actionfraud.police.uk) has produced reconstructions to demonstrate just how convincing vishing can be.

Prevention is better than cure and we would urge you to consider the following simple but effective controls:

- Vishing relies on creating panic and the need for immediate action. Do not allow yourself to be panicked into doing something you have never done before.
- Understand what banks ask for in terms of security information. Look at the guidance supplied by your bank. A bank will never ask for your full password, PIN or memorable information via email, phone call or text. Nor will it ask you to transfer money to an account that you do not recognise or to share screenshots of login pages or accounts.
- Do not use the number supplied by the caller to verify their bona fides. Note that fraudsters can spoof the phone number that appears on your caller display so do not trust it. If telephoning your bank after a suspicious call, use a different phone line as the phone line can stay open for up to 2 minutes if the person on the other end does not hang up (although BT are taking steps to reduce this time).
- If you receive a suspicious call, end it immediately (or put them on hold while you ask someone else to contact your bank). Establishing safeguards against low-tech criminal attacks is relatively simple and, we hope, being widely adopted throughout the profession.

Phishing attacks target identity theft via a link in an email which includes malware. The link directs victims to a fake website where they are asked to provide user names and passwords in the belief that they are supplying them to a trusted organisation, such as a bank. Malware and botnets can lie dormant on your computer for months or years. Soft (screen based) keyboards are as vulnerable to malware as physical keyboards. The risks can be minimised if everyone is reminded to think twice before clicking on links in emails.

A variation on phishing involves 'man in the middle' attacks. The fraudster joins a public Wi-Fi network and relies on an established connection to the victim's device to redirect emails through the attacker's host network. This allows the hacker to intercept emails. Reports in the Telegraph suggest that there are two successful cases involving property-related fraud every week, netting on average £1m per month for fraudsters.

There is a worrying lack of awareness about how cyber criminals use public Wi-Fi hotspots (270,000 in the UK alone according to ActionFraud) to steal personal and financial details. The top two public Wi-Fi activities, emails and social networking, often reveal plenty of personal information, with online banking close behind. Many firms allow lawyers to use personal devices for business, but little more than a third of firms exercise any control over the configuration and security of such devices.

A recent example occurred as the firm was about to complete a client's purchase of a second home. The email incorporating the firm's client account details was intercepted and altered. The client's email back confirming transmission of funds was intercepted and edited to say there would be a short delay before the funds were sent – giving the fraudsters time to transfer the funds beyond reach, into other accounts or withdrawn in cash.

To minimise your exposure to man in the middle attacks:

- Advise clients face to face and in writing (not by email) of your bank details, that they will not change during the transaction and to ignore contrary instructions by email. Also, only accept bank details from clients that are given face to face, by post or by another trusted method.
- Think of your clients as well as yourselves. Warn them not to post details of their home move on social media as this makes it easier for fraudsters to mount such attacks.
- Ensure that newly set up payee details are verified by more than one person.
- Instruct your bank to place a restriction on the number of high value payments that can be made within a specified period of time. More generally, other steps that firms should take to protect themselves, include:
- Training everyone on the risks and providing regular staff updates with intelligence bulletins. The people in your firm may unwittingly be your weakest link.
- Avoiding passwords that can be guessed easily (such as 'password', 123456 or your postcode and avoid pets' names which can be found easily on social media).
- Keeping passwords secure and change them frequently. Don't tape them to the underside of your keyboard where a cleaner could find them.
- Keeping software up to date, as updates include the latest patches to combat vulnerabilities.
- Google your firm name regularly to ensure your profile has not been cloned.
- Thinking about behaviour that you want to restrict or modify and then compare it against your email and internet policies. Update your policies and procedures as necessary.

Fraud is so indiscriminate that most Professional Indemnity insurers have developed a comprehensive set of controls they would like their insured firms to adopt. If you are unaware of your insurer's advice,

we would strongly recommend that you contact them and check your policies and procedures against them. Aon's clients have been sent correspondence on this subject. If you would like additional copies or you have any questions, please contact your Client Manager.

In case the worst happens, set up a crisis management process within your firm so that you know, in advance, who will do what as time may well be of the essence. If you think you have been a victim of fraud, contact your bank immediately, as the more quickly you contact your bank, the greater the chances of recovering funds. Next contact Action Fraud (the police) on 0203 123 2040. If the fraud involves client money, notify your Professional Indemnity insurer as the definition of a claim includes a shortfall on client account. Remember, however, that notifying your insurer does not relieve the Partners of their obligation to make good any shortfall on client account on discovery (your office policy or cyber risks policy may also cover losses on your office account). Finally, you must be conscious of your professional obligations in the SRA Code of Conduct and the Accounts Rules. Apart from the wide ranging obligations in chapter 10 of the Code, your Compliance Officer for Legal Practice (COLP) and/or Compliance Officer for Finance and Administration (COFA) have reporting obligations.

The opportunities that digital technologies, devices and media bring to firms are many and varied, but so are the risks, which are constantly evolving. Cyber risk is never a matter purely for the IT team. Whilst cyber risk insurance policies can provide some comfort, the COLP and COFA need to keep their firm's processes constantly under review.

For more information on this, please contact:

Marie Callaghan, Senior Client Manager, Aon UK Limited
Tel: 0121 253 3227

LEICESTER LEGAL WALK



Left to right: Ranjit Thaliwal, Lord Bach, Christl Hughes, Helen Johnson, Angela Titley-Vial.

The weather was glorious for Leicester Legal Walk on the evening of Monday 20 June. The 100 participants included Lord Willy Bach, Police & Crime Commissioner for Leicestershire and four Past Presidents of Leicestershire Law Society.

The event raised £1500 for The Midland Legal Support Trust.



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A Soft Market, but is it really?

Most Industries experiences both growth and contraction over a period of time, the Insurance Industry is no different, often described as cyclical in its nature, and referred to as either a "Hard" or "Soft" market. A hard market is where sourcing cover is quite difficult and often premiums are more expensive, a soft market is generally where obtaining insurance is easier and often more competitive.

The characteristics of a hard market include

- Higher insurance premiums
- More stringent underwriting criteria is adopted
- Reduced capacity, meaning insurers write less insurance policies
- Less competition among insurers

The characteristics of a soft market include

- Lower insurance premiums
- Broader coverage is offered
- Reduced or more relaxed underwriting criteria
- Increased capacity, which means insurance carriers underwrite more policies and offer higher limits
- Increased competition amongst Insurers

The majority of PII brokers and even the Law Society backed MGA seem to be suggesting that the Insurance market is softening for Solicitors in England and Wales, however I am not sure that this will be the case for all firms. Furthermore, when you review the characteristics of a soft and hard market it can be argued that for Solicitors PII this year it is more likely to be a combination of the two, especially given the New Insurance act and the recent decision by the British electorate to leave the European Union.

Regardless of the point in the cycle, and whether or not it is a "soft or "hard" market, for those firms that have performed well (from a claims perspective), have a strong business model, and demonstrate that they control and mitigate the risks associated with the work they undertake, competition has and will *always* be there from Insurers for those firms. The same can also be said for firms who undertake what Insurers perceive as lower risk categories such as criminal and family law. The majority of these firms have experienced competitive pricing for a number of years. The Insurance cycle impacts negatively or positively more on those firms that have experienced claims, and undertake more "risky" areas of work, like conveyance and commercial work, it is these firms that I believe benefit more from a soft market. Firms that cannot show that they have strong risk management controls in place and/or have an extensive claims history may struggle to benefit from a soft market as will those firms who don't conduct a reasonable market exercise.

Many firms, particularly smaller firms experienced a softer market last year, as we saw new Insurer entrants along with established Insurers focusing on providing further solutions and being far more protective of their portfolios. That said I am not sure all firms would have experienced this, particularly firms with conveyancing exposure.

I am sure you will agree there are various factors to consider this year, when deciding on your firms strategy for this year, we recommended that you get your broker to seek more than one option for you to provide you with peace of mind. Ask your broker, who they can directly access and review the Law Society's Insurers guide to make sure you are covering off all of the insurers that you may wish to seek an alternative from. I hope that many firms experience a satisfactory renewal this year, please be mindful that in order to fulfil this you will need to cover all bases.

Brian Boehmer, Lockton Companies LLP
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How could the Insurance Act impact on you?

'The Insurance Act 2015', the legislation applies to ALL solicitor practices in England and Wales when you are seeking renewal of your Minimum Terms and Conditions (MTC) PII policy on or after the 12th August 2016.

Similarly to the recent changes in regulation to the legal profession, the Act, rather than being a rigid code, sets out principles to be followed, with the aim of being suitably flexible regardless of the size of a firm.

(i) More detailed due diligence required

The duty of fair presentation of risk requires you to act differently in respect of your disclosure investigations than you did under the duty of disclosure and we would recommend that you start this process early and collate evidence of your investigations. You should present information clearly and flag material issues to insurers. 'Data dumping' is prohibited.

Effective due diligence and a comprehensive proposal form response is likely to assist ensure a faster renewal process in the long-term with fewer subjectivities.

(ii) Changes to MTC wording: insurers maybe more likely to seek re-imburement from insured practices who fail to disclose properly.

The Act has no impact on the extent of coverage that PII insurers will be offering: the priority of the policy continues to be the protection of the public. The SRA have issued an amendment to the Minimum Terms and Conditions citing the Act, it now provides insurers with broader grounds for seeking reimbursement from an insured practice, where information has not been fairly disclosed. It is therefore important that you fully comply with the Act.

Speak to us to find out more

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COUNCIL MEMBER'S REPORT

JUNE 2016

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. She is also Chair of the Solicitors Assistance 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. Please contact her at lindahlee@aol.com



Less than 5 years after the introduction of outcome focussed regulation

and the new handbook on October 2011 the SRA is planning a radical reform of regulation.

The first stage of the consultation, 'Looking to the Future' has now been published.

The Consultation can be found here

<https://www.sra.org.uk/sra/consultations/code-conduct-consultation.page>

The SRA is also consulting on changes to the accounts rules to be found here

<https://www.sra.org.uk/sra/consultations/accounts-rules-review.page>

Both consultations close on the 21 September 2016.

The proposals for reform play to the government and Legal Services Board perception that legal services are too expensive, do not provide value for money and that there is unmet need. It is suggested that need could be met by opening up the market further.

The SRA also believe that these proposals will drive up standards, how that will be achieved is not clear. It does mean that there will be a two tier system for consumers -those that have the option of using regulated entities and those that do not. It is likely that there will be a two tier career path for solicitors- those that offer reserved services and those that cannot. The most likely impact will be a lack of trust and a devaluing of the brand of solicitor and increasing consumer confusion and disappointment.

It gives me no pleasure to say that all the warnings given before the introduction of the last Code have come to pass- the increased cost of regulation, the confusion and uncertainty it

brought to firms, the stifling of true innovation. The prediction that the new Code would not last 5 years have also come to pass and it seems likely that the new proposals will have a similar shelf life. The proposals lasting legacy will however be the unpicking of the solicitor's profession.

A summary of the proposals are set out below.

Summary of the SRA's consultation on 'looking to the future'

Key proposals:

- A code to regulate individuals who wish to use the title of solicitor covering -education and entry standards, ongoing competence and ethical behaviours.
- A separate code to regulate firms entitled to deliver reserved legal activities- control in the firm and the availability of consumer protections over and above those available generally to consumers - including professional indemnity insurance (PII) and access to the Compensation Fund.
- Permitting solicitors to provide unreserved legal services outside of regulated firms. This change is described as being designed to benefit the public by allowing solicitors to work in the emerging 'alternative' legal market and provide high-quality services.
- unregulated providers to employ solicitors to provide services to the public
- firms to hive off their unreserved work to unregulated entities
- solicitors within in-house teams to provide legal services to the public
- Resources to support the Handbook, including clear guidance for the public.
- The SRA will revise enforcement policy to provide clarity about action it will take when solicitors or firms fall short of the standards set.
- Potential regulation of special bodies (Trade Unions; Law Centres and others providing legal

advice) and changes in regulation of Pro Bono work

Concerns:

1. Potential impact on Legal Professional Privilege (LPP)

Legal Professional Privilege only applies to qualified lawyers. Privilege therefore extends to employees (e.g.: legal executives, paralegals and trainee solicitors), provided that they are properly supervised by a qualified lawyer.

Paragraph 36(1) of Schedule 2 to the Administration of Justice Act 1985, as amended by the Legal Services Act (section 123, part 2, Schedule 16), extends the reach of privilege to SRA regulated firms. Section 190 of the Legal Services Act 2007 extends legal professional privilege to a "licensed body".

The privilege applies only to the extent that it would have done if the individual or their supervisor had been providing the services directly to the client.

The SRA consultation leaves it somewhat unclear as to whether LPP would apply where a solicitor provides legal advice to a client of an alternative legal services provider.

2. Professional Indemnity Insurance (PII)

Solicitors providing non-reserved legal services outside of regulated firms would not be required to hold PII under minimum terms and conditions set by the SRA. The SRA proposes that solicitors in these circumstances would be required to make sure their clients understand whether and how the services they provide are regulated and about the protections available to them. This reduces the protections available to consumers and also is a risk to the 'solicitor brand'. There will also be an impact on the PII market.

3. Compensation Fund

Solicitors providing non-reserved legal services outside of regulated firms would not be able to hold client money therefore would not contribute to the Compensation Fund. Clients of these solicitors would also not be able to make a claim on the Compensation Fund in any circumstances. Not all the claims paid by the Compensation Fund relate to reserved work. Again this will ultimately impact on the brand of solicitor and the cost for those who continue to offer reserved work.

4. Supervision

Unregulated firms will not be required to supervise newly qualified or inexperienced solicitors and indeed it appears newly qualified solicitors could be able to set up firms immediately. The SRA argue that time served is no measure of competence but the authorisation rules will enable them to assess competence.

5. Solicitor title

Solicitors will be able to use the title when providing services to the public whether or not the entity is regulated provided they hold a practising certificate. An entity can only use the title to describe the entity if it is regulated by the SRA.

6. Consumer confusion

The SRA are commissioning work on what information consumers need to make informed choices.

7. Conflicts and confidentiality

Although solicitors in an unregulated entity would still be subject to the requirements regarding conflicts and confidentiality it would not apply to any non-solicitors within the firm.

8. Fees

Large firms hiving off their unreserved work has the potential to have a disproportionate impact on smaller firms who are unable to take advantage of the changes and therefore may shoulder the burden of any shortfall.

Accounts Rules Consultation:

The SRA propose to simplify the accounts rules by focusing on key principles and requirements for keeping client money safe, including:

- keeping client money separate from firm money
- ensuring client money is returned promptly at the end of a matter
- using client money only for its intended purpose

There will be a change in the definition of client money to allow money paid for all fees and disbursements for which the solicitor is liable (for example counsel fees) to be treated as the firm's money.

Money held for payments for which the client is liable, such as stamp duty land tax, will continue to be treated as client money and therefore required to be held in client account.

The SRA extended the exemption from the obligation to obtain an accountant's report to firms that have an average client account balance of no more than £10,000 and a maximum balance of no more than £250,000 over the accounting period. The SRA anticipate that fewer firms will need client accounts and also reduce the number of firms who require an accountant's report through the subsequent reduction in the client account balance.

It is also intended to encourage the use of third party managed accounts (TPMA) such as BARCO as a mechanism for managing payments and transactions. The SRA envisage this is a safer means of holding client money although it is not clear why this is, it certainly will be costly.

The consultation paper includes a draft set of rules and explains that these will be supported by an online toolkit comprised of guidance and case studies.

A recent discussion paper by the Law Society's Regulatory Affairs Board sought the views of the profession on potential changes to the accounts rules and the very

high response will shape the Law Society policy in this area. This will be published shortly. The majority of respondents favoured simplifying the existing rules but rejected more radical proposals.

Conclusion

I will leave the final word with the Legal Services Board who recently reviewed the SRA's performance in 'The Solicitors Regulation Authority's Regulatory Standards report 2015/16'

http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/pdf/1605_SRA_PERFORMANCE_REPORT.pdf

There are 5 potential grades: 1) Good, 2) Satisfactory, 3) Undertaking improvement and work is well underway, 4) Needs improvement and work has recently started, 5) Recognise this needs to be done but work has not yet started

The SRA achieved satisfactory in only one category, Risk assessment. In all other categories it scored at level 3.

Most notable was the comment in relation to Outcome Focussed Regulation, The LSB

stated that,

'As the SRA has recognised in its November 2015 "Looking to the Future" paper, the Handbook "is too large, complex and detailed and needs regular amendment just to stand still". This is evidenced by the fact that the SRA's regulated community is now operating under version 16 of a Handbook that has been in force for a little over four years. ...There was some suggestion in the feedback we received that the direction of the SRA's travel can be unclear to those regulated by the SRA. The SRA is taking steps to address this point as evidenced by the recent update to its policy statement and the "Looking to the Future" paper. However, this highlights a risk that a wholesale review of the Handbook may be too much for firms (and the organisation) to cope with.'

I would urge you all to respond to the proposals. If you would like to contact me with your views, please do so. As Chair of the Regulatory Affairs Board, I and my Board and the specialist committees will be preparing the Law Society response over the summer. ■

INHERITANCE TAX PLANNING (IHT) 'TO BPR OR NOT TO BPR? - THAT IS THE QUESTION'

A worrying fact is HMRC are taking record receipts as a result of Inheritance Tax. Whilst most of us are aware that more of the population of the UK are falling into the Inheritance Tax net because of increased affluence and rising house values, it is a concern that in many cases this tax on wealth can and should be mitigated by a variety of means.

One of the methods that is increasing in popularity, through choice, is mitigation by means of Government legislation called Business Property Relief (BPR). For nearly 40 years owners of businesses that have qualified for BPR have enjoyed IHT exemption after two years of ownership. In the last 10 years providers of IHT Mitigation services, have used this piece of legislation to create BPR qualifying businesses. As a result, investors who purchase unquoted shares by means of investment into such businesses, legally create 100% tax relief for IHT after two years of share ownership. The investor also maintains complete control and access to their investment during the investment period. Most other methods of IHT Mitigation only fall outside of IHT after 7 years.

So, what types of clients are suitable for IHT Planning using BPR? In 2015 a total of approximately £1 billion was invested into IHT BPR Portfolios from clients who predominantly fall into the following categories:

- **Life Limited** - where the client is unlikely to survive another 7 years due to illness.
- **Clients Subject to a Power of Attorney** - gifting can be difficult without approval of the Court of Protection. BPR investments are simply an investment in shares and remain property of the investor.
- **Clients who want to maintain control of their money** - clients who wish to maintain control and access to their wealth but pass it on at death without incurring IHT tax charge.
- **Clients who wish to set-up a discretionary trust** - any payment into a trust above the nil rate band is liable to a lifetime transfer charge at 20%. If the sum is held in BPR qualifying assets for two years, then the transfer into a discretionary trust is zero rated.

- **Clients who are selling or recently sold a business** - any cash held once a business is sold is liable to IHT. By investing in BPR qualifying assets instant IHT relief is received if the funds are invested within three years of sale.
- **Immediate Post Death Interest Trusts** - usually the property of an IPDI will form part of the estate of the life tenant. Using BPR investments, after two years the investment is free from IHT allowing other assets to use up the Nil Rate Band.

Are there risks in investing in IHT BPR Portfolios? Of course, whenever there are tax breaks there has to be the balance of a corresponding amount of risk. All IHT BPR Portfolio investment managers seek to mitigate the risks whilst staying within the boundaries of the 'spirit of the regulations'. There are two main choices, each of which have risks and rewards attached; a) IHT BPR services that use quoted, AIM listed businesses which can realise significant growth but can be volatile and illiquid, or b) IHT BPR services that use unquoted, asset backed businesses. The latter tend to have more limited growth potential and are focussed on capital preservation and liquidity.

It is important to note that IHT planning using BPR falls outside the remit of the Financial Conduct Authority.

If you would like any further information, or to run through some examples on how BPR may benefit your clients, please don't hesitate to contact us on 07816819272 or rajesh@finance-lab.co.uk

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BEng & BComm, DipPFS
FINANCIAL PLANNER / IFA



STRICTLY PHANTOM



The project dream began more than 18 months ago before Mehmooda even became President. She wanted to give something special to the members of the Law Society. Mehmooda asked Catherine Leong to head the project. The dream was only announced to LLS members in October when we invited volunteers to be part of this project.

Emma Pettitt from Academy No1 joined forces with WesandAlex Dance Classes to bring the "Strictly Phantom" vision of the LLS president, Mehmooda Duke, to life.

Ten volunteers from LLS were partnered up with some of the best students from both dance schools and had just twelve hours

of practice to learn choreography to music from the famous musical in preparation to perform at the LLS Awards Event 2016.

Dressed in their finery and masks the novice dancers, alongside their professional partners, gave a mesmerising performance of a Waltz, swiftly followed by a dramatic show dance with the professional dancers performing a Ballroom and Latin inspired routine to "Phantom of the Opera".

Emma, Wes and Alex agreed that in their fifteen years of combined experience presenting dance creations to the Corporate World that the LLS "Phantom" would be a hard act to follow. It was an amazing experience for all involved.

On the night guests were told if anyone would like to claim a "FREE" dance class with WesandAlex dance classes or Academy No1 to please pick up a flyer from the DJ which has contact details. If anyone missed this opportunity and would like to take this opportunity up, it is not too late. Email Catherine Leong: catherine.leong@limepersonalinjury.co.uk and she will send you further details.

Catherine thanked the teachers Emma (Academy No 1), Wes and Alex (Wes&Alex Dance Classes) for their choreography and training provided to the volunteers, and their supportive students who made the journey of 'novice come showcase

dancer' a breeze for the LLS members. The dancing was widely enjoyed by the spectators as they recognised their fellow colleagues and friends. Clive Worden of Studio DM (Digital Media) produced a introductory video in Strictly style and was responsible for the live camera work on the evening.

Catherine says the 10 volunteers whom without, there would not have been a Team showcase LLS Dance have made strong connections with each other and the dance schools that it will be difficult for them to forget the experience.

Catherine Leong



Name & Firm	Pro Dancer
James Dent Howes Percival	Roberta Mott
Dan O'keeffe Moosa-Duke	Cherelle Wearmouth
Raj Moda Finance Lab	Jane Bloomer
Angela Tittley-Vial Rich & Carr	Kieran Nellist
Dipti Patel Spearing Waite	Peter Wearmouth
Sushma Kotech Glynis Wright but moved to Shoosmiths in Birmingham before the big day	Alexander Faulkner-Clarke
Nicola Kitchener Affinity Law	Wes Faulkner-Clarke
Janet Flawith AIM Mediation Ltd	Wes Faulkner-Clarke
Rik Basra Leukaemia Campaign	Kathryn Childs
Adam Marhillie Cartwright King	Christine Ashby
Emma Pettit – dance teacher, No1 Academy	not dancing with an LLS member
Vaughan Tapp – back-up and in Pro-dance showcase only	not dancing with an LLS member
Pete Carr - back-up and in both dance showcases	not dancing with an LLS member

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STRICTLY PHANTOM LLS LEGAL AWARDS 2016

The 13th May 2016, saw the LLS Legal Awards arrive at the Platinum Suite in Leicester. The venue was dressed for the occasion and what an occasion it was. This year saw a departure from the usual venue and entertainment and the theme for the evening was Strictly Phantom a Masquerade Ball.

The evening's entertainment was supplied in part by 10 LLS members who had tread the rehearsal floors for some 3 months practicing the Catherine Waltz. The LLS Dancers were supported by professional dancers from Academy No 1, Dance Centre of Excellence led by Emma Pettit and Wes and Alex from Wes and Alex's Dance Classes plus dancers from both Academy No 1 and Wes and Alex Dance Classes to partner the LLS Dancers.

Nerves shook a little but there was no need to be nervous, the performance rocked and waltzed beautifully. The professional dancers later in the evening performed a full team routine which was excellent and the whole evening was enjoyed by all who attended. The music for the evening was excerpts from Andrew Lloyd Webbers musical Phantom of the Opera.

An evening of sequins, sparkles, masks and glittering awards all laced with a touch of Strictly Phantom.



 The Food for the evening was provided by Feast of India and there were many positive comments made about the excellent menu that they provided.

Congratulations must go in the first instance to the Winners of the awards and commiserations to all the nominated Finalists. "You were my favourite."

THE AWARD WINNERS...



Junior Lawyer of the Year - sponsored by University of Leicester;
- Richard Fitzmaurice - Freeth LLP



Solicitor of the Year - sponsored by 36 Bedford row ;
- Bushra Ali - Bushra Ali Solicitors



Barrister of the Year - sponsored by Moosa Duke Solicitors
- Sally Barnett - 2 New Street Chambers



Chamber of the Year - sponsored by Finance Lab;
- 36 Bedford Row



Large Law Firm of the Year - sponsored by De Montfort University;
- Cartwright King Solicitors

Once again we must thank our sponsors for sponsoring the awards and again a huge thanks to the judges who this year had a difficult job in separating the finalists from the winners.

The judging panel;

- | | |
|-----------------------|--|
| David Simms | Publisher & Managing director of Leicester Mercury |
| David Monk | New Walk Chambers |
| Steve Evans | Leicester University |
| Sheree People | De Montfort University Law School |
| District Judge | Vera Stamenkovich |



Small Law Firm of the Year - sponsored by Severn Trent Searches;
- Cummins Solicitors



Trainee/ Paralegal of the Year - sponsored by Bushra Ali Solicitors
- Amy Roberts Morrow - Weightmans LLP

PULLED BOTH WAYS



The Pulled Both Ways Project is an innovative, jointly funded initiative between Glynis Wright & Co Family Solicitors and the Charity Soft Touch Arts. Glynis Wright, Director of Glynis Wright & Co and Christina Wigmore, Business Director of Soft Touch Arts, met 3 years ago and struck up a great working relationship. Glynis immediately understood the impact that the Charity make on vulnerable young people through their project work and wanted to work more closely with the Charity. The Charity invited Glynis to become a Business Ambassador and Glynis now enjoys an ongoing relationship with the Charity in helping them to form stronger links with the business community in Leicester.



The idea of undertaking a creative project together emerged from discussions between Glynis and Christina, and the idea for the Pulled Both Ways Film project came about. The idea was to work with young people locally to highlight the negative impact of divorce and custody battles on children whose parents are going through a relationship breakup, where the children can feel literally 'pulled both ways.' The project also aims to highlight the benefits of family mediation when relationship breakups occur, to encourage more parents into mediation if they are contemplating separation or divorce.

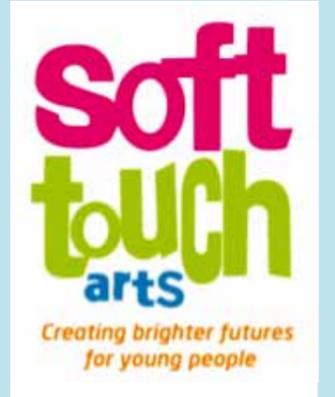
Working with students from New College, Leicester and Leicester High School for Girls, students from both schools worked with Glynis at her offices and Soft Touch Arts Film makers to produce 3 short films which show the emotional effects of divorce on children, from the child's perspective. The films also highlight how the mediation process works and can result in more positive outcomes for the family. The films have been scripted and filmed entirely by the students and tell

they tell the story of the fears and anxieties that can arise for children and young people when their parents are in dispute.

Glynis and Soft Touch plan to make the films available to Solicitors, CAF/CASS, Family Mediators and other agencies working with families in breakup to highlight the benefits of mediation and the need to protect children from acrimony.

The national campaign Kids in the Middle have shown a strong interest in the project and are going to make the films available through their national website. Glynis is in discussion with Kids in the Middle and Soft Touch Arts to see how a broader campaign can be developed nationally with additional funding.

A private premiere of the films is to be held at Highcross Leicester Showcase Cinema De-Lux Director's Lounge on Thursday 30th June 2016 for the young people involved and their invited guests. In September 2016, a formal VIP launch of the films is being



organised by Glynis Wright & Co and Soft Touch Arts to take place at the new Soft Touch Arts Centre on New Walk with invitations being extended to the legal profession, local councillors, the business community and once again the fabulous students involved in the project.

Glynis Wright
Head of Practice
Glynis Wright Solicitors
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Best Practice and Procedure for Local Authorities when seeking removal of new born babies



In the recent case of Re LW [2016] EWHC 11 (Fam), Mr Justice Keehan made it clear that there would be cost consequences for Local Authorities who failed

to abide by best practice and procedure when seeking to remove new born babies from their parents' care.

The family of LW were known to the Local Authority; proceedings having already been started in relation to LW's elder sibling B. A birth plan was put in place and the Local Authority were subsequently informed of LW's birth on the 18th January. The Local Authority then failed to issue proceedings until the 28th January when they applied for an 'urgent' interim care order. Due to a series of failings by the Local Authority, the parents and their solicitors were not informed of the hearing until less than two hours before and, due to the emergency nature of the listing, there was insufficient time for them to challenge the evidence by way of cross examination.

Mr Justice Keehan, in light of the allegations, felt that he had no choice but to make an

interim care order until a fully contested hearing could be held. In an effort to ameliorate the situation he directed that the parents should have contact every weekday until the hearing. Due to the delay, which meant that the parents were not able to have a properly contested hearing, nor have sufficient time to fully consider the Local Authority evidence, the Judge held that the process had arguably not been Article 6 compliant and ordered that the Local Authority pay the publicly funded parties' costs.

In his judgment Mr Justice Keehan made it clear that the delay by the Local Authority was unacceptable and that their standard practices needed to be revised. He made it clear that:

a) Birth plans need to be rigorously adhered to by all.

b) A risk assessment of the parents should commence immediately upon the social worker being made aware of the pregnancy and completed at least 4 weeks before the expected due date. This to be updated as necessary.

c) The assessment to be disclosed upon initial completion to the parents and, if instructed, their solicitors so that any assessment and care plan can be challenged.

d) The social worker should provide all relevant documentation necessary for the legal department to issue care proceedings no less than 7 days before the due date. The legal department should issue proceedings on the day of birth and in any event no later than 24 hours after.

e) Immediately upon issue, if not before, the Local Authority's solicitors should have served the applications and supporting documentation on the parents and, if instructed, their solicitors.

f) Immediately upon issue the Local Authority should seek an initial hearing date from the Court.

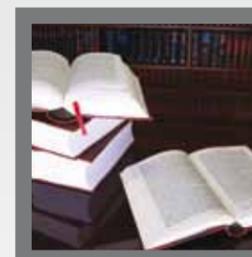
It was made clear that this should be the practice in all cases where removal is sought from birth. Time will tell whether Local Authorities will abide by this decision, but there is no doubt that they risk cost consequences and Human Rights Act applications if they do not.

Lisa Stephens
Northampton Chambers



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Julian Bryan appointed Chair of Legal Software Suppliers Association (LSSA)



Julian Bryan, Managing Director of Quill Pinpoint has been appointed as the new Chair of the Legal Software Suppliers Association (LSSA), the UK industry body for legal systems developers and vendors. Julian Bryan

takes over from Matt Lancaster.

Julian Bryan, LSSA Chair comments: "I am delighted to be picking up the chairman's baton and build on the successes of my predecessors. With technology touching every aspect of our business and personal lives, it is time for the LSSA to extend its membership offering to a far wider spectrum of software suppliers to the legal sector. I see this as a key component of the LSSA's strategy for the forthcoming year."

Dominic Cullis of Easy Convey Ltd continues in the role as Vice Chair and Phil Snee of Linetime Ltd continues as Treasurer.

The LSSA is responsible for setting and maintaining professional standards within the legal software industry, and also manages areas of mutual interest between lawyers and software providers. The LSSA also has links with a number of legislative bodies – including the Land Registry, HMRC, The Law Society, the Court Service and the LAA – and is committed to developing clear channels of communication so that law firms can gain the maximum benefit from their selected software solutions.

Biography

Julian has owned and managed software businesses in the legal and veterinary professions for the past 20 years. Julian has been Managing Director of Quill since 2012 and was appointed Chairman of the LSSA in 2016.

Quill's been a leading supplier of software and outsourcing services to solicitors for 40+ years. Quill's dedicated to employee engagement and holds silver Investors in People accreditation

and 1 star status by Best Companies in recognition as such. Quill's earned a host of awards for its software and, most recently, won the employer category in the MS Society Awards 2016 because of its support for employees with MS and ongoing fundraising efforts for the charity.

Quill is also the UK's largest outsourced legal cashing bureau so Julian is often found waxing lyrical about the benefits of outsourced services for companies of any size, particularly start-ups. Read his latest blog at www.quill.co.uk/10-reasons.

On a personal level, Julian's moved from his upbringing in West Dorset to Worcestershire and spends much of the working week in Quill's central Manchester-based head office. With a passion for gardening, he hasn't deviated too far from his farming roots. Another of his keen interests is photography and his camera goes everywhere with him. Julian is married to Carolyn and they have one daughter, Alexandra.



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FROM ETERNITY TO PATERNITY

A landmark case has allowed testing of the stored DNA of a deceased male in a paternity test

In the recent case of Spencer v Anderson¹, the applicant had previously been made aware that a male who died of bowel cancer, may have been his biological father and in the action he sought to establish his paternity and his exposure to disease risk. The alleged father's DNA had been stored in extracted form by a local hospital.

As identified by Peter Jackson J, DNA tests post mortem fall outside of the scope of the Family Law Reform Act 1969 which inter alia only applies to the living and to the testing of bodily fluid/tissue...not DNA. In an interesting twist, such tests also fall outside of the Human Tissue Act 2004, which refers to biological samples and the intent to conduct a DNA test. It does not refer to stored DNA samples, which may or may not have an associated consent for its use in paternity testing. In this case, there was no way of knowing if the deceased would have consented to a paternity test. The judge had quite rightly identified a

legislative void as neither paternity testing post mortem nor paternity testing on extracted DNA are adequately covered by the law.

In order to analyse DNA from the living (unless it is for an excepted purpose such as a criminal investigation) the consent of the donor is required or indeed, in the case of a minor, the consent of a person with Parental Responsibility. DNA is the means by which your genetic information is carried from one generation to the next. It carries the information necessary to establish your biological relationship to others but also can give some indication of other characteristics, such as disease risk. According to Peter Jackson, "DNA testing is an interference of the highest order with the subjects right to confidentiality and the privacy of their known family members". In Spencer, the alleged father's samples had been given for one purpose (determination of his bowel cancer susceptibility status)

and this did not imply blanket consent for other purposes such as a paternity test. If the court were to allow unconsented DNA testing for paternity post mortem, this could open a raft of new inheritance disputes and may discourage the provision of samples during medical treatment if there was a possibility of paternity testing after death. On the balance of argument, Jackson J allowed DNA testing to establish the paternity of Mr Spencer in the interest of justice using the inherent jurisdiction of the High Court.

On the other hand, a recent ruling in Germany held that the alleged father's right to privacy under Article 8 of the European Convention on Human Rights ranked higher than the woman's right to identify her father². Maybe the balance was swayed because the alleged father was alive and his fundamental rights might have been affected. The extended effects upon the alleged father's family are likely to have been broadly similar to

Spencer, whether alive or not.

In the Spencer case, knowing that the alleged father had disease risk would be sufficient for an individual to ask for direct genetic testing in order to determine whether the susceptibility genes had been inherited at all. In our view the determination of paternity was not necessary for this purpose and contrary to the arguments made, does not contribute to the mitigation of disease risk.

¹Spencer v Anderson (Paternity Testing: Jurisdiction) [2016] EWHC 851 (Fam) (15 April 2016)

²<http://www.bundesverfassungsgericht.de/SharedDocs/Pressemittellungen/EN/2016/bvgl6-018.html>

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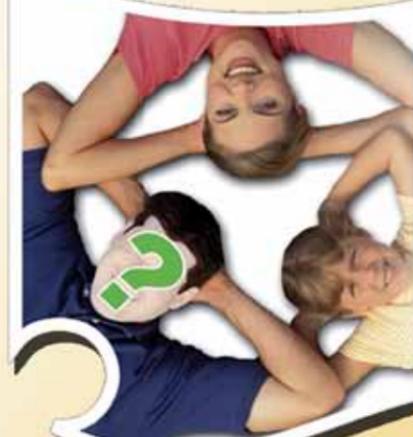
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EXPERT WITNESSES: OFFERING A 'ROLLS ROYCE' SERVICE FOR THE COURTS IN A MORE COMPLEX AGE



Sir Anthony Hooper

Many people do not know much about expert witnesses until they need them! I hope this short summary of what they do and the organisation which supports them will help our readers de-mystify the work of the expert witness in our ever more complex society and its court processes.

The Chair of the "The Expert Witness Institute" (EWI), Sir Anthony Hooper, has described a "Rolls Royce service" given by expert witnesses who supporting justice as "providing a Rolls Royce" service for us. Alas, for many people expert witnesses provide a service which is often underestimated and misunderstood. So let's hope this profile today about the EWI gives this type of witness a better profile, too!

"I'm completely depressed" he said. "I started out in the legal profession 30-odd years ago when we had as Rolls-Royce a system as you possibly could have."

"This has been destroyed gradually and then quickly over the past few years. Whatever we have said it's not made any difference at all."

"If the Conservatives come back into power it's revolution time. We have to stop helping them and stop working."

"The bar Council are not going to do anything. The Law Society is not going to do anything. The Judges are not going to do anything."

"Unless you (lawyers) are prepared to withdraw your labour you have no hope. If the Tories get back in, they haven't even started on us."

Sir Anthony Hooper 2015

Until often quite late in proceedings, or the very last moment when decision day nears in what are often complex court proceedings the weight of the expert evidence is given heavy scrutiny. So who are "experts" and "expert witnesses" and how does the system work under CPR Part 35?

From actually becoming known as an expert witness -- to developing and perfecting the essential skills -- to building a wider reputation -- and to enhancing knowledge of basic law, whatever challenges expert witnesses face, the EWI as the leading organisation for expert witnesses in England and Wales offers substantial help, guidance and support, whilst keeping everyone up to date with current developments... and this includes us as users of the service as well.

At the EWI, there is also a membership database which is available providing a referral service designed to help expert witnesses promote their expertise. It tells us what they do. Solicitors and others seeking such witnesses in a particular field of specialisation can now find them more easily using this convenient online tool. If you are an EWI member, you can have unlimited access to their Helpline, which provides prompt -- and often detailed -- answers to any queries you may have.

The weight of evidence and of responsibility for expert witnesses

A court of law is a place where a fact is not a fact until it is proved -- or in certain cases, disproved -- by incontrovertible evidence. Here, the role of the expert witness becomes paramount. Often, the evidence put forward in a trial by an expert witness can be a deciding factor in tipping the balance in favour of a well-informed, reliable well considered judgment. And it may seem a fatuous statement which says "to be an expert witness, you need to be an expert"! And it may seem obvious, but remember that an expert is not the same as an expert witness.

An expert and an expert witness

So an expert offers special expertise in a particular field. As an expert witness however,

needs to offer additional skills and abilities -- courtroom skills and report writing, for example -- which can be enhanced by training and developed over time which is where the EWI is developing specific events and currently reviewing its methods of accreditation this year. When in court, the expert witness methodically presents opinion evidence based on evidence of fact. The subsequent report -- which the expert witness also prepares -- is generally written within a specified time scale in compliance with specific legal guidance under CPR.

The EWI holds an annual Conference and it's always well attended by experts... and quite a few lawyers nowadays. The organisation is headed by the energetic Sir Anthony Hooper, a former Lord Justice of Appeal who retired from the bench in 2012 after a distinguished legal career. Hooper is the inaugural Judicial Fellow of the Judicial Institute of University College, London and will be interviewed for a later edition of the journal.

So, an "expert" can be described as anyone with specialist knowledge not commonly held, or likely to be understood by a layman. When there is no intention to place an expert's opinion before the court, that person is referred to as an expert advisor and may take on a number of behind-the-scenes roles.

An expert witness is an also an expert, but one whose specialist knowledge supports considered opinions which may be placed before a court (or other judicial or quasi-judicial body -- for example, a tribunal or arbitration). So the role of the expert is to provide technical analysis and opinion which will assist the court in reaching its decision.

The opinion evidence put forward by experts is based on evidence of fact. They are supporting justice in an era of change and it looks very much as though their importance will increase significantly as our society and its litigation becomes more complex this century.

Phillip Taylor MBE,
Richmond Green Chambers
Member, EWI Editorial Board

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within the county. The rapid industrial growth of the region during the 19th century was only possible due to the county's rich mineral resources and as well as coal; dolomite, flagstone, ironstone, ganister, gypsum, jet, alum, lead (to name but a few) were extensively mined throughout the region. As the lender and insurance powerhouse begin to understand and act on the risks presented by non-coal mining, it is more important than ever to ensure all parties involved within the property/land purchase and development process are informed of all mineral extraction hazards, everywhere. A service exclusively provided by **TerraFirma**.

Little evidence remains of our country's once rich mining heritage, hidden beneath our growing residential and commercial developments, waiting patiently and silently. This a lost but very real threat and one that finally deserves recognition in the conveyancing process.

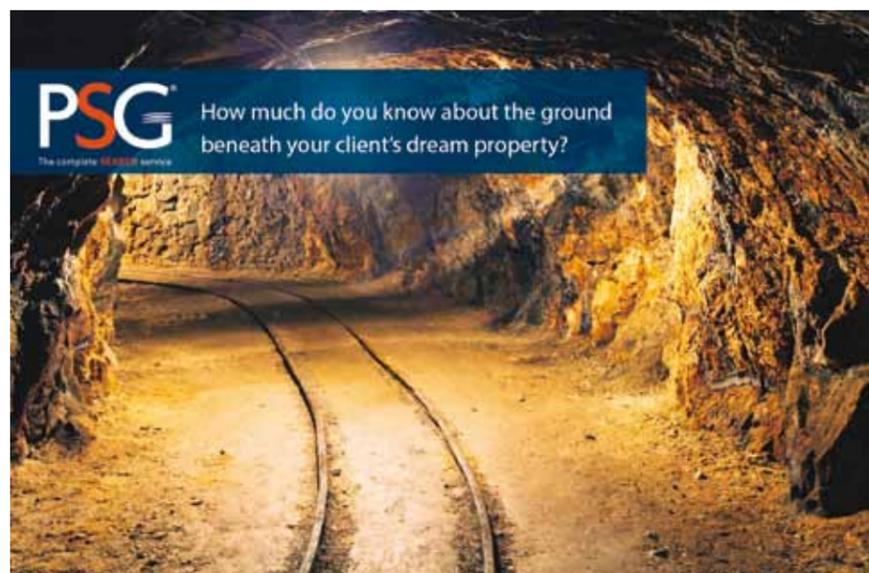
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When you hear the words 'mining in the UK' your mind may be drawn to 'Poldark' and the extensive tin and copper mining industry that criss-crossed West Devon and Cornwall or the vast underground network of coal mines that spans large parts of England and Wales, fresh in the memories of families and communities alike. What you may not know is that the UK is peppered with local and regional scale mineral extraction that has shaped the country we live in today.

There have been over 35 minerals extracted from beneath our nation's surface, with underground mining in the UK dating as far back as Neolithic times, 5000 years ago, when localised flint extraction occurred across the chalk plateau of Norfolk. Mining and mineral extraction touches every corner of every county in the UK, with mine shafts, shallow underground workings and surface quarries littering our landscape, often lost and forgotten beneath agricultural land. However, due to an increasing population and industrial growth, residential and commercial property has slowly leaked out from the city centres, with little attention paid to the problems that may exist beneath the ground.



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Vendor: Mr Stephen Russell & Mrs Stephanie Russell
Matter type: Sale
Purchaser: Miss Lillian Gates
Purchaser's solicitor: Peter Sinclair & Co
Mr Peter Sinclair
Property: 98 Queen Street, Hammersmith, London, W6 7AE
Land registry: UK Land Registry
Estate agent: James Place Realty
Lender: Lloyds Bank
Conveyancing details: Purchase Price: £3,535,000.00

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From/To/Status	Title/Subject	Created
sales@jamesplace.co.uk	Russell Sale to Gates	02/02/2016
Agent	Initial letter to agent before sending contract.pdf	
Agent	Initial letter to agent before sending contract	
Vendor's Solicitor	Letter to other side seeking extension of cooling off period	
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