The Leicestershire Law Society
# MAGAZINE
issue 6
Autumn 2016
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# BREXIT - HOW IT AFFECTS THE LAWS OF THE UK


page 6

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# KING ON TRIAL

## TRIAL DATE SET

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# AUTUMN 2016

## Editor's Intro

Welcome to the autumn edition of the LLS Magazine. What a busy time since Imogen Cox took over as President. Her first big event was the afternoon tea at the Grand Hotel Mercure and judging by the photos the food looked great. We have the King Richard III Trial "Boys in the Tower" to look forward to and a lot of work is going on in the background to make this a great success. Tickets are available and I would highly recommend that you book early to avoid disappointment. It will be an event not to be missed. Since the last issue the UK has voted to leave Europe and De Montfort University have been busy looking at the effect that "Brexit" will have on English Law. I recommend a read of the article in this issue.

Please forward any ideas for articles you would like including in the magazine to me and we can look at including that idea in future issues.

Regards

**Adam Markillie**, Editor
adam.markillie@cartwrightking.co.uk

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## WHATS ON

**31/10/2016**
**NETWORKING LUNCH WITH ACCOUNTANTS**
12pm – 2pm.
**Venue:** More Restaurant. 62A London Road, Leicester.
**Tickets:** £12.00 inclusive VAT.
Tickets available from Leicestershire Law Society Website.

**03/11/2016**
**RICHARD III, A KING ON TRIAL**
3pm – 7pm.
**Venue:** Town Hall, Town Hall Square, Leicester.
**Tickets:**
*Option 1* - £35.00 inclusive VAT.
Trial and Networking. 3pm – 7pm.
*Option 2* - £10.00 inclusive VAT.
Networking and Verdict. 6pm – 7pm
Tickets available from Leicestershire Law Society Website.

**01/12/2016**
**CHRISTMAS WITH LLS AND AWARDS 2017 LAUNCH**
In aid of LOROS
6pm – 8.30pm
**Venue:** Wistow Rural Centre, Leicester.
**Tickets:** Further information available from Leicestershire Law Society Website.

**27/01/2017**
**CIVIC DINNER**
7pm – 11pm
**Venue:** Grand Mecure Hotel, Leicester.
**Tickets:** By Invitation Only.

# PRESIDENT'S REPORT

**Four months into my Presidential year and a lot is happening.**

We had an amazing event in July at the Marco Restaurant at The Grand Hotel. It was an afternoon tea for Women in Business and Law and was brilliantly attended, great networking and also great fun.

*Jenny Cross and Cleo Lacey*

Our guest speakers, who both gave their time free of charge, were **Jenny Cross**, MD of *Niche Magazine* and **Cleo Lacey** of Demi-Couture, image consultant and personal shopper.

The afternoon was full of fizz, cake and fashion! Thanks very much to New Street Chambers for the Sponsorship. With everyone's help we raised over £400 for my chosen charity LOROS.

A full report on the afternoon tea written by Ela Crighton from Cartwright King is included in this edition along with some photographs.

There are more events coming up over the next few weeks which I have outlined below, but first I wanted to update you on some changes that are taking place at the Leicestershire Law Society.

I am delighted to announce that our Manager **Kauser Patel** is expecting her second child. Congratulations to her! This does mean though that she will taking some time off from November and we are looking for cover for her job for her maternity period. If you know of anyone who would be interested in this varied and exciting role then please let Kauser know.

We have formed a business partnership with *FVS Hosting*. They will be working with **Joanna Hector** from Weightman's from our media sub committee, to put together a brand new website which will greatly improve services for you, our members, and visitors to the site.

We have also formed a media partnership with *Niche Magazine* who will now cover and help promote all LLS events. This will help to widen the attendees and therefore improve the networking value that you get from each event.

Our membership sub–committee,(**Bushra Ali** and **Dan O'Keefe**), are doing an amazing job putting together a new package of benefits for all our LLS members. It will consist of discounts for a whole variety of stores, restaurants, hairdressers, beauty salons and many more.

Events wise, our next event is the *'Networking with Accountants'* lunch on 7th October 2016 at More on London Road. In conjunction with LANSCA and The Miller Partnership you can join us for a lunch time of excellent networking and food.

We decided to postpone the summer drinks and to tie that event in with the Richard III trial that will take place at the Town Hall on 3rd November. (please see the article in this edition)

To see the full trial will cost £35 but you can just come along for the verdict and networking drinks and nibbles for £10. Full details are on the LLS website.

Our Christmas Networking event this year till take place at Wistow Rural Centre on 1st December from 4pm-8pm. Kindly hosted by **Jane Clifford** of Wistow Café Bistro, and in aid of LOROS, this will be an afternoon/evening of mulled wine, nibbles, gin and beer tasting, shopping, networking and carol singing -with help from a professional choir. Santa's grotto will be open and the time of the event has been set specifically so that you can bring your little ones, come on your own, with friends or colleagues. Whoever you bring along, it will be great!

This event also marks the launch of the LLS Awards which will be announced at the dinner in May 2017 so please come along and listen to the categories and start thinking about who you can nominate.

**Imogen Cox**
President, LLS

## magazine **contact**

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**Accounts**
Tony Kay

# BREXIT AND HOW IT AFFECTS THE LAWS OF THE UK

**We are currently in a situation akin to the phony war period at the start of World War II. Everyone knows that something has happened, but no one is quite sure when it will get serious. As has typified this whole saga, different stories are circulating about when Article 50 TFEU will actually be triggered and the two year time period for negotiating the UK's exit from the EU will commence. Indeed, there is one school of thought that argues that Article 50 will never be triggered as long as the decision to do so rests with Parliament and not with the government exercising royal prerogative.**

Also impossible to predict is exactly what effect Brexit will have on the UK's own laws. This is because the amount of influence that the EU continues to have on the UK may depend on whether or not those favouring Brexit are willing to accept the price (both financial and legal) that the EU demands for the UK's continued access to the internal market of the EU.

The battle lines appear to have been drawn between those who value a social market economy and those who would accord primacy to the needs of business. Leaving the EU will allow the government to get rid of large swathes of laws aimed at protecting workers' employment rights, health and safety law and consumer rights – all of which are regarded as standing in the way of business making a profit.

**Laws that might change.**

The right wing think tank, the Institute of Economic Affairs, ran a competition in 2013/4 seeking the best blue-print for Britain outside the EU. The best essay was regarded as that submitted by Iain Mansfield. Mansfield identified a range of measures he would repeal or simplify. Unsurprisingly the law transposing the Working Time Directive headed the list. He also wanted to 'simplify' other areas of employment law and argued for getting rid of consultations with unions over redundancies. A number of measures aimed at protecting the environment were also listed for repeal including WEEE and REACH, and dealing with renewable energy targets.

Mansfield also suggested scaling back on EU measures introduced to control financial markets. He wanted to repeal a wide range of EU health & safety measures, although he acknowledged that business exporting to the EU would continue to need to demonstrate compliance. Consumer protection law also needed to be repealed or simplified according to Mansfield who singled out the rules covering the rights of passengers for repeal. Although he advocated retaining the current law on unfair commercial practices, Mansfield would abolish the requirements for business to provide ADR or ODR, This would, of course, have the effect of making the law harder to enforce by consumers.

The British media and some politicians have long (perhaps deliberately) confused the EU with the Council of Europe, reserving particular dislike for the European Convention on Human Rights. Repeal of the Human Rights Act 1998 may well follow Brexit – the UK no longer being bound to respect human rights as required by Article 2 TEU.

**Laws that might not change.**

Other areas of law are less contentious for those who voted to leave the EU. After over 40 years of membership of the EU, the EU's attempts to harmonise the laws of all Member States in order to simplify the operation of the internal market, have resulted in some areas of law being heavily harmonised, e.g. Competition and Intellectual Property. The EU has not had the competence to act in other areas of law, such as criminal law. These retain their national differences.

British businesses that trade in the EU will continue to be subject to EU law, as ICI found out to their cost in 1972 even before the UK had joined the EEC. That being the case, having a separate and different set of laws for the UK would be an unnecessary burden for UK businesses. Mansfield argued that laws could be simplified or abolished for businesses not trading outside the UK. Given the pressure to increase on-line sales opportunities, this might be difficult to monitor.

**Potential legislative vacuum.**

There are four types of EU legislation, the two Treaties; Regulations, Directives and Decisions. Of these the treaties will cease to have effect once the European Communities Act 1972 is repealed. Decisions usually only affect identified individuals (legal and natural) or are of a technical nature. The main issues lie with Regulations and Directives. As Directives have to be transposed into national law, there is no urgency over considering whether those laws, which will remain part of the law of the UK even after Brexit, should be retained, repealed or amended.

The potential vacuum concerns EU Regulations. An EU Regulation is automatically part of the national law of all 28 Member States as soon as it comes into force. No national measure transposing a Regulation is needed. As soon as the UK leaves the EU all those Regulations will cease to have effect. How much of a problem this will be in practice is difficult to assess. Not all Regulations affect all Member States equally. The EU Regulation dealing with methods of olive oil analysis, for example, is only likely to be of interest to the countries producing olive oil.

What is the size of the problem? The EU's Eur-lex website provides some figures for the different types of legislation enacted each year. In 2015 there were 846 Regulations of which 807 were issued by the Commission. There were only 10 Directives issued in the whole of 2015 and the number of decisions issued amounted to 588, the bulk of which came from the Council (279) and the Commission (236). For the 25 years from 1991-2015 a total of 37,482 Regulations were issued, with the bulk coming from the European Commission. Sorting through that lot in two years is a tall order. Perhaps the government will outsource this to firms of solicitors or to university law schools? □

Ian Kilbey

*The author, who qualified as a solicitor in 1990, is currently a senior lecturer at De Montfort University Law School. He has a Master's degree in EC Law and is the lead academic for the teaching of EU law, EU constitutional law and Competition law.*

*Iain Mansfield's article was published by the IEA in Brexit: Directions for Britain outside the EU. (2015)*





# HOW MANY NEW CUSTOMERS MUST YOU ACQUIRE TO PAY FOR UNNECESSARY ENERGY AND OTHER BUSINESS COSTS?

**One is too may isn't it? Unfortunately many firms are still being overcharged for their electricity, gas, phones, broadband and merchant services. When you think about how hard we work to grow our business and achieve the service levels we aspire towards, it is little wonder that comparing utilities often sits low on the priorities. The difference between a good and a bad deal can add up to thousands of pounds but many firms are paying more without realising. We are delighted to offer a free business MOT through our Patron Jonstar, whilst most of us don't like dealing with bills, Jonstar love looking at bills for their customers and finding savings and sometimes refunds! Here are what some of their happy customers had to say:**

"Thanks to Jonstar for a fantastic service on our office utilities! Job well done giving valued advice and peace of mind"

**Bushra Ali**, Bushra Ali Solicitors.

*"Our experience of Jonstar Energy Brokers was excellent and completely 'hassle free' in terms of our input as they took the initiative, led all the relevant dialogue with the companies and fed back to us with a very simple and clear answer as to the options that we had available to us. The reality is that the service was without any charge to us at all and of course with no commitment to have to alter a supplier if we did not wish to do so. In our case the involvement led to a saving of money and we would be very happy to recommend them and will be retaining their help and support going forward. In terms of any Commercial energy cost savings I would thoroughly recommend that you take them up on a free no obligation comparison. There is literally nothing to lose and potentially everything to gain!"*

**Ranjit Thaliwal**, Thaliwal & Co Solicitors

It could not have been simpler - Jonstar took the hard work out of it and took care of everything; the savings we have made are considerable and we could not achieved them without Jonstar's help.

**Mehmooda Duke**,
Moosa-Duke Solicitors.
Call: **0116 2704686**
or Email: *info@jonstarenergybrokers.co.uk*

Ye Leicestershire Law Society
# MAGAZINE
issue 6
Autumn 2016 A.D.

# KING RICHARD III... A KING ON TRIAL

**RICHARD** PLANTAGENET, yesterday.

**HIS VICTIMS!** Or were they? The Princes in the tower

**UNEASY SITS THE CROWN**

**TRIAL DATE SET 03/11/2016 - KING RICHARD III SUMMONSED TO ATTEND**

## A unique opportunity to decide upon the guilt or innocence of one of our most highly controversial monarchs

We now try him in the City of Leicester, the home of his mortal remains. What was his role on the disappearance and subsequent death of the Princes in the Tower?

We examine the 15th Century evidence within a contemporary legal framework and contextualised in the light of modern forensic techniques

You, the Jury will decide and return a verdict... Guilty or Not Guilty

The trial will be prosecuted by Queen's Counsel from 36 Bedford Row and Imogen Cox of Cartwright King will be Junior. The defence team will consist of a further Queen's Counsel from 36 Bedford Row and the Junior will be Helen Johnson of Emery Johnson Astills

The prosecution will call Dominic Mancini and Sir Thomas More. The defence will call the Bishop of Lincoln and Margaret of York, Duchess of Burgundy.

They will give their evidence which will be tested under cross examination. HHJ Simon Hammond (retired) the presiding Judge, will sum up and you, the jury, will decide on guilt or innocence. The burden of proof will be beyond reasonable doubt.

The trial will go through the evidence of the time and also look at the way new forensic techniques would help in the modern day. In order to assist in your deliberations you will hear from a narrator who will outline the evidence and procedures from the 15th century, (Christl Hughes), and a narrator who will outline the current law and forensic techniques, David Lee counsel from 36 Bedford Row.

King Richard himself will be in court to stand trial. What will he say in his evidence?

After hearing all of the evidence and the summing up by HHJ Hammond, you will consider your verdict. Whilst thinking over the evidence you will have the opportunity to network over drinks and nibbles with your fellow jurors and other local professionals and will then return to the court to hear the verdict.

The food will be prepared by 'Decadent Catering' and the event has been kindly sponsored by The Grand Hotel, Leicester.

NB please note that this event is not intended to be an accurate historical representation of history but is staged for your enjoyment only.



# HAPPY BIRTHDAY YOUR MAJESTY

**Christl Hughes Chair of SBA The Solicitors' Charity donned full regalia for the Patrons Lunch hosted by Her Majesty The Queen. On arrival however guests were issued with a rainwear poncho in (correct) anticipation of a right royal deluge. Duly drenched the SBA party was later joined by Jonathan Smithers President of The Law Society. A very wet but truly memorable occasion.**

More information about SBA The Solicitors' Charity can be found on the website *www.sba.org.uk*.

SBA The Solicitors' Charity

# COUNCIL MEMBER'S REPORT SEPTEMBER 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 lindakhlee@aol.com

**By the time this article has been published it is likely that the Ministry of Justice (MoJ) will have announced that publicly funded advocates working with vulnerable witnesses will have to undergo compulsory training before they can act in serious sexual offences cases. It is expected that the deadline for completing this training will be some time in 2018. The Law Society will be offering training compliant with the rules and details will be published as soon as the MoJ have announced the details. Although colleagues working in this area will no doubt be aware that this announcement was likely, it is an additional cost in an area of work that already yields little profitability.**

In recent months, there has been considerable work following on from the Solicitors' Regulation Authority (SRA) consultation on significant changes to the Code of Conduct.

I have participated in Law Society roadshows in Cambridge, Nottingham and Milton Keynes in addition to supporting Leicestershire Law Society in submitting their response.

As outlined in my last article the proposals are that solicitors should be permitted to offer unreserved legal activities from an unregulated entity (for example representing buyers and sellers of businesses)

Very little support has been seen from the profession to the proposals.

An online survey conducted by the Law Society 82% of respondents did not feel that the suggested changes to the regulatory framework were needed. 82 % also felt that the SRA's proposals to permit solicitors to work in unregulated firms would damage the solicitor brand in general.

A sentiment echoed by the City of London Law Society whose response can be found here:

*http://www.citysolicitors.org.uk/attachments/article/108/SRA%20Handbook%20Review%20Final%20AB.pdf*

Who felt there was a risk of damage to the global brand of solicitors and expressed concern that the proposals would not solve unmet need – a key driver for the SRA.

Similarly, The Legal Ombudsman (LeO) in their response to be found here:

*http://www.legalombudsman.org.uk/wp-content/uploads/2014/09/Looking-to-the-future-consultation-response-September-2016.pdf*

LeO supports the wider policy objective behind the proposal, which they define as providing greater flexibility for solicitors to deliver their services, and therefore give consumers greater access to competent and affordable legal advice when needed. However they express concern about the impact on the principle of entity-based regulation, the wider system of redress, and how they will work in practice. Leo expresses serious concerns about:

- The lack of clarity about, and the potential difficulties in, determining its jurisdiction.
- The risk to consumers due to the removal of the compensation fund and professional indemnity insurance.
- The viability of the small claims court as an alternative to LeO

In its view if the proposals remain the same, the jurisdictional issues can only be addressed by amending the Legal Services Act -something unlikely to be high on the agenda of a government dealing with the fall out of Brexit.

It believes that 'the proposals will complicate the system of redress and create confusion for consumers and service providers.'

The following is based on an article which was précised in the Gazette last month concerns the Solicitors Accounts Rules (SARs)

The current rules are complex, lack clarity and complying with the rules comes at considerable cost for practitioners. The Solicitors' Disciplinary Tribunal (SDT) Annual 2015 report published in June 2016 revealed that 19% of cases before it involved breach of the accounts rules.

The obligation to protect client assets and money is a cornerstone of the profession's reputation. Failures to comply with the accounts rules are backed by disciplinary process and redress through compulsory insurance and LeO. Any client loss arising from an act of dishonesty, not covered by insurance, is underwritten by the whole profession. The Compensation Fund steps in to compensate where there is no available insurance.

Ahead of the consultation by the SRA, the Law Society asked its membership what sort of reforms it would like to see in relation to SARs and the recent discussion paper received a bigger than expected response.

Despite the current difficulties, there was surprisingly little appetite for change. 33% favoured no change whatsoever and a further 3% would prefer to see only very minor changes. The most popular response came from the 36% who opted for simplification and shortening of the existing rules with a further 10% preferring simplification of the existing rules with some additional elements. The more radical solutions offered attracted very little support.

The publication on 1 June of the SRA's consultation, 'Looking to the Future: Accounts Rules review' offers a far more radical change than anticipated with the proposal to change the definition of 'client money'. The new definition would allow money received from or on behalf of a client to be treated as the firm's money where it presents money to be used for any fees and disbursements for which the solicitor is liable. This would cover for example counsel's or expert's fees but not taxes such as stamp duty or inheritance tax. It also covers money paid on account of solicitor's costs.

At first blush this may seem attractive as it would boost the cash flow of firms pending payment of expenses or invoicing of costs. Notwithstanding these superficially attractive possibilities the full impact of this change does not appear to have been addressed by the SRA.

Until the solicitor's work has been carried out (unless otherwise agreed) payment to the benefit of the solicitor is not due. If money is paid to be held on account of costs or disbursements to be incurred, this money is regarded as held on trust for the client. Creditors of a firm including banks, suppliers and investors will undoubtedly want clarity as regards what money held in the firm's name belongs to the firm and what is held on trust. That will be swiftly followed by requirements for security or new terms for supply or credit. The solution to avoid mixed funds would then appear to be to have two office accounts.

The rationale suggested by the SRA is that reducing the total amount passing through or held in the client account may for some firms avoid the need for an annual client account audit.

To put this in perspective one only has to consider the situation where a firm operates in overdraft or avoids dipping into deficit on its office funds through the use of funds 'earmarked' for third party payment. It is naïve to assume that suppliers will not alter their terms to put legal liability on clients and then in case of insolvency, for claims to mounted on the Compensation Fund. It is hard to believe that insurers would ignore their risk of increased exposure and the confidence of other stakeholders would be impacted. There is significant risk to the profession in loss of reputation. The SRA has not considered the impact on the compensation fund or experts and Counsel.

It does not appear that software providers have been consulted as to the likely cost of adapting software required to operate the new system. Many of the respondents to the Law Society discussion expressed concern at more upheaval, cost to the firm in updating software, implementing new procedures and staff training.

So where does the benefit lie? Certainly not to the clients who will become unsecured creditors (the SRA's suggestion that current consumer protections and the use of credit cards for payments will eliminate the risks is clearly incorrect).

The answer lies in the main thrust of the reforms by the SRA in the Code of Conduct itself - 'Looking to the Future - flexibility and public protection'. The SRA state it 'will address the problem of access to justice'. It sees the reforms as a means of meeting the government agenda of innovation and the view that there is widespread 'unmet need' of the public and small businesses for legal services.

Under the new framework proposed, regulated solicitors will be able to practice as solicitors in any unregulated business, offering legal advice and other unreserved services direct to the public. One of the difficulties of this model is the handling of client money- solicitors in such entities would not be able to operate a client account. For the most part the redefinition of client monies to exclude fees would avoid the need for such entities to operate a client account.

However, should the need arise for such entities to deal with the occasional need to handle client monies presumably it would be supported by permitted use of a Third Party Managed Account (TPMA) a second proposal in this reform.

A TPMA is company which operates an escrow service to receive funds from clients, which are required in relation to on-going legal services. The funds would remain in pooled segregated bank accounts for the term of the legal services. The SRA first considered the use of such accounts in 2015 but delayed its decision.

Early indicators were that there was little appetite from the profession who saw it as a high cost per transaction and as offering no greater safety than an ordinary solicitors client account. Fears were expressed that such a requirement would become compulsory. Successive governments have expressed a fondness for a centralised client account so that the interest could be used to off-set legal aid costs. There is no suggestion that there is any intention to make this compulsory but 88% of those responding to the Law Society discussion paper indicating that it was felt unlikely the profession would take this up. Once again how such services will interact with the Compensation fund has not been considered.

So what are the new rules - the SRA consultation presents a very simple draft set of accounts rules and explains that these will be supported by an online toolkit comprised of guidance and case studies. The toolkit and guidance have not been published and therefore it is very difficult to judge whether or not such rules will reduce the administrative burden on solicitors.

The 6 pages of rules now stem from 4 principles:

*i.* keeping client money separate from the firm's money

*ii.* ensuring client money is returned promptly at the end of a matter

*iii.* using client money only for its intended purpose

*iv.* proportionate requirements for firms to obtain an annual accountant's report.

Fewer firms will need to obtain accountants reports but reporting accountants will need to get to grips with the new rules and guidance and any increased cost to them will be passed on to their clients.

Introduction of these changes as a whole, would cause expense and difficulty to the profession, client protections will be reduced and third parties such as banks, experts, Counsel and others impacted. If it is not possible to simplify the rules in a way that reduces administrative burden, the current rules should be retained.

Finally, in May of this year the Legal Services Board (LSB) published its review of the SRA. The LSB noted that it had, '.. expressed concern about the need for supporting evidence and analysis to justify a change in approach, in some of the SRA's applications to us to alter its regulatory arrangements'.

Once again the consideration of the impact of these changes is poorly considered.

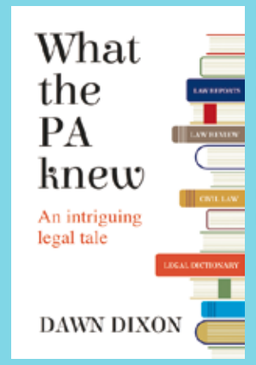
The LSB also noted that the number of consultations undertaken by the SRA risked 'consultation fatigue' and it also states that the wholesale review of the Handbook, 'may be too much for firms (and the organisation) to cope with'.

Ultimately that is the main failing of the SRA, in pursuit of a dream of radical reform, designed to give unquantifiable benefit, it ignores the needs of 10,000 plus firms and their clients. The profession will struggle to cope with such a radical change but so too will a regulator which has yet to achieve a satisfactory rating in any but one category assessed by the LSB. ■

# BOOK REVIEWS

## ‘What the PA knew’ by Dawn Dixon

ISBN 978-1-784520-81-6
published by Panoma Press.





**In 1998 Dawn Dixon was a partner in an established firm, however she was in what she described as her ‘creative patience’ mood. She had met with a group of young Black lawyers who had the idea of opening a Black-owned commercial law firm in the City. She felt she could unlock opportunities for herself and others. In the event only two of them were prepared to give up the security of their existing roles.**

Establishing Webster Dixon should have been the fairy tale ending after years of struggling to qualify as a lawyer and become established in the profession. At her convent school Dixon had been told by a careers officer that as a member of an ethnic group she was setting her standards too high in wanting to be a lawyer. Notwithstanding this lack of support she worked hard to achieve her dream.

Initially the firm seemed to be a success and the future bright. That is until the day Dixon discovered her partner had ‘borrowed’ client money to invest in a diamond business that was in fact an advance fee fraud. She made an immediate report and managed to fight off an intervention but had to close the firm.

Lesser mortals would have been destroyed by these events but not Dixon, now a Consultant at PDC Legal in Hertford. One of the projects she has committed to since, is the publication of her first novel, ‘What the PA knew’. A fictionalised version of her life, told through the eyes of her personal assistant, a composite of the many PAs who have worked with her over the years. It also sets out Dixon’s thoughts on the development of the legal profession and the advice she gave to many young partners setting up their own firms.

It concludes with 35 Life Lessons the first of which ‘Life isn’t fair but it’s still good’ could have been an alternative title for this book.

It is a fascinating insight into one woman’s battle to overcome the adversity of life, it is humorous and informative.

Dixon’s message to young lawyers, and particularly those from an ethnic minority background is that with enough hard work and resolution it is possible to overcome any number of obstacles and that a successful career in the law is not within the exclusive remit of the privileged few.

The book has wide appeal not least for those of us who remember a world gone by but not entirely forgiven.

Available at: *https://www.amazon.co.uk/What-PA-knew-intriguing-legal/dp/1784520810*

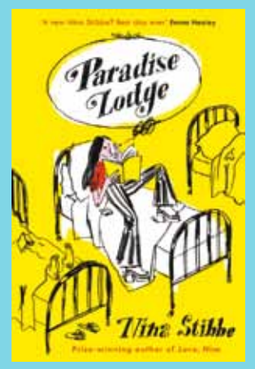
**Linda Lee**

## Paradise Lodge by Nina Stibbe

Penguin Random House 2016
ISBN 978-0-241-24024-3

**Following the recent TV series “Love, Nina” Christl Hughes reviews Nina Stibbe’s third novel.**

*Nina Stibbe with her Uncle the retired Leicester solicitor Jeremy Barlow.*




**Nina Stibbe was born in Market Harborough, Leicestershire and this novel is set here, inspired by her (positive and happy) memories of working at the Grange Nursing Home at Saddington in the 1970’s.**

“Longston” does not actually exist but with the references to the Grand Union Canal and the Pork Pie library I think the location of Paradise Lodge Care Home might be a contraction of “Long St” and “Wigston”. Other venues such as Haymarket Theatre and the Church of St James the Greater get a mention together with local individuals such as Engelbert Humperdinck and the Attenborough brothers. There is even a hint of football!

The year is 1977 but I thoroughly recommend this book to both those who do and those who do not remember the deaths of Elvis Presley and Marc Bolan.

For example the issues concerning residential care of the elderly are constant. Is the liquor loving proprietor of Paradise Lodge providing a service or running a business? Is the aim of the organisation to keep the customers happy and comfortable, but not necessarily alive, or to prolong the stay of, in particular, “high tariff” residents for the fees? Does it need a “client relationship manager” to liaise with family members concerned about the disappearance of their inheritance? How can competent, honest staff be recruited and retained at minimal cost?

Conflicts of interest abound together with studying while working and the challenges of detachment for all the featured professionals. The solicitor though seems to be OK. His name is Jeremy, presumably after the author’s Uncle the retired licensing specialist Mr. Barlow.

This is a very readable book with a good plot as well of plenty of food for thought and I hope that it is televised or filmed.

**Christl Hughes**





# AFTERNOON TEA AT THE GRAND HOTEL

**This was the first event organised by my esteemed colleague, Imogen Cox, as President of Leicestershire Law Society. The venue was the impressive, Marco’s Restaurant at the Grand Hotel.**

The support for Imogen and for this event was obvious. I saw lots of familiar faces, friends from other law firms, barristers from local chambers, colleagues from the court and probation services and several other local agencies and businesses.

There were two very impressive guest speakers (pictured above), Jenny Cross from Niche Magazine who’s journey leading her to her current position at Niche Magazine was both emotional and inspiring and Cleo Lacey, an image consultant and personal shopper, who has an impressive resume and surely, one of the best jobs in the world!

As for the main event, the afternoon tea, it was absolutely delicious!

In short, the event was a resounding success and a great start to Imogen’s year as President.

Article written by Mrs Ela Crighton, Cartwright King Solicitors.

# PROBATE MATTERS - WHERE ARE WE NOW?

## Inheritance tax, Probate applications, Trusts & Estate

**For we private client lawyers, the appointment of a new Chancellor of the Exchequer always comes with a certain amount of nervousness. How will the new Chancellor deal with the tax that affects us most – Inheritance Tax? Will the ship remain on the same course set by the previous incumbent or will he take the helm and lead us into new uncharted waters?**

*So, what were we expecting?*

Firstly, back in February, we learned that the government is considering a massive hike in court fees for probate applications.

Our clients are currently required to pay a flat fee of £155 to process an application for a grant of probate. This flat fee had already risen from £45 in 2014. Individuals who do not use a solicitor to prepare their probate application are currently required to pay a flat fee of £215. Once the grant of probate is issued by the probate registry, the executors will be able to prove that they have authority to deal with the property, money and other possessions belonging to the deceased when they died. Not every estate needs to go through the probate process but the government has estimated that each year, 270,000 applications are processed.

The proposal is that the simple flat fee system will be replaced by a tiered charging structure, corresponding with the value of the deceased's estate. In a move to generate approximately £250m per year, estates worth less than £50,000 would pay no fee, but if the deceased's estate is worth any more than that, the charging structure will kick in. This could see estates valued at just £300,000 paying £1,000 just in court fees! An estate valued at £500,000 would have to budget £4,000 in court fees and if your estate is worth more than £2m, you will be charged a whopping £20,000 for your trouble! Even if you are not paying inheritance tax, you may still be liable for the new probate fee charge. We will have to see what our new Chancellor decides to do about this.

Secondly, we were expecting changes to inheritance tax, as announced by George Osborne in last year's summer budget. Inheritance tax has always been something of a political hot potato with many voters feeling that it is an iniquitous tax, charged on those who have worked hard and already paid plenty of tax throughout their lifetimes. Clearly the Brexit decision is going to have an impact, one way or another, on our economy and the way that our taxes are set.

Provided plans remain unchanged, we are about to enter the new age of the Additional Nil Rate Band (ANRB). From April 2017, the ANRB would be available to certain individuals to add to their existing Nil Rate Band (currently £325,000). The ANRB attaches to the family home and will come into effect in stages over the next four years starting at £100,000 from April 2017 and increasing in increments of £25,000 over the three subsequent years. Therefore, when it reaches its maximum of £175,000 by 2020, married couples or civil partners leaving their family house to direct descendants could pass on up to £1million of their joint estate to those descendants.

The arrangement is not so generous if you are leaving your assets to those other than direct descendants. Thus a couple leaving assets to nieces and nephews will not benefit from the ANRB. However, as always, the devil is in the detail and it remains to be seen how gifts to discretionary or non discretionary trusts will be treated.

However, if you are eligible for the transferrable nil rate band, getting it or indeed the ANRB will not be automatic. There will be forms to complete to make a claim for these allowances and information required for those forms which may be difficult for your families to obtain after your death but which you may, with some forethought, be able to provide easily.

Therefore, whether you have a will or not, it would be wise to be aware of any changes that may come and to review your testamentary arrangements and your IHT situation in the light of those changes. In the weeks and months to come, we will see on which course the new Chancellor decides to take us.

Brexit has brought uncertainty in many areas. Many clients ask me what my number one top tip would be to save IHT....and my answer is always the same "Spend it!". That is then usually qualified by what should it be spent on and my answer remains the same "Very nice wine that you drink and don't lay down and some very nice holidays!" Given some of the post Brexit scare stories that we are hearing about the higher costs of trading with our European cousins, we best get on swiftly with both of those plans!

■ **Alyson Coulson**

*The Association of Probate Researchers (APR) welcome the news that lower valued estates will be fee free, as it is vital that more estates go through the correct channels and obtaining a Grant is a critical step. The decision by Lord Chancellor Chris Grayling in 2013 not to extend the list of reserved legal activities opposing the recommendation of the Legal Services Board (LSB) to cover will writing, and the following year the government decision not to extend the scope of regulation, has been one of the biggest failings in recent time. Obtaining a Grant should not be a financial obstacle on smaller estates they are vital to help combat fraud. However the proposed fee scale for larger estates is still unclear and any attempt to calculate the fee on the gross as opposed the net value would seem totally unfair.*

**Neil Fraser**,
Chairman
***www.a-p-r.org***







# REPORT SHOWS RISKS TO INDEPENDENCE OF UK LEGAL PROFESSION

**A strong and vibrant legal profession is vital to ensuring that the rule of law is upheld, the Law Society said today welcoming the report of the International Bar Association (IBA) presidential taskforce on the independence of the legal profession.**

Law Society chief executive **Catherine Dixon** said, *'A strong and vibrant legal profession is vital to ensuring that everyone has access to justice and that the rule of law is upheld. This important report identifies areas where legal independence is under attack across the world including in the UK.*

*'We must never take the independence of the legal profession for granted. In the UK legal professional privilege (LPP) is under attack. LPP is a cornerstone of our justice system in that it ensures a person can speak confidentially to their solicitor without the risk that confidentiality will be breached by a third party, including the State.*

*'The report also identifies a risk to the independence of the legal profession in the UK because the oversight regulator, the Legal Services Board (LSB), is a non-departmental public body whose majority lay board is appointed by a government minister (the sectary of state for justice) and whose CEO has a reporting role, as the accounting officer for the organisation, ultimately to the secretary of state for justice.*

*'It is notable that in a recent LSB report outlining its vision of regulation this government body failed to recognise the importance of an independent legal profession, which if lost would undermine the very fabric of our society and our ability to maintain the rule of law.*

*'It is imperative in this context, and in light of the many threats to legal independence around the world, that the legal profession stands together. We cannot be complacent, and we must continue to fight to ensure the survival of strong, vibrant independent legal professions around the world'.*

# THE **FUNDING VOID** AND THE CURRENCY OF **PRO BONO**

**The dictionary defines pro bono work as work 'done or undertaken for the public good without any payment or compensation' – in other words 'free of charge'. Those three magical words are invariably subjugated by natural cynicism – 'there's no such thing as a free lunch' and 'you don't get 'owt for nowt' spring to mind! Media driven perceptions of the legal profession might engender similar sentiments. Au contraire! The legal profession is not just a collection of businesses, it is a public service collective which has justice at its heart, and it is certainly no stranger to working for nothing.**

## The Access to Justice Foundation

Section 194 of the Legal Services Act 2007 (which came into effect on 1 October 2008) formally recognizes this. It subverts the indemnity principle and articulates the power of a Court to make what is tantamount to an order for inter partes costs – an order made against the opponent of a litigant with no funding in place. The costs recovered are paid to the Access to Justice Foundation, a charity which provides much needed finance to law centres and other similar advisory services. The Foundation does of course receive money from other sources, including unclaimed client account balances from solicitors, Legal Support Trusts fundraising events and other generous donations from a plethora of individuals, associated legal institutions and enterprises, including the Law Society, the Bar Council and numerous legal publications. *(more information can be obtained via http://www.atjf.org.uk/)*

## Section 194

The essential pre-requisites and features of Section 194 are summarized thus:

- Made only by a 'civil' court (County/High/Court of Appeal (civil)/Supreme Courts)
- Recipient has legal representation, all or part of which was free of charge
- Can be made even if Counsel not acting free of charge
- Cannot be made against a party who was also pro bono or legally aided
- Cannot exceed what would have been determined by a conventional costs order
- Costs claimed must have been incurred after 1 October 2008
- VAT must not be claimed
- Onus on winning litigant to apply for the order and to quantify the costs

## Positive Evidence

The Solicitors Journal report that since 2008, the scheme has resulted in some 160 pro bono costs orders with a cumulative value of approximately £600,000.00. Statistical evidence from Trustlaw – Index of Pro Bono 2015 (Thompson Reuters Foundation) reveals further positive evidence. A sample size of 8,043 fee earners in England & Wales suggested an average of 21.9 hours of pro bono work each annually; the percentage who performed 10 hours or more amounted to 35.3%. Partner engagement also showed a consistent and positive trend in line with previous years with 37.8% recording time on pro bono matters; and the number of pro bono hours performed by partners increased by almost 10% to 14.9 hours *(further detailed information can be found at http://news.trust.org/spotlight/TrustLaw_Index_of_Pro_Bono/).*

The recent attitude of government

We live in times of immense change and austerity, something that the last Lord Chancellor (Michael Gove) claimed to be acutely aware of. In his inaugural speech he said:

*'..the law is more than a marketplace, it is a community, the legal profession is more than a commercial enterprise, it is a vocation for those who believe in justice being done.....many of the most prestigious chambers at the Bar and many of the solicitors' firms already contribute to pro bono work and invest in improving access to the profession..... it is clear to me that it is fairer to ask our most successful legal professionals to contribute a little more rather than taking more in tax from someone on the living wage.'*

Laudable though it is for a senior politician to extol the virtues of the legal profession, it is rather less commendable to engage in an almost subliminal shifting of responsibility. In the words of Mr Andrew Caplen, the then President of the Law Society in 2014:

*'Pro bono legal advice should never be seen as a substitute for a properly funded legal aid system. It is right to publicise the tremendous work that so many solicitors do free of charge'.*

There speaks the voice of experience and reality, the incisive summation of an experienced lawyer, as opposed to the politically manoeuvring rhetoric of Mr Gove, a journalist by trade and a (then) Lord Chancellor by design.

## The recent attitude of the legal profession

Perhaps there is more potential for pro bono work (on a formal basis at least) but it cannot be a panacea. Statistics suggest that much is being done, and my own experience of clients and friends in the legal profession suggest that they do so much more than the statistical data reveals. Lawyers typically spend a great deal of unpaid time dealing with their clients, providing practical advice, reassuring them, giving them a proverbial 'shoulder to cry on' and just being there for them – instances of pro bono work by every lawyer that go unrecorded. As committed professionals their remit is to deliver justice and a high quality service; the overall framework within which this is achieved however is quite clearly the responsibility of government. Sadly an ever burgeoning part of our society are being denied access to justice in the name of austerity. In the words of Lord Falconer (shadow justice secretary):

*'[A]ccess to justice has been all but dismantled for the poorest in our society.....The number of social welfare cases being granted funding has plummeted, victims of domestic violence are struggling to get help, employment fees are a significant barrier to workplace justice and the essential safeguard that is judicial review has been severely restricted'.*

The Law Society, Bar Council and the Chartered Institute of Legal Executives have recently launched a working group to explore the feasibility of a contingent legal aid fund; this follows on from a speech by Sir Rupert Jackson earlier in the year. Conceptually this might involve the creation of a pooled fund of resources which would be capitalized and topped up by a contribution from damages in successful civil cases in which the winning party is backed by that fund – a form of self-perpetuation. An initial report is due by September and a final report before the end of the year. Whatever conclusions are reached, it is to be hoped that they are done so in a spirit of social realism and in a genuine effort to facilitate greater access to justice.

## Concluding thoughts

Ultimately there is a funding shortfall when it comes to access to justice. The government (and lest it be thought that this is a party political attack, governments of all hues for some years) appears to be abrogating its responsibility to effectively ensure access to justice for all, one of the core principles of any democracy worth the name. It is greatly to the credit of so many lawyers that they are mitigating this effect, not because they are obliged to, but because they put the public good before their own.

The legal profession are clearly playing their part and now it is time for government to play theirs – and I can tell you that pro bono!

■ Michael Fitzpatrick

quill pinpoint

# 10 QUESTIONS TO ASK YOUR OUTSOURCED CASHIERING PROVIDER

OUTSOURCING IS A STRATEGY INCREASINGLY ADOPTED BY LAW FIRMS EAGER TO OPERATE MORE EFFICIENTLY AND FOCUS ON THEIR PRIORITIES OF FEE EARNING AND BUSINESS MANAGEMENT. BUT, BEFORE ENGAGING AN OUTSOURCING PROVIDER, CAREFUL SCREENING IS RECOMMENDED.

To help you, we've compiled 10 top questions...

### 1. WHO WILL MANAGE MY ACCOUNT?

As you'll be working together closely, will a dedicated individual be handling your day-to-day tasks and is there an assigned deputy for absence cover? Also, who heads up the team? Over time, you'll need to interact with your cashier, deputy and supervisor so chat over the phone or meet face-to-face to decide if you'll get on well.

### 2. DO YOU HAVE A PROVEN TRACK RECORD IN MY INDUSTRY?

Specialist suppliers to the legal profession are well versed in how you work and the challenges you face. Check credentials, ask about service level agreements and request reference sites. Speak with a handful of these existing customers for honest feedback about service quality and overall satisfaction to assist your purchase decision.

### 3. WHAT'S THE STATUS OF YOUR FINANCIAL HEALTH AND OWNERSHIP?

This is potentially the beginning of a long-term partnership. Probe into the supplier's profitability, stability and longevity. You might want to review their balance sheet at Companies House as a starting point. Successful, independently owned, long-standing businesses are preferable for obvious reasons.

### 4. WHAT ARE THE COSTS TO OUTSOURCE?

Secure detailed pricing up-front to avoid any nasty surprises from hidden costs later on. Do any add-on fees apply for various outsourced service components? What happens if your business changes? Will the service scale up or down alongside you? Finally, weigh up the final pricing structure against the in-house alternative – employing staff and purchasing software – to get the total pricing picture.

### 5. WHAT ARE YOUR SECURITY MEASURES?

Enquire about encryption, firewalls, password protection, physical data centre anti-intrusion systems, regularity of software updates and back-up procedures. In the rare event of a security breach, what's the provider's response plan? How will they handle incidents and rectify any ensuing data or financial losses? Seek minimum ISO 27001 standards and a business continuity plan.

### 6. HOW QUICKLY CAN I GET UP AND RUNNING?

How long will it take to set up and configure your database in order to make the switchover to outsourced support? Likewise, for the supporting software package (if provided), what time period's required for granting access and delivering end-user training? Along the way, is there a migration plan to ensure a smooth transition? Allow up to 6 weeks.

### 7. WHAT ARE MY MINIMUM CONTRACT TERMS AND HOW DO I TERMINATE?

Life happens, circumstances alter and cancellation can become a necessity. What's your escape strategy and who owns your data? Read the standard contract small print so you know exactly how long you're committing yourself to at the outset. Your provider should act as custodians of your data so ensure you're offered transitional assistance with data provided in an appropriate format for your retention if the relationship comes to an end.

### 8. WHAT HAPPENS IF I HAVE A PROBLEM OUT OF HOURS OR RECEIVE NOTIFICATION OF A COMPLIANCE VISIT?

The norm is 9am-5pm support with 24/7 system access for your accounts and matter data. If you're informed of a compliance visit from a governing body, however, can you contact your provider for assistance preparing reports and other documentation? And, are they available during the visit itself should any queries arise? Any self-respecting provider should be willing and able to provide this type of back up, even if it's over-and-above the normal call of duty.

### 9. WHAT OTHER OUTSOURCING SERVICES DO YOU OFFER?

Some providers will have an extended range of offerings so you can take advantage of optimum outsourced support, for example payroll and pension management. If they offer software too, better still. 'One-stop-shop' provision takes convenience to a new league because you have one point of contact for everything.

### 10. WHY SHOULD I OUTSOURCE ANYWAY?

If you've got retiring, resigning or long-term absent employees, and if you're just a tiny bit curious what positive impact outsourcing may have on your business, then begin your enquiries. Outsourcing isn't always the answer but imagine the possibilities if it is.

*__Julian Bryan__ joined Quill Pinpoint as Managing Director in 2012 and is also the Chair of the Legal Software Suppliers Association. Quill is the UK's largest outsourced legal cashiering provider with 35 years' experience supplying outsourced services and software to the legal profession. To contact the Quill team, call __0161 236 2910__, email __info@quill.co.uk__ or visit __www.quill.co.uk/cashiering__.*

# A **NEW DIGITAL SUBMISSION PORTAL** WILL FACILITATE SUBMISSIONS TO GOVERNMENT AUTHORITIES

THE Oyez Gateway

**According to government statistics, there are currently more than 650 transactional services provided by UK government departments that process more than 2.4bn transactions every year. The Government's much heralded Digital by Default strategy was announced in 2010 with the objective of replacing cumbersome and expensive paper transactions with an easier and more cost efficient digital model.**

However ideal these digital solutions may be in relation to the general public, the non-collaborative approach taken by government agencies is inadvertently adding complexity to processes for law firms. Separate sign-ins and different workflows for each authority are just two examples of why government portals are not an ideal environment for the legal practitioner.

Additional efficiency barriers include limited functionality and reporting, time-out issues and, critically for law firms, a threat that risk management and compliance could be compromised. In response to these shortcomings, Oyez Professional Services has developed the Oyez Gateway digital submission portal, a single independent platform that allows submissions to all relevant Government authorities. This will allow legal practitioners to collaborate and incorporate digital submissions into their current workflows using a common process across multiple government agencies. Ultimately this will lead to more efficient, lower cost submissions and the adoption of workflow collaboration will reduce the risk of submission rejections.

The first portal developed for The Oyez Gateway is the Companies House Charges Module (MR1-5, LLMR1-5), from an agency whose intent is to be 100% digital by 2019. It was designed with the twin principles of more efficient, lower cost digital submission and the enforcement of workflow collaboration which reduces the risk of non-compliance. The Oyez Gateway Companies House Charges Module has generated strong interest from larger law firms including two top ten practices who are looking to future proof their submission processes.

The Oyez Gateway removes the risks associated with unsupervised submissions. An option was developed that allows a pre-elected authoriser to check and approve all submissions before they are sent to the receiving authority. Users also have access to a dashboard view of submissions, listed by their current status, and can share view links with relevant co-workers to bring them into the process. The general collaboration engine is enhanced for each specific area of e-submission, and for the Companies House Charges Module (it verifies company details against the receiving authorities register as the user enters the data, thus removing the risk of submitting incorrect details that could lead to rejection. Users can also view the attached legal instrument to ensure the correct one is attached. Human error is minimised through the Gateway 'Duplicate' feature by automatically transferring original data directly into the newly created copy of the initial document.

By centralising the point of release for all submissions, the Oyez Gateway also neutralises any access issues caused by technical problems with the receiving government service. The Gateway can detect and notify all users of any changes in availability and submissions are held securely until they can be released.

The Oyez Gateway also offers the elasticity of a UK cloud hosted service. It allows system users to be added, removed or updated instantly, and enhances security and reduces demand on internal infrastructure and IT resources.

**Digital:** *www.oyezgateway.co.uk*
**Tel:** 0845 017 5517

# CONVEYANCING AND TECH - THERE IS NO TIME LIKE THE PRESENT TO MAKE A CHANGE

**Lately I have noticed more and more that technology has us living as a 24-hour society. Our days are quickly filled, particularly through the use of said tech, whether at home or at work, and we find ourselves describing our lives more and more as 'busy'. Being in a fast paced society means we have learnt to expect instant gratification when purchasing an item or service, as well as receiving swift, exceptional customer service – and all at a competitive price, of course. As a service industry, legal firms are not immune to these attitudes and it is issues around the efficient use of time and the direct effects of it which can be addressed by using process consolidating technology.**

As global use of technology grows exponentially, legal firms have been pegged as slow to adopt new systems and processes, and as lawyers are often risk-averse and time-poor, there may be less motivation to spend unbillable time researching or implementing new technology. However, I recently read the Lexis Nexis Bellwether Report, 2016 which provided an optimistic view of attitudes toward technology in the legal industry, where it stated that over 90% of the lawyers surveyed agreed that "continued investment in technology is no longer optional – it is a 'must'", and 64% of respondents 'strongly agreed' that continued investment in technology is essential to legal practices.

So how does this stack up with reality? In a recent survey performed by InfoTrack, 73% of conveyancers who responded said that they use between 3-5 websites to complete a conveyancing matter, and more than 60% said that the ability to complete contracts online would make the conveyancing process more efficient. This clearly shows there is certainly an awareness that investing in consolidated technology is imperative to maintaining a competitive edge and being as efficient as possible, particularly in industries such as conveyancing. However, the same research shows that the market is still accessing numerous websites to complete a single transaction. From the initial searches through to indemnities and submission of notoriously lengthy forms, such as SDLT and AP1, you should expect to be able to access all the key tasks in one location, in turn creating efficiency and allowing you to focus on providing exceptional customer service.

There is no time like the present to make a change in the technology you are using. Change can allow firms to turn their focus to those areas which clients value the most, those which make the biggest difference to their experience, which is especially important given that research shows how much time is required in managing client expectations. This means that by identifying systems and processes that are going to benefit both internal and external stakeholders in the long term, early adopters of innovative technology will reap the benefits.

Adam Bullion
Head of Marketing, InfoTrack

# WIN A TRIP TO AUSTRALIA WITH INFOTRACK

**If your holidays aren't yet planned for 2017, then it's worth checking out InfoTrack. InfoTrack have announced their latest incentive – a prize draw to win a two-week holiday for 2 to Australia.**

Having recently added electronic contract packs to their platform, InfoTrack are a service provider that bring together all the key conveyancing tasks under one roof, including SDLT Submissions and API Transfers.

For the chance to win the trip to Australia, InfoTrack customers receive an entry each time they use one of three services – eCOS (electronic contract packs), SDLT or API. The more often these services are used through InfoTrack, the more entries users will receive into the prize draw.

**Adam Bullion,** General Manager of Marketing at InfoTrack comments *'We recognise that our clients work very hard. Our aim is to bring the enjoyment back to conveyancing through technology. The prize of a trip to Australia, running through to the end of December, is designed to be enjoyable and simple to enter, which is similar to our platform. The more a user conducts SDLT Submissions, API Transfers and eCOS (electronic contract packs) through InfoTrack, the more entries they'll get, increasing their chances of winning.'*

For more information and to find out how the promotion works, simply visit ***http://www.infotrack.co.uk/takemetoaustralia***




## WIN a 2 week trip to Australia for two

InfoTrack's platform uses enjoyable technology to challenge and evolve the conveyancing process. Now, you could be enjoying 2 weeks in Australia for simply doing your job. For every **SDLT**, **AP1** or **eCOS** performed using the platform, you'll automatically be entered into our prize draw.

The more you use the platform, the more chance you have of winning.

[ SDLT ] + [ AP1 ] + [ eCOS ]

For more information or to sign up today, just visit:
www.infotrack.co.uk/takemetoaustralia or call 0207 922 5777

InfoTrack

ACCREDITED FORENSIC ACCOUNTANT & EXPERT WITNESS

# GIVE US THE TOOLS...

## ...and we will do the job.

**In this case, the job is to value a holding of shares in a private company, and the tools are the details about the company which the valuer needs to be able to perform such valuation. A recent High Court (Chancery) decision should be helpful.**

The case is *Cosmetic Warriors Ltd & Lush Cosmetics Ltd –v- Andrew Gerrie & Alison Hawksley [2015] EWHC 3718 (Ch).* Cosmetic is the company holding the intellectual property, and Lush is the manufacturer and retailer of those cosmetics which look like huge lumps of fudge with embedded vegetation. Gerrie and Hawksley, husband and wife, owned 22% together of the shares in both companies, and wished to sell their shares. The companies applied to the Court for interpretation of the Articles of Association in two respects: should the shares be valued as a block of 22%, giving rise to minority discounts or on a quasi partnership basis; and what information should be made available to the accountant tasked with valuing the shares?

I deal with the first issue briefly, since it is specific to this case. The Articles said that *"...the prescribed price shall be such sum per share as shall be agreed..."* between vendor and purchaser, or by taking the median price determined by two independent chartered accountants, acting as expert determiners. The Court found that, because the Articles referred to shares and not to holdings or blocks of shares, the fair value price of the vendors' holdings was to be decided by valuing the entire companies, dividing by the number of shares in issue, and multiplying by the number of shares held by the vendors. Thus one arrived at an exact pro rata value of the whole companies, hence no discount for minority holdings.

The second is of much broader interest, since it deals with a situation which I, and others who value companies, often encounter. I value shareholdings quite frequently in three situations:

- the Section 994 "unfair prejudice" regulations, where the Court orders that an aggrieved shareholder is to be bought out at a fair value by the company or the other shareholders;
- in family law where a clean break is sought and the value of the company to be taken out of the marriage by one spouse is to be balanced against other matrimonial assets;
- and where, for example, a director and shareholder wishes to retire and his colleagues wish to pay him a fair price for his shares.

Indeed, I am on the panel of the President of ICAEW as an expert determiner, I was in the first batch of only five to be accredited as such by The Academy of Experts, and I now act as an examiner at The Academy for those seeking accreditation.

So for all these reasons, I am keenly interested in knowing how much information about a company I have the right to demand.

So far, I have used common sense. My approach has been to put myself in the shoes of the hypothetical arm's length purchaser, given access to all the information necessary to perform due diligence: fully detailed financial statements, business plans, top customers and suppliers, intellectual property, employment contracts, leases, and so on. And as an SJE in family matters, I prepare a bespoke questionnaire so that both spouses can tell me what they know about the company. Quite often one spouse does not know much about the other's business affairs, but each must be given the right to express their views to me.

Yet it is surprising how often I am fobbed off by parties, or even their solicitors, telling me that I can find all I need to know from Companies House. The majority of companies filing accounts are defined as small companies, and all they need to file each year is a balance sheet, a couple of notes, and little else. With such limited information a valuation is impossible, and I have turned down instructions where it is clear that I am to receive nothing else.

Now – hopefully – it's different. At clause 115, the judge in Lush said:

*"...my ruling...is that a potential transferee...is not to be provided with publicly available information only, but is instead to be provided with such further information available and relating to [the company] as [the other party] knows and are not prevented from disclosing due to obligations of confidentiality..."*

It follows that a chartered accountant acting as valuer, for either party or for both, can demand to see as much information as he regards as necessary to perform the valuation.

The judge recognised that confidentiality may cause problems, but suggested that they can normally be resolved by undertakings. After all, all that a spouse departing a marriage normally wants is for the matrimonial "balance sheet" to be fair to both sides. Unless a fair price can be put on the company which the other spouse is taking, how can such a balance sheet ever be compiled? And similar considerations usually apply in commercial cases.

I come back to common sense. A valuer needs to know much about a company before he can value it. Lush merely gives judicial authority for the approach I have for many years taken to valuation assignments. Give me the tools...

**Chris Makin**
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**Biog:** *Chris Makin was one of the first 30 or so chartered accountants to become an Accredited Forensic Accountant and Expert Witness – see www.icaew.com. He is also an accredited civil & commercial mediator and an accredited expert determiner. He has performed about 100 mediations, given expert evidence at least 100 times and worked on a vast range of cases over the last 27 years. For CV, war stories and much more, go to* ***www.chrismakin.co.uk****.*

# MAKING LAND **WORK?**

**Remember the Law Commission report of 2011? It's been dusted off and we can now expect a draft Property Bill courtesy of Her Majesty in the Queen's Speech of May this year.**

This together with other measures such as the Neighbourhood Planning and Infrastructure Bill are designed to simplify the law relating to ownership and use of land.

The Neighbourhood, Planning and Infrastructure Bill will provide new provisions to better enable the development of land, including eliminating the misuse of planning conditions and enhanced CPOs, plus more relevant levels of compensation.

The Property Bill will, amongst other things, streamline the creation of easements and will rephrase restrictive and positive covenants as "land obligations." It will purportedly be clearer that both types will bind successors. The intention is to deal with some specific issues including contributions to payment and maintenance of communal areas. The legislation will need to very carefully consider the wider implications of misuse of such positive obligations, not allowing any provisions that are too onerous.

I cannot help feeling this is a sledgehammer to crack a walnut. I need not remind the reader that we find ourselves in uncertain times.

It is very important to protect the value and amenity of land and the law relating to covenants should facilitate that. The claims with which we deal are chiefly about money and legal mechanisms whose original motives were to protect and are now being used to create a ransom scenario or nuisance in this increasingly litigious age. Rarely is the principle the actual concern.

The current law relating to covenants and easements is complex, is that rightly so? The human mind is infinitely complex, it evolves and times change. The law must surely do likewise to reflect this.

Cases that no longer work should be examined and overridden by specific statute if the status quo is unsatisfactory. We've seen this already concerning Village Green legislation. The pendulum of favour has swung from dog walker to developer more than once; the latest position enabling the latter to build, to generate jobs and help the economy without being thwarted by spurious claims.

I find it difficult to understand why the same swift action has not been taken to rights of light. The courts are slowly assisting with new thinking about injunction versus damages and the profit driven developer versus the little person. Nevertheless, we are still left with an unsatisfactory Court of Appeal decision that realistically will not be challenged as a commercial agreement, and will always be the preference to the legal costs of a Supreme Court ruling.

Will new high level legislation help or hinder us? If the new thinking overrides the way easements to light are established will a balance be found?

We will of course be operating two systems: the old based on established and presumably ongoing case law and the new 'simpler' version.

Jurisprudence 101 tells us that statute is the bare bones of the legal system, whereas case law adds the flesh. It is highly likely that the new system will require interpretation of its wordings both to establish the meaning of the intention of Parliament and the impact of the provision on the specifics of the case at hand. In order to reach a satisfactory solution will we be tempted to slip back into established thinking, or will we start to build a new library of case law to run concurrently with the run off of the old?

Ending, perhaps, on a positive note; there'll certainly be a lot more work for all of us...

**Wesley Timothy**, Senior Underwriter,
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DUAL Asset Underwriting

*The opinions expressed in this article are the author's own and do not reflect the view of DUAL as a whole.*

# UNIQUE WORK PLACEMENT OPPORTUNITIES FOR **UNIVERSITY OF LEICESTER**

UNIVERSITY OF LEICESTER

**The University of Leicester has been selected to take part in the Sutton Trust's Pathways to Law Programme for the 2016-17 academic year, which inspires and supports Year 12 and 13 students from non-privileged backgrounds who have an interest in a career in law and are academically-able.**

This programme, set up in 2006 by the Sutton Trust and The Legal Education Foundation, aims to widen access to the legal profession along with the support from major law firms.

The University of Leicester will be running the Pathways to Law Programme for 30-35 students and will include:

- ***Academic sessions on Law***
- ***Skills based sessions***
- ***Information, advice and guidance about the application process to Law at university***

In order for students to be considered for the programme they must have attended a state school, achieved at least 5As or A*s at GCSE and either be the first generation in their family to attend university or be (or have been) eligible for Free School Meals.

www.leicestershirelawsociety.org.uk

### How you can be involved

As part of the programme, the University is also committed to helping the students find work placements.

The University is looking for Law firms to offer a unique opportunity for these students to gain a work placement in a legal environment. This can be one or ideally multiple two-day or three-day placements between February and April 2017.

Offering work placements to Pathways to Law students will help you contribute to your Corporate Social Responsibility and Social Mobility agendas in providing opportunities for students who traditionally would not have had access to the industry.

### The Leicester Way

At the University of Leicester we have a 'No Prep, No Entry Policy' where students must have prepared in order to attend employer-led activities. In keeping with this, all students will be well prepared for the placement having attended a mandatory 'pre-placement' workshop prior to starting. Here they will learn about the expectations of the placement for instance: dress code, behaviour and confidentiality.

If you are interested in providing one of these placements please contact Morag McIvor on mcm30@le.ac.uk for more information.

# VET CHARITY PDSA LAUNCHES NATIONWIDE FREE WILLS SCHEME

**Veterinary charity PDSA, which provides care for sick and injured pets of people in need, has launched a nationwide Free Wills service for pet lovers and is seeking solicitors to join its programme.**

The charity's vets and nurses provide over two million treatments every year, helping 300,000 owners who would otherwise be unable to afford veterinary care for their pets. Two out of three treatments are funded by gifts in wills, making the charity one of the UK's most popular beneficiaries among legators.

Ruth Lister, PDSA's Legacy Development Manager, says: "Legacies make up a vital part of PDSA's funding. When we piloted our Free Wills scheme, we had a fantastic response from animal lovers who chose to leave a gift to us. This lasting legacy shows their love for pets by helping us provide our life-saving veterinary services across the UK."

PDSA will pay participating solicitors a fee to write a simple or mirror will. Clients may then choose to leave a gift to PDSA in their will although this is not compulsory.

*"PDSA has been saving, protecting and healing pets for nearly 100 years and we are one of the most popular animal charities to offer this free will service," said Ruth. "We hope solicitors will add us to their current list of Free Will charities, or work with us to provide free wills for the first time."*

PDSA's offer of a free simple will or codicil is available to individuals or couples over the age of 50, with solicitors building up 'will banks'.

Dominic Mackenzie of Ison Harrison Solicitors, Leeds, said: "Partnering with PDSA on their Free Will offer has given us the opportunity to secure long-term business with clients who require executor and other services.

It is also a great way to demonstrate our commitment to corporate social responsibility, supporting a charity that helps hundreds of thousands of pets each year."

Solicitors across the UK can join PDSA's Free Wills offer, and right now the charity is especially keen to hear from firm in the following areas;

- ***Leicestershire***
- ***Derbyshire***
- ***Northamptonshire***
- ***Cambridgeshire***
- ***Worcestershire***
- ***Hertfordshire***
- ***Suffolk and North Essex***
- ***Norfolk***

For more information about joining PDSA's Free Will scheme, please visit ***www.pdsa.org.uk/freewill*** or contact Ruth Lister on **01952 797 274** or lister. ***ruth@pdsa.org.uk.***

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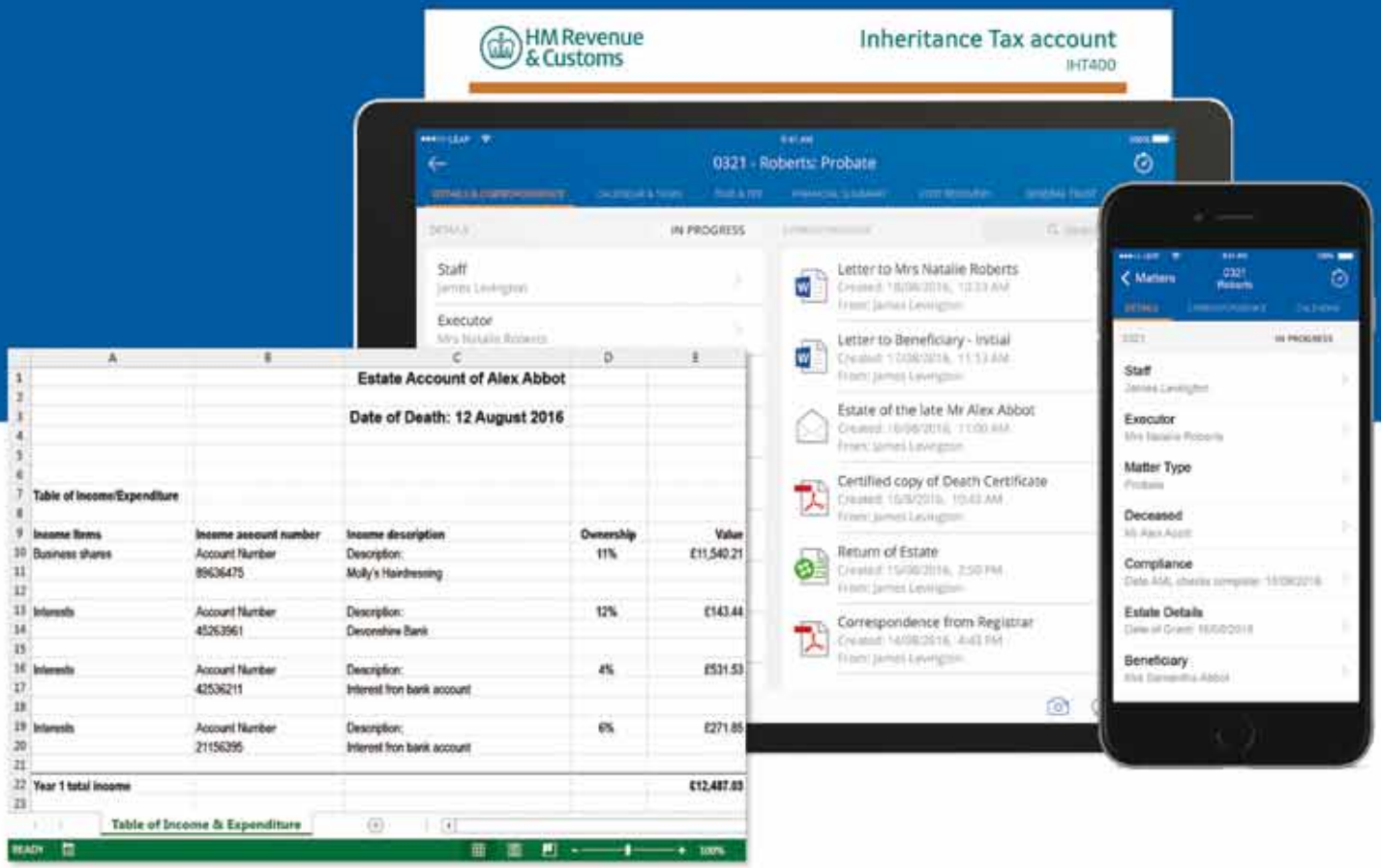


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