

Leicestershire Law Society

magazine

LLS LEGAL AWARDS 2017

AND THE WINNERS ARE...



WELCOME TO OUR 2017/18 PRESIDENT

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SURROGACY CASES & NEW DEVELOPMENTS

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And much more...



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WELCOME/CONTENTS SUMMER 2017



Editor's Intro

By the time this edition goes to print, we will have said our goodbyes to Imogen Cox, President for 2016/17 and welcomed our new President for 2017/18 Mr Jonathan Foster.

As Editor, I have completed a full year and four editions and I have no idea where the year has gone. What a year it has been for the Leicestershire Law Society with the events organised by Imogen, which included the very successful Richard III Trial.

The LLS Magazine has not yet had an opportunity to talk with our new President about what he has planned for the next year, but a coffee has been organised and we will update you all in the Autumn Edition.

You will note that we now have a Members Page and this page is for you the members. It will be a permanent feature. If you have social events that you think will be of interest to members then please contact Daniel O'Keefe and Bushra Ali to get them included. Please be aware that

the Magazine is quarterly and is usually printed January, March, June and September. There is always a deadline copy date, by which date all articles must have been submitted. You need to think ahead by 3 months if you want to include a forthcoming event in any edition.

If you attend an LLS event and would like to be a reporter for the event, then please contact me to express an interest. This will allow me to ensure space is available and to provide you with editorial assistance to make the most of your article.

The Magazine looks forward to a busy year with our new President and to bringing to you, LLS Members all the updates, gossip and information about life in the legal profession. If your firm wishes to congratulate a member of staff on promotion or to provide a eulogy about a colleague that has sadly passed, then please do not hesitate to make contact.

Well, time to sign off and prepare the summer edition for print.

Adam Markillie, Editor
adam.markillie@cartwightring.co.uk

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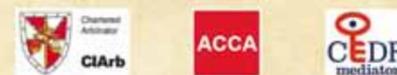
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Jeffrey C Rosenthal
FCCA, FCIArb, MAE



PRESIDENT'S REPORT

It was a privilege to become the President of the Leicestershire Law Society 2017/2018 recently. I have to say though that this was, however, with some degree of trepidation. The successes and the achievements of past presidents certainly sets a high bar. I am determined though to ensure that my presidential year continues to promote the aims of LLS whilst also uniting members of the profession locally.

I was reminded recently that three words emphasise the aims of the national Law Society. These are PROMOTE, REPRESENT and SUPPORT. Those aims should not simply be national aims but also the aims of our local society.

We need to ensure that as a Society we promote the ties which bind us and celebrate who we are and what we do

Over past years we have been actively looking at ways of increasing our membership. Recently a membership pack has been developed which clearly sets out the benefits of being an LLS member. It is intended that this pack should be made available shortly and sent out to all new members. This is, however, your society. We need to be inclusive and ensure that we provide what members want. This, in itself should not only increase current membership but increase the involvement of members overall.

I intend that the Society should consult with existing members to discover what you all expect from your Society. The Committee will be considering how this can be achieved. One option would be to look at an electronic survey and I hope that you will all provide your input so that the Society can work for you.

I also want to ensure that the Society works closely with LJLD. Young Solicitors are the future of the profession and of LLS. I will be meeting with the LJLD President and a representative of LJLD will be welcome to attend committee meetings to nurture and maintain relations.

LLS must also ensure that it is relevant and important to those yet to enter the profession, which, in turn means building on our relationship with local universities. Both the University of Leicester and De Montfort University are Patrons of the Society and we are privileged that both wish to have that involvement with us. We need, as a Society, to do what we can to pave a way into the profession and provide an insight into the legal world, involving students in the activities of the Society from the outset.

The future of the Society not only depends upon its members but also the ongoing support of Patrons, Business Partners and Sponsors to whom we are

extremely grateful. The Society not only needs to provide for its members but also to ensure that we are delivering to those who provide financial support. I intend to liaise with our supporters to maintain these special relationships so that we can all work together for the benefit of each other.

My intention, this year is also to increase the momentum of social/networking events, collaborating, where possible with other local professionals. A calendar of events should be available shortly to keep us entertained and to help us build on our professional relationships.

My chosen charity this year will be PROSTaid. This is a local charity run by prostate cancer patients, families and urological professionals. The charity supports, befriends and educates as well as funding three specialist nurses and treatment not available on the NHS. I hope that this year will provide many fundraising opportunities for such a worthwhile cause.

My year as President has just begun and the momentum needs to be maintained. Feel free to raise any issues or ideas that you may have with myself or any member of the committee. We are, of course your Society

Jonathan Foster
President LLS

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OUTGOING PRESIDENTS' REPORT - IMOGEN COX



What a busy year for the Leicestershire Law Society. From drinks receptions, to Networking with Accountants. The Trial of King Richard III.

Christmas at Wistow Rural Centre. The Civic Dinner at the Grand Mercure Hotel and the Awards Ceremony shortlisting event and of course the 2017 LLS Legal Awards Ceremony. I just do not know where the whole year has gone.

I have had the most enjoyable year as President and I must thank the LLS Executive Board and all Committee Members for their support and assistance throughout my Presidency.

I had the good fortune of not just working with one LLS Manager, but working with 2 LLS Managers as Kauser Patel, took time out to have a baby and Simone Bell took over as Manager for Kauser's maternity leave. I owe both a huge thank you for all the time and effort that they have put in to the events and for all the support they have given to me.



President Imogen Cox and Vice President Jonathan Foster

Simone took the reigns from Kauser and just ran with the organisation. (And I do mean ran, on numerous occasions from one venue to another) A very smooth transition and an excellent job. Thank you both.

I also want to say thank you to Adam Markillie, current editor of the LLS Magazine. I suggested to the head of the Media Sub Committee, Manbir Thandi that Adam would be a suitable candidate for Editor of the magazine and I have not been disappointed. The Magazine was originally set by Manbir and Adam took over at the start of my Presidency and the Magazine has gone from strength to strength and has

received numerous positive responses from its readers. I wish the magazine continued success.

I now place the reigns of the Presidency in the capable hands of Jonathan Foster who took over at the LLS AGM in May 2017. I wish Jonathan and all at LLS all the success it deserves for 2017/18. I sincerely hope that Jonathan has as much fun as I have had meeting and greeting and representing the LLS.

I would now like to thank the Societies Patrons and Business Partners for their continued support in all aspects of the Societies activities. Without their support and sponsorship, the society would not be where it is today.

LLS is a vibrant society, with lots going on and is highly regarded in the profession as a forward thinking, progressive society.

Keeping with the theme of the Legal Awards Ceremony and to close in "Looney Tunes" style,

"That's all folks."

SURROGACY CASES AND DEVELOPMENTS IN THE LAST YEAR



Katherine Duncan took time out from her busy schedule to talk to Leicestershire Law Society Magazine about some

of the more interesting surrogacy cases and developments in the last year.

Katherine has a busy practice in private and public children matters, international family law and financial proceedings. She was called to the Bar in 2014 and became a tenant

at 5 St Andrew's Hill Chambers in 2015. She has a particular interest in the law relating to surrogacy and parental orders and represents clients in this area.

LLS Magazine asked Katherine if she could give some examples of the cases that have been dealt with in the courts over the last year and the outcomes;

KD In *Re M (A child)* [2017] EWCA Civ 228 (2nd March 2017) the Court of Appeal dismissed an appeal by a homosexual couple, A and B, against an order that the child, Z, should live with the surrogate. The surrogate

mother, X, had not been willing to consent to a parental order. A was the genetic father. The substantial ground of appeal concerned whether the judge had conducted a proper balancing exercise when engaging in the welfare analysis of the child's needs. The Court of Appeal concluded that the trial judge had conducted a proper balancing exercise. The judge at first instance was entitled to put weight on the fact that separation from X would have a detrimental impact on Z and to conclude that in this case the genetic considerations did not justify a move. The judge was able to assure herself that Z would have the opportunity to share his life with his

genetic father and siblings now and in the future. Z needed to have both A and B, and X in his life and it was X who was most able to secure this.

What about Single Parents?

KD In *Re Z (A child) (No. 2)* [2016] EHC 1191 (Fam) (16th May 2016) the applicant father, who was a single man, sought a declaration of incompatibility in accordance with s.4 HRA 1998 after the President previously ruled that the s.54 HFEA 2008 could not be read down in accordance with s.3 (1) HRA 1998 to enable a parental order to be made on the application of one person. S54 of the 2008 Act was declared incompatible with Z's human rights under Article 14, taken in conjunction with Article 8, insofar as it prevented Z from obtaining a parental order on the sole ground of his status as a single person as opposed to being part of a couple.

In *F v S* [2016] EWFC 70 (8th November 2016) a single father made an application for a Child Arrangements Order in relation to A, his biological child, who was born in USA following a legally recognised surrogacy arrangement. The respondent was the surrogate mother who gave birth to A following IVF with embryos created using gametes from the applicant and anonymous third party egg donor. The application was not contested.

The applicant had been registered as A's father on her American birth certificate, but this was not issued under any of the enactments specified in s4(1)(A) Children Act 1989. The effect of s4(1)(a) of the act is that it is not possible for an unmarried father to acquire parental responsibility by birth registration if the child is born outside the UK. The applicant was also not able to obtain Parental Responsibility by way of a Parental Responsibility Agreement under s4(1)(b) as the parties had not entered into such an agreement. The father could not apply for a Parental Order because he was single. The applicant considered making an application to adopt but as A was born through an international compensated surrogacy arrangement, the application may have created complications in respect of criminal restrictions under the Adoption and Children

Act 2002 and the bringing of a child into the UK for the purposes of adoption. In any event, he considered it inappropriate to adopt his own biological child. A Child Arrangements Order was made providing that A lives with the father.

On 14th December 2016 the House of Lords held a short debate on surrogacy. Baroness Chisholm of Owlpen confirmed that *the Government will introduce a remedial order to achieve this, so that single people can apply for parental orders on the same basis as couples. The remedial order will be subject to consultation and will include transitional arrangements, which would put all single people on the same footing and allow a reasonable time period to apply. The House will recognise that there are complexities and a considerable number of consequential amendments to other pieces of legislation, so our current plan is that the remedial order will be introduced to Parliament in early 2017.* On 7th February 2017 during a House of Commons debate, the Parliamentary Under-Secretary of State for Health, Nicola Blackwood also confirmed the government's plans to push for a remedial order and she committed to pushing for this to happen by May.

Cases Concerning Consent

KD In *Re A&B (Surrogacy Consent)* [2016] EWHC 2643 (Fam) (25th October 2016), the surrogate mother and her husband did not give consent to a Parental Order being granted in favour of the applicant biological parents of the twins A and B. All other relevant criteria in s54 HFEA 2008 were met. The respondents did not wish to have any involvement in the children's lives and were refusing their consent due to their own feelings of injustice. The children remained living with the applicants and the respondents remained the children's legal parents. The proceedings were adjourned indefinitely in the hope that the respondents would change their mind.

Domicile Cases

KD In *AB & CD v GH* [2016] EWFC 63 (7th March 2016), the judge quickly concluded

that 6 out of the 7 criteria under s.54 HFEA 2008 were met. The judge took more time to consider the position in relation to domicile. Both applicants were born in Germany; their domicile of origin was Germany. Mrs Justice Thesinger concluded that CD had acquired domicile of choice in this jurisdiction, and that even though the parties had not lived in the jurisdiction for any length of time since 2013, she had retained her domicile of choice and not abandoned it. The judge found so for the following reasons: *a)* she immersed herself in the life in the jurisdiction; *b)* she felt more attuned to the English culture and customs; *c)* the couple had their main family home in this jurisdiction; *d)* CD became a British citizen even though there was no need for her to do that; *e)* she had no plans in the future to return to Germany either on retirement or to be buried; *f)* the physical absence from the jurisdiction had not changed her intention to remain committed to living permanently and indefinitely in this jurisdiction. This was a case where the judge felt that the oral evidence had "brought her written evidence to life".

In Conclusion

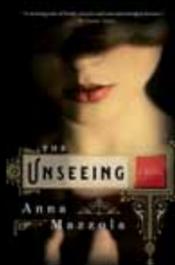
Katherine concluded by saying, "These cases, along with many others, highlight the current problems with the legislation. The courts will go as far as they can to read into the legislation to act in the best interests of the child despite the rigid nature of the HFEA 2008. We shall have to wait and see if the government keeps to its word and introduces a remedial order to rectify the problem for single parents. While there is much work to be done to improve how surrogacy arrangements are regulated and promoted, when the issue only affects a small minority of the population, it is hard to see how a light will be shone any brighter on the issue, any time soon."

LLS Magazine thanks Katherine for taking the time to talk with the Leicestershire Law Society Magazine.



BOOK REVIEW THE UNSEEING

by Anna Mazzola ISBN 978 1 4722 3473 5 360pp



London, turn of the year 1836. King William IV is in failing health at Windsor Castle and his young niece Princess Victoria is preparing to ascend to the throne.

A female torso is found on the Edgeware Road on 28th December, a human head in Regents Canal on 9th January 1837 and two legs in a marshy piece of ground at Camberwell on 6th February.

Quite remarkably for 150 years before DNA coding the evidence of Dr Girdwood of Paddington Green workhouse that the pieces made up one single corpse was never disputed. Writing on the sack containing the legs enabled the police to identify the body as that of Miss Hannah Brown of Carpenter's Buildings, Camberwell who had disappeared over Christmas. At the Old Bailey on 15th April 1837 the man Hannah had been due to marry, businessman James Greenacre was convicted of murder and his former housekeeper and girlfriend Sarah Gale of aiding and abetting. Both were sentenced to death.



Anna Mazzola

So much for the facts found at the Trial. But what really happened? Was single Mum Sarah a willing accomplice or an unwitting dupe? How much did she really know?

Around this real life drama attracting massive public interest at a time when written news was confined to newspapers and a lot of people could not read (can you imagine the Twitter conversations today?)

Anna Mazzola, solicitor, one time litigant and author has constructed as good a fictional theory as any other of what it could have really been about. Well researched and highlighting both contemporary aspects (the plight of the poor, the stink, the smog, the cold, the hell of Newgate prison) and enduring issues such as domestic violence, coercion, drink, and debt, not forgetting payment for criminal advocates, this novel contrasts very well the desperate (fallen?) young women with the rich (male) lawyers who nevertheless have their own professional conflicts of interest and domestic concerns.

The Criminal Appeal Act 1907 enabled the new Court of Criminal Appeal to set aside a verdict reached by a jury in proscribed circumstances but 70 years earlier the only option available to a convict sentenced to death was a petition for mercy to the Home Secretary. The excellent narrative follows that procedure through the investigation by barrister Edmund Fleetwood on behalf of the Rt. Honourable Lord Russell as Edmund tries to save Sarah from the gallows.

This is an excellent novel and I greatly enjoyed it.

Christl Hughes

Equality & Diversity sub Board

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THE NEW PRESIDENT'S CHOSEN CHARITY

PROSTaid IS REALLY DELIGHTED AT BEING THE CHOSEN CHARITY FOR 2017/18 BY THIS YEARS LEICESTER LAW SOCIETY PRESIDENT JONATHAN FOSTER. PROSTaid LOOKS FORWARD TO WORKING WITH YOU ALL.

What is PROSTaid?

PROSTaid has since November 2006, as an independent Charity here in Leicestershire been working to improve the care & treatment of local men with prostate cancer. Relying totally on donations and bequests from local companies and individuals to continue its work receiving no government funding.

Completely committed and dedicated to raising awareness, give support and raise money for life saving equipment for prostate cancer treatment to benefit and save lives for local men for generations to come within the local Leicester Cancer Care Network. Serving Leicester, Leicestershire and Rutland.

Every week in Leicester, Leicestershire & Rutland 38 men are diagnosed with prostate cancer and five men sadly die from the disease!

So what is PROSTaid doing in 2017-18 for local men with prostate cancer?

- Funding two full time prostate cancer specialist nurses for one in Urology at the point of diagnosis at UHL Leicester General Hospital and one at UHL Leicester Royal Infirmary Oncology for local Patients with advanced metastatic prostate cancer with five or less years to live.
- Funding the cost of introducing local HDR Brachytherapy treatment for prostate cancer. This will reduce the treatment times of local patients undergoing radiotherapy for prostate cancer by 40% and improve outcomes by 15%!
- We have helped to raise funds for the provision of a "Robot" to perform Robotic Prostatectomies with improved results and outcomes
- We offer support groups to help & support to patients and partners, one at the Cradock Arms in Knighton Leicester on the third Thursday of every month at 7.30pm and one at Don Paddy's restaurant Market Place Uppingham on the second Tuesday of every month at 7pm
- We also offer one to one counseling, support and befriending service for men and their families who feel a need to talk.

What do we continue to do?

New treatments :Provide less invasive treatments for Prostate cancer with the latest proven treatments. Help the introduction of new drugs to treat patients. Fund the latest Research into new diagnostic tests. The equipment is expensive, outside NHS Budgets so we have to raise the funds.

Awareness :Raise the local awareness of prostate cancer, encouraging local men over 50 to get checked out and those men with a higher risk i.e. with a family history of the disease, like African Caribbean men or men who have a mother with breast cancer to get checked out at 40. We do this every year with a Double Decker bus that visits every county town in Leicestershire & Rutland

Information Support:

We offer access to the latest prostate cancer information, leaflet's & videos from our website www.prostaid.co.uk & our leaflet boards situated in all major hospital in Leicestershire & Rutland, and our free App and our quarterly newsletter.

Please have a look at our link to our own Prostate Cancer App for Android and iPhone, "Its a man thing" ,all the info you need written in a calm, simple, jargon free way you can understand that we are delighted to say that has won an award for one of the 12 top UK Health Apps www.itसानथिंग.org.uk

MORE SOLICITORS REFERENCE TAX BENEFITS OF LEGACY GIVING DURING WILL-WRITING THAN EVER BEFORE

The proportion of solicitors and Will-writers talking about the tax benefits of legacy giving with clients has risen to an all-time high, according to new research commissioned by Remember A Charity.

The tracking study, carried out by Future Thinking, monitors solicitors' and professional Will-writers' approach towards legacy giving and attitudes towards working with charities.

Rob Cope, director of Remember A Charity, said: "It's great to see record numbers of advisers talking about the tax advantages of legacy giving and that our campaign supporter scheme is making a real impact here. The challenge now is to build on this momentum, working collaboratively with the legal sector to ensure that advisers are well informed and remain enthusiastic about raising the issue of legacy giving with clients."

The latest survey – conducted in December 2016 – reveals that more than seven in ten (72%) solicitors and Will-writers always or sometimes advise clients about the inheritance tax benefits of legacy giving, up from 66% in 2015 and 61% in 2009, when the survey was first carried out.

Almost two-thirds (64%) of advisers always or sometimes proactively mention the option of leaving a gift to charity, with 38% saying they always do so. One fifth of advisers occasionally proactively mention charity, while 14% never do.

Advisers working with one of Remember A Charity's campaign supporter firms are more than twice as likely to always mention charity bequests. There are now over 1,100 campaign supporter organisations that commit to mention the option of charitable giving during the Will-writing process.

Three-quarters of advisers that worked for one of the consortium's supporter firms always mention charitable legacies during the Will-writing process compared to just a third of advisers at other firms.

On average, advisers report that 17% of Wills contain a charitable bequest, having grown steadily from 15% in 2011. The large majority (78%) said their firms have assisted in the administration of an estate containing a charitable legacy.

This news comes during the same week as changes to the inheritance tax framework, which take effect from 6th April 2017.

Remember A Charity has raised concerns that these changes pose a risk to legacy fundraising and called on Government to review the fiscal incentives available, including the feasibility of introducing a VAT exemption on the cost of legal services linked to writing Wills that include a charitable donation.



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COUNCIL MEMBER'S REPORT

JUNE 2017

Linda Lee has been Council Member for Leicestershire, Northamptonshire and Rutland since 2003. She is a past President of the Law Society of England and Wales and is the current Chair of the Regulatory Processes Committee and a member of the Regulatory Affairs Board, Access to Justice Committee and the Audit Committee. She is current Chair of the Solicitors Assistance Scheme. Linda is an experienced litigation solicitor and is a Consultant at RadcliffesleBrasseur where she specialises in solicitors' disciplinary and regulatory work. She can be contacted by email at: lindahlee@aol.com



This month, there have been two significant events for the future of our profession.

The impact of the acquittal of Leigh Day and

Co and three of its solicitors of more than 20 charges could be far reaching.

The 7-week hearing at the Solicitors Disciplinary Tribunal (SDT) is the longest in the Tribunal's history and estimated to have cost in the region of £10 million. It followed the defence secretary, Sir Michael Fallon's public demand for action.

Accounts vary but from the reporting of the case, Leigh Day believed its clients were innocent farmers caught up in the aftermath of the Battle of Danny Boy. Journalist report that a key document given to Leigh Day no later than 2007 - suggesting its clients were members of the Mahdi army - was not disclosed by Leigh Day until some years later.

The entire history of the situation will never be known but it was suggested the Al-Sweady Inquiry (which reported in 2014 at a cost estimated between £25 and £31 million) could have been avoided had the true nature of the claims been made known earlier.

The Al-Sweady inquiry found that allegations of torture and murder against the British Army were "wholly without foundation and entirely the product of deliberate lies, reckless speculation and ingrained hostility".¹ It did find that nine Iraqi detainees had been ill-treated but the more serious allegations were not upheld.

Phil Shiner who represented the initial group of Claimants admitted to acting dishonestly in relation to the claims he brought but Leigh Day denied dishonesty and were exonerated by the SDT.

However, for the British public there is clearly a level of distaste. As ever, this is not helped when it is revealed that lawyers millions from such claims, with the senior partner of Leigh Day reporting to have billed for 2,600 hours in 2007/08 alone.

In addition to the cost to the public purse, the financial cost to the profession in footing the bill for the prosecution will provoke further investigation.

A further consideration is the impact on English and Welsh lawyers globally. Since the Legal Services Act 2007, there has been much criticism from international lawyers of this jurisdiction's lack of independence from the government. This argument can only be strengthened by the allegation that there was copious correspondence between Sir Michael and Paul Phillip, Chief executive of the Solicitors Regulation Authority (SRA) relating to the conduct of the prosecution. If true, this will undoubtedly come under scrutiny, particularly from those competing to undermine the dominance of England and Wales as the global jurisdiction of choice.

The full judgment in the Leigh Day case will not be available until August at the earliest and until then, the reasoning will not be clear.

One publication reported that none of the allegations of professional misconduct were found to be proven to the *required criminal standard of proof*. If the findings were to be expressed in this way, this could strengthen the SRA's demands for a change to the standard of proof at the SDT.

The SRA have been arguing for an increased disciplinary jurisdiction - at present their powers are limited to fining up to £2,000 or reaching agreed terms via a Regulatory Settlement and questioned whether or not the remaining functions of the SDT should be undertaken by the courts. It has also questioned the appropriate standard of proof to be applied.

The SDT applies the criminal standard (beyond reasonable doubt), whilst the SRA in making its determinations applies the civil standard (on the balance of probabilities).

A Privy Council decision of 1955² sets out the traditional position,

"... in every allegation of professional misconduct involving an element of deceit or moral turpitude a high standard of proof is called for, and we cannot envisage any body of professional men sitting in judgment on a colleague who would be content to condemn on a mere balance of probabilities."

This was restated by Lord Lane in 1993³

"It seems to us, if we may respectfully say so, that it is not altogether helpful if the burden of proof is left somewhere undefined between the criminal and the civil standards. We conclude that at least in cases such as the present, where what is alleged is tantamount to a criminal offence, the tribunal should apply the criminal standard of proof, that is to say proof to the point where they feel sure that the charges are proved or, put in another way, proof beyond reasonable doubt."

The rationale for change is that 'modern' regulators favour the civil standard. Certainly, within the medical professions, it has been cited that the need for public protection demands the lower standard and this is echoed by the SRA in its response to the Bar Standards Board's consultation on a change to the civil standard of proof, published on 2 May.

The failures in the regulation of medical professionals such as Harold Shipman are well known but it has been difficult to find an equivalent failure as a result of a decision made by the SDT. The concern for public protection sits somewhat oddly with the SRA's desire to reduce public protection - more of that later.

It has been argued by senior figures at the SRA that the costs of prosecutions would be less but no evidence has been put forward to support this assertion.

It is hard to accept that the burden of preparation would be much changed - rather incentives to poor preparation might well be increased. The precise number of successful prosecutions before the SDT are not recorded in the annual report but it is estimated that it is well in excess of 90%. The SRA have been unable to provide any figures relating to prosecutions not brought because of the current higher standard.

Other supporters of a change to the standard of proof, the Legal Services Board, the Legal Services Board's Consumer Panel and the Government Insurance Fraud Taskforce have not been able to point to any specific mischief that needs to be addressed. Indeed, concerns have been expressed in the past in relation to the delay by the SRA in investigating and prosecuting cases.

The SDT has two functions, it is a first instance decision-maker and it is also an appellate body for decisions made by the SRA. It is the second function where difficulties have arisen.

When the SRA first started using its enhanced disciplinary powers in 2010 it decided to adopt a civil standard of proof. The recent case of Arslan⁴ led to the judiciary questioning the current standard.

Mr Arslan was not a solicitor and the SRA used its powers to sanction and to issue an order preventing solicitors from employing him. He appealed to the SDT which noted that the SRA had applied the civil standard but felt it was entitled to use the criminal standard. On that basis, the allegations of dishonesty were not proved and a lesser sanction applied.

The SRA appealed. Leggatt J said (obiter): *"The present situation in which the tribunal, when acting as a primary fact-finder, applies a different standard of proof from that which the SRA applies when carrying out that role is unsatisfactory and illogical...I also see considerable force in the point that the climate and approach to professional regulation and discipline have changed since Re A Solicitor [the 1993 authority for the criminal standard] was decided."*

Sir Brian Leveson added: *"I emphasise the observations of Leggatt J in relation to the standard of proof in these cases and underline the need for a re-evaluation of the approach to disciplinary measures intended to protect the public. Notwithstanding [the] encouragement to do so, to go further than the confines of this case would not have been appropriate."*

The SDT have indicated they will be consulting on changing the standard of proof. The SDT could opt to change the standard but could only be compelled to do so by legislation. It could be that with the pressure from other stakeholders it may decide to make a change to the standard of proof before being compelled to do so.

Finally, on 13 June, the SRA announced it had considered the responses to the consultation 'Looking to the future: flexibility and public protection' which ran last summer.

Key changes are:

- removal of restrictions on solicitors delivering non-reserved services to the public from unregulated entities
- a new reduced set of 6 Principles

- a new shorter Code of Conduct for Solicitors and a new shorter Code of Conduct for Firms (although this will be supported by a considerable volume of guidance)
- removal of requirements for solicitors working in non-regulated firms to carry professional indemnity insurance and to contribute to the Compensation Fund.
- The SRA took some account of stakeholders' concerns and slightly amended their original proposals as follows:
- changes were made to the wording of their second principles regarding upholding public trust, to make it clear that it refers to trust and confidence in SRA regulated professionals
- made it clear that the ban on cold calling remains
- took account of concerns over cost implications for firms arising from their proposals on account rules, and amended the definition of client money. The majority of firms with a client account will not need to make further changes.

This announcement has been met with disappointment and anger by many in the profession. It appears to ignore the concerns of the profession and stakeholders with plans which reduce public protection. It also seems possible that new entities will take advantage of the waiver procedure and the 'regulatory sandbox' that permit such entities to operate in this manner well ahead of the introduction of a new Code of Conduct book, thus discriminating in their favour.

It also ignores research and consumer concerns. For example, the 2016 survey of consumers conducted by Ipsos Mori showed that 86% felt solicitors' businesses should have professional indemnity insurance. Concerns expressed by the Competition Markets Authority⁶ regarding consumer confusion have also been ignored as has the Legal Services Boards concern that the profession and the profession (and indeed the SRA) may not yet be ready for such radical change⁷. Concerns have also been expressed about the potential erosion of legal professional privilege.

The Law Society has pointed to the response to a 2016 Law Society survey, in which 'a substantial number of solicitors

expressed real concern with many of the proposed changes to the handbook including 82% saying encouraging solicitors to work in unregulated businesses would damage the solicitor brand - a brand that the Competition and Markets Authority (CMA) identified as synonymous with quality advice.'

The SRA's decision on the next steps and a summary of the responses to the consultation are available at: www.sra.org.uk/sra/policy/future/resources.page

The SRA plans to issue a further consultation on the detail of the proposals, which will include new authorisation and practice requirements, and its enforcement strategy in autumn 2017.

In addition, the SRA intends to publish guidance for solicitors and firms in advance of the implementation of their new rules. The SRA does not anticipate introducing the new requirements before Autumn 2018. Added to this mix at some stage later this summer the SRA will publish the next phase of their reforms dealing with Financial Protection and alterations to the Minimum Terms and Conditions which has the most potential to alter the way the market operates.

I will write on this further as more information becomes available as well as on the radical changes and developments of the qualifying and SQE proposals.

In the meantime, I would very much appreciate receiving your views on both the planned new handbook and the changes to the standard of proof.

¹ www.gov.uk/government/news/publication-of-the-al-sweady-inquiry-report

² www.gov.uk/government/news/publication-of-the-al-sweady-inquiry-report

³ *Bhandari v Advocates Committee [1956] 3 All ER 742*

⁴ *Re a Solicitor [1993] QB 69*

⁵ *Solicitors Regulation Authority v Solicitors Disciplinary Tribunal & Huseyin Arslan (Interested party) & Law Society (Intervening party) [2016] EWHC 2862 (Admin)*

⁶ *Legal Services Board: The Solicitors Regulation Authority's Regulatory Standards report 2015/16 p9 para 23*

⁷ *Competition and Markets Authority: Legal services market study 15 December 2016*



LEICESTERSHIRE LAW SOCIETY MEMBERSHIP PAGE

Welcome to the membership page. You will find this section in every edition of the magazine, to provide you with information about what you get for your membership.

We feel that the Leicestershire Law Society is a fantastic organisation offering great value to its members and we are very keen to make sure that we tell you about all the society has to offer. We are always looking to hear from members with any comments they have about their membership and particularly about any suggestions they have about how they feel the Society could be improved. We are particularly keen to hear from junior members of the profession, to ensure that the LLS meets the needs of the next generation of Leicestershire lawyers.



Bushra Ali and Daniel O'Keefe

THE MEMBERSHIP TEAM

Bushra Ali and Daniel O'Keefe make up the membership team. Bushra Ali is the founding/sole Director of Bushra Ali Solicitors which is a specialist immigration practice. Bushra has twice been awarded Leicestershire Law Society Solicitor of the Year. Daniel O'Keefe is a Senior Solicitor at clinical negligence firm Moosa-Duke Solicitors.

If you have any queries or comments to make regarding membership, please contact us at Bushra@bushraalisolicitors.co.uk and dokeeffe@moosaduke.com

TYPES OF MEMBERSHIP

There are different ways of becoming a member of the society. However, all members are entitled to attend our social and networking events and can take advantage of our membership benefits.

CORPORATE MEMBERSHIP

This is for firms of solicitors. You only pay for the Partners in the firm. Corporate

membership covers all solicitors, trainees and paralegals in the firm, so it is a great way of enabling the whole firm to make use of Law Society membership.

ASSOCIATE MEMBERSHIP

This is for barrister's chambers. It is really important that we have a significant presence from the Bar in the Society and our social events are a great opportunity for networking with the legal community.

INDIVIDUAL MEMBERSHIP

Individuals can become members of the LLS. This is available for all current and former legal professionals.

SPECIAL MEMBERSHIP BENEFITS

The membership team have been working hard for our members and we are delighted to have secured some excellent deals with local businesses and we are working on many more. The latest benefits available to all members are:

David Lloyd Sports Club, Narborough
14 day free trial membership for all LLS members and their family

Carisbrooke Tennis Club - Kenwood Road, Knighton, Leicester LE2 3PF
Full Adult Membership £120 (reduced from £250)

The Belmont Hotel - De Montfort Square
10% off food and drink orders and room rates (contact Lucy Hateley for a discount card)

Mumbai Inn - London Road
10% off total bill

Koyla - Charter Street
10% off total bill (minimum spend £25.00)

We will have more deals and discounts to announce very soon. Please look out for the membership page in every edition of the magazine, where we will show you all the latest membership benefits.

David Lloyd CLUBS

David Lloyd Narborough exclusive 14 day pass for you and your family.

We are proud to be in partnership with Leicestershire Law Society and would like to invite you and your family to take part in our exclusive 14 day pass. Have full use of the club and enjoy racquet sports, gym, classes and why not take a dip in our heated indoor and outdoor pools!

To take advantage of this fantastic 14 day experience day, please contact us on **01162727820**.

Kind regards
The Membership Team

Email: mship.narborough@davidlloyd.co.uk
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GDPR COMPLIANCE



Matt Torrens, Managing Director at Legal IT Specialist, SproutIT, reflects on some of the many key points covered at his recent LPMA Seminar on GDPR compliance.

What is the GDPR?

The General Data Protection Regulation (GDPR) comes into force in May 2018 and will replace the Data Protection Act 1998. It is broader in scope, strengthens rights of the individual, brings extra requirements to data Processors and Controllers and, of course, is backed by higher penalties.

GDPR is a legal requirement. A 'regulation' is a legal act of the European Union that becomes immediately enforceable as law in all member states simultaneously – it does not need to be transposed into National law.

Do we need it?

The primary objectives of the GDPR are to give control back to citizens and residents over their personal data and to simplify the regulatory environment by unifying regulation within the EU.

Chambers and all Legal firms are already subject to the Data Protection Act 1998,

and a number of professional obligations surrounding data protection, however GDPR takes this compliance to a new level.

Will Brexit affect GDPR?

There has been some confusion about how Brexit will affect GDPR. The UK will remain a full member of the EU until the negotiations on withdrawal are completed. The government has confirmed that the UK's decision to leave the EU will not affect the commencement of the GDPR.

Next Steps

Organisations need to act NOW to identify what steps are necessary to ensure that they and their members are fully compliant by the implementation date. It is wise to run a Gap Analysis process, in order to understand your current position, against the Regulation, and determine the steps you must take in order to achieve compliance. You will need to blend People, Process and Technology to properly address your GDPR responsibilities.

Example fines = £120,000 Under the GDPR **£4.3 million**

In October 2012 a solicitor in the UK sent an email to the wrong client and was fined £120,000 under the 1998 Act. Under the GDPR that fine is estimated to be £4.3 million.

sprout IT
Legal IT Specialists

If you accept that brand awareness and reputation is key to the survival and growth of your practice, then you might also consider how to build reputational resilience in the form of a Cyber and GDPR strategy.

Find out more

Matt Torrens, MD of SproutIT has over a decade of practical data protection experience working with law firms, and is also EU GDPR Foundation & Practitioner certified.

For a copy of the SproutIT GDPR Cheat Sheet for the legal sector, email; AskTheExpert@sproutit.co.uk

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20 years in the conveyancing industry

Kevin Brown, Director at Geodesys



20 years in the conveyancing industry

It has been two decades since the formation of Geodesys... and, coincidentally, 20 years since the property boom began in the UK! Geodesys came into being around

the same time as the early conveyancing searches were introduced and was instrumental in bringing some of these searches to the marketplace. Since 1997 there have been lots of changes in the searches industry and you could say that some of these changes have contributed to how conveyancing practices work today.

Analogue to digital

In 1997 the world was still dealing with faxes, paper documents, order forms and cheques. In the conveyancing industry, solicitors and their assistants needed to spend a lot of time unearthing the important information they needed to support a property transaction. Twenty years on, search companies have very sophisticated processes in place to simplify the provision of property-related information and data. At Geodesys, for example, our website offers a simple ordering process to cut down on delays and an intuitive online mapping tool to facilitate the identification of particular properties. This benefits solicitors by giving them valuable time to focus on the due diligence aspects of the transaction for their clients.

The evolution of searches

From 1997 early versions of the Local Authority search and the drainage and water search were available, but both were limited in terms of content. Geodesys worked closely with other water companies and the Law Society to develop the CON29DW. It launched in 2002, enhanced by the addition of several new pieces of information including location of sewer and water mains, the connection status of a property and billing information. Geodesys was also one of three companies involved in taking environmental

searches to the marketplace after the Government introduced contaminated land legislation in April 2000. Since then the market has seen some major developments with regard to environmental searches: searches are now available with different levels of screening and risk-specific assessments depending on the nature and location of the transaction. We have also seen a number of stand-alone reports come onto the market, such as energy and infrastructure, and ground stability searches.

We can't forget Home Information Packs!

HIPs were introduced in 2007 when it became mandatory for all homeowners to have specific searches done before they could put their houses on the market. Specific components of the HIP included an Energy Performance Certificate, Land Registry official entry and title plan, a CON29DW and a Local Authority search. However, HIPs were not with us for very long, lasting for less than three years before the Government suspended the requirement!

Looking ahead

The need for affordable housing has been a constant theme of recent years. The Government has recently responded with their Housing White Paper (February 2017), taking a first step towards tackling some of the complex causes. Alongside this, Land Registry will become 'a more digital, data-driven registration business'. Working together, they aim to have 'all publicly-held land in the areas of greatest housing need registered by 2020'. By providing transparency on land ownership and interests, it should become easier to identify land that may be suitable for development.

Geodesys has been at the forefront of the conveyancing industry for the last 20 years and, in 2017, we continue to innovate by ensuring we keep a close eye on housing industry trends. This is complemented by our commitment to our clients, listening to their feedback and developing systems and processes to make their lives easier. Here's to the next 20 years!



Conveyancing searches?



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LEGAL AWARDS DINNER 2017

REPORTER: ADAM MARKILLIE



May 19th 2017, saw the return this year to the Athena Conference and Banqueting Centre in Leicester, to celebrate the Leicestershire Law Society Legal Awards Dinner. The theme of the evening was a "Night At The Movies" and what a night it was.

Athena used to be the former Odeon cinema, so was befitting of the theme for the event. The building was designed by Harry Weedon and Robert Bullivant and stands at the junction of Rutland Street and Queen Street in Leicester opposite the Curve Theatre. The cinema originally only housed a single screen but had seating for nearly 2,200 customers. It first opened its doors to the public on 28 July 1938 and remained part of the Odeon cinema chain for 59 years.

The auditorium was sub-divided into three smaller cinemas in the early 1960s and a smaller fourth cinema was added in 1988. By 1997 the cinema had been earmarked for closure. The building remained closed for a number of years until it was taken over and converted for use as the Athena Conference & Banqueting Centre. The exterior was restored and many of the buildings interior features were conserved and restored.

The building became a Grade-II listed building on 27 August 1997.



The theme of the event, set by President Imogen Cox, was a "Night At The Movies" and no awards ceremony would be complete without "Hollywood" and "Oscar."



The menu had a movie style theme and the starter was reminiscent to a restaurant scene from "The Godfather." Serving, Parma Ham, Italian Salami, Olives, chargrilled Vegetables and Flavoured Breads on a grey slate to give authenticity to the rustic feel of the dish.



The main course, Chicken Itallienne, with a chicken breast filled with torn basil leaves and mozzarella cheese, wrapped in bacon served with a tomato and red wine sauce, Could have slipped straight from the table from the movie "Roman Holiday." A 1953 classic starring Audrey Hepburn and Gregory Peck.



Dessert could have come straight from a little coffee shop to the east or west of the Trevi Fountain or lifted from the 1953 movie "Three Coins In The Fountain." A Vanilla Bean Pannacotta served with balsamic seasoned berries and a crunchy teuille biscuit.



On arrival at the venue, walking down the "Red Carpet" to the waiting Paparazzi. All desperately waiting for the money picture of who is dating who. Who is on whose arm and who is wearing the latest must have accessory as is befitting the stars of the evening.



The Headline sponsors for the event where "GRAYPAUL NOTTINGHAM" and LUMBERS of Leicester.

GRAYPAUL provided a MASERATI for the entrance along the red carpet and LUMBERS sent four models as two couples each dressed in different Jewels and Watches for all at the event to guess which couple was wearing the most expensive Jewels.



The whole event carried the movie theme throughout and during the evening the big screen played numerous films of past and present and many of the young attendees not knowing the classics and being reminded by those that have seen many more movies than they care to mention, why the film was a classic, which then caused great debate at some tables.

This years awards ran throughout the evening and the occasional gulp and tear from the worthy winners was obvious to all. Wrapped in the emotion of the event I am sure.

A huge well done and congratulations goes to all those who made it to the finalists list but didn't quite make it to winner. "That's showbiz kid."

The Judges have said that this was one of the most difficult years they have had to try and separate the finalists and all the entrants who did not make the final selection. A testament to the quality of the people within Leicester, Leicestershire and Rutland who work within and support the Legal Profession.

A huge thank you must go the team at LLS who organised the event and a massive thanks to LLS Manager Simone Bell, who watched over a truly spectacular awards ceremony. A perfect evening, which was befitting of the prestige the LLS has built since it was first established in 1860.

The Leicester Law Society once again thanks its Patrons and Business Partners

for there support with this event and there continuing support to the Leicestershire Law Society.



LEICESTERSHIRE LAW SOCIETY LEGAL AWARDS 2017:

The Winners



1. JUNIOR SOLICITOR OF THE YEAR.



Holly Mayne
Sponsor: University of Leicester



2. SOLICITOR OF THE YEAR.



Nicola Kitchener
Sponsor: Finance Lab



3. TRAINEE/PARALEGAL OF YEAR



Myles Bennet
Sponsor: the 36 Group



4. CHAMBER OF THE YEAR.



KCH Garden Square
Sponsor: Miller Partnership



5. LARGE LAW FIRM OF THE YEAR.



Weightmans LLP
Sponsor: De Montfort University



6. SMALL LAW FIRM OF THE YEAR.



Emery Johnson Astills
Sponsor: KCH Garden Square



LLS Magazine caught up with Holly just after she had won and asked how she felt about winning the award, Holly said "I am really shocked, excited, did not expect to win. I would like to thank Belinda, Louise, Kevin and the supervising partners."

Nicola spoke to LLS Magazine after receiving the award and said "I am overwhelmed about winning and it is lovely to have the recognition."

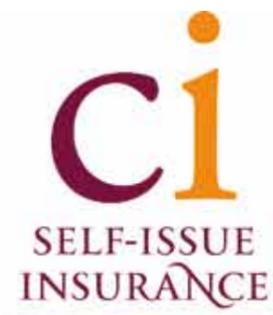
Following a short emotional acceptance speech, LLS Magazine asked Myles if he could put into words how he was feeling, Myles responded by saying "Wow! Unbelievable! I was not expecting to win, unbelievable."

LLS Magazine spoke to Mark van der Zwart who is Head of Chambers at KCH Garden Square and said "KCH is a good set with 42 years serving the people of Leicestershire and East Midlands. I am proud of the whole team who continue to provide such good service. We are grateful to the Leicestershire Law Society for this award."

Richard Osborn of Weightmans said, "Weightmans is absolutely delighted and honoured to win against so many good firms in Leicester. For all in the firm this is a good team effort. It is great to see such a turn out at the LLS Dinner."

LLS caught up with Helen Johnson, (whilst she was eating delicious chocolates which formed part of the menu for the dinner) a Managing Partner of Emery Johnson Astills after the award and told LLS Magazine "The award for the whole firm means a great deal to us. Thank you to all our wonderful staff and thank you to the Judges and to Leicestershire Law Society." Helen went on to say that she was "delighted with the way the whole evening had gone."





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PATERNITY FRAUD, A BLOW TO THE STOMACH...



Increasingly entering common parlance is the term "paternity fraud" which is the naming of a man as being the biological father of a child

by that child's mother, when in fact, she knows he is not the father.

Paternity fraud is a subset of "mis-attributed paternity", where a child has been fathered by one man, but is actually the child of another and that mis-attribution is deliberate rather than accidental. In other cases the male may have agreed to bring up the child of another (e.g. from a previous relationship or adoption), but in others, the male mating tactic of cuckoldry has occurred and the male is unaware that the child he is bringing up is not his. While this metaphor can be taken a little too far (since the child is genetically linked to the mother and does not generally expunge the half siblings from the house), it is a common term in evolutionary biology, where it is applied to unwitting males who make a significant parental investment in off-spring which are not genetically related to them.

The motivation for paternity fraud includes:

a) false claims from either parent with the objective of avoiding or receiving child maintenance payments, b) mothers who wish to hold their family together rather than discourage parental investment from the incumbent male or expose her infidelities or c) males who wish to avoid responsibilities, whether these be financial or familial or indeed, cover up their own indiscretions from their spouse or partner.

As to the frequency of paternity fraud, then there are no clear figures and one should be aware of often mis-quoted data from mis-paternity studies where subjects had a reason to take the DNA test. These data are valid in their own right but are not applicable to paternity fraud. The emotive headlines we often see in the popular press, which potentiate the urban myth of increasing paternity fraud in UK society, does us all little

service and there is no verifiable evidence that paternity fraud is on the increase. However, it does occur.

DNA profiling provides evidence of biological relationships and as responsible test providers, we are acutely aware that with the prospect of incontrovertible evidence, people who are contemplating or indeed, driven to, paternity fraud may attempt to obfuscate the procedure. Accordingly, procedures are in place to minimise this possibility.

In fact, paternity fraud is not a new concept, it has been with us for generations and our literature and law is littered with reference to it. It is also mentioned several times by Shakespeare in his various works, where the husband of an adulterous wife, the "cuckold", is often seething with underlying suspicion. For example, when Iago addresses Othello (III. iii.165); "That cuckold lives in bliss, who certain of his fate loves not his wronger, but O, what damned minutes he tells o'er, who dotes yet doubts, suspects yet fondly loves!" To which Othello replies "Oh, misery!". It is the "Oh misery" that is instructive, the discovery of a paternity fraud has been described as "a blow to the stomach".

The origin of paternity fraud dates from the 1576 Poor Act, when the law required mothers with illegitimate children to name the father in order to ensure that he supported her financially, thus placing a lesser burden on the Parish Poor Law Overseers. They ensured weekly payments from the named "father" by issuance of "bastardy bonds" and which thus created the first opportunity for paternity fraud, as blackmail and perjury then became rife. The law was repealed in the "New Poor Law" of 1834 in order to save poor men from unsuitable marriages and then, a woman with an illegitimate child was sent to the workhouse without financial compensation.

These days paternity fraud may be pursued using the tort of deceit (on the balance of probabilities that the intention was fraudulent) and is not a criminal matter unless a false statement is knowingly made

on a public document, such as on a birth certificate or perhaps in information provided to the CMA. There have been a handful of cases which have reached the courts and where damages have been awarded to the male for "indignity, mental suffering/distress, humiliation" or "emotional hurt", though there are also cases where this approach has been unsuccessful¹. It has not yet been possible however, for the male to retrieve maintenance payments, as the court takes the view that bringing up a child confers benefits as well as costs.

Paternity fraud has thus been with us for generations and is of course hard to completely eliminate, but the use of an accredited DNA testing procedure makes it difficult for this to remain undetected and also provides unequivocal evidence to support cases involving the tort of deceit. In the UK the use of the rather explosive paternity fraud accusation is relatively modest; this is largely due to the judicious use of accredited paternity testing.

Dr Neil Sullivan

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¹ The modern text... The man who knows his wife is cheating on him is happy, because at least he isn't friends with the man she's sleeping with. But think of the unhappiness of a man who worships his wife, yet doubts her faithfulness. He suspects her, but still loves her. http://nfs.sparknotes.com/othello/page_142.html, accessed 10th May 2017.

² P v B (Paternity: Damages for Deceit) [2001] 1 FLR 1041; A v B (Damages: Paternity) [2007] 2 FLR 1051; Webb v Chapman [2009] EWCA Civ 55.



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Mr Sameer Singh MBBS BSc FRCS Consultant Orthopaedic Surgeon

Mr Sameer Singh is an experienced expert witness in personal injury and medical negligence cases relating to his specialist areas of expertise. These include:

- All aspects of trauma – soft tissue and bone injuries • Sports injuries
- Upper and lower limb disorders and injuries • Whiplash injuries

His practice concentrates on shoulder, elbow and hand disorders using techniques that are tailored to patient needs and utilising accelerated rehabilitation techniques to promote faster recovery and reduced time off work.

Mr Singh completes over 200 medico legal reports per year and offers an efficient turnaround within 10 days from receipt of all relevant documentation. He can take instructions for cases on behalf of either claimant or defendant.

Clients can be seen in clinic locations in Bedford and Milton Keynes.



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EWI GOOD EARLY SIGNS FOR 'HOT TUBBING'



As yet, the EWI survey finds Experts giving evidence concurrently – known as 'hot tubbing' – is assisting the courts and reducing costs, according to a survey carried out by the Expert Witness Institute (EWI).

The poll of 154 experts also found that half had seen the number of instructions received go up over the past year – while a third had seen their fees rise. But late payment by solicitors was a significant problem.

Though only 15% of the experts surveyed had actually been involved in some way with hot-tubbing – a key innovation introduced by the Jackson reforms but still in its early

stages – those who had gone through the process reported that it assisted the court to determine disputed issues of expert evidence, reduced the length of the trial and saved costs.

Some said hot-tubbing was also being used in mediations and early neutral evaluations, while just one respondent felt that the practice achieved nothing. The positive findings echo those of a Civil Justice Council report in August.

A fifth of respondents also reported a growing number of court orders for single joint experts, a shift that on balance found support – while 37% approved of this, 23% said such orders should only be made in very limited circumstances.

The experts were generally happy with the quality of instructions from solicitors (68% agreed that 'Most are good – they know what they're doing'), while the rest found them slipshod, increasingly so in some cases due to the strain the solicitors were under.

Less happily, 54% reported having been pressured to change a report, while just 10%

said they were paid on time – 42% said they were paid "very late and only after a lot of chasing". Only 19% said the solicitors always or usually let them know the outcome of the case – which is often linked to when they will eventually be paid.

Perhaps unsurprisingly, there was little love for the Legal Aid Agency among those experts who did legal aid work – some 59% considered the fee rates unsustainable, while 21% thought the agency's rules too restrictive.

The Rt. Hon Sir Anthony Hooper is chair of EWI and says: "The survey, together with our recent 20th anniversary conference, paint a picture of a dedicated group of people who are open to changes in the way expert evidence is delivered for the benefit of the justice system. Hot-tubbing is a significant reform for expert, judge and lawyer alike and the early signs are encouraging.

"Experts and solicitors must work together. The survey shows that there is room for improvement in the manner in which solicitors treat their expert witnesses".

EXPERT WITNESS JAN BAGSHAW CREATES NEW ASSOCIATION



The new premises in Heywood



The Court Room

In an exciting move for 2017 Jan Bagshaw RM RN Nursing Expert and her long term business associate Peter Ruffell have become a formal association and moved into superb enlarged premises in Heywood the heart of Greater Manchester (GM). The new company Bagshaw-Read Associates is linked with the twin companies of National Epilepsy Training and National Epilepsy Care giving a comprehensive service of Training, Care and Legal in one location. The new premises could not be more apt as they were once the Old Police Station and Court House for the locality before the GM reorganisation into larger areas with purpose built Police Stations and Central Court. A considerable sum of Euro funding was spent on refurbishing. The offices are very modern whilst still retaining the character of the fine building. The original Court Room has been retained which is an ideal training and symposium venue together with various featured rooms for consultations and team meetings.

Jan Bagshaw RM RN PG Dip-Epilepsy heads the organisation and brings her skills from 30 years in the NHS and subsequent 7 years in private practice including Bond Solon training which has enhanced the already successful and reputed businesses.

Peter Ruffell HN Dip EE is Commercial Director and Practice Manager and brings a wealth of experience and organisation ability to the administration, logistics and team organisation.

Jan has the support of highly skilled staff to enable a turnaround time to be approximately 6 weeks from receipt of the bundle of records for screening reports and part 35 reports.

Jan undertakes instruction for general nursing matters as well as her specialised field of Epilepsy and Nurse Prescribing.

Having the back up of a

team of specialist nurses there is plenty of flexibility for Court appearances as an Expert Witness.

Jan manages clients with Epilepsy working with Court of Protection and Insurance Organisations. Consultations, assessments,

care planning, training of healthcare professionals and attending multi-disciplinary team meetings (MDT) are some of the services which are part of the Association's capability. Services are provided throughout the UK and overseas.

Jan Bagshaw



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- Amanda Stevens, Huddell Solicitors (EWI conference chair)
- Mike Napier CBE QC LLD (chair, main panel session)





JACKSON WARNS OF "HARSH" COSTS SANCTION OVER MEDIATION FRUSTRATION



A party that frustrates the mediation process by "delaying and dragging its feet for no good reason" will face a potentially "harsh" costs sanction as a result, Lord Justice Jackson has warned.

Thakkar and Anr v Patel and Anr [2017] EWCA Civ 117 was decided in January but has only come to light recently. It concerned a dilapidations claim and counterclaim for rent repayment over a school in Leicester.

Both parties achieved a measure of success at trial but, finding that the defendant tenants had been unenthusiastic about a mediation being pushed by the claimants earlier in the proceedings, the judge ordered the defendants to pay 75% of the claimants' costs.

On appeal by the defendants, Lord Justice Jackson (pictured), sitting with Lord Justice Briggs, found: "The defendants, while not refusing outright to mediate, dragged their feet and delayed for so long that the claimants lost confidence in the process and closed it down. The judge held that this case was suitable for mediation. He held that, if there had been a mediation, there was a real chance of achieving a settlement. Those findings were plainly correct."

Had the case settled, he continued, "the vast majority of the litigation costs would have been saved".

Jackson LJ referred to the Court of Appeal's 2013 ruling in *PGF II SA v OMFS Company*. He said: "The message which this court sent out in *PGF II* was that to remain silent in the face of an offer to mediate is, absent exceptional circumstances, unreasonable conduct meriting a costs sanction, even in cases where mediation is unlikely to succeed.

"The message which the court sends out in this case is that, in a case where bilateral negotiations fail but mediation is obviously appropriate, it behoves both parties to get on with it. If one party frustrates the process by delaying and dragging its feet for no good reason, that will merit a costs sanction. In the present case, the costs sanction was severe but not so severe that this court should intervene."

PGF II was cited in another Court of Appeal case recently, which included a submission from the losing defendants that the trial judge had failed to make some allowance in their favour for the fact that the claimant refused to or failed to engage with their proposal that the dispute should be referred to mediation. In *Gore v Naheed and Anor* [2017] EWCA Civ 369, a dispute over a right of way, Lord Justice Patten said he had "some difficulty in accepting that the desire of a party to have his rights determined by a court of law in preference to mediation can be said to be unreasonable conduct particularly when, as here, those rights are ultimately vindicated".

He recounted that, in *PGF II*, a failure to engage, even if unreasonable, did not automatically result in a costs penalty. It was simply a factor to be taken into account by the judge when exercising his costs discretion.

Patten LJ went on: "In this case, the judge did take it into account but concluded that it was not unreasonable for Mr Gore to have declined to mediate. His solicitor considered that mediation had no realistic prospect of succeeding and would only add to the costs.

"The judge said that he considered that the case raised quite complex questions of law which made it unsuitable for mediation. His refusal to make an allowance on these grounds cannot in my view be said to be wrong in principle."



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TOP TIPS ON COMBATTING FRAUD



The well-publicised Mishcon de Reya £1 million fraud case, when its client was duped into buying a London property from a seller dishonestly posing as the owner, has sent ripples of alarm throughout the legal community.

Although conveyancers are an obvious target for the increasing threat of rogue house owners and buyer deposit redirection fraud, it's not just conveyancing practices that need to be on their guard. As a legal practice, you're tempting prey for cyber criminals, not only because you hold large sums of money, but also vast volumes of valuable client information.

The number, variety and sophistication of cybercrime grows daily, ranging from distributed denial of service attacks and phishing scams to hacking and ransomware. To qualify my argument, here are some recently quoted cybercrime statistics:-

- National Fraud Intelligence Bureau's 2016 figures show 159 recorded losses of buyer deposits which is an 85% year-on-year increase
- Office of National Statistics quotes 5.8 million cybercrime incidents which equated to 40% of all recorded criminal activity in 2016
- Action Fraud estimates the cost of cybercrime is currently £193 billion per year
- BIS Information Security Breaches Survey revealed that 81% of large organisations have experienced a security breach with the cost per company being, on average, between £600,000 and £1.5 million

And this is only the tip of the iceberg. Under-reporting is a big issue. Many cybercrimes go unreported for fear of criticism and disciplinary action. You have a professional responsibility, enforceable by industry regulators, to identify, contain and remediate breaches, cyberattacks included.

Aside from your regulatory obligations under the SRA Code of Conduct, you face new pressures from indemnity insurers who'll want to see plans in place to thwart criminals when renewing policies and setting premium rates including run-off cover. There's a plausible case for the need for a separate cyber insurance policy, over

and above PII, to address the risks posed by cyber criminals and assist the recovery of potential losses incurred.

Not forgetting your other compliance responsibilities. The Data Protection Act 1998, Money Laundering Regulations 2007, Proceeds of Crime Act 2002, Terrorism Act 2000 and new EU General Data Protection Regulation applicable from May 2018 to name a few.

The stakes are high but there's much you can do to mitigate risk by creating a robust, reliable and secure cyber environment. Access our previously published 'Desktop security: 10 top tips' article for more in-depth advice on how best to manage risks within your IT infrastructure. We cover topics such as operating systems, email attachments, file transfers, data back-ups, passwords and more. Visit www.quill.co.uk/desktop-security.

Because cyber security is such a serious business risk, we're extending our earlier guidance here with some top tips on combatting fraud so that you can take proactive steps to tighten your defences:-

Beware of outside-of-the-norm behaviour and requests for monies

According to the Solicitors Regulation Authority (SRA), 75% of cybercrime reports are so called 'Friday afternoon frauds'. These cases involve criminals intercepting and altering emails being sent between two parties (solicitor and client), mostly bank details in order to redirect funds.

If you're suspicious, raise queries, several times if needs be, and ideally via a known telephone number. As part of this, you could set up a dummy run with a £1 transfer. Once receipt's been confirmed, you're ready for the real McCoy. If it turns out to be completely legitimate, those concerned will appreciate your stringent questioning and testing.

Review your new client intake procedures

When new clients instruct your firm for their legal matters, what checks do you carry out on them? A cursory glance at someone's passport, driving licence or utility bills is no longer sufficient for purpose. Seek out as much detail as possible on both identity and credit history so that you're confident your clients are who they say they are, have the means to pay for your services and that your hard-earned profits aren't ending up in the

greedy hands of racketeers.

Also, tell clients upfront – both face-to-face and within your client care documentation – that you'll never ask them to send money to a different account than that already provided. That way, they can be on the lookout too and immediately contact you should they receive any communications of this nature.

Define your client money handling processes

Money is of course the biggest incentive and the SRA's referred to £7 million of client money being lost to cybercrime in the last year. With the SRA Accounts Rules at the forefront of your mind, make a clear distinction between client and office monies, assign duties to your cashiering team members, designate reporting lines and outline timescales throughout.

For example, you may specify only appointed staff should transfer money and make it a habit to take deposits as late as practicable so there's less money on account at any given time. As well as giving your clients a higher level of service, you'll lessen the risk of financial theft.

Create disaster recovery and business continuity plans

To form an adequate series of responses to unexpected emergencies, attempted crime amongst them, produce carefully written disaster recovery and business continuity plans. These will contain information on the types of crises which could befall you, how you should act if they do, roles of primary staff members, phases of recovery, emergency contact numbers, anticipated outcomes and records of test or genuine disaster situations. The ultimate objective is to put your firm in the strongest position to deal with critical incidents with minimum disruption to the running of your business.

This is yet another area we've written about extensively before. Read our 'Top ten disaster recovery and business continuity planning tips' for further details. Visit www.quill.co.uk/disaster-recovery-planning.

Develop a risk management policy and monitor activity

Prevention is always better than cure so set out your preventative and detective measures within a risk management policy. These may comprise IT-based solutions such as SSL encryption and anti-

virus software to physical security devices such as CCTV surveillance and burglar alarms. Your policy will address how to classify, deal with and communicate risks.

Analyse your business closely for signs of unusual activity that could indicate the beginnings of an attack. The sooner you're able to counteract possible violations, the better, to effectively stop criminals in their tracks.

Report every failed and successful attack

There's an onus on you to do so, and the legal profession can only clamp down on cybercrime if we truly know the extent of unlawful activity and methodologies employed. With more two-way conversations, trends can be recognised, scams identified at an earlier stage, alarms raised to others and appropriate responses carried out.

Notify the SRA, Action Fraud, Information Commissioner's Office and / or your insurers.

Consider your employees' role in your business and engage your workforce in best-practice risk management

Restrict certain tasks in your business, for example software installation, to assigned personnel. Small steps such as these can go a long way to minimising exposure to risk. One weak link is all it takes to open your business to intrusion.

Similarly, if you employ home and remote workers, you'll want to restrain use of unapproved devices and removable media, both of which carry their own security risks and can uncover your entire network to vulnerabilities. Set up some safe parameters for your staff to adhere to then educate your personnel in IT best practice.

Evaluate your IT systems and suppliers

We've already briefly mentioned the importance of running the latest operating systems, performing automated back-ups, installing firewalls, and using dedicated anti-virus and anti-spyware software for protection against hackers. There's readily available software to reduce risk even more. Anti-money laundering checks, credit screens, conflict of interest searches, proof of identity document capture and breach warnings will preserve your matters and their associated finances.

Or, you can go a step further and enlist extra back office services such as fully outsourced cashiering and payroll. Your outsourcing provider's keen attention to detail will immediately highlight anomalies and alert you to dubious goings-on.

Remember the SRA Code of Conduct here. Ensure outsourcing agreements – be it for cloud software or outsourced services – allow you to comply with your client protection duties. And ask about ISO certifications for reassurance that your supplier conforms to international security standards.

Julian Bryan,
Managing Director,
Quill Pinpoint

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 40 years' experience supplying outsourced services, legal accounts and practice management software to the legal profession. To contact the Quill team, call 0161 236 2910 or email info@quill.co.uk.

THE BIGGEST CHANGE TO **AML** IN A DECADE

Very soon after the election, we expect the "Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 to be enacted.

As yet, they are still in draft form and subject to change. Much of the 2007 regulations remain intact, however, there are considerable amendments and additions and below are highlighted those most relevant to lawyers.

Risk Assessment

Each firm will have to prepare a risk assessment. This will involve taking reasonable steps to identify and assess the risks your firm faces, and keeping a written and up to date record of those steps you have taken.

When compiling your risk assessment, you should consider:

- Who your clients are
- Where your clients, or their funds are coming from
- The services you are providing to your clients
- How you provide services to your clients
- Size and nature of your business

Whilst it is not possible to prevent entirely the risk of being targeted by criminals, having a robust risk assessment will justify the steps you took.

Policies, controls and procedures

You must establish and maintain policies, controls and procedures to mitigate and manage the risks which you have identified in your risk assessment. They need to be proportionate to the size and nature of your business.

Your policies must provide for the scrutiny of complex and unusually large transactions. This means each matter will need to be risk assessed. You should consider the due diligence information which has been obtained, and the nature of the instructions. The main question that lawyers need to ask themselves is does the transaction make sense?

Internal Controls

The internal controls which you must implement will depend on your assessment of the size and nature of your business. You may need to

- Appoint an individual who is on the board, or equivalent as the officer who is responsible for compliance with the regulation
- Carry out screening of relevant employees and agents.
- Establish an independent audit function to examine the effectiveness of the policies

Training

The training you provide must now also include training on Data Protection and the obligation to train extends to agents.

Customer Due Diligence (CDD)

CDD is not just required at the beginning of a relationship with the client, but also must be applied when you become aware of changes in the circumstances of an existing customer.

There are some important additions to the 2007 regulations in relation to a body corporate, namely

- The memorandum of association.
- Where the client is beneficially owned by another person you must now also to verify the identity of the beneficial owner.
- Where the beneficial owner is a legal person, you also need to understand the ownership and control structure of the beneficial owner.
- These requirements will not be satisfied by relying only on the register of people with significant control.
- If the person instructing you is acting on behalf of a client, you must verify that person

It is also important to note that the definition of beneficial owner of a trust has been extended to now include settlor, the trustees, the beneficiaries or class of beneficiaries and any individual who has control of the trust.

www.leicestershirelawsociety.org.uk

Enhanced Customer Due Diligence (EDD)

The Regulations are more prescriptive as to when EDD measures need to be applied. You must apply EDD when the case is high risk.

When assessing whether a matter is high risk, you must consider regulation 33(6) including amongst others, customer, service and geographical risk factors.

EDD means examining the purpose of the transactions and increasing the frequency of monitoring. You may also seek further independent verification of the information you have been provided, take more steps to understand the ownership and financial situation or to ensure the instructions fit the client's business.

PEP definition

This has changed to include domestic PEPs and widened to include members of governing bodies of political parties and on the board of international organisations.

Simplified Due Diligence (SDD) and Pooled Client Accounts.

In relation to the client account, banks can apply SDD provided that

- The firm presents a low degree of risk, and
- Information on the identity of the person on whose behalf monies are held in the PCA are available on request and within 2 working days

You will need to ensure that you have explained to the client that, if the bank requests information about who you hold funds for, you will be required to provide that information. The client needs to consent to that.

Data Protection

You must provide new clients with a statement that any personal data received will only be processed for AML and CTF purposes. Data must be retained for 5 years following the end of the business relationship but then deleted unless you are required to keep it by law, or the data subject has given express consent for its retention. You will need to ensure that you have the client's express consent to keeping the data for longer than 5 years.

'The Biggest Change to AML in a Decade' is a series of short succinct articles which looks at some of the main issues directly affecting solicitors. Whilst the final regulations are yet to be finalised, it is clear, that in a relatively short period of time, solicitors firms will need to make a number of changes to their policies and procedures to comply.

To stay up to date with the latest developments and to receive the latest articles in this series, email solicitors@uk.lockton.com or visit www.locktonsolicitors.co.uk

About Amy Bell

Amy Bell is Risk Management Consultant for Lockton, award winning providers of effective risk management solutions. With over 12 years' experience advising law practices across the UK and globally, Amy helps firms to adapt to the changing legal landscape and how to adopt best practice in implementing compliance procedures.

Through consultancy with partners, Amy provides training and support for everyone in the firm to help understand compliance and how to apply risk management principles to improve client service and deliver maximum efficiency.

She is the Chair of the Law Society's Money Laundering Task Force, where she represents the Solicitors profession at Government and in Europe. She is also the author of the Law Society's Anti-Bribery Toolkit.

To learn out more about Lockton's Risk Management Training and Consultancy services please visit www.locktonsolicitors.co.uk



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CYBERCRIME: HOW DO YOU PROTECT YOUR LAW FIRM FROM RANSOMWARE THREATS?

Ransomware threats to law firms have increased at an alarming rate over the last eighteen months. As a leading supplier of practice management software, at LawWare we occasionally hear apocryphal stories about firms who have paid the ransom rather than risk downtime and data loss.

WHAT IS RANSOMWARE?

Ransomware is computer malware that installs itself covertly on a victim's computer or network. It then executes a cryptovirology attack that adversely affects it and demands a ransom payment to decrypt it.

Simple ransomware may lock the system and display a message requesting payment to unlock it. More advanced malware encrypts the victim's files, making them inaccessible, and demands a ransom payment to decrypt them.

Ransomware attacks are typically carried out using a Trojan that is disguised as a legitimate file. The ransom is almost always demanded to be paid in the digital currency, Bitcoin.

Here are a few simple tips

that can be put in place to mitigate the risk.

PROTECTION CHECKLIST.

Backup all your data.

By far the most important weapon in your arsenal is a regularly scheduled backup. If you are subject to an attack you can simply wipe your system to eliminate the ransomware and re-install the backup.

The more often you backup your data, the less you will lose. It's worth thinking about your backup frequency and just how much data your practice can afford to lose without affecting its performance.

Keep your software up-to-date.

Ransomware often relies on the victim running outdated software where vulnerabilities are known. To combat this, the best approach is to create protocols for ensuring updates are performed when necessary. Keeping common third-party software such as Java and Flash up-to-date will eliminate a large number of threats.

Educate your staff.

Your staff are the weakest link in the security chain. If they

allow themselves to fall victim to a phishing scam or other email generated approach, they can compromise the security of your entire business.

Teach fee earners and staff to recognise potential threats and to treat unrecognised or unsolicited mails with extreme caution. Train them to ask these key questions about emails:

- Do I know the sender?
- Do I really need to open that file or go to that link?
- Did I really order something from this company?

Avoid being infiltrated.

Occasionally your staff may unwarily visit compromised websites or open emails that contain malvertising. These are the usual sources from which the infiltration and malicious downloads will come. By blocking access to malicious websites, emails and attachments you can protect your network and avoid problems.

Use high quality antivirus software.

There really is no excuse for being lax in this matter. Making use of a good quality antivirus solution throughout your entire system is a must. Ensure all laptops and portable devices that interact

with your network have the same levels of protection as the network itself.

Know the enemy.

Intelligence about the latest threats provides you and your IT staff with advance warning about cyber-crime activity in your area and industry.

You can keep up to speed with the latest reports from cyber intelligence organisations such as Talos. Talos publicly shares information about emerging threats and provides forums and instructional videos to help you keep ahead of the game.

Finally, say no to ransom demands.

You may be tempted to pay up and recover access to your data to avoid both inconvenience and real operational problems. This should be the last thing you think about!

Make sure you notify the authorities and remember, succumbing to the demands will only encourage the criminals to make further attacks.

Mike O'Donnell,
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CYBERSECURITY ISSUES CENTRAL AS EXPERTS AGREE FIRMS SHOULD VIEW THEM AS A SERIOUS BUSINESS RISK

We have brought together leading experts to discuss cybersecurity risks to coincide with our spring update to the Risk Outlook.

Our roundtable involved leading agencies and experts from a range of sectors to discuss how businesses can tackle the risks of cybersecurity. As well as us, there were representatives from the Information Commissioners Office, Barclays, Advent IM, National Crime Agency, IASME & UK Cyber Forum, BGI.Cyber.Ltd., Pelican Underwriting, QBE Insurance, Cyber Strategies, PA Consulting and Microsoft.

There was general agreement that law firms are an attractive target for criminals not only because they can hold large amounts of money but also valuable client information. Three key themes from the roundtable were that:

- Too often cybersecurity is viewed as just an IT risk. It is a business risk that requires engagement and ownership at a senior management and Board level. Training staff is important, but businesses also need to develop a culture where cybersecurity is treated as a serious priority.
- People and processes are as crucial as technology. Law firms should consider having rigorous and unambiguous procedures for when clients notify them of any changes to their personal information or bank details during a transaction.

- The use of unsupported software increases an organisation's vulnerability. In addition to addressing this risk, businesses should also consider the benefits of implementing Cyber Essentials - a Government-backed scheme to help organisations protect themselves against common cyber attacks.

The roundtable coincides with the publication of our spring update to its Risk Outlook, which highlights seven priority risks for the legal sector. It shows that three quarters of all cybercrimes reported to us involve email modification fraud. Half of all such reports are email modification frauds against conveyancing proceeds. It says any field of work which involves client money is at risk, with probate another common target.

We are committed to taking a constructive and engaged approach with firms when they fall victim to cybercrime. However, the risk update does highlight that we will take action where firms are not proactive. For instance it has this year issued rebukes in cases where a firm has failed to report the loss of client money or been slow to remedy client losses.

Paul Philip, SRA Chief Executive, said: *"We all benefit from information technology, but that means we are all vulnerable to cybersecurity risks. These risks evolve rapidly. Whether it is money or sensitive client information, law firms are an obvious target. It is the job of*

firms to take steps to protect themselves and their clients, but we want to help.

"So in addition to regular updates and conversations with firms, we also want to make sure we learn from insights across all sectors. It was clear from our roundtable how similar the issues are. By working together we will be in much better place to stay cybersecure."

The update of the Risk Outlook is available here: (<http://www.sra.org.uk/risk/outlook/priority-risks.page>)

We published a detailed report into the IT security at the end of 2016: (<http://www.sra.org.uk/risk/resources/information-security-report.page>)

Neil Kevan
Trust & Probate Underwriter

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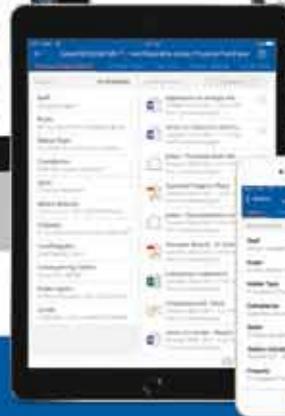
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