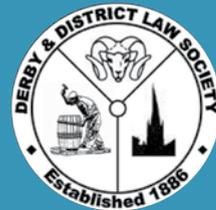


# D&DLS Bulletin

Derby & District Law Society



[www.derbylaw.net](http://www.derbylaw.net)

Dec / Jan 2020/1

## Stop Press: LIGHT AT THE END OF THE TUNNEL?

**Wishing all our readers  
a happy festive season and  
a hopeful 2021!**

Photo of Derbyshire's High Peak by VCG Photo ©2017

**Also in this issue:**

**Working Back to Front? • Experts and the 'Statement of Truth'**

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## Editorial



As I write this a vaccine has just been approved for the dreaded disease and the whole country is looking forward to letting go (with appropriate social distancing in place no doubt) a bit at Christmas but more than that there is hope of a return to some sort of normality in 2021. As Debenhams and Arcadia have both given up the ghost in the last 24 hours who knows what that "normal" will look like.

I am still trying to increase DDLS presence on social media – I am concentrating on the LinkedIn page – please use this link to connect to the page - <https://www.linkedin.com/company/derby-and-district-law-society>

Thank you to Stuart Barlow for a hugely successful and well attended webinar at the beginning of November. We will plan another session in Spring and as ever I will e-mail out with details. Check the website for details of other courses you may find useful from our gold patrons DG Legal and the Law Society. We will be looking into Barristers Chambers running some webinars for us and if you have any contacts or course requests please contact me.

Next year DDLS is 135 years old. Please let me have any anecdotes from yesteryear. I hope to be able to put an article in each edition next year but I do need your help please. I am not sure that my memories of fights and sitting under the table giggling at the annual dinner (not the same dinner I must add) are printable!

I am pleased to say that more Derby City schools than ever have entered teams into the debate competition. The final should take place on Wednesday 24th March 2021 4-6pm – hopefully at the University of Derby Law School. Anyone wanting to be involved as a Judge or just attend the Final please let me know.

Have a Happy and Healthy Christmas and I hope to see you in person in the New Year. Take care

**Julia Saunders**

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#### Sole Practitioners' Group (SPG) Tina Attenborough

# President's Page



## Hello Everyone,

I hope that you are all well and staying safe.

Unfortunately, we find ourselves in another period of national lockdown. Within my own firm we continue to find ourselves very busy and like most other firms throughout Derby and Derbyshire, we are finding ways to adapt and serve our clientele in the best and most efficient ways possible.

It still appears that there will be hardships ahead for us all but with any luck the news of new vaccines which will be available in the coming months will hopefully see the country, and indeed the world, return to a sense of normality by this time next year. However, in addition to the Courts still struggling with a large backlog of matters, it appears the legal system will take some time to recover.

In my own field of Private Client work, the government and HMCTS have pushed ahead

with their own plans to make applications for probate online mandatory for all parties by the 2<sup>nd</sup> November 2020. A period of grace for paper applications expires on the 30<sup>th</sup> November 2020. For the time being the online system is for the simplest forms of Probate application but over the next year the system will be upgraded for all types of Probate application. The days of the paper oath are now ending although there are still delays with the Probate Registry depending on the type of application. The centralisation of Probate applications this year has also added to delays.

The annual Derby & District Law Society Dinner has been scheduled for 23<sup>rd</sup> April 2021 at Pride Park Stadium. Hopefully by this time the COVID-19 restrictions will have been loosened and I hope that you will keep the date free in order to attend.

The Derby City Schools Debate Competition is also scheduled to commence in January 2021. This competition is for local schools and will once again be run by our administrator Julia Saunders.

If you would like to know more or would like to become involved in the competition, please contact Julia for more information.

Over the last few months our sponsor DG Legal has provided several free webinars which can assist you with rules and regulations in relation to the current COVID-19 crisis. More are planned and please contact our administrator for more details if you do not receive the emails which provide the times and dates.

The Derby & District Law Society also now has a presence on LinkedIn and be sure to check this out and connect with fellow members.

I hope that in the next few weeks restrictions are eased and that we are all able to safely spend time with our families over the Christmas period.

The Derby & District Law Society and myself wish you a happy Christmas and a prosperous new year.

**Martin Salt,**  
President, 2019-21



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## Acting for Seller and Buyer – The Classic Conveyancing Conflict



Lorraine Richardson provides a reminder of conflicts of interest in conveyancing, focusing on one of the key areas where risk can arise: acting for both the buyer and seller in a transaction.



**Conveyancing solicitors have got more to worry about than conflicts, haven't they? It might seem that way, but avoiding conflicts of interest is an ongoing professional duty. Also, I would suggest that the current upheaval makes conflicts more likely, and thus more of a risk for conveyancing firms.**

Solicitors should think carefully about whether their firm should act for seller and buyer in the same transaction. This article is written from the perspective of conflicts in conveyancing for solicitors. Licensed conveyancers are governed by a different conduct and conflicts regime.

Anyone considering conflicts of interest should remember that an actual conflict of interest is not the requirement. The purpose of the Code of Conduct is to avoid conflicts arising in the first place. This is why solicitors must always be looking out for a "significant risk" of a conflict. A significant risk is sufficient for the solicitor to decline to act. It may be a cliché, but prevention is better than cure: avoiding a conflict in the first place is far better than trying to clear up the mess if a conflict arises.

The reason that identifying a potential conflict and avoiding it is so important is because if a conflict between clients arises during the transaction and the solicitor concludes that they are unable to continue acting, they should inform the clients accordingly, and cease to act. The solicitor should also advise the affected clients to seek legal advice elsewhere and will no doubt lose the costs on the file.

When considering whether it is appropriate to act for the seller and buyer in the same transaction, some solicitors will apply the following criteria:

- the clients are established clients of the firm
- separate fee-earners act for the seller and buyer; and
- each fee-earner is based in a different office

These may look familiar. These criteria are, in fact, the exceptions to the prohibition for acting for seller and buyer which applied in the 2007 Solicitors' Code of Conduct. They have not been applicable since 2011. While they might be helpful indicators when considering the overall risk of conflict, they are not in themselves exceptions which allow the firm to act.

I suggest the starting point is that the firms do not act for the seller and buyer in the same transaction. The fee-earners involved should try to justify to themselves why they should act, and note their detailed considerations on the file. If the firm decides it can act in this situation, it should then obtain the informed consent in writing from all affected clients, to allow the firm to act.

But acting for the seller and the buyer in the same conveyancing transaction should be an exceptional event. It is necessary to ensure that it is in each client's best interests for the firm to act. If a firm concludes that it should act for seller and buyer in the same transaction because it does not want to

lose both sets of legal fees, this is a classic example of the firm putting its own interests above those of the clients.

It is fair to say that solicitors' firms have vastly differing approaches to matters of conflicts of interest: some firms take conflicts of interest very seriously and have a clearly defined process to follow, while others give this little or no thought.

Whatever the attitude of the firm to conflicts, I suggest that all staff in a conveyancing team, of whatever experience, should be encouraged to trust their instincts in relation to conflicts and report any concerns to a more senior member of their team. 'Knowing what you don't know' is a powerful risk management tool when it comes to conflicts.

*Lorraine Richardson is an experienced property solicitor, author and speaker, and Managing Director of property law training provider, Adapt Law Ltd ([www.adaptlaw.co.uk](http://www.adaptlaw.co.uk))*

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# Minutes of a Meeting of the Derby & District Law Society Family Law Committee

Meeting: Wednesday 7 October 2020

## Present:

Fiona Apthorpe (Secretary)  
Julie Skill  
Lucy Tissington  
Manesha Ruperal

## Apologies:

Claire Dean  
Liz Doherty-Astle  
Nick Herbert

## No Apologies:

Diana Copestake  
Ben Lawson  
Vince Beckwith  
Jane Lakin  
Liz Guyler  
Joanna Jarvis  
Ruth Jones  
David Guthrie  
Fiona Lazenby  
Melanie Bridgen  
Naomi Hickman  
Janine Hobday

## 1. MATTERS ARISING

### 1.1 Membership/Attendance

The meeting took place successfully by Teams although attendance was disappointingly low. Can we check that all Members of the Sub-Committee are fully paid up Members of Derby & District Law Society. The main Committee is keen to emphasise the benefits to local practitioners of being members of the main Derby and District Law Society Committee and the main Committee felt very strongly that membership of Sub-Committees when not a Member of the main Law Society ought to be the exception rather than the rule. Any who are not therefore currently Members of Derby & District Law Society will need to join the main society.

### 1.2 Court User Meetings

HHJ Williscroft (Designated Family Judge for Derby) will be holding a virtual professional court user group once per month commencing on 08.10.2020 at 5:00pm. The meeting will last approximately 30 minutes. It will provide updates on both public and private law and will provide an

opportunity to raise generic issues, rather than case specific ones.

Suggested agenda is as follows:

1. Update re public law
2. Update re private law
3. Address points in the most recent newsletter
4. Feedback from court users - any concerns arising/positive feedback
5. Details of any local training or services
6. Good news stories or well wishes  
Fiona will check whether this is open to all.

## 2. AGENDA ITEMS

### 2.1 Public law

Fiona has been contacted by Tanuja Parmar Regional Implementer for the Transformation team (Midlands) in relation to Family Public Law and the new service that will be rolled out to our courts in the region. Fiona has suggested that she contact Melanie Bridgen and Melanie is asked to please report back to the Committee?

### 2.2 Private/Public Children's Cases

New initiatives highlighted by HHJ Williscroft.

### Private law

Cases will now receive light touch gatekeeping by legal advisors (Week 1). They will check if a case needs an emergency hearing or not, eligibility etc. and if the case needs safeguarding checks or not, but they won't allocate to a level of judiciary. Simple cases that don't need safeguarding will be listed for hearings.

The rest of the cases will be block listed in Week 8 on a date but without a time. In Week 6 a District Judge will triage the cases with safeguarding letters, and fix a time and confirm whether justices /legal advisor or District Judge should deal with the case or remove the case from the list with directions. This might be for information, s7 reports, statements about alleged abuse or other matters.

The court will need to continue hearing these cases by telephone for the foreseeable future with Cafcass available also by telephone to speak separately to the parties

or the court. In general, the experience is that this works reasonably well.

Why are the court changing the system ?

- They think it will save some time in getting cases listed by enabling some cases to be managed without a hearing
- Triaging the right level of judiciary is best done once they are clear on what the safeguarding letters say
- Managing what are increased numbers of cases
- Also – the FLOWs (support for victims of domestic abuse) is now available for such remote hearings. Their telephone number is 0300 330 2159 , and McKenzie Friends are also able to join though should try to email the form to the court beforehand.

### Public law

In November the court will go on line with the new online issue system. Staff and judiciary have already had training and report forms that enable clearer information to make decisions about need for urgent hearings and allocation. Everyone will need to have training about this and invitations will be delivered to the profession and video and written material in due course . The cases get issued and orders and filing managed centrally but referred to local gatekeepers.

### 2.3 Court developments

Apparently some of the Derby judges are using the new CV cloud platform appears to be that most cases are still being dealt with by BT meet me it seems to be the preferred option of Birmingham as well.

### 2.4 Divorce/FR

There are continuing problems with the online divorce system. There is a useful summary of the current situation in the Resolution bulletin issue 207. The next stage is to enable the respondent's solicitors details to go onto divorce petitions and for the respondent's solicitors to receive the petition and to digitally respond. This is likely to happen before the end of the year. That will be a huge improvement. It is hoped also that there will be the facility soon to amend petitions, make miscellaneous applications and apply for personal service of a petition.

HMCTS has put together videos to show users how to apply for consent orders via

the website. This is mandatory except where divorce applications have not yet reached decree nisi, existing FR applications have been made on paper, it is a variation, civil partnership or judicial separation or where a solicitor represents the respondents in FR proceedings. It is now possible to apply online for consent Orders where a party has a confidential address.

## 2.5 Gossip

You had to be there...! If you weren't we were probably talking about you!

## 3. PERMANENT AGENDA ITEMS

### 3.1 Database

A reminder that the database of Family Practitioners is a very useful method of communicating information to family lawyers locally.

Could everybody please double check that Members of their Family Team are included. If you are not included please let Fiona have your email address.

### 3.2 Training and Education

Suggestions for topics would be appreciated.

### 3.3 Local Family Justice Board

The Derby Family Local Justice Council was originally set up in 2005. It was subsequently resurrected as the Local Family Justice Board. Many Committee Members are Members and if you want to be on the LFJB's mailing list and be sent information about training events etc please contact [Joanne.eaton1@hmc.gsi.gov.uk](mailto:Joanne.eaton1@hmc.gsi.gov.uk)

### 3.4 Rights of Audience

HHJ Williscroft has explained that there is no longer a protocol in the family courts in Derbyshire to enable experienced Legal Executives to have generic rights of audience in the Family Proceedings Court. The position in private law proceedings is that Chartered Legal Executives are authorised persons under the Legal Services Act 2007 but are required to have an advocacy certificate before they have rights of audience in parts III, IV or V Children Act proceedings.

Chartered Legal Executives without the advocacy qualification can ask on a case by case basis for rights of audience in Part II-private law- proceedings only.

The view of the DCJs in the Midlands is that trainee legal executives and legal executives working towards their advocacy certificate can apply on a case by case basis to the judge for rights of audience with a CV which sets out that relevant experience and the kind of hearing that they wish to attend. Everyone attending a court hearing should tell the usher their status so it is clear.

If someone does not have a right of audience they can fill in the usual McKenzie friend form and provide similar assistance but they cannot have FAS home signed since they are not an advocate.

### 3.5 Court User Groups

Nothing to report save as above.

## 4. DATE OF NEXT MEETING



The next meeting will be remaining scheduled meeting is Wednesday 2 December by Teams.

**Fiona M K Apthorpe**  
Secretary

## Law Society Governance votes



**Michael Williams**

Dear all,

There are two important motions coming up within Law Society Governance on which you need to vote – I am including this in the Bulletin with the deadlines as they are at present but it MAY WELL BE that the dates will be pushed back again and DDLS will e-mail to let you know.

1. The plan to reform the make-up of the Law Society Council. Change is certainly needed but the plan needs further refinement before implementation. There is no need for our seat Derbyshire and E Staffs to be amalgamated with Nottinghamshire so if you agree with me you can try and stop it by voting against.

2. The plan to prevent Council members serving more than 12 years. You will probably be surprised to hear that after 5 years I am comfortably in the top half by virtue of seniority. Council is not stuffed with hordes of elderly members outstaying their welcome. I think it would be very dangerous to allow this limit to be imposed. It would leave a very inexperienced group at the mercy of staff - few of whom have worked for the Law Society for anything like 12 years.

The few senior members of Council ( about 20 out of 95 ) possess irreplaceable knowledge and experience which frankly is needed. The proposers of the motion are mainly Junior Lawyers full of enthusiasm but obviously lacking experience . I urge you to reject the motion.

The ballot will be held electronically. The requisite email will be sent to everyone on 2nd December and a reminder on 14th December. Voting closes on 16th December and the result will be announced the week following.

**You have until 20th November to check that your details are correct on My Law Society (MyLS) .**

If there are any problems try the Support Centre on **020 7242 1222** or email Robert Print, who can be contacted via the Law Society at [www.lawsociety.org.uk](http://www.lawsociety.org.uk)

Thank you

**Michael Williams**

Council Member for Derbyshire and East Staffs

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## Words of Wisdom: Working Back To Front



Some scholars believed that Lord Denning, the famous Master of the Rolls and Court of Appeal judge, used to look at the cases that came before him and decide what the outcome should be; he then set about looking for the Case Law to back up his view. This of course goes against the traditional approach of listening to the submissions put by each side's advocate and then reaching a decision.

Problems can however be resolved on some occasions by taking this backwards style approach, and during my practising career, I succeeded more than once by using this method.

Working in a rural practice, I often dealt with the estates of farmers who had died, and needed to persuade the Inland Revenue Capital Taxes Office (as HMRC Capital Taxes was then called) that there was no IHT to pay due to Agricultural Property Relief (APR) and Business Property Relief (BPR) bringing the chargeable value of the estate down below the nil-rate band. Then, as now, one had to consider the "Character Appropriate Test" and non-agricultural value in the farmhouse, as well as convincing the Case Officer that the dwelling was indeed "occupied for agricultural purposes". Things got easier with the advent of transferable nil-rate bands giving up to £650,000 available before IHT started.

In one case, the farmer who had died was a widower and apart from the farmhouse, there was another dwelling his son occupied. Claiming APR on two houses always presented a problem on small Peak District farms as they were rarely big enough in the eyes of the District Valuer to support two families; indeed in this case the son had a job away from the farm driving a milk tanker. However, he fitted this in between helping his father milk over 120 dairy cows. Dad was over 80 when he died and I submitted a claim for APR for both dwellings on the basis that one man – never mind one in his 80's – could not possibly tend to and milk 120+ cows on his own and would have had to employ a farm worker but for the son's help. Rather than leaving it to the Capital Taxes Office to go through the IHT400 in the traditional way, with Additional Information on the last page, I inserted my justification for claiming APR on both dwellings at the front of the form, concluding the submission by inviting the CTO to agree simply that the chargeable estate was below £650,000. The back-to-front approach paid off as we had official clearance within a month of submitting the papers. I like to think that putting my arguments at the start of the form meant that I held the psychological high-ground from the outset, rather than having to face the uphill struggle of dissuading the Case Officer from any conclusions to which he had already (erroneously) jumped before reaching the Additional Information section of the form.

Although I spent my entire career doing non-contentious work, I did once solve a boundary dispute by the back to front method whilst covering for a litigation colleague who was on annual leave. Our client was claiming that some land belonging to an old Victorian factory he had bought as a development project had been poached by the neighbour to the rear. On the face of the Land Registry filed plan, it looked to be an open-and-shut case. The 1880's conveyance of the land on which the factory was to be built did not have a plan but described the site as having an area of so many square yards with a frontage of so many feet to the public highway and a depth of so many feet from said public highway. In those days pre-registration Deeds were handed over on completion with the Land Certificate, and in my view discarding

them is as sacrilegious as burning the tape of the full 90 minutes of the 1966 World Cup Final because someone has uploaded a 20 minute film of the best bits. Anyway, our client had measured the site and found it to be a good six feet short of its described depth and the scaling off of the filed plan supported it. The rear neighbour was however adamant that no land had been poached when he'd replaced the boundary fence the previous year. Solicitors were therefore instructed.

Being a fan of Time Team on Channel 4, I began to wonder about the history of the site and what might have changed in the locality between the date of that Conveyance and first registration at the Land Registry. (It was too far away to go and do a site visit, and there was no Google Streetview at that time). Luckily, I knew someone who worked for a long established land agent in the town in question, so I rang him up to ask if they had any old 1:2500 County Series OS sheets from before 1900. The oldest one he turned up was from 1912. He sent me a photocopy of the part with the factory on it, which I recopied onto some tracing paper and laid it over the filed plan which was taken from the early National Grid 1970's OS map – also conveniently scaled 1:2500. I discovered that at some time during the period between the two maps being drawn, the road fronting the site had been widened and guess what – it was by about 6-8 feet. It seemed that although it was now right next to the highway pavement, the factory's front elevation wall was originally built a short distance back from the road.

I sent a copy of my findings to our client. He was happy the issue had been resolved, as indeed was the neighbour. When my colleague returned from leave, he readily acknowledged that he'd never thought about trying to source a map the same age as the conveyance, and he'd also never wondered if anything had gone from the front of the site, having been instructed that the dispute concerned the position of the neighbour's new fence along the rear boundary.

Solutions are not always found where we would expect them to be found - as Lord Denning probably knew....

Chris Green



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Making Lives Better

# Legacy bodies welcome Government actions to resolve probate backlog

Charity legacy bodies have welcomed a statement from HM Courts & Tribunals Service (HMCTS), which sets out its plans to resolve the delay and backlog of Wills passing through probate.

During the pandemic, rising death rates, an increase in incomplete grant applications and challenges to the usual working practices have all put added pressure on the probate system, which had already been struggling due to a surge in applications in spring 2019, as well as the introduction of a new case management system. These pressures have created a bottleneck in terms of legacy notifications and funds. This has a significant impact on UK charities, many of which rely on gifts in Wills for over 30% of their annual voluntary income.<sup>1</sup>

frontline services going. HMCTS recognises how much the sector relies on gifts in Wills and we are hugely grateful for their continued commitment to work with us to resolve the backlog. This commitment not only helps charities to forecast future income, but to plan their vital services going forward.”

For more information, see the HMCTS statement here: <https://www.rememberacharity.org.uk/media/wxdfn2nn/probate-hmcts-statement-november-2020.pdf>

ILM and Remember A Charity will continue to work closely with HMCTS and other partners to ensure that members and the charity sector are kept informed of further progress.

<sup>1</sup> Strengthening Charities’ Resilience with Legacies, November 2020 (Remember A Charity, Legacy Foresight, ILM and Smee & Ford)

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Rob Cope

With 29,000 estates currently held in the system, HMCTS has been working collaboratively with the Institute of Legacy Management (ILM) and Remember A Charity to monitor and address the situation and its impact on the charity sector.

In this statement, HMCTS announces that several measures have been put in place to address the backlog and minimise future delays. This includes taking on and training more staff, reducing the waiting time on digital applications and trialling a new digital notifications solution with Smee & Ford. Regular progress data on applications and grants will be published on a monthly basis via the HMCTS website.

ILM and Remember A Charity welcome the resolutions and the commitment of HMCTS to continue to collaborate, taking action to ensure that legacy income and notifications can be processed as swiftly as possible.

**Matthew Lagden**, CEO, Institute of Legacy Management, says: “It has been a priority for ILM and Remember A Charity to work closely with HMCTS to keep our members informed, looking at the ways in which we can track and help to resolve delays, particularly during such a challenging year. We are delighted to see that HMCTS has expanded its probate team to help increase capacity, and that Smee & Ford’s digital service is speeding up the current process of notifications. These steps give us confidence that HMCTS has the capacity in place to deal with the backlog and the expected rise in applications through the winter.”

**Rob Cope**, director of Remember A Charity, adds: “Charitable income has been heavily hampered by the pandemic this year, making legacies all the more important in enabling charities to keep their



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# The Legacy of Coal Mining

A recent article<sup>1</sup> in the Observer newspaper questioned whether we are facing the imminent end of Coal as an energy source in Britain.



Looking back at where we have come from, UK coal production was around 70 million tonnes a year in the mid-18th century and rose to a peak of just under 300 million tonnes by 1913 according to the UK Government figures. Usage of the fossil fuel has however dropped as residential use has largely ended and just eight million tonnes was reportedly used by UK industry last year, with only two million supplied from UK sources.

Today, UK mining is virtually wiped out, having fallen from 3,000 mines at the peak to just 13 now, with coal representing approximately five per cent of overall annual energy usage.

From the heights of the industrial era, coal production instead leaves behind a significant and long-lasting legacy that will continue to have an impact on the country, well into the future. Ground stability poses a real hazard for properties located over or even near mine workings for decades to come and is important to consider when transacting properties.

I spoke to **Phil Huddleston** MRICS, a Director of PinPoint Coal Ltd and former Head of Mining Information at the Coal Authority to talk about what lawyers need to consider when undertaking ground stability due diligence on property transactions in these areas:

*"Derbyshire is a tale of two coalfields, split by the Pennines. On the west side we have the old coal*

*workings around New Mills and Whalley Bridge and on the east side the coals worked from Chesterfield in the north down to Ilkeston in the south.*

*"Today there is no underground coal mining in Derbyshire. The last coals were worked near Arkwright town – the village they moved<sup>2</sup> from Markham Colliery, which closed in 1993. Markham was the biggest colliery in the former NCB North Derbyshire Area and the site has since been redeveloped into the Markham Vale Business Park. This includes a new intersection, Junction 29A, giving access to the M1 Motorway which runs at the side of the former colliery site.*

*"Although the mining has stopped it has left behind lots of potential problems that home owners and developers need to be aware of:*

- Old mine shafts can collapse causing sudden and severe damage
- Old shallow workings that can collapse causing crown holes at the surface and resultant subsidence damage
- Old subsidence damage from deeper mining.
- The potential for settlement in areas that have been opencasted (quarried)

*"In Derbyshire there are lots of these potential problem locations that make it still relevant today. One lesser known risk is mine gases; heavier mine gases such as blackdamp (mainly Carbon Dioxide) really only present as a problem for people who try to enter old workings. Lighter gases, like methane, can and do make their way to the surface. Usually this is through man-made routes such as the shafts sunk to mine the coal.*

*"In many locations, this gas is now captured and used as an energy source, however there have been instances in the past where the gas has made its way to the surface through cracks in the rock left by the mining.*

*"One well-known example is Arkwright Town -located between Chesterfield and Bolsover, which was formerly a coal mining village. Arkwright Colliery closed in 1988 and it was then discovered that the community was threatened by emissions of methane gas, causing some of the houses to be evacuated.*

*"The whole village was owned by British Coal and a decision was taken, along with Derbyshire County Council to transfer ownership of the 52 properties to a housing trust, construct a new village to the north of the site affected by methane, and move all residents. The old Arkwright Town was subsequently demolished in 1995.*

*"This demonstrates that the legacy of mining can continue long after the coal has been worked, on the personal stress encountered by those affected.*

*"When buying a property in an area with a mining history, purchasers should be encouraged to look at mining reports to see if there have been any claims on the property, and if there have, to satisfy themselves that any damage has been repaired.*

Concludes Phil: *"They should also look to see whether the property has ever been notified under Section 46 subsidence legislation as this is a good indicator that the operator of the mine thought there would be subsidence."*

The new Landmark Coal Mining Report – powered by PinPoint – provides all the standard answers required by the Law Society together with (as appendices) additional information about mine entries and claims when they are reported. The reports are supported by professional opinion from a Chartered Minerals Surveyor.

While coal mining may be largely condemned to the history books, its after-effects leave behind a lasting legacy that certainly means it shall not be forgotten, and cannot be ignored.

<https://www.landmark.co.uk/landmark-legal>

**Allie Parsons,**  
Customer Success Consultant,  
Landmark Information

## Notes

<sup>1</sup> <https://www.theguardian.com/environment/2020/aug/09/is-this-the-end-for-king-coal-in-britain>

<sup>2</sup> <https://www.theguardian.com/society/2003/feb/19/housingpolicy2>

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# Can your expert truly sign the Statement of Truth?



Chris Makin

An expert's report under CPR must conclude with the Expert's Declaration stating that the expert knows his duty to the court and has complied with that duty. There must then be a Statement of Truth, which used to say:

- I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.
- But as from 1 October 2020 that statement is extended, with these words:
- I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

It is relevant to consider why these words are added, and particularly interesting to me because it concerns a solicitor, now an ex-solicitor, in my home town of Huddersfield.

The relevant case is *Liverpool Victoria Insurance Company Ltd -v- Dr Asef Zafar* [2019] EWCA Civ 392, being an appeal by LV= against a sentence of only 6 months, suspended for 2 years, on a medical expert witness on the grounds that it was unduly lenient.

## The Facts

On 3 December 2011 a Mr Mudassar Iqbal was in an RTA. The other driver, at fault, was insured by LV=.

Mr Iqbal was examined by Dr Zafar, who ran what the Court of Appeal referred to as an expert witness "factory". He was able to examine an injured person and produce an expert report every 15 minutes; he produced 5,000 reports a year, and he earned £350,000 for this work in addition to being a full-time GP with the NHS.

Dr Zafar did the examination 11 weeks after the accident, and dictated a report in Mr Iqbal's presence, stating that in his opinion there had been whiplash but it had resolved one week after the accident and Mr Iqbal was fully recovered.

The report dated 17 February 2012 went to instructing solicitor Mr Khan of TKW, bearing an expert's declaration and the traditional Statement of Truth.

From a file note at TKW, it seems that Mr Iqbal rang the solicitor to say that he had continuing problems of whiplash. So Mr Khan said he wrote a letter (which could not now be found) to Dr Zafar asking him to produce an amended report.

Communication was through an agency, Med-Admin. A secretary asked Dr Zafar if a revised report should be prepared. Dr Zafar agreed, and a report identical in all respects but for the continuing whiplash was produced.

Now the solicitor had two versions of the same report. Regrettably for him, a paralegal put a bundle together which included the wrong, first, report.

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**N Christopher Makin** FCA FCFI FAE QDR MCI Arb

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LV=, recognising the effect on their insurance business if they were to pay out claims based on false expert opinion, sent an investigator to find out from Dr Zafar just what had gone on. Dr Zafar tried to blame others, told lies, and produced a false witness statement with a Statement of Truth.

LV= decided to make an example of Dr Zafar, and took High Court action against him (and against the solicitor) for contempt of court.

After a lengthy contested hearing, Garnham J found that ten grounds of contempt of court had been proved against Dr Zafar, and he imposed the suspended sentence mentioned above. LV= appealed because they considered it unduly lenient.

## The Court of Appeal's view

The Court of Appeal took a harsh view of the actions of both Mr Khan and Dr Zafar. Mr Khan was not involved in the Court of Appeal case; his future had already been determined: he was jailed immediately by the High Court, the Law Society intervened in his practice, and he is no longer a solicitor. End of.

As for Dr Zafar, the judgment is well worth a read, and there was repeated criticism of an expert who makes a false declaration. The High Court referred to a fireman in *South Wales Fire and Rescue*

*Service -v-Smith* [2011] EWHC 1749 who had lied about not having any earnings after his accident, and was jailed. Garnham J, with whom the Court of Appeal agreed, said this:

*"Those who make false claims should expect to go to prison. Solicitors and expert witnesses who act dishonestly in the evidence they give to the court, whether in support of such claims or otherwise, must expect a similar outcome. Mr Khan and Dr Zafar, you must understand that the proper functioning of the court system depended on your honesty. Your conduct in this case amounts to a fundamental betrayal of the trust placed in you by the court."*

## The outcome

Dr Zafar pleaded financial strain because he had lost his main income. He would clearly not be recognised as an expert again. The court was unimpressed.

As for the sentence, the court did find that it was unduly lenient; 6 months suspended for 2 years should have been 9-12 months immediate. But the court contented itself with leaving the suspended sentence undisturbed, but giving guidance for such cases in future. We have been warned.

The extended Statement of Truth obliges experts to think very carefully before signing off their reports. And now we all know the reason for this extended wording

Solicitors when choosing experts should be careful not to instruct experts such as Dr Zafar, and solicitors who wish to remain on the roll must not get involved in such affairs. Simple!

## Biog:

Chris Makin has practised as a forensic accountant and expert witness for 30 years, latterly as Head of Litigation Support at a national firm. He has given expert evidence about 100 times. He also performs expert determinations.

Chris is a fellow of the Institute of Chartered Accountants where he has served on the Forensic Committee, and as an ethical counsellor; he is a fellow of the Chartered Management Institute, a fellow of the Academy of Experts where he serves on the Investigations Committee, and a mediator accredited by the Chartered Arbitrators.

He practises as a mediator, from his home in West Yorkshire and his rooms at 3 Gray's Inn Square, London WC1R 5AH, telephone 020 7430 0333. He has mediated 100+ cases so far, on a huge range of subjects, with a settlement rate to date of 80%. For more see his website with videos:

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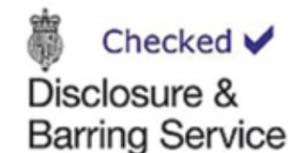
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## 360 Business

**360 Wellbeing Centre, Chatsworth Road is the destination deluxe when it comes to health and wellbeing in Derbyshire. A hint of Belgravia and a team of experts both medical and complementary, the centre does not disappoint.**

As soon as you get beyond the door a sense of calm ensues with stunning décor and artistry created by local artist Sally Ginger. 360 wellbeing Centre would not look out of place in the borough of Chelsea.

However, Managing Director, **Samantha Woodcroft** explains, it's not been easy.

"We had our grand opening just a month before lockdown and had so much planned, including a huge wellbeing event at the Chesterfield Proact stadium for which we had already sold 250 tickets.

We were one of the first industries to be locked down and the last to reopen. It's extremely frustrating but we've used our time wisely, we have teamed up with an industry leader to offer a full response to the COVID-19 outbreak, we have developed a new "Coronavirus cleaning" and "Antiviral Sanitisation" service, based on Public Health Guidelines, in an effort to assist local businesses with their

regulatory requirements including risk assessments.

In addition our clinic now offers, antigen Covid testing performed by nurses in clinic. Results are available within 15 minutes.

The clinic has recently added the 'Hear to listen' campaign giving clients access to a team of experts who specialise in all things mental health from anxiety and depression to PTSD.

The treatment menu is bursting with therapies such as IV vitamin drips, colon hydrotherapy, expert facial treatments and psychotherapy not forgetting a full range of complementary treatments and ear irrigation.

*If you would like more information, please contact:*  
[www.360wellbeingcentre.co.uk](http://www.360wellbeingcentre.co.uk)  
 Tel: 01246 938948  
 Email: [info@360wellbeingcentre.co.uk](mailto:info@360wellbeingcentre.co.uk)

### Is your business COVID compliant?

**Can you afford to have your business closed due to an infection outbreak or by not following the guidelines?**

What would you do if you were made aware that you have had a staff member, visitor or even a customer who had a positive Covid-19 test?

**360 Business can help, from full risk assessments to deep cleaning.**

We offer help and advice to be fully compliant or a **Deep Clean** and **Sanitisation certification**, so your customers and visitors feel assured their health is important to you.

Speak with our business team about how we can help you.  
 01246 938 948 | [info@360wellbeingcentre.co.uk](mailto:info@360wellbeingcentre.co.uk) | [360wellbeingcentre.co.uk](http://360wellbeingcentre.co.uk)

# Four weeks to go... Make your voice heard and tell your story

JOIN OVER 1,350 LEGAL PROFESSIONALS & TAKE PART BY DEC 31 DEADLINE

## Tell us about your LIFE IN THE LAW

Take part in our ground-breaking research study and help us find out how legal practice and workplace culture affect wellbeing



[lifeinthelaw.org.uk](http://lifeinthelaw.org.uk)

#lifeinthelaw  
#cultureandpractice

Legal mental health charity LawCare is urging legal professionals to take part in their ground-breaking research study 'Life in the Law' to determine the impact of work culture and working practices on the wellbeing of legal professionals. Anyone working in the legal industry, including those in training and support staff, can complete the anonymous online questionnaire across the UK, Ireland, Channel Islands and Isle of Man until December 31st. The results, which will be announced next year, will help LawCare improve the support available to legal professionals and drive change in the profession, as well as forming the basis for an academic paper.

The research seeks to understand the day to day realities of life in the law and uses three academic research scales for burn-out, psychological safety, and autonomy. It includes questions about sleep, workload, hours worked, self-care

and working environment, as well as asking what wellbeing support is offered at work. There are also questions about bullying, discrimination and harassment, sleep, alcohol, and experiences of stress, anxiety, and depression. The research will also examine how the legal profession has been affected by COVID-19.

**Elizabeth Rimmer**, CEO of LawCare, said: *"This is the biggest ever piece of academic research into wellbeing in the legal industry in the UK and Ireland. We've been absolutely delighted with the number of responses so far and we urge all legal professionals to make their voice heard and tell us about their life in the law. This will give us a clear picture of how the culture and practice of law affects mental health and help us not only to improve the support available to legal professionals, but drive long lasting change in legal workplaces so that people working in the law can thrive."*

The charity teamed up with leading

academics in the field **Dr Emma Jones** (University of Sheffield), **Professor Richard Collier** (University of Newcastle), **Caroline Strevens** (Reader in Legal Education, University of Portsmouth) and **Lucinda Soon** (Solicitor and PhD researcher) along with **Nick Bloy** (Executive Coach and founder of Wellbeing Republic) and **Kayleigh Leonie** (LawCare trustee and solicitor) to develop the research study.

Take part at [lifeinthelaw.org.uk](http://lifeinthelaw.org.uk)

### About LawCare

- LawCare is an independent charity offering emotional support, information and training to the legal community in the UK and Ireland. We work to promote good mental health and wellbeing in legal workplaces.
- We're here to help through our confidential helpline, email, webchat and one-to-one peer support network. The helpline number is 0800 279 6888 (1800 991 801 in Ireland) and you can access other support, information and resources at [www.lawcare.org.uk](http://www.lawcare.org.uk) ([www.lawcare.ie](http://www.lawcare.ie))
- We help all branches of the legal profession: solicitors, barristers, barrister's clerks, judges, Chartered Legal Executives, paralegals, trade mark attorneys, patent attorneys, costs lawyers, their staff and concerned family members.
- Our support spans the legal life from student to training to practice and retirement.

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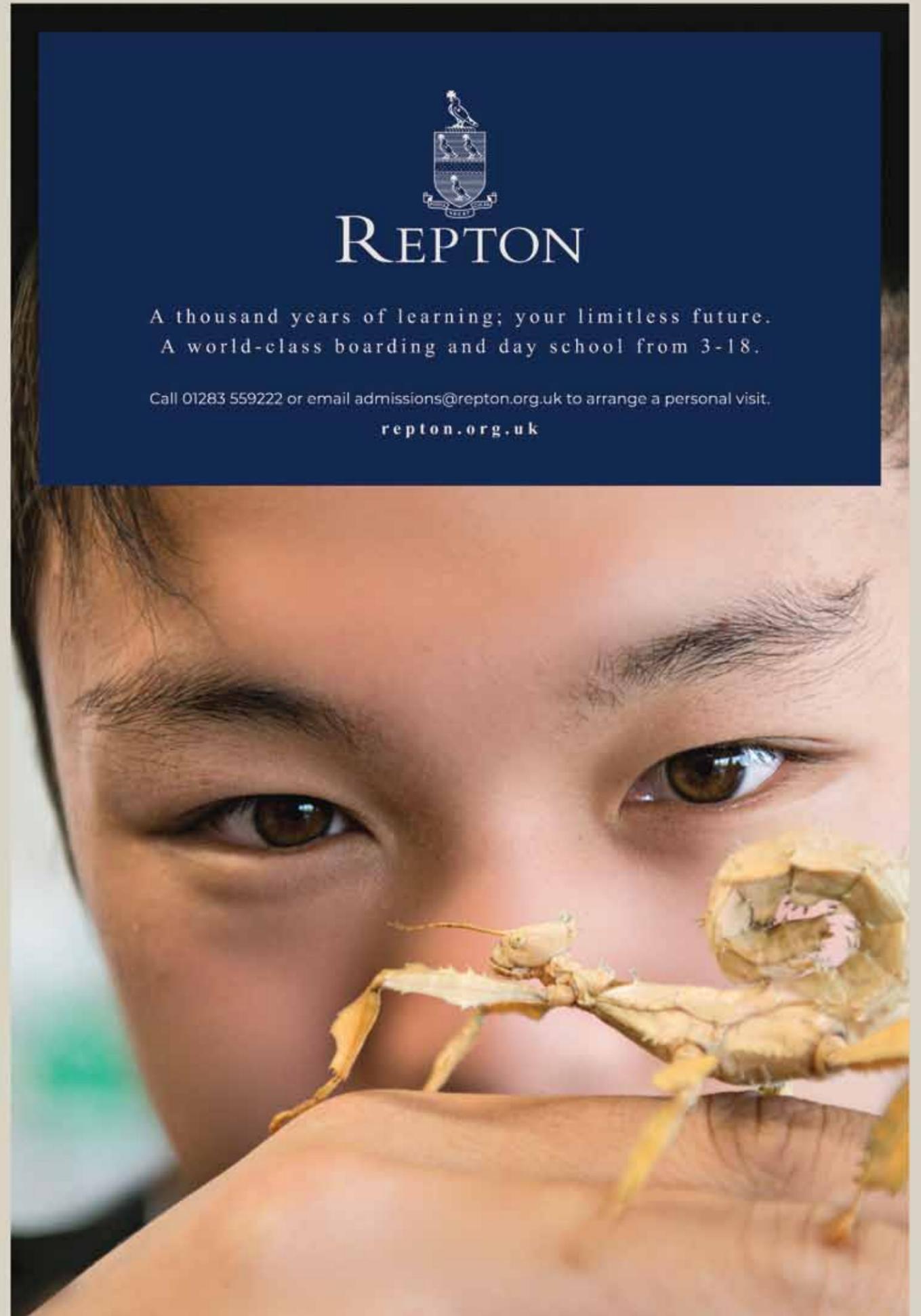
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# Geodesys offers free of charge SDLT service as the market bounces back

As the property market resumes following the gradual lifting of lockdown measures, figures from HM Revenue and Customs have shown that property sales rose by and incredible 15.6% in August accompanied by a significant increase in house prices<sup>(1)</sup>.



- Pre-populates the forms based on the information already stored in the Geodesys case file, alleviating the need for duplication when completing the AP1 form
- Information is validated before submission to HMRC. This allows you to correct any human errors which would result in rejection.
- Instant SDLT5 certification – no long turnaround times
- Has a comprehensive GDPR toolkit allowing you to search, edit, export and mark to delete your client's personal data
- Drafts can be saved at any time - no need to complete in one go
- No training is required, and the submission can be made directly and securely from the Geodesys platform.

Although experts are predicting that the boom is not sustainable, current sales are also being boosted by the Stamp Duty holiday introduced by the Chancellor in July. This sees the stamp duty threshold increased to £500,000 until the end of March 2021. Although first time buyers were already exempt from SDLT on property purchases up to £300,000, the recent additional reduction of SDLT, has been designed to stimulate the overall market and is certainly playing a role in supporting house sales.

**Johnny Davey**, Conveyancing Product Manager from Geodesys commented: *"We are delighted that the property market is seeing considerable growth at the moment, following the substantial pause during lockdown. Thanks to our technology-based service, we as an organisation have been able to continue with business as usual throughout and we have a full customer services team in place to support clients."*

*"Now that the market bouncing back so rapidly, we are delighted to offer a little something back to our dedicated customers by offering our efficient SDLT service free of charge."*

## IT'S A GREAT TIME TO TAKE ADVANTAGE OF OUR SDLT OFFER<sup>(2)</sup>

To help support our conveyancing customers, we are currently offering our simple and efficient Stamp Duty Land Tax (SDLT) service FREE OF CHARGE until 31 March 2021. Our online SDLT solution allows you to quickly and securely submit your SDLT returns from within your case. But, perhaps more importantly, the service provides complete peace of mind as the online returns process is fully-compliant with the Law Society's Conveyancing Quality Scheme (CQS) and Core Practice Management Standards.

The SDLT service is just one of a number of tools Geodesys offers to provide a seamless and compliant ordering process for property searches. To find out more about our SDLT and our full range of conveyancing services, please visit [www.geodesys.com](http://www.geodesys.com) or email Kay Toon, our Key Account Manager at [kay.toon@geodesys.com](mailto:kay.toon@geodesys.com).

Our post-completion SDLT solution offers you the following benefits:

- Meets the Law Society CQS CPMS 1.2 requirement for an audit trail and third-party review process

### Notes:

(1) *The Times*, 23 September 2020

(2) Free of charge SDLT offer ends 31/03/2021.



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# Covid-19's impact: Practice areas by work type

By **Julian Bryan**, Managing Director, Quill



Showing clear signs of recovery in the sector, legal activity in September bounced back to an average of 19% more than pre-Covid levels, according to the legal matters benchmarking tool, Quilldex.

At its lowest point, Quilldex reported overall cases dipped by 36% in April 2020, but this has now rebounded to 19% in September 2020, buoyed by family law (25%), private client law (36%), conveyancing (49%) and employment law (49%). Let's take a deeper look into these areas of rebound.

## Family law

The emotional pressures of isolation and lockdown have taken an unfortunate toll on families. Compared to January, we've seen a 25% rise in September in family law matters relating to divorce, childcare and financial remedy due to relationship breakdowns. Child protection applications

are up and property and investment values are also in flux or freefall. This all makes financial settlements harder to achieve.

Correspondingly, HM Courts and Tribunals Service has seen an increase of 17% in receipts of family and divorce matters. These government figures are based on matters progressed to court, which are slightly fewer due to court closures and halted trials.

According to the latest Law Gazette news, family courts now face a backlog, further exacerbated by complications caused by the drastic altering of financial circumstances and prioritisation of child protection cases, as intimated above. Further upheaval is expected following the summer and Christmas holidays, and not to mention Brexit, as reciprocal agreements around custody remain unclear.

For family lawyers, then, it's a busy time both now and ahead.

## Private client law

Quilldex saw a 36% hike in private client matters such as LPAs, inheritance, probate, wills and tax. The reality that we must all confront our own mortality is leading to many using this time to get our affairs in order and plan for the future.

Reinforcing the upsurge is HM Courts and Tribunals Service who confirmed an influx of probate applications relating to coronavirus and Office of National Statistics (ONS) figures finding deaths from 7-13 September 2020 were 5.4% higher than the five-year average.

## Conveyancing

The upswing in matters is amongst its most apparent in conveyancing. Here, daily new cases fell to around a third of normal levels in April, indicated by a 64% drop, due to the lockdown and mandated halts placed on property moves by our government, but this is now running at 49% above the benchmark.

This trend follows a revival in the property market since lockdown restrictions were eased, and chimes with Land Registry data showing that applications in June were 64% higher than in April. In addition to the large-scale reopening of the property space, other ramifications to the housing market come in the form of the current stamp duty holiday, further incentivising buyers to proceed with house sales and adding to conveyancers' workloads.

## Employment law

Employment case numbers correlate to key dates in the Coronavirus Job Retention Scheme calendar, which defined deadlines for furloughing employees. Said to be costing the government £60 billion by the Office for Budget Responsibility, take up of the scheme relates to claims for almost 10 million jobs. On top of this, the ONS reports that unemployment grew by 4.1% in the three months up to July, leading to a spike in employment tribunal cases from people challenging decisions about lost jobs.

The Ministry of Justice has published data showing that 39,093 single claims and 5,915 multiple claims are now outstanding in the employment tribunal. These factors culminate in a heavier-than-usual caseload for employment lawyers. In Quilldex, this plays out in notable highs (average 57% increase in August) and modest lows (average 31% drop in April).

## More steady areas - legal aid, criminal and immigration

Legal aid is one of the steadiest graphs in Quilldex, although even that showed a rise of 10% at its September average, perhaps better mirroring ongoing cuts to legal aid rather than any Covid phenomenon. The criminal graph is also relatively steady, albeit with a peak of 17% rise in activity in September and trough of 52% in April. Nightingale courts have been opened to alleviate the pressure on the court system in dealing with approximately 550,000 outstanding criminal cases; the backlog of which has grown as a result of coronavirus and the subsequent inability of courts to function safely for much of the year.

While immigration matters dipped by 53% in May and stayed low throughout the summer months, it eventually rose by 11% in September. With widespread travel restrictions including entry and exit bans in the UK, combined with the Brexit effect on employers and universities, immigration has remained a constant source of work for solicitors throughout the coronavirus outbreak and is expected to continue up to the transition period for leaving the EU, which ends on 31st December 2020.

## Slower areas to recover: Commercial and civil law

Quilldex suggests commercial law being slower to recover with September rates being 19% lower than January's, painting a picture of instructions increasing gradually as business activity resumes and contractual relationships become more complicated, thereby demanding input from legal experts.

In comparison, civil law saw a 56% increase in matters compared to January, likely due to the aforementioned complex contractual provisions and ensuing disputes, amongst other civil-related legal affairs.

## Planning for the future with technology

While the adverse impact of coronavirus has been felt by us all and Covid-19 itself deemed a catalyst for change, the positive is that law firms have adapted well and are in a strong position to secure the future of their businesses.

Technology plays a vital role in optimising operating models and reinforcing strategic plans, and now, accelerating growth during uncertain times. Never before has the digitisation of traditional ways of working been more in the spotlight. Modern, more virtual-friendly law firms are the way forward, and having cloud-based software is one tool to success.

The reason for the shift in focus from on-premise to cloud-hosted applications is straightforward. The former is installed on a company's own servers, and is accessed on-site and nowhere else. The latter is deployed via a cloud computing model for anywhere, anytime, any device access via an Internet connection.

Enabling staff to do their work from home efficiently and securely without interruption is now a foremost concern for law firms. Essential technology infrastructure is a crucial part of business continuity and disaster recovery plans for any legal practice keen to weather the storm and keep servicing their clients virtually.

## In summary

If law firms have learnt one thing in 2020, it is to hope for the best and prepare for the worst. And not even the most pessimistic individual could have imagined how 2020 would turn out.

After a difficult few months, it is heartening to see new instructions returning rapidly to pre-pandemic levels in so many areas of law, and in many instances exceeding them.

This year has confirmed like no other that the law is a robust sector with plenty to look forward to as the UK continues its journey back to (some sort) of normality.

## About Quilldex

Quilldex is based on new matter openings from a representative sample of Quill's Interactive software users, comprising 7% of all law firms across England, Scotland and Wales. Current figures are based on average monthly activity rates against January 2020 as a baseline. By launching Quilldex to the market, its data gives law firms assurance of their own recovery as well as confidence to progress with planning and investment initiatives over the rest of 2020 and into 2021. To learn more, visit: [www.quill.co.uk/quilldex](http://www.quill.co.uk/quilldex).



**Julian Bryan** is the Managing Director of Quill, which helps law firms streamline and run their practice better by providing simple and easy-to-use legal accounting and case management software, as well as outsourced legal cashiers services. Julian has been an advocate for quality software standards and served as the Chair of the Legal Software Suppliers Association from 2016 to 2019. He can be reached at [j.bryan@quill.co.uk](mailto:j.bryan@quill.co.uk).

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