

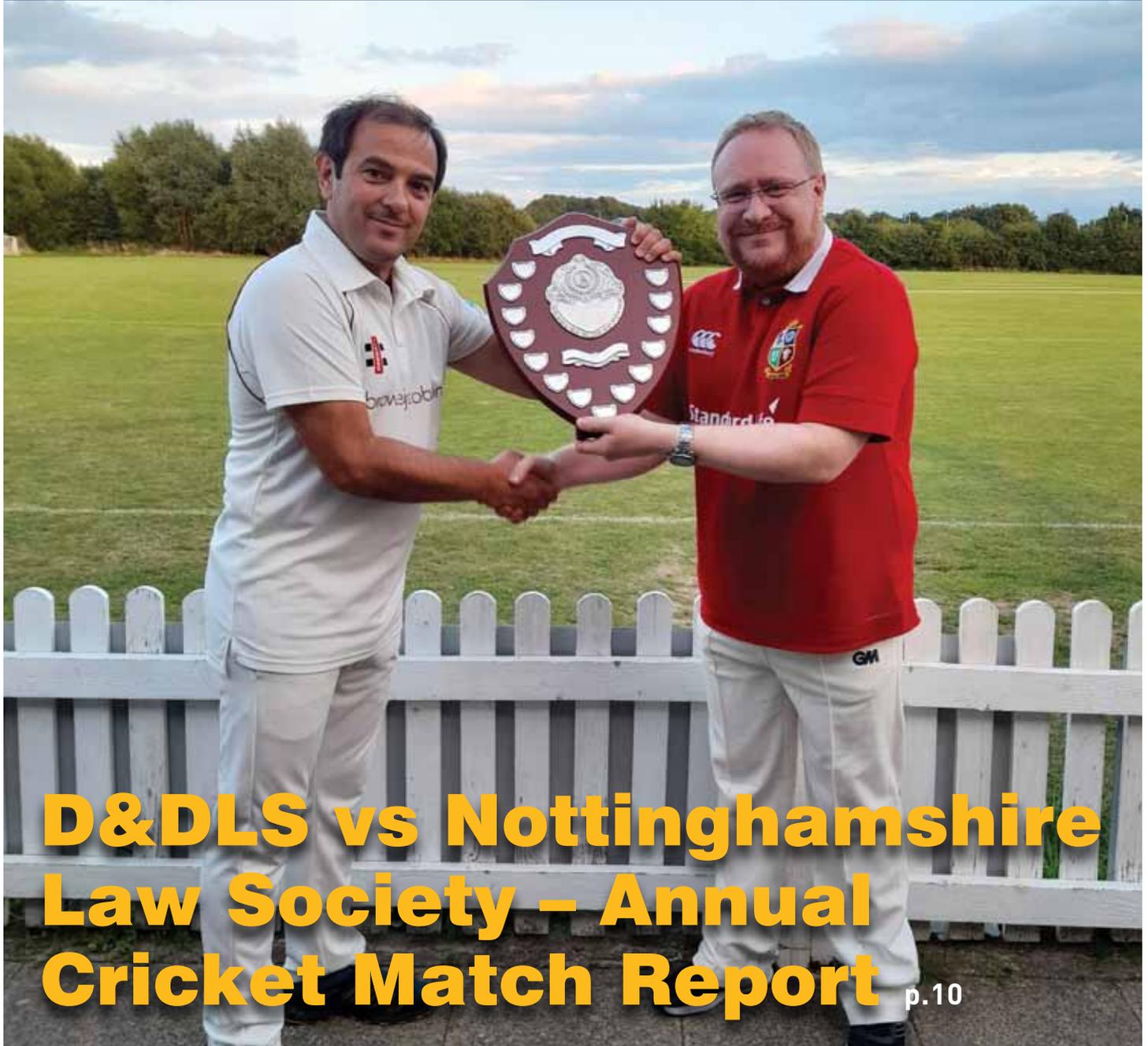
D&DLS Bulletin

Derby & District Law Society



www.derbylaw.net

Sept / October 2021



D&DLS vs Nottinghamshire Law Society – Annual Cricket Match Report p.10

Also in this issue:

Can Employers Force their Staff to have the Covid Vaccine?

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Editorial



So it is September and I am enjoying the new found freedoms of being able to go to the cinema or shopping without a mask and the dubious freedom of going on holiday but paying for what seems like a million tests and experiencing travel anxiety whilst waiting for results, ordering yet more tests and then getting pinged (twice!) having gotten off planes. Serves me right for going away. Is it just me or is everyone making the most of it whilst expecting that any day now we will be plunged back into some sort of restrictions?

Children are back at school – well mostly hopefully, and my eldest grumpy teenager has returned from his exciting travels (12 countries in 21 weeks) and magically is mostly ready for University in a weeks time. Thank goodness his mum is organised.

Summer is always quiet for DDLS but the cricket match went ahead and was enjoyed by all. Thanks to David Williams for helping to organise and Martin Salt for the great write up and photos.

We are looking forward to the Past President's Dinner in the middle of September and may I remind everyone that the Annual Dinner is 5th November at Pride Park. I will be re-sending invites in the next week or so and please get your firms interested.

The mystery author has struck again on page 12. Someone must have guessed who this distinguished former practitioner is – e-mails to me please.

You will also see in this issue that the seat on the national Law Society Council has been amalgamated with Nottinghamshire and there is an introduction to Shama Gupta, our new Council member on page 6. There will be a farewell message from Michael Williams, who has done the most amazing job of keeping us 'in touch' with national goings on for many years, in the next issue.

Any requests for events or training courses etc. please just let me know.

Take care.
Julia Saunders
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President's Page



Hello. At long last we are returning to something like a normal way of life - face masks are hopefully becoming a thing of the past, attended court appointments are resuming and we are even starting to be able to take holidays, both staycations and abroad.

The year is rapidly advancing. Summer is nearly over and the nights are already drawing in.

There is very little to report in terms of events that have been scheduled over the last few weeks which is not unusual during school holidays. Whilst I myself was enjoying a few days away, I understand that the Annual Cricket Match between DDLS and Nottingham Law Society took place and although DDLS were defeated, I am told it was a very close match and we look forward to a re-match next year.

At my request, your Vice President Manesha Ruparel attended a remote Presidents and Secretaries Conference and has passed on a very helpful resource pack containing information about how local Societies keep their members interested and involved. On that point, I would like to take this opportunity to reach out to all of you and encourage members to get more

involved with your local Society. I would like to remind all members that the Society operates a number of sub-committees and all members are encouraged to get actively involved with the sub-committee relevant to their own practice area. The current sub-committees are:-

- Education and Training
- Criminal
- Family
- Probate/Wills/Trusts
- Sole Practitioner Group
- Civil Litigation (to be established)
- Ethnic Minorities (to be established)

Joining your relevant sub-committee will enable you to voice your opinion about issues that are important to you and will give you the chance to ensure you are up to date with local practices and decisions. This should help on a day to day basis, as well as giving you the opportunity to meet and chat with other members who practice in the same field as you.

Joining a sub-committee won't involve you giving up large amounts of time. Meetings are generally no more often than every alternate month and moving forward no doubt remote meetings are something that we have had imposed upon us by lockdown but which are here to stay. If you would be interested in joining a sub-committee, then please contact me by email at

Julie.skill@elliottmather.co.uk and I will either provide you with details of the next meeting or pass your details onto the relevant Chairperson. Your Vice President is actively trying to establish an ethnic minority's sub-committee and is looking for anyone who would like to join. We are hoping to receive support with this later in the year from our President Stephanie Boyce. If you would like to become involved with this exciting new project then please again let me know (Julie.skill@elliottmather.co.uk) or contact Manesha Ruparel direct who is keen to set up a meeting with all interested parties to discuss the roadmap moving forward.

I am looking forward to other events that are already in the diary and will up-date you on in my next report.

Finally, I would like to take this opportunity on behalf of the Society to say thank you to our outgoing Council Representative being Michael Williams who has worked tirelessly for the Society for many years and also to welcome your new representative being Shama Gupta.

If you would like any issues putting to your council representative then please let me know.

Julie Skill
President, 2021-22



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Meet Shama Gupta, our newly elected Council Member



Hello, I currently represent Nottinghamshire on the Council at The Law Society (TLS) and look forward to representing Nottinghamshire, Derbyshire and East Staffordshire following

geographical changes to the Council from 14th October 2021.

I am finding it both exciting and challenging, and I would like to do my best for my constituents; I have volunteered to be on the Council Members' Communication Advisory Group to enhance communications between TLS, Council Members and constituents, to ensure this is effective and 'joined up'.

By way of background, my roots are in the Midlands where I have lived most of my life. After qualifying in 1988 with a

general high street practice in London, I worked as a property Solicitor with Herbert Smith (now Herbert Smith Freehills), then became a Senior Lecturer in Law on the LPC for 10 years and am currently the Diversity & Inclusion Ambassador at Freeths LLP.

I enjoy promoting the legal profession and giving back to the legal community through my various roles:

- former member of the Nottinghamshire Law Society's (NLS) Education & Training Committee

- Honorary Secretary of NLS
- Social Mobility Ambassador for TLS
- member of TLS Lawyers with Disability Division
- former TLS Council member Ethnic Minorities seat
- ad hoc member of NLS D&I Committee

I look forward to meeting many of you at the events of Derby & District Law Society.

Thank you and kind regards

Shama Gupta
Council Member

Family Law Committee

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

Meeting: Tuesday 6 July 2021

Present:

Fiona Apthorpe (Secretary)
Julie Skill
Lucy Tissington
Liz Guyler
Fiona Lazenby
Kirpal Bidmead
Nick Herbert

Apologies:

Manesha Ruperal
David Guthrie
Natalie Haydon-Yeung

No Apologies:

Diana Copestake
Ben Lawson
Ruth Jones
Melanie Bridgen
Kelly Mower

1. MATTERS ARISING

1.1 Membership/Attendance

The meeting took place successfully by Teams although we are agreed that the next meeting will be face to face.

1.2 Court User Meetings

Nothing to report.

2. AGENDA ITEMS

2.1 Listing

Colleagues shared the experiences of last minute court hearing cancellations generally due to lack of sufficient judges. There has been a mixed response from the court. Some colleagues have been successful in obtaining payment in respect of wasted counsel's fees in full. Others have been told that it is an administrative issue and have been forced to complain to the Ombudsman. A matter which the Committee is resolved to raise with the judges at the next meeting which the Committee plans to organise for September.

2.2 Meeting with the judges

The Committee had a useful meeting with the local judges and senior court staff in January and it is proposed that Fiona contact the court to see if we could organise another similar meeting in or around September.

2.3 Forms A

Whilst the committee were not aware of any formal rule, nonetheless the court do not appear to be requiring forms a for dismissal purposes to be filed in online consent application cases.

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*

3.4 Court User Groups

Nothing to report save as above.

4. Date of next meeting

The next meeting will be remaining scheduled meeting is Tuesday 2 November 4pm at Geldards' offices on Pride Park and will take place face to face.



Fiona M K Apthorpe
Secretary,
Family Law Committee

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Can Employers Force their Staff to have the Covid Vaccine?

This divisive and topical issue causes many difficulties for employers when trying to balance the rights of the company with the rights of their employees. Of course, nobody is advocating the physical enforcement of vaccinations on the British workforce, but how is force actually defined? If the vaccine means the difference between employment and unemployment, the freedom of choice may be threatened, if not completely stripped away for some people. Equally, how can employers prove their proactive approach to modern health and safety if the vaccination is not part of their COVID policies? Finding a middle ground is proving problematic.

On the one hand, a decision to mandate the COVID vaccine does have some grounded arguments. For example, The Health and Safety at Work Act 1974 obliges employers to "ensure... the health, safety and welfare at work of all [their] employees", and to "ensure... that persons not in [their] employment... are not thereby exposed to risks to their health or safety". Introducing a policy of compulsory vaccination is arguably, therefore, a "reasonably practicable" measure by which to achieve this.¹

This may be particularly applicable in environments such as care homes. The UK government has recently moved in favour of making the vaccine compulsory for care home staff following a Department of Health and Social Care investigation that discovered more than a fifth of staff, in almost half of the UK's care homes, still had not been vaccinated despite being eligible.² The protection of care home residents can be seen as a justifiable measure to ensure the safety of "persons not in [the] employment" of the care home, in the eyes of health and safety legislation. After all, those who are vulnerable have a right to life, and should expect that everything is being done to protect them. But what is being done to protect the rights of the staff?

Forcing the vaccine on workers is contentious in that it could breach people's rights to religion and belief, protected by the Equality Act 2010 and Article 9 of the European Convention on Human Rights.³ Although those with medical exemptions are excused from this new regulation in care homes,

there are still many issues to consider regarding people's freedoms. Further, the trade union GMB has said that over a third of their care worker members would seriously consider leaving their employment if the vaccine was forced on them.⁴ It seems that mandatory vaccination policies could be more detrimental to employers than first thought. This is even more acute for those sectors such as social care, which already struggle to recruit staff.⁵

So, if being vaccinated becomes a requirement that people's jobs depend upon, the real danger to employers comes in the form of unfair dismissal. This potential minefield of discrimination claims could prove difficult to navigate for a company trying to enforce the COVID vaccine. If you force it on everyone, you discriminate against those protected by the Equality Act and Article 9 as mentioned above. If you exempt those with medical conditions or religious beliefs, then you are discriminating against those without any reason other than their freedom of choice.⁶ Further, if you do not require your customers and clients to be vaccinated, then how can you push it on your staff?

It is questionable as to whether any employer would be able to successfully argue that they had a fair reason to dismiss their employees over this issue. If they could show that having a fully vaccinated workforce is the only "reasonably practicable" way to keep their staff safe, having carried out a full risk assessment, then perhaps they might see some success in court. However, this may only be realistic for industries where RIDDOR (Reporting of Injuries, Diseases, and Dangerous Occurrences Regulations) applies more strictly, as employers could argue that the employee breached health and safety rules. This is still tenuous – at what point does the vaccine become more important for construction workers on a building site than for those delivering face-to-face services in a shop or office environment?

Ultimately, the alternatives to mandating the vaccine on staff are far too many to justify the use of force. Offering home working, frequent testing, and the use of PPE in the workplace are all relatively easy measures for most companies

to implement as a compromise. If the vaccine is important for the business, then a policy of strong encouragement alongside incentives might be put in place without harming an individual's right to choose. While finding a middle ground for this issue is difficult, the attempt should still be made.

The points raised in this article are discussed in the recent webinar ran by DG Legal, titled *Can Employers Force Their Staff To Have The Covid Vaccine?* Watch this free webinar here: <https://dglegal.co.uk/webinars/can-employers-force-their-staff-to-have-the-covid-vaccine-webinar/>

Lucy Astbury,
Assistant Consultant at DG Legal

Notes

- ¹<https://www.legislation.gov.uk/ukpga/1974/37/section/2>; <https://www.legislation.gov.uk/ukpga/1974/37/section/3> Accessed 27 July 2021 10:49
- ²<https://www.bbc.co.uk/news/uk-57829135> Accessed 15 July 2021 11:27
- ³<https://www.legislation.gov.uk/ukpga/2010/15/part/2/chapter/1>; https://www.echr.coe.int/documents/convention_eng.pdf Accessed 15 July 2021 12:12
- ⁴<https://www.gmb.org.uk/news/ill-thought-through-plan-mandate-vaccinations-could-lead-care-staff-exodus> Accessed 15 July 2021 12:25
- ⁵<https://www.bbc.co.uk/news/uk-england-london-57573142> Accessed 27 July 2021 10:18
- ⁶<https://www.equalityhumanrights.com/sites/default/files/religion-or-belief-guide-to-the-law.pdf> pg 3. Accessed 27 July 2021 11:00



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Derbyshire & District Law Society vs Nottinghamshire Law Society – Annual Cricket Match Report

Thursday 19th August 2021 at Gedling and Sherwood Cricket Club

D&DLS took on Nottinghamshire Law Society in the annual cricket match which finally was able to proceed after two years without a game. D&DLS were the current holders of the shield last won in 2018.

Both sides were limited to ten players, but this did not diminish spirits or the wish to put on a good show. Although the weather prevailed and provided a nice evening at the club, a late start of 5.45pm restricted both sides to 14 overs.

Nottinghamshire Law Society's batsman got their team off to a ferocious start hitting numerous boundaries and forcing our team to spend most of their time running to chase balls or searching the surrounding countryside and bushes for lost cricket balls. Fortunately, D&DLS were able to slow the run rate and restrict Notts Law Society to 112 for the loss of 1 wicket.

D&DLS then stepped up to bat and had a very promising start with Shoaib Azad having to retire on 26 not out and Kieran Chappell hitting 23 before being caught.

A spirited 17 from Peter Kidd and 19 from Phil Bramall was not enough as D&DLS fell agonisingly short of the 113 required to win posting 107 off 14 overs, just 6 runs from victory.

A fun and entertaining evening was had by all, and it was great for society members to socialise once more. Many thanks to all that took part, our supporters and especially to David Williams who was able to provide cricket equipment for the team.

See you all next year!

Martin Salt



Nottinghamshire Law Society – 112 For 1 (98 Runs + 14 Extras) – 14 Overs

D&DLS Batting Card

		RUNS
SHOAIB AZAD	NOT OUT (RETIRED)	26
KIERAN CHAPPELL	CAUGHT	23
RAJ BOURI	LBW	0
PETER KIDD	CAUGHT	17
JAMES NEWTON	BOWLED	0
PHIL BRAMALL	NOT OUT	19
TIM DYSTERRE-CLARK	RUN OUT	0
GRAHAM DEAN	NOT OUT	0
MARTIN SALT		
KIRSTY SMITH		

EXTRAS		22
TOTAL	(14 Overs)	107 for 5



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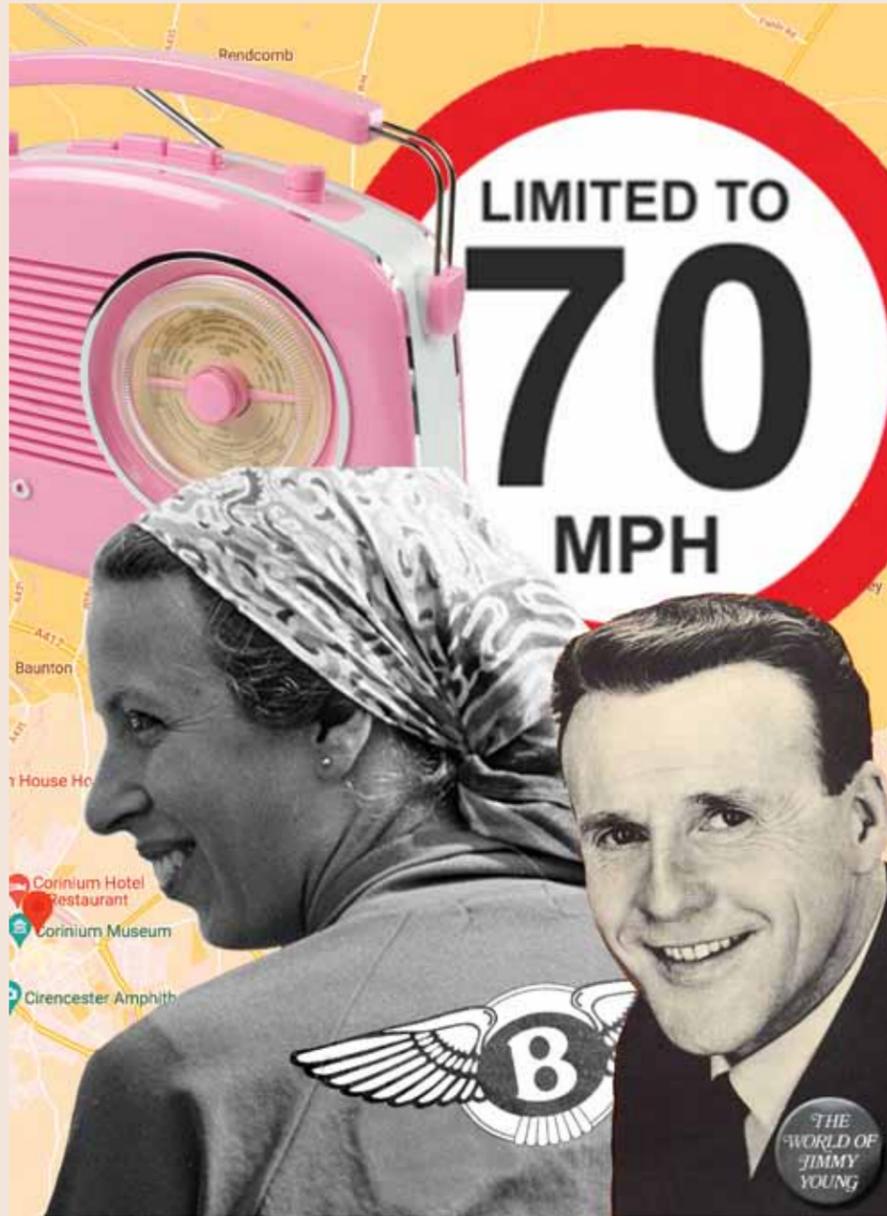


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Those were the days... Memories of an old solicitor Pt. 2



Those were the days... when on January 21st 1977 there was a historic event at the relatively humble magistrates court in Alfreton when a member of the Royal Family appeared before a criminal court for the first time since Queen Caroline in the 19th century, and certainly the first time any member of Royalty had appeared before a "common criminal court". Princess Anne, then 26 had been caught a few weeks before Christmas 1976 speeding at 93 mph in a 70 mph limit on the M1 near Alfreton. She pleaded guilty in her absence and was fined £40. H. R. H was represented

by Arthur Willis, (late of Flints) no doubt on the recommendation of the Lord Lieutenant. Immediately after "*sentence had been passed*" Arthur jumped up from the solicitor's bench and disappeared at high speed into a small room behind the Magistrates Bench which was used as an office by Harold Westhead, the Magistrates Clerk, on court days. Arthur reappeared after about two minutes to explain to the other solicitors present that he had been told by Farrers, the Queens solicitors (for whom Arthur was acting as an agent), to phone the Palace immediately after the

hearing and to speak to a senior partner of Farrers who would be with the Queen, to tell the Queen, the result, "*because she doesn't want to hear it for the first time on the Jimmy Young Show*". Sadly this incident was missed out of 'The Crown'.

Those were the days when... there were quaint customs of the time, now abolished: In 1969, when an Articled Clerk I had to attend Derby Assizes with a Silk who was acting for a client on a very serious charge. At a break in proceedings the Q.C and I headed off for a coffee. When we came to pay he turned to me with a smile and said "*I can't pay for yours you know, I can't be seen to be treating an Attorney*" The Bar's rules prohibited Barristers from "treating" (i.e making gifts or doing favours to) attorneys, including getting a two bob coffee for a Clerk!

Those were the days when... (warning - sensitive readers should not read on) until the 1980s persons who menstruate (apparently the judicially-woke approved term) were not permitted to attend the Derby Law Society Annual Dinner unless Members of the Society : no female guests and - no female members of staff unless also Members of the Society. And at that time there were few menstruating Members. The position with Chesterfield L.S. is unknown to the writer and sadly there are no photographic records at all in the DDLS archives.

Mr X



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- *Contracting psychology staff to Local Authorities, the National Health Service and the Prison Service.*

Minimising the impact of the Insurance Market condition on your practice

In recent months, much has been reported on the current condition of the professional indemnity insurance market. Unfortunately, experience tells us there will not be a quick resolution to these prevailing market conditions.

Insurance companies are commercial enterprises; just like legal practices, they want to turn a profit or at worst, break even for the transferring of risk. However, several leading insurers are unable to do this in the current climate. Right now, claims activity in the legal profession surpasses the premiums collected, and both the severity and the frequency of claims are also on the rise.

Indeed, not all practices experience claims, and firms that have may be unlikely to repeat them. Either way, the insurance policy has to respond in the event of a claim. Losses experienced will impact insurers' premiums in the relevant practice areas, with this adjustment likely to affect even claim-free practices. Those that experience claims are likely to be impacted more severely, as these could influence the base rates of their practice areas. If the claims burn cost (explained below) is impacted, premiums could be affected.

Example of claims burning cost calculation

$$\frac{\text{Total value of claims over X years}}{\text{Premium collected over X years}} \times 100 = \text{claims burn \%}$$

In light of the above, today's insurance market is a challenging environment for firms. The whole premise of insurance is that the premiums of the many pay for the claims of the few. If this simple metric isn't working, there will naturally need to be a change. In light of the current circumstances, insurers' appetites have been suppressed and PII insurance rates and premiums are typically increasing. Practices can, however, take steps to

minimise the impact to them specifically. Firstly, to protect the short, medium and long-term costs of your insurance, it is imperative to continue to evolving your approach to risk management, taking time at regular intervals to assess the risks associated with your specialisms. Risks evolve, and if you do not dedicate the time to assess exposures and implement appropriate procedures, you will be increasing your chances of claims. Failure to implement an effective risk management plan could have significant consequences; some practices will experience much higher price adjustments due to the market conditions and loss deterioration.

We recommend taking the following steps to protect your practice from tough market conditions:

1. Prepare a quality presentation, including detail beyond the minimum required information. Your PII presentation is effectively your shop window to insurers, so we recommend using this opportunity wisely.

Many practices claim to be 'low risk' in their activities, but few articulate why. Providing evidence for the underwriter's file is absolutely critical, and we recommend providing additional information to support the numerical data in your proposal form. Be careful not to overdo this; if the documentation is too wordy, it will defend itself well from ever being read.

Your proposal should highlight the key and salient points, focussing on how you mitigate the risks associated with your specialism, while also pointing out the accomplishments of your practice and its fee earners.

Please remember that your presentation is not the only window a prudent underwriter will look into, they will also check your web presence.

We recommend ensuring that your website accurately respects what you actually do – this goes for imagery too.

Do also check the law society website does not contradict your presentation in

any way. Look out for the descriptions of your work, your staff and your accreditations – if you identify errors, you can request an edit. Any online reviews or any commentary from open sources will also need to be addressed.

2. Selection of the right representative is key. Comprehensive and direct insurer market access are crucial components, so anyone professing to be a specialist broker should be able to demonstrate these to you. You should be provided with a clear understanding (in writing) of the insurers that the representative plans to approach on your behalf. An important consideration in your selection is that, regardless of the size of your practice, a comprehensive market exercise cannot be undertaken without Lockton. This is due to sole distribution rights to various insurers.

You may also wish to check the representative's claims infrastructure. While no practice wishes to experience claims, if this happens you want assurance that your representatives have the experience and expertise to assist you in your hour of need.

3. Start early. For those that renew in October, I would suggest that now is the time to start. While preparing your presentation, request your claim summaries to check that these are accurate. If you have experienced claims, a narrative will be expected around what happened, along with measures implemented to prevent a repeat occurrence. Insurers will also expect an explanation around any open notifications, including your view on merit and quantum.

Right now, the market is challenging, but Lockton can still create healthy competition and deliver innovative solutions for your business. To find out how we can assist you, or to request support as to what to include in your presentation, please contact me or another member of the Lockton team.

Brian Boehmer,
Partner, Lockton

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UNCOMMONLY INDEPENDENT

Landmark Moment for Gifts in Wills

1 Million Charitable bequests donated over 10 years

Consortium celebrates landmark legacy moment at start of Remember A Charity Week



06 September 2021, London: A landmark goal for charitable bequests has been reached with over one million gifts in Wills donated to charities over the past decade, according to figures released to coincide with the launch of Remember A Charity Week (06-12 September 2021).

With over 100,000 charitable bequests left in Wills each year, more than one million gifts were donated from 2010/11 to 2019/20, data from Smee & Ford shows. Over that time, cumulative legacy income to UK charities exceeded £23 billion, funding vital services across the country. Appetite for legacy giving continues to grow and, despite recent delays at probate, the number of charitable bequests is predicted to rise by 30% over the decade.*

The 200-strong charity consortium Remember A Charity launches its week-long public awareness campaign today, encouraging people across the country to consider leaving a gift in their Will. A collaborative initiative, the campaign brings charities together with 1,300 legal professionals to champion legacy giving across the UK. Head judge of Dancing with the Stars, Len Goodman, is supporting the campaign, having altered his own Will to include a charity.

Rob Cope, director of Remember A Charity, says: "Legacy giving can be transformational for UK charities and it's wonderful to consider the phenomenal impact of those gifts. Donations have long been on the rise, but the global pandemic has accelerated that growth, shining a spotlight on the critical role of charities in our communities and the importance of Will-writing. This funding is critical for the sector as we strive to build back and strengthen resilience for whatever the future holds."



Rob Cope

"Remember A Charity Week is a great opportunity for legal advisers to open up conversation about gifts in Wills and to help ensure that all clients are aware of the opportunity of including a gift in their Will, after taking care of family and friends."

Remember A Charity runs a Campaign Supporter scheme for legal professions, offering information and resources for solicitors, Will-writers and professional advisers about raising the topic of gifts in Wills with clients.

Find out more at: <http://www.rememberacharity.org.uk/solicitor>
*Source: Legacy Foresight, 2021



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Call Handling For Law Firm Clients – A Personal View



The Oberoi Business Hub team have developed niche expertise in providing call handling services for law firms.

Training, experience and their passion for great customer service is key to the consistent high quality service.

Here, team member Laura Cotton talks about her role: handling incoming calls for several law firms to improve efficiency and customer service standards for both them and their clients.



us, our Account Manager liaises with the client to determine how they want us to answer and manage their calls. Whether that be emailing or texting the message direct to the client or live transferring the call to the appropriate staff member. Our Account Manager also sets up our IT systems for seamless service delivery. Time is allocated to train each team member who is responsible for handling the client's calls.

What information do you need to do your job?

We are effectively an extension to the client's team so we accrue an in-depth understanding of each and every law firm client, including their structure, senior partners, number of fee earners and the areas of law that they specialise in.

Having done this research, the most important information is how the client wants their calls to be handled. This determines whether we transfer the calls to individuals, go through to fee earners directly or their secretaries first or whether they prefer to be emailed with the caller's contact details and details of their enquiry. We ensure our systems are always up to date with individual's names, roles, working days and times as well as updates about holidays or when they are unavailable for any reason which is important to provide an efficient service.

How do you handle calls?

We provide a tailored service to each law firm so the process depends on each client's preferred practice. Regardless of the preferred process, it is obviously vital that we create a good first impression and a professional service from the outset. My approach is always to be as informative and helpful as possible and to create a positive experience for the caller. Having greeted the caller, I determine who they need to speak with and the reason for their call - making notes to pass on to

the relevant staff member. If the initial contact is unavailable, I refer to the client instructions and try a second or third staff member at the firm. Alternatively, I email the details through, advising the caller that I have done this and to expect a call back. The benefit of this is that our clients can be prepared with the relevant files to hand before calling back. If it is a cold sales call to, say the marketing department, we often have specific instructions to take more detailed information so they can decide whether they want to return the call - saving them time by filtering the unwanted calls.

What reports/logging information do you provide to your law firm clients?

At the end of every day, we provide a detailed call log which is an overview of call details, the nature of the enquiry, caller contact details, who from our team answered the call and the time of the call. By scrutinising the nature of the calls that are coming through on a daily basis, our clients can gain a comprehensive overview of their business which they would not necessarily achieve otherwise. For instance, it can highlight bottlenecks in the business ie: whether certain departments are receiving a larger than average number of calls chasing outstanding information.

What do you most enjoy about your job?

I love speaking to people and helping them with whatever they need. I am particularly interested in calls about conveyancing as I am in the process of buying my first home and I have learnt so much from people's calls about their own issues.

For more information about call handling services provided by Oberoi Business Hub, visit <https://www.oberoibusinesshub.co.uk/hub-services/call-answering/>

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Chris Makin

I have banged on for ages about the stupidity of going to law over border disputes. And I'm not talking about Russia invading the Crimea, or China's campaign to take over Taiwan. No, much closer to home, I have in mind the passions which can be aroused when next-door neighbours argue over where exactly the border falls between their two properties.

When passions flare up, all sorts of problems arise. One is that the border between adjacent houses on an estate is rarely defined accurately. Ground workers take a cavalier approach, and it's no good relying on "the area bordered in red" on the Land Registry plans, since that line when scaled up may be a metre or more wide in real life. If a border is not defined accurately, a houseowner may have difficulty selling their house because they cannot say exactly what land is for sale. And passions continue to run because protagonists can never get away from the "enemy" next door. But going to law can be terrifying expensive.

Let us look at some examples from my mediations.

The first concerned a row of detached houses, "little boxes on the hillside made of ticky tacky". There was Mr Left's house and a drive, then Mr Right's service strip and house with a drive to its right, and so on up the hill.

Mr Left wanted to construct a garage over his drive with a bedroom over, but there was doubt about where exactly the border lay between his drive and the service strip. Mr Left asked Mr Right if he could construct his extension up to the edge of the service strip rather than the mid-point of the low dividing wall. Mr Right adamantly refused; but when he was on holiday, Mr Left built the shell of the extension nevertheless.

During the mediation, I knew we were in trouble when Mr Right produced a photograph of the two houses, showing where he believed the boundary lay. Interestingly, there was a bedsheet draped out of the bedroom window, painted with a Union Jack and "Welcome Home, Gary". To be friendly, I asked "Who's Gary?" to be told that he was his only son, now dead, a soldier killed in the first Gulf War, and Mr Left had encroached on the "sacred" land where he had played with Gary as a child.

After fierce negotiations, Mr Left agreed to pull down the extension and rebuild it two inches narrower. That would have been a good result, except that Mr Right said that he must have been Right (!) all along, so he wanted his costs. Mr Left had no money. The mediation failed, and no doubt the dispute rumbled on, with huge legal costs and destroyed relationships; but we got so close.

The second example concerned a pair of bungalows on a smart estate. In the first was a chap who had bought his bungalow when new, and the second had been occupied by an old lady now deceased. The chap used to help the old lady with light gardening, but when she died he encroached onto her drive by laying paviours about 6 inches onto her drive. Then the second bungalow was

Chris Makin

Chartered Accountant
Accredited Civil Mediator
Accredited Expert Determiner

Chartered Accountant with 20+ years experience as Forensic Accountant and Expert Witness at national firm partner level; Mediator for 10+ years: High settlement rate. See website for more details, including mediation scale of fees.

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bought by two young ladies, who objected and wanted the full width of their drive to be restored.

Two themes developed. The first was that one of the young ladies was a taxi driver, and she generally finished her shift at 10.00pm, putting her taxi up the drive and closing the gate, which happened to be fixed to the front corner of the two bungalows. The effect was that the chap heard a loud bang through his wall, every night just as News at Ten was starting. He was not pleased.

But worse, it emerged that the two young ladies were gay, and the chap wasn't going to have people like that on his estate. So he had gone round all the neighbours to persuade them to make the ladies unwelcome, but all the neighbours said they were a delightful couple, and were welcome on their estate. This did the chap's temper no good at all!

When mediating I couldn't change the chap's attitude to gay people, so I concentrated on the gate. Late at night I ended up on all fours, designing a gate with an acoustic break, using the torch on my iPhone. The dispute settled, but it could have been very nasty.

With the third and final example there were similarities, but the major issue was legal costs. Here, the adjacent houses shared a drive, but each wanted to define their half of it. One side had done so by laying paviours (again!) which allegedly encroached on the

other's drive. Both sides had so far spent over £10,000 on solicitors and on experts' reports, none of which came to any firm conclusions. And each side independently had an estimate of further costs to trial, if the mediation failed, of £50,000 – each! If the matter had proceeded to a full hearing, the losing side would have faced a costs order of £100,000 or so, meaning that they would likely have had to sell their house to pay those costs. How stupid is that?

The mediation settled, as it had to. The outcome is less important than that mediation allowed the parties to get off the merry-go-round and their homes were no longer at risk.

Sir Alan Ward is a mediator, latterly chairman of the Civil Mediation Council, and for many years before a Court of Appeal judge. I have mediated with him in his very first mediation,

and he was excellent. But on the bench he saw too many of these Border Wars, and we would all be wise to have regard to what he said about border disputes:

"This is another of that hideous form of litigation called the boundary dispute, a form of litigation which is best not pursued. Just how much is this stupid piece of land worth? What you are arguing over is a few rhododendron bushes. If you live in St Georges Hill, you've got money to throw away, presumably. But why throw it away like this? You're all potty. Disputes of this kind are a most hateful form of litigation; go away and sort it out."

That says it all!

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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Expert Witness Institute Online Conference 2021

“Lawyers and Experts”: Facing the Future Together

Friday 28th May 2021

WE MISSED YOU ALL – BUT SEE YOU NEXT YEAR IN PERSON!

An appreciation by **Elizabeth Robson Taylor** MA of Richmond Green Chambers and **Phillip Taylor MBE**, Head of Chambers, Reviews Editor, “The Barrister”, and Mediator

Lord Hodge, Deputy President of the Supreme Court, and the new EWI President from October 2020, gave an absorbing keynote speech at this year’s online EWI Conference, chaired throughout by Saba Naqshbandi, whom we welcome to the role.

To state the obvious (for some), it was a somewhat surreal experience this time round without the face-to-face chats and the nattering and meeting up with old colleagues: coronavirus was the unfortunate theme throughout, too. However, two speeches stood out for the 2021 Conference this year: those of Lord Hodge and Sir Martin Spencer.

Lord Hodge: The Keynote Speech



Lord Hodge spoke of what the court expects of a competent expert witness reflecting on his own experience of expert witnesses, both as a judge and advocate. He described the critical role of the expert witness in the administration of justice, together with judicial expectation. His lordship also shared thoughts on the impact of the pandemic on the courts saying that the title of the conference, ‘Lawyers and Experts: Facing the Future Together’, “felt particularly apt”.

Hodge set out what he felt the court expects of a competent expert witness, and we have highlighted some of these points:

- Independence and Impartiality. While this might seem obvious, he felt it was concerning that in a 2019 survey 25% of expert witnesses had felt pressurized to change their report in a way that damaged their impartiality, and 41%

indicated that they had come across other expert witnesses they considered to be a ‘hired gun’

- Expert evidence must be ‘expert’,
- In addition, an expert witness had to undertake the task of ‘being an expert’, being aware and competent in their duties to the court,
- Continual critical examination of their own work or opinion.
- Ownership, or, as expressed by McFarlane LJ in a 2018 speech in one word: ‘Clarity’. Both clarity of thought and clarity of expression or presentation of the evidence will assist the judge greatly. Hodge stressed that it was “imperative that expert witnesses take full responsibility throughout the process of preparation and presentation for his or her opinion evidence”.

“Judges, lawyers and experts have to face the future together”, said his lordship, reflecting on this theme and the dramatic impact of the COVID-19 pandemic on the courts. “I am very much aware that life had not been easy for expert witnesses during the pandemic both in terms of carrying out physical site visits or examinations and in financial impact, be that through postponed trials, or delays in payment”. Sentiments felt by all of us!

Although some may not agree, Hodge observed that “not all consequences of the pandemic were bad”. The court’s operations during the pandemic were, from the words of the Lord Burnett, that it is “the biggest pilot project the justice system has ever seen.” It was important to take time to reflect on what had worked well and how this could be harnessed more broadly to improve the overall function of our system of justice, concluded Lord Hodge.

“The task of transforming our justice system”, he continued, “required the

input of all actors in the court system”. He repeated that we “have to face the future together”, so this conference presented an opportunity “to enhance the contribution of expert witnesses and those lawyers who work with them in support of that aim”.

Sir Martin Spencer



It is always a pleasure to hear from the EWI Chair, Martin Spencer. Sage advice as always, and he offered these words concluding the conference:

“Since our last conference, we have worked through two further periods of lockdown from the Covid19 pandemic, and we have all continued to adapt to new working practices”. “But”, he continued, “as social distancing measures ease, even the Lord Chief Justice has said that ‘remote and hybrid hearings will still play their part in managing footfall in courtrooms and public areas.’ We suppose so, but some return to normality is to be yearned for in 2022.

So, this year’s conference theme is, says Martin, “very relevant in considering how both Lawyers and Experts can learn from each other and embrace many of the changes as we move forward”. Speaking of the panel discussions and breakout sessions, he said that “this year we have brought together a formidable team of speakers, knowledgeable and influential in their fields, with a huge breadth of experience”. It should not go unsaid that every recent annual conference we have attended broadens the mind!

A virtual “au revoir” until 2022 and let us hope we can all meet up together in person once more to enhance the panel and breakout sessions!



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Marketing your service in the new conveyancing landscape

Once the conveyancing industry emerges from the current high numbers of instructions and stamp duty deadline, what's next?

Ensuring your practice remains competitive in the face of online conveyancing, panels and agency referrals can see like an uphill battle, and, without a dedicated marketing resource, you may feel that your business development efforts can be limited. Luckily there are plenty of approaches and tools that all the conveyancing team can take advantage of, and many of these can be managed in-house. We present some clear steps to help you reach new and previous homebuying customers, whatever the marketing budget and resource you have available to you.

Branding and differentiation

In this digital age it can be easy to forget the importance of brand in conveyancing. There are thousands of definitions of "brand" but, keeping it simple, it's really about differentiating your service, adding to the value that your service offers and communicating this effectively. Whilst building a strong brand may seem more relevant to heavy-lifting consumer companies, it's not out of reach to smaller, more traditional businesses and, no, not even to conveyancers!

Buying a property is a significant commitment and the nature of the conveyancing process presents lots of opportunities for the conveyancer to build and communicate value to their customers. Customer insight is key to this. As a conveyancer you'll be used to dealing with different types of client, but can you truthfully say that you know what your clients look like, what's important to them and structure this information in a useful way?

If you have a marketing team, some of this work may have been completed, but even without a marketing resource, a lot of useful information can be gleaned from customer feedback. This can come to you directly or via Google, but if you're not getting that all-important insight, why not consider a quick customer satisfaction survey, or hand out a short questionnaire to new customers or at any local events you may attend? The findings can often surprise you and can help you shape your brand, content and messaging to the needs of your market.

There's often a wealth of knowledge hidden within the company so working with colleagues to structure this can be invaluable, supporting brand building and possibly even a simple customer client segmentation to information the experience for different types of home-buying clients.

Optimising the value of client enquiries

All businesses can lose sight of the quality enquiries that they receive about their service and, for busy conveyancers in particular, it can be difficult to find the time to analyse enquiries in a useful way. In the same way as the branding exercise, however, it's amazing what can be learnt from reviewing different

conveyancing enquiries received by your practice. All members of the team can be involved in this exercise and can brainstorm how responses ought to be handled. Ask colleagues to come up with ideas on the main benefits of instructing your firm and the best of these ideas can be incorporated into different approaches used for outbound calling.

Having the right skills

It's also worth considering whether you are using the right people to follow up enquiries. Administrative staff may be highly skilled in providing conveyancing information and quotes, but may not be engaging with customers particularly well. Analysing the success of different colleagues involved in responding and call-backs can be useful in identifying if any have a natural talent for converting enquiries into business. Successful approaches can then be replicated. Although universally unpopular, role-playing different phone conversations can be really good for training staff and helping them to optimise calls to potential clients. If you don't have anyone with the right skills internally though, this is an area where investment in external sales training can really pay off. There are some very simple techniques that used to improve confidence and raise conversion rates.

Timing

As mentioned above, customer experience is incredibly important when dealing with a conveyancer. If your team has been providing a great customer experience, you should have no problems in attracting back former clients, but the key, of course, is to know when they are back in the market for your conveyancing services.

Using a service to alert you to former clients listing their property for sale allows you to contact them at precisely the point they require a conveyancing service. And neither GDPR nor the SRA Publicity Codes are barriers to using such a service. Conveyancers can use Legitimate Interest as the basis for processing former client data, and Version 19 of the SRA Code excludes current and former clients from the prohibition on unsolicited approaches.

Conveyancing Alert services are often offered by search providers and can be tailored to your budget.

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Data from the first in a new series of Data Insights Reports from Landmark Information has shown the broad extent to which flooding poses an ongoing threat across England and Wales.

The report provides land and property industry professionals with insightful snapshots of rich flood data to explain the true impact risk upon communities across the country. It highlights the local authorities that have the highest rate of properties located in Flood Zones 2 and 3, and reveals that 37 out of the 335 local authorities have at least a fifth of properties in Flood Zone 2 within their jurisdiction.

The report also identifies that more than 27,000 (6.7%) notable Listed Buildings are based in areas deemed to be at the highest Flood Risk parameter (3), in addition to almost 12% of all 200,000 Scheduled Monuments are situated in Flood Zones 2 or 3, which include highly notable buildings like the Tower of London, Hampton Court Palace and Caerphilly Castle.

The new series of Data Insights Reports, which will be published every quarter, will focus on specific themes, from a review of planning updates and the local and national impacts, to uncovering information relating to a range of environmental hazards.

Chris Loaring, managing director of Landmark Information (Legal), said, "According to the Environment Agency, approximately one in every six properties in England are considered to be at risk of flooding. This is forecast to grow as climate change continues to translate into shifting impacts on both current and evolving land use.

"It is no secret that flooding poses a continued risk across our country – whether from surface water floods from heavy rainfall, groundwater flooding, through to coastal erosion and rising sea levels. It is something property professionals in all sectors need to be highly tuned to.

"We are therefore pleased to share a series of Data Insights Reports that provide valuable and revealing insights derived from our data and help better inform those working across the property industry who can benefit from a clearer view of the future.

Data: the lifeblood of the property transaction

"In the two decades that Landmark Information has been supporting the property industry with vital due diligence, the way the data is captured, accessed, assessed and delivered has shifted.

"From paper-based reports, CD-ROMs and PDF reporting, now the transition is taking us to digital. The reliance on documents and PDFs will ease and we will see an increased appetite for digital data that feed directly into an organisation's existing workflow. Instead of capturing a single moment in time, the data will instead be continuous and provide a current flow of data that is relevant at any given moment in time.

"Flood data, alongside planning datasets, is one of the most dynamic risk types. The data is continually changing, driven by many factors – from local community and infrastructure updates, to the changing picture of the global climate. Having access to data that considers historical flood events while assessing modelled data relating to future impacts offers precise insights that developers and purchasers need, in order to make informed decisions.

"From a legal conveyancing perspective, the way you manage – and access – that data is critically important to ensure the most appropriate advice is provided. Live data feeds will provide the most up to date picture, and this approach will herald a significant new chapter in the evolution of due diligence in the property sector.

"We are proud to be driving forward this digitised approach and working closely with industry stakeholders to consider how the continued evolution of data feeds can benefit every part of the property industry."

Landmark Information has an extensive wealth of data that is used across the property industry, every day, by developers, property lawyers, environmental consultants, estate agents, surveyors, architects and planners to help in confident decision-making and in transactions.

For more information visit, <https://www.landmark.co.uk/news-insights/industry-reports/>.

1 in 6
properties in the UK are
affected by flooding.

Not all flood reports are created equal.

The Law Society Flood Practice Note 2020 identifies that 'The market for flood searches is not regulated. There are different types of searches available with marked variations in the cost, quality, range, analysis and interpretation of data.'

So it's reassuring to know that every single Landmark Flood Risk report that identifies a high risk, is assessed by a consultant leading to more first time passes.

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