

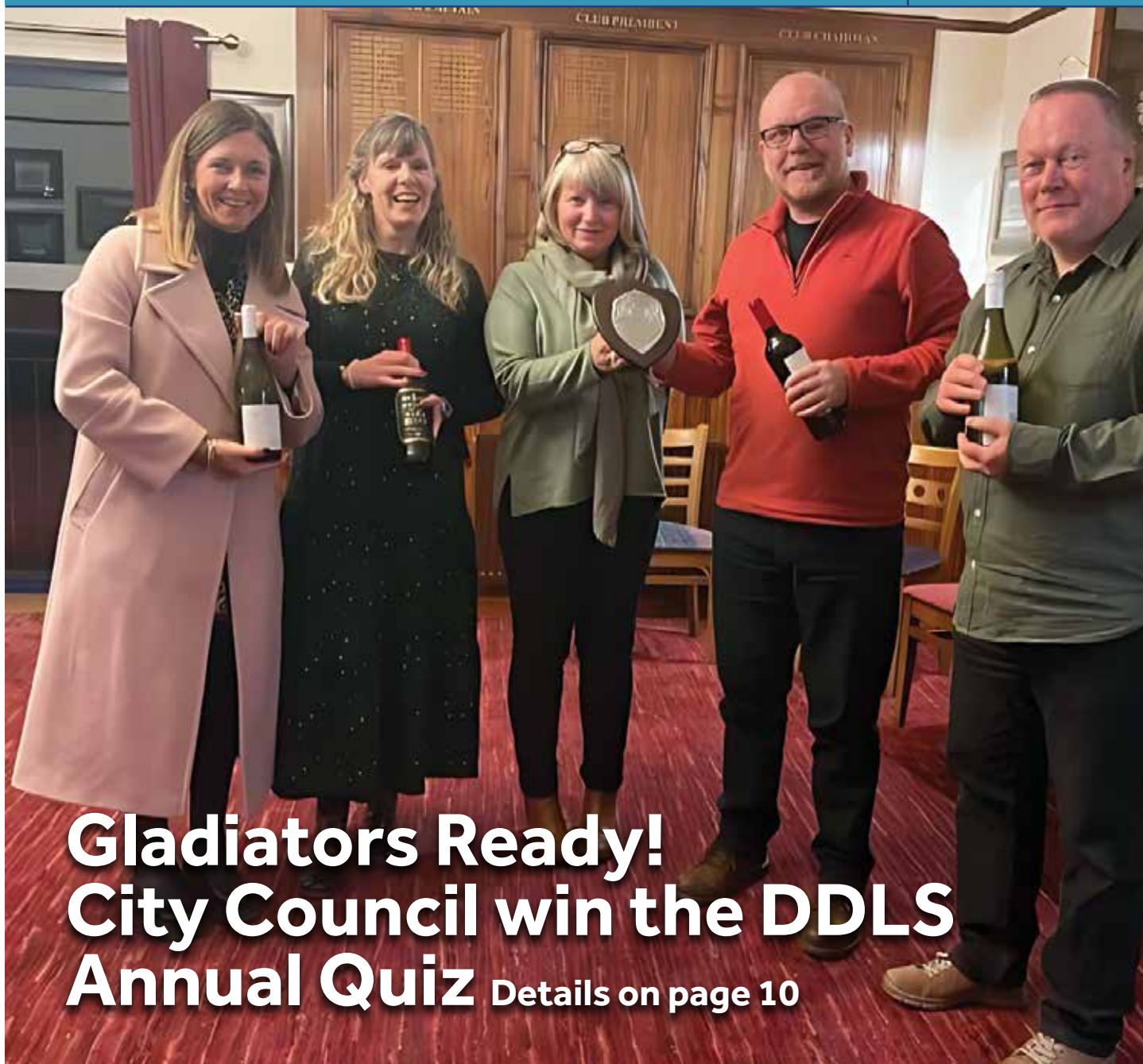
# D&DLS Bulletin

Derby & District Law Society



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

Feb / March 2024



## Gladiators Ready! City Council win the DDLS Annual Quiz

Details on page 10

Also in this issue:

New Feature: Firms in Focus - Smith Bowyer Clark • Tapas Thursday

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# D&DLS Bulletin

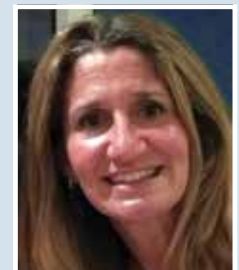


Derby & District Law Society  
Feb / March 2024

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## Editorial



January is always the strangest month, somehow the longest, as it stretches out before you and then the shortest as it somehow passes in a flash. Every time a Bulletin is due Oliver says it has been a quiet time and then sits down to write a President's piece that is packed full of events – see page 5.

As I write this it is only a month to the Annual Awards Dinner. Tickets are selling well but please e-mail me to secure your seats. Oliver has "mixed it up" this year by disposing of the formal speeches and booking the No Limit Street Brass Band. I have been listening to

them on YouTube and am very excited to hear them in person. After the award presentations there will be a raffle and charity auction with all proceeds going to the President's local charity – Enthusiasm. The evening will end with dancing and chatting for those of us less able.

The Derby school debate competition has reached the semi-final stage and the final will be at Derby University Law School on Agard Street on Wednesday 13th March from 4pm. Please come along and support the 14 and 15 year olds if you can. I promise you will be suitably impressed with the standard of the speaking and the hard work that the children have put into their arguments.

I am grateful to **Felicity Coats** for the criminal update on page 6 of this Bulletin. The DDLS sub-committees (with a few notable exceptions) could

all do with some new willing committee members. The various committees, with contact details for the secretaries, are listed on page 4 please do get in touch and put yourself forward.

On page 9 we have a new feature – Firms in Focus. Smith Bowyer Clarke are our newest members, and I am embarrassed to say that I was not aware of their work until recently. There are always occasions when we have to refer work and it helps to know who, locally, is available to receive those referrals. If you would like your firm to feature, then please e-mail me.

I hope to see you at an event soon  
Take care.  
**Julia Saunders**  
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Last updated 02.01.24			

# President's Page



legal professionals do battle in the first ever estate agent and lawyer crazy golf competition at the House of Holes in Derby. The feedback we received was excellent, and we look forward to further collaborating with **Peak Mortgages and Protection** going forwards. Thanks to **Rhys Schofield** and **Rachel Maxwell** for organising, to **Ben Wheeler** from **X-Press Legal Services** for providing the prizes, and to **Tandem Bank** for sponsoring the event.

Next in the diary was our annual quiz on 01st February held at the **Derby Rugby Club**. Thanks to our quiz mistress **Julia** for running the night, and to our Vice President **Tina Attenborough** for co-hosting. Congratulations to team "Gladiators Ready" from **Derby City Council** who retained the trophy and to team "Legal Eagles" from **Flint Bishop** who won the chocolate orange round.

In the background (but still very importantly), the annual debates competition which is run in collaboration with the **Derby Law School** is now well underway. I am due to judge the final on 13th March, and am told by the judges who have been involved so far that, once again, the quality of the young debaters is fantastic. From past experience, I am not at all surprised by the positive feedback I am receiving and the importance of initiatives like this (organised for the local secondary schools) and the legal skills triathlon (aimed at undergraduates, postgraduates and young legal professionals) cannot be understated. We are all playing a part in the development of the next generation, and if you would like to get involved in initiatives of this kind then please email **Julia** at [admin@derbylaw.net](mailto:admin@derbylaw.net).

My next formal engagement will be to attend the Law Society Presidents' day on 17th February, which is kindly being hosted by **David Gilmore** of **DG Legal** at the **King Power Stadium** in Leicester. I am very much looking forward to catching up with my regional counterparts, as well as meeting our current President of the Law Society of England and Wales, **Nick Emmerson**.

I think that is about all I have to say for now by way of update, but I shall continue to represent the society as we steam towards the annual awards dinner and beyond. Until next time, stay safe and stay well.

**Oliver Maxwell**  
President, 2023-24

## Reminder!

**A gentle reminder of the momentous event on our horizon! The retirement of our very own Diana Copestake!**

**6 March 5.30 for 6 at Seven on Pride Park (easy parking outside!)**



# Council Member Report February 2024



Shama Gupta

• **Axiom Ince Collapse**

TLS is working with the LSB and the SRA to ensure that all proper assurance is provided to the public and to the membership.

Further reading – LSB confirms review of events leading up to the SRA's intervention into Axiom Ince | The Law Society

<https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/lsb-confirms-review-of-events-leading-up-to-the-sras-intervention-into-axiom-ince>

• **Criminal legal aid decision**

The High Court ruled on 30 January in TLS's favour in its judicial review against the MoJ. Now, the government must rethink its irrational decision on criminal legal aid funding before the system collapses.

Further reading – Our High Court victory: government must rethink criminal legal aid funding | The Law Society:

<https://www.lawsociety.org.uk/topics/legal-aid/law-society-high-court-victory-on-criminal-legal-aid>

• **Call for Evidence on Local Criminal Justice Boards**

The MoJ launched a Call for Evidence on Local Criminal Justice Boards to better understand the challenges that they face and how they can best be supported. If you are practicing criminal law or supporting local legal practitioners who do, please consider responding to the Ministry of Justice by 23 February 2024 at [www.gov.uk/government/consultations/local-criminal-justice-board-call-for-evidence](http://www.gov.uk/government/consultations/local-criminal-justice-board-call-for-evidence).

• **Review of Civil Legal Aid - Call for evidence**

The MoJ launched a Call for Evidence on Civil Legal Aid for views on broad, cross-cutting areas related to civil legal aid such as suggestions for improvements, future risks and opportunities, and the wider benefits of civil legal aid.

Further reading – Civil legal aid review: government launches call for evidence | The Law Society:

<https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/civil-legal-aid-review-government-launches-call-for-evidence>

• **Legal Heroes**

Legal Heroes is an opportunity to recognise the solicitors who have made the biggest difference to the lives of others, their local communities and society over the last two years. Nominations are open between 1 February 2024 – 28 February 2024.

Further reading – Legal Heroes | The Law Society:

<https://www.lawsociety.org.uk/campaigns/legal-heroes>

TLS welcomes feedback from you and I would like to hear from you about anything you may wish to share concerning your professional needs. Please contact me at <https://www.lawsociety.org.uk/about-us/our-governance/council-constituencies-and-current-members/shama-gupta>.

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**Shama Gupta,**  
Law Society (TLS) Council Member

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## Criminal Update

1. The law society and others have won the judicial review in relation to the fee increase which is really welcome – although it is unsure at this level what it will mean to the future.

2. There has been a recent consultation into new police station fees and also new youth court fees. The youth court is to make sure the best advocates are dealing with the youngest in society. The youth court can also see inexperienced advocates deal with cases where as an adult they would be in the Crown Court, so there will be incentives to have properly trained advocates on these cases.

3. I attended a meeting with Her Honour **Deborah Taylor** on Monday at the legal Aid agency. She is the Chair of the Criminal Legal aid Advisory Board and was looking to meet defence practitioners as part of her role in looking at the issues at ground level with costs, overheads, staffing and retention. It was really useful so hopefully gives her a flavour of the day to day difficulties we are facing.

4. A meeting has been arranged with the court to look at why Saturday and Occasional courts at Nottingham are delayed and are routinely sitting – this meeting will take place in March. There are issues with CPS papers being available, the Courts being slow to get going

and the cells not having the prisoners on time.

5. Issues still live in the Criminal Justice Board agenda are the difficulties in retaining and recruiting staff into this area of law and the fact that the occasional courts (Saturday and BH) are still in Nottingham Court when it is a long way to travel for practitioners, the clients to travel back and also families

On the plus side it is nice to see that meetings and an interest in resolution is taking place with some of these issues.

**Felicity Coats**  
Criminal sub committee secretary

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# Arthur Hugh Walford (Hugh) 1938 - 2023



Hugh was told by a priest/cousin that he came from a line of Walfords who could be traced back to the 14th century and at that time he was the last in line. With his death on New Year's Eve, that particular line of the family bearing the name of Walford comes to an end. However, with his wife, Barbara, he had two daughters, Kate and Caroline, and he had a granddaughter and three grandsons, all of whom he was very proud and his talents live on in them.

The talents Hugh inherited were diverse. From his father and grandfather, he developed great skills in carpentry and joinery and a love of beekeeping which remained with him until just a couple of months before his death. He had the skill of piano playing, largely relying on his memory and ears rather than sheet music and developed these to the extent that he became the resident organist at his Ilkeston lodge. Whilst he was a good classical pianist, his great love was jazz and blues music. One of his relaxations was the playing keyboards in a quartet of friends. In beekeeping circles Hugh was well known in Derbyshire and his honey was very well regarded. The sight of him in full 'armour' was not easily forgotten and there were occasions when this proved essential to prevent serious injury. One such was when together with Stephen Elder of Bryan Elder Chartered Surveyors of Heanor a hive became extremely angry indeed and both men had to leap over a nearby fence and hide with chickens in a shed until peace was restored! Hugh was of course able to merge his joinery and carpentry skills with the need to make beautiful (but fully functional) hives, which were much coveted.

Hugh met Barbara in 1962. They married in 1968 and lived together for many years in Smalley before moving to Hazelwood in 1991. Hugh was brought up in Ilkeston, but Hugh attended Nottingham High School having won a scholarship. On finishing school, he went to spend time with his father's relatives in Oxford and envied the farming and rural life they enjoyed. However, his father, who was a teacher at Hallcroft School in Ilkeston, had other ideas for Hugh and he approached Paul Robinson the then senior partner of the Firm of F.G. & P.M. Robinson Heanor & Ilkeston for Articles. This was agreed and so began the start of Hugh's legal career. Hugh's training took a conventional route for the time that is private client work involving wills, probate and conveyancing. He proved to be a diligent pupil such that by the end of his Articles he was able to handle his own case load with confidence.

Hugh qualified as a solicitor in 1971. By this time Hugh had extended his skills so that he could confidently carry out commercial property work also. Such was his standing in the firm and local professional community that in 1972 he became a Partner in Robinsons. By that time the firm had grown considerably in size and Hugh assumed the role of lead partner for property matters.


Throughout his career at Robinsons Hugh was greatly respected not only for the quality and accuracy of his work but also for his ability to achieve outcomes on time with good humour. He made and sustained very good working relationships with other firms which greatly helped his own clients. With his own clients Hugh developed a special affinity. He was invariably welcoming and cheerful, a good listener and adviser and inspired confidence. It was these qualities which led to client loyalty to him and which was to be found in commercial as much as private clients. The substantial changes in the way conveyancing was conducted during the early years of

this century were not welcomed by Hugh who mourned a loss of standards and collegiality.

When Robinsons expanded their Derby office and closed Heanor Hugh, although at an age other partners were prone to retire, decided not to give up the law but instead to continue to work part-time, setting up office as a sole practitioner from Belper. Hugh enjoyed this relaxed solo venture until he retired in 2006.

Hugh and Barbara enjoyed a happy retirement spending time with their family and many friends and enjoying cruises, holidays and their mutual love of nature and gardens. They were able to share a family holiday in September of 2023 celebrating Hugh's 85th birthday, Barbara's 80th, their eldest grandson's 21st and their only granddaughter's 18th. They lived in one of the highest parts of Hazelwood with views over the whole of Derby city and the surrounding rural areas. When Hugh's body left the house immediately before Midnight on New Year's Eve. Barbara went out into her back garden as she and Hugh had always done on that night every year since they started living in Hazelwood. Just at that moment fireworks erupted all over the city. It was as if Derbyshire was giving congratulations for a good life well lived !

**John Nickols**  
Partner Robinsons 1966 to 1998




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# Firms in Focus: Smith Bowyer Clarke



Harry Bowyer, Laura Newton and Simon Clarke

**Smith Bowyer Clarke Road Transport Lawyers was established in 2016. We are a niche firm based within the centre of Derby offering legal services and solutions for clients based in the UK and across Europe. We represent haulage and passenger transport companies as well as individual drivers facing criminal or regulatory proceedings.**

We have a team of in house solicitors and barristers who have considerable expertise in Transport Law. Our team regularly appear in the Magistrates' Court and County Court through to the Higher Courts including bringing proceedings in the High Court and Court of Appeal, in addition to the First Tier and Upper Tribunal. In 2022, the Court of Appeal made a significant ruling against Border Force which resulted in an overhaul of the Civil Penalty Scheme, in a matter handled by Simon Clarke. More recently, there has been significant publicity regarding our involvement in a Judicial Review against TfL on behalf Dutch hauliers.

Our work includes Motoring Prosecutions, Private Hire and Operator Licencing, Civil Penalty Appeals, TfL Penalty Appeals, Vehicle Seizures and Regulatory Investigations.

The Partners of the firm are barristers **Harry Bowyer, Simon Clarke** and Solicitor **Laura Newton**. Harry and Simon come from a successful career at the criminal bar, Laura qualified at HMCTS where she was a Senior Legal Adviser and moved to private practice in 2015.

There is a real emphasis within the firm to nurture talent. **Millicent Dooher** and **Lisa**

**Lyden Cowan** both qualified as barristers after undertaking Pupillage within the firm. **Millie** had studied in the UK and qualified at the New York Bar, before returning to dual qualify in the UK. Trainees **Sofia Poole** and **Jaskiran Pal** are undertaking the Solicitor Apprenticeship in conjunction with Nottingham University. Senior Solicitor **Murray Oliver** has recently joined the team, bringing with him over 20 years' experience in the industry.



Sofia Poole, Laura Newton, Millicent Dooher and Jaskiran Pal



# DDLS Annual Quiz, 1<sup>st</sup> February 2024



This Year's Winners - Gladiators Ready!

Well done to all those teams and firms that took part in the annual DDLS Quiz. Thank you to Derby Rugby Club for hosting us again. This is the first year that I have actually had to set the quiz thanks to Peter Ball for carrying on this duty for a few years after his retirement and Sue Woodall and her fabulous team doing the honours in the following years. The task is surprisingly hard. The difficulty is getting the level of questions right to suit the various demographics that I am pleased to say the annual quiz attracts. The final scoresheet revealed many teams mid table with the winners scoring an amazing 140 out of 180.



The night was won by Gladiators Ready from Derby City Council. They retain the trophy but I know that it was a special night for Paul McMahon who has often been in the team in the top three but was sadly poorly last year when this team won. Evidence that perseverance pays off. Well done all. The chocolate orange bonus rounds were won by Legal Eagles from Flints who managed to get their heads round the tricky dingbats with ease.

Thank you for supporting DDLS and the social events. I hope that you all had an entertaining evening. Special thanks to Tina Attenborough (our vice president) for helping present and score the quiz on the night and to John Ellis and Amelia Sutcliffe for collecting the score sheets all night.

The top seven teams are listed below – anyone who wants the complete scoresheet please drop me an e-mail.

**Julia Saunders**  
admin@derbylaw.net  
01283 734989



TEAM	FIRM	SCORE
Gladiators ready	Derby City Council	140
It's all hearsay	Smith Partnership	139
The team with no name	Derby City Council	139
The divorce dazzlers	Family Law Group	129
3X+1	Peter, Christine, Graham & Giles	127.5
WOW	Wykes O'Donnell Williams	126
I don't believe it's	Elliot Mather	126

# Tapas Thursday Networking Lunch 11<sup>th</sup> January 2024



Our second Tapas Thursday was another great success with 30 or so local (and not so local) lawyers and business people enticed out during January which for some reason always seems to be the longest, driest and dullest month of the year!

After a brief welcome from President, Oliver Maxwell, we heard from Craig Dade of Leap Legal Software UK who joined local firm, Smith Partnership, in sponsoring the event. We were then treated to an excellent and plentiful tapas feast.

We welcomed representatives from Nelsons, Wilson & Roe, Smith Partnership, Leap Legal Software, Timms Solicitors, Flint Bishop Solicitors, MC Assess, University of Derby, Equity 55, RS Legal Recruitment, Spendlove Surveyors, Legal & Contingency, Calm in a Box, Attenborough Law, Austin Moore LLP, DDLS and STAT Building Consultancy.

Thank you to everyone who came along and special thanks to Smith Partnership and Leap Legal Software for their sponsorship. Watch this space for the date of the next Tapas Thursday.

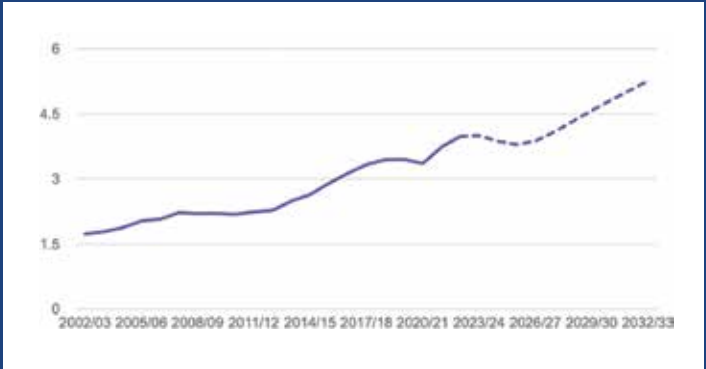




# Record breaking year for charity legacy income

Charity legacy income is estimated to have reached £4bn and bequest numbers almost 140,000 in the year 2022/23 — an annual income growth of 6.5%. This news comes at a time when a growing number of charities are increasingly reliant on gifts in Wills.

The growth estimate is based on this year's Legacy Monitor from Legacy Foresight - the sector's annual benchmarking research programme, which gathers data from over 80 charities, accounting for almost 50% of the charity legacy market.

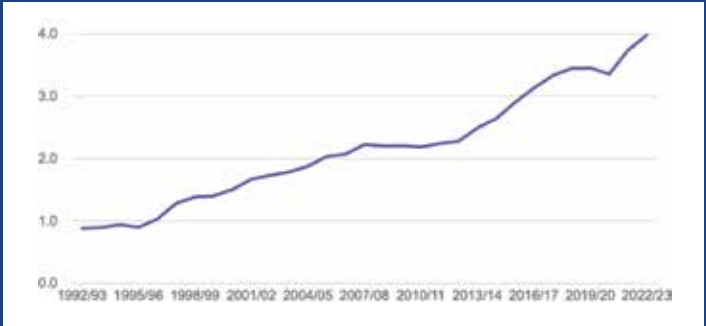


UK legacy income, £bn

These results reflect the resilience of the legacy market, with easy and up-to-date access to the latest facts and figures from the UK legacy market now available via Legacy Future's new Data Dashboard.

Although the upward growth trajectory looks set to continue for the long-term, Legacy Foresight also warns that current economic conditions are likely to negatively impact growth in the coming months - with falling house prices not only impacting average gift values but also affecting the time taken between notification and money being received by charities.

Despite the projected fall in house prices meaning that the medium-term forecast for legacy income is relatively subdued, beyond 2026, the forecast for the legacy market is a lot more positive, with an expected return to accelerated growth. In real terms, legacy income is predicted to reach over £6bn by 2050.



Long-term predicted growth of UK legacy income, £bn

While growth in legacy income is positive news, charities need to be aware that the market is becoming more crowded. With



more charities vying to be heard in the legacy market, it is getting harder to maintain and grow share. Smaller charities with smaller budgets are finding it easier to spread their legacy programmes to potential legators as digital marketing for legacies becomes more mainstream.

Charities must therefore be prepared to plan, invest and be creative to secure their space in this evolving sector.



CEO of Legacy Futures, Ashley Rowthorn, says: *"With the huge impact that external forces such as house prices and the probate backlog are having on the legacy market, it's more important than ever and yet more challenging than ever, for charities to understand how they are faring compared to the market."*

*"Charities need to stay aware and informed as to what is happening to the external drivers, so they're able to separate market trends from their own. This will enable a better understanding of their underlying performance and to set realistic budgets and strategies for the future."*

Lucinda Frostick, Director at Remember A Charity, says:



*"Particularly in such tough economic times, charitable legacies have never been more valued. Fundraisers, finance teams, CEOs and trustees at any charities with established legacy fundraising programmes will no doubt be thankful that their predecessors had the foresight to invest in legacies in years gone by, helping them weather the current storm."*

*"We can't control the economic environment, but what we can influence is the propensity for giving and the way in which we inspire people to leave a gift in their Will. Currently, we're seeing appetite for legacy giving reach record levels. In challenging times, it's all more important that we continue to collaborate within the sector and beyond, building on legacy growth to normalising charitable gifts in Wills."*

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# Estatesearch Uncovers Over £1.5 Million of Unknown Assets



**19 December 2023:** Leading legal technology provider Estatesearch has uncovered well over £1.5 million of unknown assets on behalf of private client practitioners working on probate cases. This represents <1% of the total volume of orders that Estatesearch has processed in the last 12 months.



**Ben Furlong**, Customer Services Director, Estatesearch confirms: "Our Financial Profile search helps legal firms locate forgotten accounts,

policies and shareholdings, often on behalf of vulnerable individuals in probate cases, to ensure they receive inheritance which is rightfully theirs. Usually, we don't know the value of any assets which have been identified, however, this year we spoke to ten firms to find out about their experiences of using our Financial Profile Search. From this small sample, we found that just over £1.5 million of unknown assets had been identified. We work with hundreds of legal firms and so the figure across all of our clients would be far in excess of this figure."

Estatesearch offers a Financial Profile Search which provides a comprehensive and detailed report to support an efficient fact-finding process, helping Solicitors quickly build a better understanding of clients' financial affairs to manage and/or administer an estate effectively. Using information and data from a variety of sources, the resulting report helps support due diligence, with a clear audit trail to demonstrate the steps undertaken to identify all assets and liabilities. The search includes AML and identity trace, Liability Search, Financial Asset Search and, in the Financial

Profile Premium, Company Directorships and an Unclaimed Asset Search which includes up to 40 additional pension and insurance providers to help locate forgotten accounts, policies and shareholdings. All subjects are automatically enrolled with the Vulnerability Registration Service to prevent fraud and financial abuse against the estate too.



**Cinzia Duncan**, Senior Associate, Harper Macleod one of Scotland's leading full-service law firms explains: "Estatesearch's Financial

Profile search proved invaluable [in one case], quickly identifying six bank accounts containing hundreds of thousands of pounds plus an annuity. Uncovering these unknown assets has enabled us to move forwards with the Executry process and will ensure the beneficiaries will now receive what is rightfully theirs."



**Tom Bottomley**, Solicitor at Ewart Price an expert legal team based in Welwyn Garden City, Hertfordshire confirms: "One high-value estate included various investments and shareholdings and our client was confident they already had all of the information regarding the deceased's assets. Nevertheless, we advised our client to run Estatesearch's Financial Profile as standard due diligence and for her own piece of mind. To our client's surprise, a significant investment was uncovered by the search of around £38K, which had ramifications for the inheritance tax position. Our client is now reassured that no other assets will come out of the woodwork and no stone has been left unturned."

Correct identification of assets and liabilities is essential to ensure appropriate distribution of an estate and to ensure Executors meet their obligations in this regard. Failure to identify an asset at the appropriate time can lead to contention and negligence claims between Executors and Beneficiaries, HMRC fines for understated IHT and additional fees charged for re-administering the Estate, costs which must be borne by the Estate. However, with accounts increasingly being managed online, families and their executors face real challenges when it comes to identifying and locating the assets of the deceased. **Ben Furlong** continues: "Over time, it's easy to lose track of pension pots, premium bonds or life insurance policies. In our own research survey of 2,000 UK residents carried earlier this year, we found that 38% of people don't know the whereabouts of all their loved ones' accounts.

"As a result, it is estimated that there is over £200 Billion in unclaimed assets in the UK. With the report for our Financial Profile Search being returned within 30 working days, Estatesearch now offers a cost effective, rapid search solution to provide peace of mind for beneficiaries and ensure legal firms have completed due diligence on behalf of clients providing a clear audit trail to demonstrate the steps undertaken to identify all assets and liabilities in an estate."

As well as the Financial Profile Search, Estatesearch also offer a range of additional services including, Trustee Notices, Overseas & UK Bankruptcy Searches, Unoccupied Property Insurance, Early Distribution Insurance and Share Valuations. With no registration or subscription fees, our customers simply pay for the disbursements they need, when they need them.

**Ben Furlong** concludes: "While we are delighted to have helped repatriate such a high value of missing assets with their rightful owners, over the next year we plan to launch further services to support private client practitioners involved in estate administration as we continue to leverage data and technology to streamline processes. We are led by our clients' feedback to develop new services that support them in meeting their due diligence obligations and driven to helping them to provide better outcomes for their own clients, particularly those that are vulnerable."

For further information please visit: <https://www.estatesearch.co.uk/services/>

# Forensic accountants in matrimonial cases



Chris Makin

**Have you ever come across a forensic accountant who regularly turns business away? Read on!**

I receive many requests for help in family cases, often several times a week, typically from the wife who considers that her husband is not making full and correct disclosure of his financial affairs. What am I able to do to help them? This is a personal note setting out my understanding of the position, and I provide it here so as to avoid the need to give the same explanation repeatedly.

Typically, a lady does a Google search where my name comes well up on page one. She looks at my website, views the videos, reads the war stories, and concludes that I am a helpful character with a wealth of experience (I am, I am!) who can help them to find the husband's hidden assets or the lies in his disclosure.

In the old days, that was certainly the case, and I have had some stunning successes. But these days it's different. Except in the multi-million pound cases seen in the national press, or where a party is so blatantly dishonest that the court recognises the need for an investigation – and this is very rare – the court will only approve the appointment of a forensic accountant to act as a Single Joint Expert (SJE), who acts for both spouses, but with an overriding duty to the court.

This works well where the main function of that expert is to value the business which one party will be taking out of the marriage on a clean break – I have done hundreds of such valuations – or where an expert is required to opine on the ability of one self-employed spouse to pay maintenance to the other. But where there is serious doubt about a spouse's disclosure, but not bad enough for the court to recognise the need for an investigation by a forensic accountant, two main difficulties arise.

The first is that if the wife or her lawyer thinks that I would be a suitable SJE and puts my name to the other side, I would be typecast as the wife's man, and the husband would want his own man. Result: deadlock, which can be resolved only by one side or the other giving in, or by both sides putting their (wo)man's CV before the court for the judge to decide who shall be the SJE. And that leads to delay and expense.

The point is that an expert can produce a report and give evidence at a hearing only with the court's permission.

There is an alternative: the forensic accountant can act as expert adviser. He is not on the court record, but works in the background, providing assistance to the lady's lawyers. He cannot appear at court (except on the back row, perhaps passing notes to the barrister), and there is no prospect of the husband being ordered to pay any part of that accountant's fees. And the investigating accountant can use only the evidence produced, which may be limited.

So to conclude, if a business valuation is required for a clean break, I can act as SJE as I have done many, many times before. And within limitations, I can act as expert adviser. But for me to act on the record as expert for one party, the other spouse's shortcomings in disclosure would have to be egregious (outstandingly bad or shocking) and if that situation is suspected, I would recommend that the party concerned should speak to their lawyers, not to me, about whether the court might appoint a party expert acting to carry out an investigation.

In fact, what I always do when a spouse approaches me for help, and the dilemma is whether I could act as SJE or expert adviser, is that I ask them to read this article (it appears on my website as a blog) and then

speak to their lawyer. I seldom, if ever, hear anything further. So the job, if it ever was a job, is thrown away. You see, with any case I will not waste your time if it apparent that to pay me for an expert report would be a waste of money.

I remind readers that I offer an initial review of any case without obligation (see "How long's a piece of string" on my website here: ), but that review should be done only when the lawyer considers there is a chance of the court agreeing to have a party expert.

Of course, if a straightforward business valuation is needed, I'm your man!

**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:

[www.chrismakin.co.uk](http://www.chrismakin.co.uk)

[chris@chrismakin.co.uk](mailto:chris@chrismakin.co.uk)

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# 2023 in Review: Don't let complacency ruin your credibility

EWI Chief Executive Officer, Simon Berney-Edwards, shares his thoughts on 2023, a year where Expert Witnesses have continued to come under increasing scrutiny.

As we come to the end of the year, I'm taking the opportunity to reflect on yet another interesting year for Expert Witnesses. Once again, there have been several high-profile cases which have reflected the best and worst in Expert Evidence. So here are my top ten takeaways from 2023.

### 1. Don't get complacent

You may have many years of experience as an Expert Witness, but even the most experienced experts can get things wrong. Over the last year we have seen:

- Numerous reports submitted for assessment which have contained the wrong declarations and/or statement of truth.
- Examples of experts who were coerced by the legal team to do something that they felt wasn't right, only to have this backfire in court.
- Examples of experts facing criticism in the witness box because they hadn't addressed all the issues, evidence, or range of opinion.

So...

### 2. Make sure you are up to date

Whilst the EWI will always cover key rule and regulation changes in our monthly newsletter, we have now started emailing members directly when key practice changes happen, or important guidance is issued.

However, why not take some time now to review your templates to make sure are using the correct declarations and statements of truth.\*

We've also created a Report Checklist\* you can use to ensure every report is compliant and of good quality.

### 3. Ensure you make yourself aware of some of the recent changes

On that note, you are hopefully fully aware of the recent changes that came into force at the beginning of October.

- England and Wales - Criminal Procedure Rules - Change to Declaration\*
- England and Wales - Civil Procedure Rules - New rules governing Expert Evidence in the Intermediate Track\*

If you are not aware and you do work in these courts – it is important you familiarise yourself

with these changes now.

### 4. Preparation is key to avoiding criticism

At this year's Sir Michael Davies Lecture, the Honourable Mr Justice Williams, High Court judge and chair of The Family Justice Council Subcommittee on Experts, shared his views on the criticism of Experts in the courts.

His top tips to avoid it included:

- Remember the fundamentals of being an expert.
- Remain within your area of expertise.
- Comply with the relevant procedural codes.
- Don't take on too much.
- Comply with timetables.
- Communicate any difficulties.

If you would like to hear more of what he had to say, you can access the recording.\*

### 5. Remain within your area of expertise

The judgment of Mrs Justice Bacon in *Sycuro Ltd v PCI-Pal PLC & Anor [2023] EWHC 2161 (Pat)\** contains an important reminder for experts. During the course of the trial, it transpired that one of the expert witnesses (whose qualifications in their own field were not in doubt) had written a report and gave evidence on matters that were clearly outside their field of expertise. The result was that the judge was unable to accept their evidence on any matter that fell outside their core area of expertise. I am looking forward to hearing Mrs Justice Bacon's views on this case at our Conference next year!

### 6. Review your opinion when necessary

If another Expert (whose opinion you rely on) changes their opinion, make sure you consider the implications for your opinion. A good example of this can be found in *Benjamin Scarcliffe v Brompton Valley Group Ltd [2023] EWHC 1565(KB)\** which provides important lessons to be learned for all Expert Witnesses.

### 7. Take a moment to review your CV

Back in April, I reviewed the case of *Watts v Watts [2023] EWHC 679 (Ch)\**. This contains several learning points for experts. But one of the key issues affecting the credibility of the expert was that they had written nothing within their CV to demonstrate that they possessed the specific expertise relevant to the case.

Remember your CV needs to reflect why you



can act as an expert in the case at hand.

Need some help? Why not attend our CV writing for Expert Witnesses\* webinar on the 24th January.

### 8. Consider how you might deal with dishonesty

The case of *Muyepa v MOD* highlighted the issues faced by Experts when dealing with fundamental dishonesty. Back in January, David Stothard, Managing Director at MAPS Medical, examined that case\* which was ultimately dismissed as a result of the claimant's dishonesty.

He concluded by inviting experts to spend some time considering the evidence presented by the medical experts in this case set out in the judgment (paragraphs 167 to 278 inclusive), whether they fall within your area of expertise or not and reflect on how you might have presented your evidence had you been involved in the case.

### 9. Maintain your independence in discussions of Experts

There has been continued discussion during the year of the importance of remaining completely independent during meetings between Experts and ensuring experts do not involve their legal teams in the drafting of the joint statement or act on behalf of the legal team during the discussion. This was further clarified by new guidance from the King's Bench division\* that clearly states this.


### 10. Maintain your credibility

Hopefully this will be clear by this point in this article, but some of the most easily rectifiable mistakes will seriously affect your credibility. So, as it is the end of the year, why not take some time to reflect on your practice and think about what you can do to ensure you retain your credibility in 2024.

And with that I wish you every success for the New Year.

Simon Berney-Edwards

\*All links can be accessed here: <https://ewi-live-portal.azurewebsites.net/News/2023-in-review-dont-let-complacency-ruin-your-credibility>



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Since the early 90s LH has provided court reports, gaining a reputation with major law firms for accurate assessment of condition, the clarity and detailed specification of therapy and related equipment requirements so ensuring accurate allocation of costs. A signature aspect of E2S's reports is the attention given to using factual evidence and reasoned arguments to underpin our recommendations.

Work roughly equally split between Claimant and Defence with a growing proportion of joint instruction.

Both experts are CUBS accredited (LH:2013, DH:2012) and appear on the Expert Witness site and that of the UK Register of Expert Witnesses.


LH is a registered member of the HCPC and the Association of Speech and Language Therapists in Private Practice; both are members of the Royal College of Speech & Language Therapists. LH is also a member of North West Special Interest Group for Adult Acquired Disorders & Headway.

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## Connect with Dr. Heather Harris

MBBS FRCS FRCR

### Consultant Radiologist



Dr Heather Juliet Harris is a Consultant Radiologist based in Chesterfield, Derbyshire

She has extensive knowledge of general radiology and radiology practice including policies, procedures, IR(ME) R, IRR17 and day-to-day issues working in a radiology department in a District General Hospital. She was governance lead for 5 years and clinical director for 3 years. She has attended the coroners court on behalf of the hospital on a number of occasions to present an overview of the radiology in a case. She also has experience of writing reports for complaints and incidents.

Her work covers general radiology with subspecialist areas of interest of gastrointestinal and hepatobiliary imaging, uro-radiology, non-vascular intervention and emergency work. She has experience working for an outsource radiology reporting company from 2014-2019. Dr Harris is a Technical Assessor for UKAS, assessing for the Quality Standard for Imaging, and also undertakes work for the Parliamentary Health Ombudsman.

Dr Harris has undertaken medicolegal work since 2020 and has written over 70 reports, all for the claimant. She is able to take on work for the defendant. She has attended 8 conference calls and attended the coroners court as an expert witness. She currently accepts work from the UK including NI Ireland, and the Republic of Ireland.

**Training**  
Medico-Legal Expert Witness Essentials Course, Specialistinfo, Birmingham, 21.11.18 – 5 CPD credits  
Clinical Negligence Course, Specialistinfo, Online, 21.01.21 – 5 CPD credits

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Mr Richard Bailey has over 20 years experience as a consultant and clinical lead in Accident & Emergency Medicine at a busy DGH. He instructs on advanced trauma courses.

He advises his NHS trust on cases pending litigation and has attended courses aimed at improving the court skills of an expert witness. His expertise covers the whole remit of emergency medicine, but he has a special interest in trauma.

Mr Bailey can act for either claimant or defendant or as a Single Joint Expert and he has been preparing personal injury, medical negligence and medical reports for the Police/CPS for over 10 years.

He can see clients in his rooms in Chesterfield and Derby

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# The importance of a DNA test for Immigration applications



Dr Neil Sullivan

An investigation by the BBC in May last year<sup>1</sup> revealed that there are UK men who are posing as fathers for migrant women and taking fees of up to £10,000 for falsely adding their names to birth certificates.

This enables the child to become a UK citizen and hence for the mother to gain residency. It appears that despite the rules banning the practice, these “fathers” are advertising on social media and are using elaborate and convincing backstories, which can only get more convoluted with use of AI. Social media posts involve both men advertising themselves as “fake fathers” and women searching for a British “citizenship daddy”.

Falsification of a birth certificate is a criminal offence<sup>2</sup> yet the practice continues, with rare examples of prosecutions.<sup>3</sup> As evidence of paternity, sufficient checks are required and the technology to do this, via a DNA test, is both readily available and tried and tested.<sup>4</sup>

Since the Home Office has not published data on the number of visas given to non UK parents of British children, the scale of this fraud is not publicly known. However, it is the case that if an illegal migrant female gives birth in the UK to a child who has either a) been fathered by a man with indefinite leave to remain or b) is a British citizen, then the child will be British by birth. This does the correct thing of course, it protects the child, but the consequence is that the mother can apply for a family visa and hence citizenship.

The BBC reported that this practice has been going on for many years, including communities from Bangladesh, India, Nigeria, Pakistan, Sri Lanka and Vietnam.

In these cases, where the “red flag” is raised, there is a clear requirement for a DNA paternity test. For example, a red flag would be a British child with one British parent who is named on the birth certificate and a non-British mother who is without a visa. Unfortunately, there is no legal requirement in the UK for a DNA test when an application is made for a child’s passport or when registering the birth. There is a strong case for change.

In the cases of unmarried parents, the responsibility for registering the birth of a child lies with the mother and only the mother has parental responsibility. If both “parents” are present at the registration, then there is the situation where the fake father or the citizenship daddy will have parental responsibility for the child. Falsification aside, once the visa/citizenship process is complete, the mother may claim “genuine mistake” and via a DNA test, apply to have the fake father or citizenship daddy removed from the birth certificate. Equally, should the biological father appear, he may also apply for an amendment, but this would not give him parental responsibility unless a court order was in place or unless the mother agreed.

A DNA test for paternity either excludes a man from biological parentage with 100% certainty or determines that he is the biological father. The latter, an “inclusion” is usually given as a probability of paternity and will give a statistic in excess of 99.99%, especially if we have been able to test the mother. Of course, paternity DNA tests of this nature should be conducted by an accredited company, such as our own, which is on the Ministry of Justice list as “a body that may carry out parentage tests directed by the civil courts of England and Wales under section 20 of the Family Law Reform Act 1969”.<sup>5</sup>

By using such a company for these tests, you can be assured that as far as is possible, checks are carried out to establish identity and facts, plus we control the sample collection, via use of one of our registered samplers and adherence to the legal procedure for collecting samples for DNA testing.<sup>6</sup> This is important because there is a chain of custody which allows reliance on the DNA testing data.

The BBC investigation into birth certificate manipulation has provided illumination into circumstances which are disconcerting and indeed, helps makes the case for more accredited DNA testing to be used in immigration applications.

**About the author:**  
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Complement Genomics Ltd (trading as Dadcheck®) is accredited by the Ministry of Justice as a body that may carry out parentage tests directed by the civil courts in England and Wales under section 20 of the Family Law Reform Act 1969.

Please see: <https://dadcheckgold.com>

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### Citations

<sup>1</sup> UK men offered £10K to pose as dads in visa scam, BBC investigation finds - BBC News

<https://www.bbc.co.uk/news/uk-65556437>

<sup>2</sup> Section 4 of the Perjury Act 1911

<sup>3</sup> Mum jailed for lying about the dad of her baby on birth certificate to spite ex-boyfriend - Wales Online

<https://www.walesonline.co.uk/news/wales-news/mum-jailed-lying-dad-baby-16932386>

<sup>4</sup> [www.dadcheckgold.com](https://dadcheckgold.com)

<sup>5</sup> dadcheck® is UKAS accredited testing laboratory No. 2743.

<sup>6</sup> Blood Tests (Evidence of Paternity) Regulations 1971 (SI 1971/1861), as amended Blood Tests (Evidence of Paternity) (Amendment) Regulations 2015.

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# Housing legal aid providers on the brink of collapse

New research published by the Law Society of England and Wales has shone a light on the depth of the crisis facing civil legal aid providers.

A study commissioned by the Law Society from Frontier Economics has worked with providers across the market to understand in-depth their operating model and financial situation.

An interim report\* analysing data from housing legal aid providers reveals:

- 100% of providers are loss-making.\*\* The average fee earner is only able to recover around half of the full costs of providing housing legal aid
- There is a high turnover of junior staff as they leave for better pay and work-life balance
- Providers are working long hours with high levels of stress and burnout, which is exacerbated by the significant administrative costs involved in housing legal aid work

Law Society of England and Wales president **Nick Emmerson** said: “This vital research reveals the

lengths providers have to go to keep housing legal aid afloat in the current environment – routinely working grossly excessive hours and cross-subsidising from other parts of their businesses.

“It’s therefore no surprise that we’re seeing providers exit the market because they can no longer sustain this approach. Those who remain struggle to attract younger people to legal aid work.

“At a time when the cost-of-living crisis is driving rising numbers of evictions and repossessions, the UK government needs to use its Civil Legal Aid Review to invest in legal aid now before it collapses completely.”

Additional research\*\*\* from the Law Society shows that 26 million people currently have no access to a local housing legal aid provider.

**Nick Emmerson** concluded: “We urge the government to provide the civil legal aid system with the investment needed to ensure there is a future for this vital public service.”

\* Read the Research on the sustainability of civil

legal aid interim report. This stream of work is ongoing. A final report will be published in due course: <https://www.lawsociety.org.uk/topics/research/housing-legal-aid-sustainability>

\*\* All providers surveyed to date are found to be loss making when we adjust for inter-partes incomes and the majority are found to be loss making even when accounting for inter-partes incomes.

Frontier’s research will form part of the Law Society’s submission to the government’s review of Civil Legal Aid, which is due to report in March.

\*\*\* Research taken from our updated housing legal aid desert map, which will be published on 21 February, alongside the rest of our civil legal aid desert maps. It will coincide with the Law Society’s call for evidence submission to the Civil Legal Aid Review. The heat map is compiled from the directory of legal aid providers which is published by the Legal Aid Agency.

<https://www.gov.uk/government/publications/review-of-civil-legal-aid-provider-survey-report>



# Deputyship and Statutory Will Applications: How does a probate genealogy firm help?

As all Deputies and Court of Protection specialists will know, applying for a Statutory Will can be a complicated and time consuming matter. As part of the duty of care, and requirements for making a Statutory Will, it is necessary to hold a copy of the person's existing Will, a draft of the proposed Will, details of their family, assets and income, as well as medical evidence of their incapacity in order to provide these to the court, together with any other evidence the court requires.

Anyone who would be potentially affected by the application (perhaps a beneficiary who would lose out, for example) will be a party to the court proceedings. Finders International specialises in researching P's next of kin, providing a verified family tree and a full report of the required findings to support your Application to Court.

Here are some of the ways in which a probate genealogist can help:

## 1. Verifying Family Tree Information:

We can conduct thorough research to trace and identify all of P's next of kin according to intestacy rules. We can do so with little or no contact with the family, at the authority of the Deputy, and ensure that our research is backed by documentary evidence.

The court or the deputy may receive information about P's family from various sources, including family members. This information can often be inaccurate; therefore, we can verify the accuracy of any information already held, ensuring that the family tree is comprehensive and reliable.

## 2. Resolving Complex Family Scenarios:

In cases where the family structure is complex or unconventional, a probate genealogist can provide expertise in unravelling intricate family scenarios. This includes stepsiblings, half-siblings, or other unique family relationships. With modern families spread across the globe our international expertise can assist in even the most complicated of family make ups, and wherever people may live.

## 3. Ensuring you are aware of P's existing Will & financial assets

Ensuring you know of any Will P may have made in the past is crucial to this process. Finders can assist by conducting a comprehensive Will Search to identify any Will that may have been made before P's affairs were managed under Deputyship Order. Additionally, a full missing asset search can also be conducted for P, ensuring that you are aware of the full financial picture.

## 4. Providing Evidence for the Court:

The findings of a probate genealogist can be presented as evidence to the Court of Protection. This documentation helps validate the accuracy of the family tree and ensures the correct family members are notified of the process.

## Insights into the research process

A question that we are often asked is, 'How do you do it?' Many

who have researched their own family tree will know that birth, marriage, and death records are essential in confirming findings. At Finders International, we also have in-house databases, local representatives, and a network of international researchers to assist with our research. Each case comes with its challenges, including children born out of wedlock, overseas research and common surnames. Our team work on cases with these elements on a daily basis and carry out research for Court of Protection teams all over the country, so have the experience to overcome these research hurdles.

## Case Study

At the point of our instruction, the only information held was that P had a deceased partner and one living cousin.

Our research first confirmed that P had no children and was an only child.

Extensive research using all available genealogical resources confirmed that P had no living Paternal family. However, we confirmed that P's maternal family was larger than expected.

During the course of our research, we identified 6 maternal aunts and uncles who left descendants, identifying a number of living cousins.

As part of our verification process, we obtained birth, marriage and death certificates and identified current addresses for all P's next of kin. This information was provided to the Deputy in an easily digestible family tree and report, with appropriate supporting documentation. In this case, at the Deputy's request, no contact was made with the family before our report was submitted.

Our involvement in this case was key, as we identified three more family members in addition to the cousin previously known. This full picture enabled the Deputy to proceed with the Statutory Will Application and notify all the correct next of kin.

Our expertise in genealogical research ensures a thorough and accurate representation of the P's family connections, enabling confidence in the information provided to the Court for the purposes of obtaining a Statutory Will.

Finders International can assist pre-deputyship application if the court requires you to contact family, friends or neighbours of P. We can also assist with Statutory Will Application research, Missing Will and Assets searches, Administrator searches and Unoccupied Property Insurance. If you have a case like the above or have any questions regarding our services, contact us today at [quotes@findersinternational.co.uk](mailto:quotes@findersinternational.co.uk), call 0800 085 8796 or visit our website [www.findersinternational.co.uk](http://www.findersinternational.co.uk).



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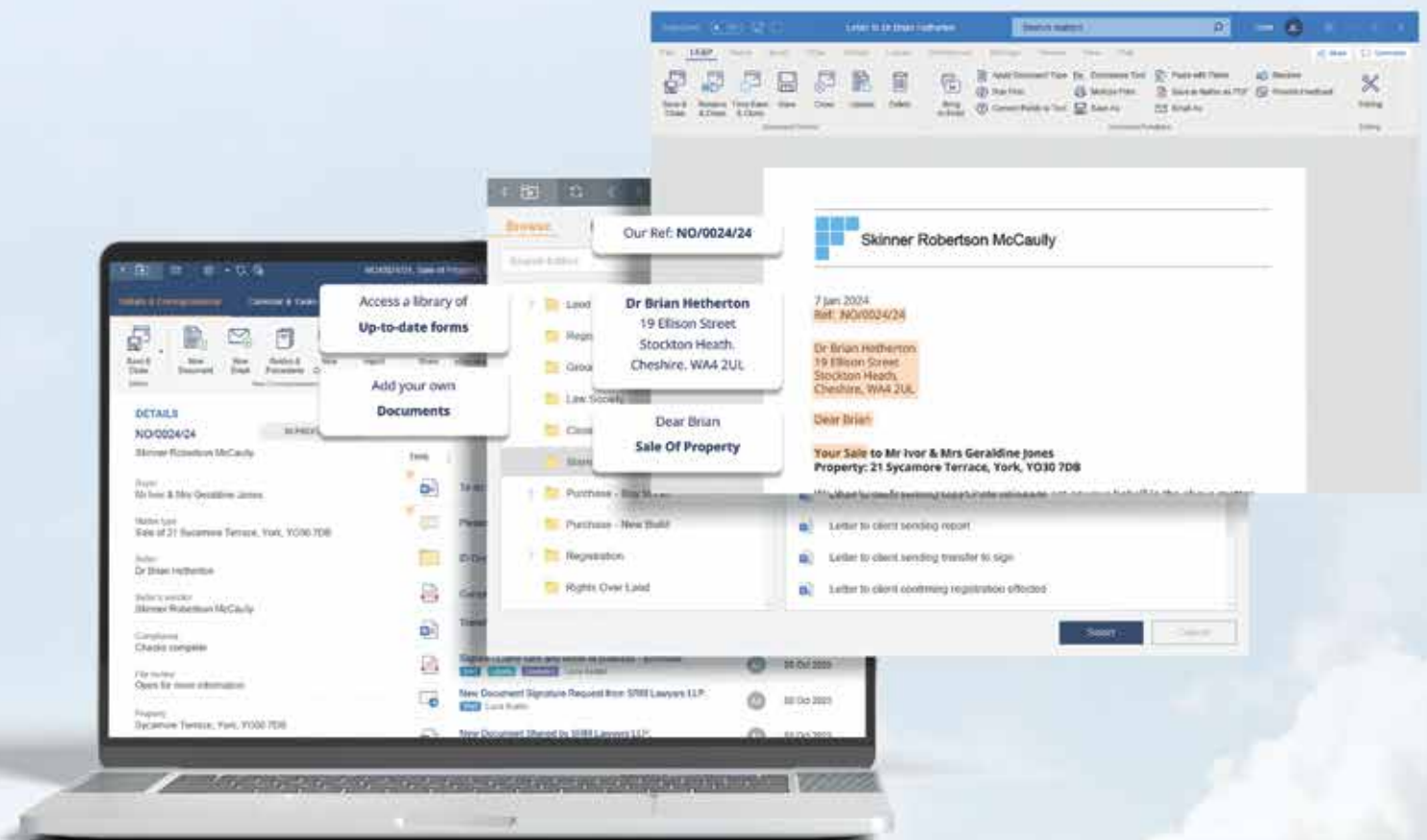
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