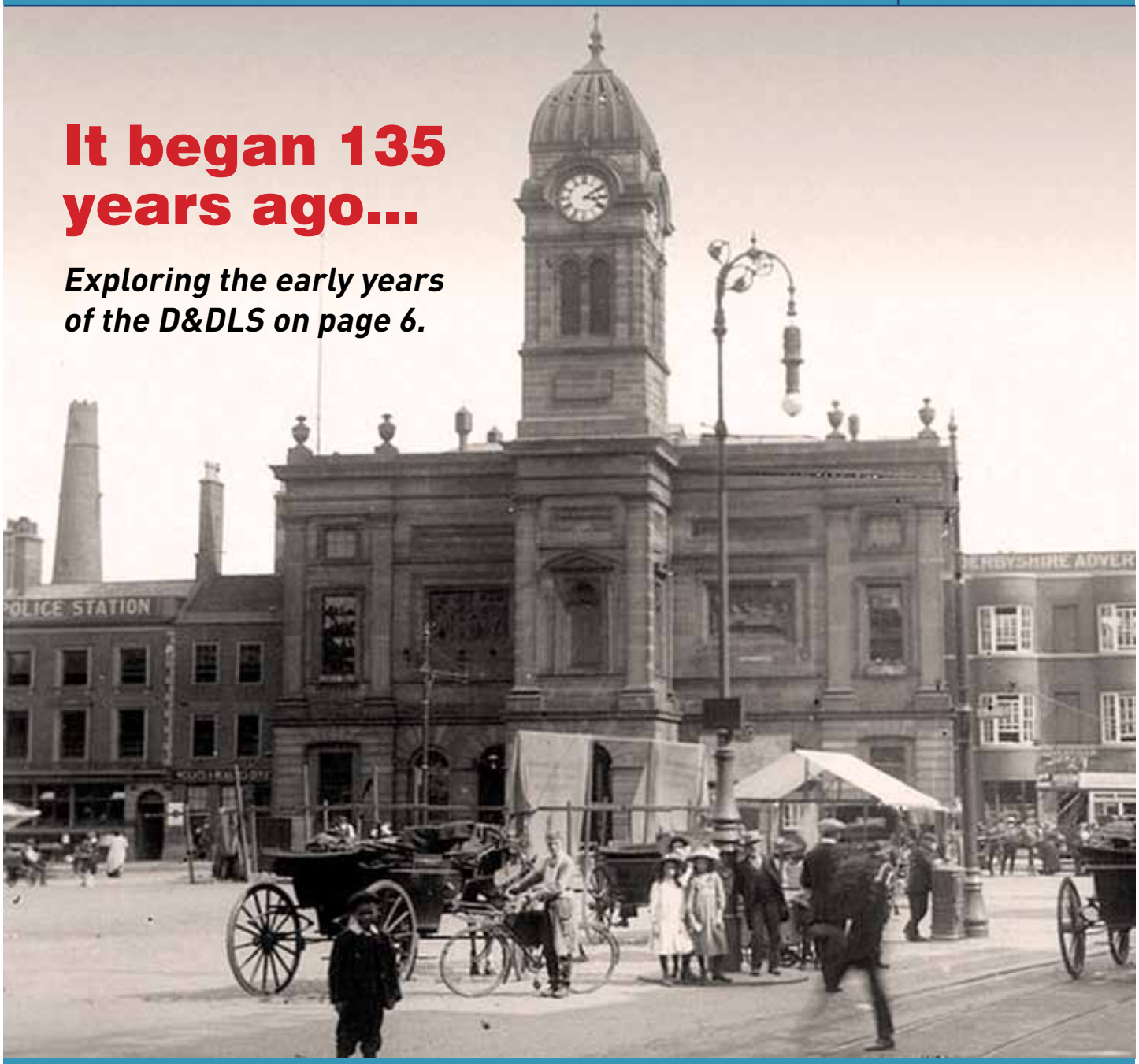
D&DLS Bulletin

Derby & District Law Society

www.derbylaw.net

March / April 2021



It began 135 years ago...

Exploring the early years of the D&DLS on page 6.

Also in this issue: Bell vs Tavistock: Informed Consent vs Autonomy?

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Editorial

I choose to be optimistic. The nights are getting lighter and the clocks are going forward, I have had my first jab, the vaccine roll out is going at an amazing pace and I am hoping that my now 19 year old can actually stop working nights in a warehouse and do some volunteering – the "real" reason for his year out! So, with that optimism in mind DDLS has been re-arranging. The Derby City Schools Debate Competition still involves 11 teams and will take place in the Summer term. Sadly, still mostly on line but fingers crossed the Final will be LIVE (we will have forgotten what face to face means) after the lockdown restrictions are lifted towards the end of June.

The Past Presidents Dinner has been re-arranged to Wednesday 22nd September 2021. The Annual Awards Dinner has been re-arranged to Friday 5th November 2021. DJL hopes to run a Derby Legal Walk this year – date to follow. For the sake of completeness the AGM has NOT been re-arranged and will take place on Zoom on Wednesday 5th May – notices and meeting links will be sent out in due course.

You will notice that we have a new Gold Sponsor for this year and huge thanks to DG Legal – we are pleased to be working with you – please read their introduction on page 14. We are grateful as ever to Severn Trent Searches for their ongoing sponsorship and our relationship with the University of Derby goes from strength to strength. The Triathlon will take place this year on teams for 14th April 2021 and is a great event for trainee solicitors and law students alike.

DDLS is proud to announce the formation of a new BAME sub-committee. We will be working with the University of Derby and looking into projects and events to promote and support lawyers from A BAME background. This neatly coincides with Stephanie Boyce taking office as President of the Law Society. She has said that *"the trail is ready to be blazed"* – not sure DDLS is quite at that point but her message of *"increasing diversity, inclusion and social mobility, improving access to justice and technology, and promoting good mental health and wellbeing"* is one that we are ready to get behind. Anyone interested in becoming part of this sub-committee or suggesting projects/events please e-mail me – you don't have to be part of the main committee.

This year DDLS is 135 years old. I have started to write a few history pieces for the Bulletin. Anyone wanting to contribute please do let me have your memories/stories and, dare I say, photos.

Take care

Julia Saunders
admin@derbylaw.net
01283 734989

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Published by:
EAST PARK COMMUNICATIONS Ltd.
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Price St., Birkenhead, Wirral, Merseyside
CH41 4JQ
Tel: 0151 651 2776
simon@eastparkcommunications.co.uk
www.eastparkcommunications.co.uk

Advertising
Simon Castell

Managing Editor
Julia Saunders

Design
David Coffey

Accounts
Tony Kay

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Officers and Committee Members for 2020-21

Officers

President*
Martin Salt
Martin.salt@chapsol.com
Tel: 01773 540480
Chapman & Chubb
Shane House
157 Nottingham Road
Somercotes
Alfreton
Derbyshire
DE55 4JH

Vice-President*
Julie Skill,
Elliot Mather LLP
Chesterfield
Tel: 01246 231288;
julie.skill@elliotmather.co.uk

Deputy Vice-President*
Manesha Ruparel
Alexander & Co
mr@aandco.co.uk
Tel: (01332) 600005

Honorary Secretary*
Fiona Apthorpe
Geldards LLP,
Derby
Tel: 01332 378335
Fiona.Apthorpe@geldards.com

Immediate Past President*
Honorary Treasurer*
Ben Lawson
Family Law Group
Tel: 01332 650000

(= Ex-Officio)*

Parliamentary Liaison Officer
Julie Skill,
Elliot Mather LLP
Chesterfield
Tel: 01246 231288
julie.skill@elliotmather.co.uk

Public Relations Officer (+)
Vacant

Derby Junior Lawyers
Natasha Hybner
Swindell & Pearson
01332 367051
natashahybner@patents.co.uk

Constituency Council Representative, Derbyshire (+)
Michael Williams
Tel: 01298 24185
mwilliams@bemerton.co.uk
(+) attend Committee by invitation

Other Committee Members
Tina Attenborough
Attenborough Law, Derby
Tel: 01332 558508
tina@attenboroughlaw.co.uk

Andy Cash
Cartwrigt KIng, Derby
Tel: 01332 346111
andy.cash@ cartwrightking.co.uk

Andrew Cochrane
Flint Bishop, Derby
Tel: 01332 340211
Via nikki.rennie@flintbishop.co.uk

Diana Copestake
Freeth Cartwright LLP
Tel: 0845 2725674
diana.copestake@freeths.co.uk

David Hardy
Tel: 01332 842008
david.hardy1630@gmail.com

Natalie Haydon-Yeung
Geldards LLP
01332 331631
natalie.yeung@geldards.com

Liz Haysom
E.Haysom@derby.ac.uk

Sue Jennings
Tel: (M) 07946 609436
robskelding@squarise.co.uk

Oliver Maxwell
Nelsons
01332 378696
oliver.maxwell@nelsonslaw.co.uk

Claire Rudkin
Flint Bishop, Derby
Tel: 01332 340211
claire.rudkin@flintbishop.co.uk

Simon Stevens
Eddowes Waldron
01332 348484
sws@ewlaw.co.uk

Solicitors' Benevolent Assoc. area representative
Peter Lord
9 Larkhill,
Swanwick DE55 1DD
Tel: 01773 541753

Administrator / Bulletin Editor
Julia Saunders,
14 Risborrow Close,
Etwall,
Derby
DE65 6HY
Tel: 01283 734989
Mobile: 07964 358042
Email: admin@derbylaw.net.

Sub-Committees
(Secretary in italics)

Criminal Litigation
Simon Stevens

Andy Cash

Quentin Robbins

Andrew Oldroyd
(01332 225225)

Nick Wright
(01332 364751)

Education & Training
Sue Jennings,
& all Sub-Committee Secretaries

Employment and Business Law
Sue Jennings

Family Law
Fiona Apthorpe

David Guthrie
dg@aflp.co.uk

Diana Copestake
diana.copestake@freeths.co.uk

Fiona Apthorpe
Fiona.Apthorpe@geldards.com

Fiona Lazenby
fiona.lazenby@knightsplc.com

Julie Skill
Julie.Skill@elliotmather.co.uk

Kelly Mower
kellym@eglegal.co.uk

Kirpal Bidmead
kirpal.bidmead@flintbishop.co.uk

Liz Guyler
lizguyler@eglegal.co.uk

Lucy Tissington
Lucy.Tissington@elliotmather.co.uk

Manesha Ruparel
mr@aandco.co.uk

Melanie Bridgen
melanie.bridgen@nelsonslaw.co.uk

Natalie Haydon-Yeung
Natalie.Haydon-Yeung@geldards.com

Nick Herbert
nh@aflp.co.uk

Ruth Jones
ruth.jones@smithpartnership.co.uk

Sole Practitioners' Group (SPG)
Tina Attenborough

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President's Page

Hello Everyone,
I hope that you are all well and staying safe and that the new year is being kind to you.

After nearly two years this will be my final piece as your President for our bulletin. It has been a privilege to be the President of the Derby & District Law Society for an extended period of time, although due to the COVID-19 pandemic I have not been involved with as many events as the President usually takes part in.

There is light at the end of the tunnel and as we speak the potential for the end of lockdown and social distancing on the earliest date of 21 June 2021 means we may be finally heading for a period of normality. The legal industry on the whole has survived but there are going to be difficult times ahead for many law firms, especially smaller ones, who base themselves on an already struggling high street.

The annual Derby & District Law Society Dinner has been scheduled for 5th November 2021 at Pride Park Stadium. Hopefully by this time the COVID-19 restrictions will be a distant memory and that you will keep the date free in order to attend. The event has always been an important date on our calendar and this time it will certainly have the added attraction of our local legal industry finally being able to network and socialise once more.

I would like to thank our ever-present administrator Julia Saunders for all her continued hard work in the day to day running of the Society, especially in organising all our events. Without her the Society would not be able to function.

I also wish to congratulate our incoming president Julie Skill, and Manesha Ruparel on becoming our new Vice President.

I was encouraged to join the Derby & District Law Society in 2012 by the late Mr Michael Mallender of Taylor Simpson & ----------, who was a long standing and enthusiastic member. His view was that the Society existed to support each other as fellow professionals, as well as its other functions, and it was not what the Society can do for you but what can you do for the Society. I have always taken this to heart and ever since joining I have done what I can to help.

Although my tenure is now coming to an end, I very much look forward to supporting the Society over the coming years.

Finally, I wish to thank you, our members, for your continued support of the society.

I look forward to seeing you all again soon,

Martin Salt,
President, 2019-21

The Beginning of Derby and District Law Society in 1886

The first Committee meeting of the then Derby Law Society took place in early 1886 – the minutes were handwritten in ink and recorded in a Minute Book manufactured for the new local law society by Francis Carter, Manufacturing Stationer, of Iron Gate Derby. Further investigation reveals that a document from Francis Carter "letterpress and lithographic printer, stationer, bookseller, heraldic die stamper etc" is to be found in the Yale Centre for British Art USA. Fame indeed.

Apart from the formation of DDLS 1886 was not the most notable of years. Horlicks first sold malted milk to the public. Karl Benz drove the first automobile. WG Grace achieved the highest test score of 170 against Australia at the Oval. Apache Chief Geronimo surrendered – ending the last major US-Indian war.

At home, Queen Victoria was 49 years into her 64 year reign over what was then the British Empire. Liberal Prime Minister William Gladstone introduced the Government of Ireland Bill. It was the first major attempt to enact a law creating home rule in Ireland. Totally unrelated the first Crufts dog show is held in London.

In Derby the population was about 100,000 – it has since grown by two and a half times. Derby County Football Club was just two years old.

Derby Law Society had their Rules printed and distributed to all members – not many and obviously all men – stolen from Leicester Law Society! Subscriptions were £2 a year. The first subcommittee was set up to buy books for the Law Society library (kept at 10 Full Street Derby) and to keep an up to date list of those books. The first President was C S B Busby Esq.

More from 1886 in the next Bulletin...

Julia Saunders
admin@derbylaw.net

SAVE THE DATE!
Annual Awards Dinner –
5th November
at Pride Park Derby
7.15 for 7.45pm

Subsequent Presidents of Derby, Chesterfield and DDLS:

Derbyshire

2020/21	Martin Salt
2019/20	Martin Salt
2018/19	Ben Lawson
2017/18	Simon Stevens
2016/17	Andy Cash
2015/16	Di Copestake
2014/15	Sue Jennings
2013/14	Paul Hackney
2012/13	Stephen Woolley
2011/12	Christine Ball
2010/11	Andrew Cochrane
2009/10	Julia Saunders
2008/09	Nigel Anderson
2007/08	Quentin Robbins
2006/07	Sue Woodall
2005/06	Lewis Rose OBE
2004/05	Mary Honeyben
2003/04	Michael Copestake
2002/03	Fiona Apthorpe
2001/02	Arthur Titterton
2000/01	Graham Dean
1999/00	John Calladine
1998/99	John Vinecombe
1997/98	David Hardy
1996/97	Peter Scragg
1995/96	Peter Johnson
1994/95	G St Q Drew
1993/94	Peter Ashworth
1992/93	JRH Wilson
1991/92	John Cawdron
1990/91	DP Potter
1989/90	JW Moss
1988/89	WNK Rowley
1987/88	HA Brewer
1986/87	AJ Moore
1985/86	DE Auden
1984/85	J Hudson
1983/84	JP Fletcher
1982/83	GT Copestake
1981/82	JPR (Peter) Pym
1980/81	J Fisher (?)
1979/80	JPN Waldron (?)
1978/79	L Irving
1977/78	EM Mather (?)
1976/77	WM Brooke-Taylor
1975/76	JRS Grimwood-Taylor
1974/75	CJJ Grey
1973/74	A Haldenby
1972/73	RWP Cockerton
1971/72	FG Partridge
1970/71	W Bagnall
1969/70	FW Barnett
1968/69	PM Robinson
1967/68	B Johnson
1966/67	H Pipes
1965/66	BGJ Cash
1964/65	T Wilson
1963/64	JHK Thomson
1962/63	FD Worthington
1961/62	S Forshall
1960/61	PR Cash
1959/60	AEH Sevier
1958/59	CFR Cleaver
1957/58	DG Gilman
1956/57	HW Timms
1955/56	AJ Robotham
1954/55	NR Pinder
1953/54	RSD Cash
1952/53	WLP Woolley
1951/52	FO Bates
1950/51	CR Lymm
1949/50	HS Rees
1948/49	DAS Cash
1947/48	HC Brooke-Taylor
1946/47	TH Bishop
1945/46	AS Moore
1944/45	KC Horton
1943/44	GB Robotham
1942/43	JH Richardson
1941/42	JPR (Percy) Pym
1940/41	AV Nutt
1939/40	HC Copestake
1938/39	FG Robinson
1937/38	J Gretton
1936/37	WRH Whiston
1935/36	PB Mather
1934/35	FE Moult
1933/34	CS Bowring
1932/33	AJ Cash
1931/32	LE Eardley-Simpson
1930/31	HM Clifford
1929/30	R Holland
1938/29	WTM Orme
1927/28	FS Thirlby
1926/27	HO Moore
1925/26	HR Cleaver
1924/25	SG Taylor
1923/24	F Cattle
1922/23	AR Robotham
1921/22	JET Ducker
1920/21	AR Flint
1919/20	AN Whiston
1918/19	PO Francis
1917/18	GR Eddowes
1916/17	WA Reid
1915/16	WH Milnes Marsden
1914/15	RW Sale
1913/14	G Trevalyan Lee
1912/13	WH Whiston
1911/12	G Mosley
1910/11	JR Pinder
1909/10	BW Moore
1908/09	AE Hobson
1907/08	WJ Holbrook
1906/07	JT Wykes
1905/06	CRB Eddowes
1904/05	W Blews Robotham
1903/04	R Sale
1902/03	W Woolley
1901/02	W Hollis Briggs
1900/01	WB Woodford
1899/00	RS Clifford
1898/99	TW Coxon
1897/98	NJ Hughes-Hallett
1896/97	J Bostock
1895/96	F Stone
1894/95	AG Taylor
1893/94	A Heny
1892/93	J Potter
1891/92	AJ Flint
1890/91	WH Whiston
1889/90	J Smith
1888/89	WG Taylor
1887/88	CSB Busby
1886/87	CSB Busby

Chesterfield & NE Derbyshire

2000/01	JA Browne
1999/00	RA Shiers
1998/99	NA Clarke
1997/98	PM Longden
1996/97	WJ Fletcher
1995/96	Miss AC Kerr
1994/95	M MacDonald
1993/94	RH Wright
1992/93	BJM Mather
1991/92	RAC Woodhead
1990/91	JW Cutts
1989/90	JC Rice
1988/89	LM Florin
1987/88	Mrs P Battersby
1986/87	A Borman
1985/86	RT Proctor
1984/85	AJG Glossop
1983/84	J Blakesley
1982/83	NW Thorpe
1981/82	MH Johnson
1980/81	JN Gill
1979/80	D Dolman
1978/79	BJ Shingleton
1977/78	M Nevis
1976/77	EC Eagle
1975/76	E Marks
1974/75	RA Kennedy
1973/74	GP Broadbent
1972/73	BS Shemwell
1971/72	JB Thomas
1970/71	KA Round
1969/70	JW Clarke
1968/69	C Guard
1967/68	RA Cleaver
1966/67	GA Hotter
1965/66	EM Mather
1964/65	FJ Rooth
1963/64	RSD Cash
1962/63	RF Stokes
1961/62	WH Blakesley
1960/61	Col AWC Glossop OBE
1959/60	MRE Swanwick MBE
1958/59	C Proctor
1957/58	GH Slack
1956/57	EP Barstide
1955/56	AJ Cooke
1954/55	JH Hodkin
1953/54	G Bradley OBE

Stamp Duty extension provides relief for buyers and property firms

Not only are home-buyers readily welcoming the extension of the Stamp Duty Holiday, but so too are local property businesses. X-Press Legal Services - Derbyshire & Nottinghamshire is delighted at Rishi Sunak's recent Budget announcement, which sees the Stamp Duty Holiday extended further until the end of June.

The holiday is being extended until 30th June, but it will also be tapered off rather than ending abruptly, with individuals purchasing properties up to the value of £250,000 benefitting from the scheme until October.

X-Press Legal Services is a property search company that provides expert reports to solicitors and conveyancing professionals across the region. The stamp duty holiday has seen demand for its searches increase 50% since it began back in Summer 2020.

Owner of the company, **Ben Wheeler,** comments: *"We have been working flat out due to the increased demand for our searches, which are a real measure of demand in the property market generally. We have seen higher levels of searches than ever before - and we were concerned that many people would not be able to complete their property transaction before the original deadline of March 31st. In addition, conveyancing professionals have been under significantly more pressure to ensure transactions are completed.*

"The whole sector has been lobbying for an extension rather than a 'cliff-edge deadline', so it is pleasing that there will be a tapering off period as well as the extension. This will allow thousands more people to make savings."

Part of a 27-office network across England and Wales, X-Press Legal Services - Derbyshire & Nottinghamshire provide solicitors and conveyancing professionals with a complete range of property searches and reports that comply with all of the relevant regulations.

Ben concludes: *"We pride ourselves on making it as easy as possible for conveyancers to deliver legal services to their clients, so we provide a choice of reports which you can choose according to your needs. Our aim is to save our clients time and money; helping ensure property transactions complete with the minimum of fuss."*

With over 20 years' experience, X-Press Legal Services is one of the top ten search providers in the UK. Trusted by more than 500 legal practices in England and Wales, the firm produces a staggering 400,000+ conveyancing searches and reports each year.

Meeting between Derby & District Law Society Family Law Committee and local District Judges

Held on: Monday, 11 January 2021

Present: District Judge Davies, District Judge Parker, District Judge Gillespie, Fiona Apthorpe *(Secretary: D & DLS Family Committee)*, Kirpal Bidmead, Diana Copestake,Nick Herbert, Manesha Ruparel, Julie Skill.

Remote Hearings

Most hearings at Derby are currently being conducted remotely and, indeed, the guidance is that they should be dealt with remotely "if at all possible".

D J Gillespie reported that she has done quite a few children fact finds and final hearings. There are challenges. It is not possible to move around in court, the witness box cannot be used and no touching of Holy books. Broadly however, the hearings have worked well though. District Judge Parker has done some hybrid cases where CAFCASS have been remote. Generally, a positive reaction from those involved. The parties are not generally disadvantaged by not being physically present. However, the fact finds may be more challenging. Dealing with cases by telephone may be a bit more difficult, especially where dealing with litigants in person.

Practitioners to note that there are now large screens in some of the District Judge rooms and the District Judge courtrooms. This enables witnesses to be physically seen in hybrid hearings.

Manesha commented that final hearings in particular, are being dealt with quite efficiently. Fiona concurred. Counsel are paid a fixed fee, but where solicitors are present, they can obviously be getting on with the day job back in the office and simply be called in when needed, which means that the clients are not paying for a full day of their solicitor's time in court, creating significant savings.

HHJ Rogers has confirmed that for finance cases video link hearings should be the norm even for FDA's and FDRs. Face to face should be the exception not the norm rather than telephone. Children cases may be more difficult and they are cases where it may be necessary to deal with cases by telephone. It needs to be recognised that litigants in person do not always have the necessary technology.

Generally, the Judges felt that the procedural hearings were working very well on the phone, particularly if the decisions were not controversial.

DJ Davies intimated a preference for Teams, although the courts are being told to use the CVP platform. However, this ties up a member of staff to assist the Judge. With money cases, DJ Davies would much prefer simply to set up the Teams meeting himself.

Nick commented that BT Meet Me can be problematic sometimes using a mobile. DJ Davies said that they had been told to try and phase out using BT Meet me, but it is needed for private hearings where one party is not represented.

Certainly the general feeling is that remote hearings are quite efficient.

DJ Davies commented, however, that it does make it impossible to run block lists. Therefore, each case has to be listed at a particular time. Also, remote hearings make it less likely to settle and create less time for discussion, negotiation and narrowing the issues in advance.

There is a pressure on physical courtrooms at Derby which obviously has an impact. There are only two proper courtrooms which are used by the CJs, which is why Derby is using the magistrates court and Chesterfield as outreach courts.

Listings

Broadly, listings seem to be OK. No complaints about care listings. Last week listing on 04 and 05 January for 25 and 28 January, so the timescales are not too bad.

There is a pressure from the non-molestation hearings being dealt with by solicitors from other areas to whom victims of domestic abuse are referred by the police or DA agencies. Not so much troubling local practitioners but there were nearly three hundred non mols last year, compared with just over two hundred the year before. Obviously the impact of the Covid-19 lockdown.

The listing situation has been assisted by the fact that Derby now has a dedicated Family Listing Officer.

Issue

Nick commented that there was a long delay in issuing Forms A through Nottingham. The twelve to sixteen week timescale for the FDA appears to be more honoured in the breach. Lack of DNs were holding up a lot of cases before. It was also noted that DAs are taking longer to come through.

Practitioners are dealing with divorce cases on-line but this doesn't work if both parties are represented, which is a problem.

DJ Davies did comment that the FRC has had the benefit of more staff, but it may be a lack of court dates available due to Covid-19 that is causing the backlog. The FRC consent orders are now being turned around within 7 days once they are uploaded to the FRC platform in most cases.

E-Bundles

DJ Gillespie commented that it is much easier for the court to deal with a proper e-bundle with a navigable and searchable Index. Some bundles are still being scanned in and they are difficult to negotiate, although it is recognised that not every firm has the technology. Some courts however, e.g. Manchester, are saying that all bundles must be in a bookmarked format.

DJ Davies commented that if we send a pdf to the court, there is a 20mb limit at Derby to a justice.gov.uk in box. Therefore, the bundle is 50mb it will have to be split three ways. However, there is a larger limit as he understands it on an e-judiciary account, so rather than send it to @justice.gov.uk, it could be sent directly to the Judge if the Judge has no objection to that. All three DJ's present confirmed they have no objection (and a positive preference) for bundles to be emailed to them direct by professionals.

The court are looking at a drop box facility and civil in Nottingham are trialling this for future use.

Conclusion

Fiona thanked the District Judges for their valuable time this afternoon. It is proposed to meet again in another six months when, hopefully, the lockdown will have ended and some semblance of normality may be returning!

Fiona M K Apthorpe
Secretary,
D&DLS
Family Committee

D&DLS has a new gold patron: D&G Legal

We are delighted to come on board as a Gold Patron for Derbyshire Law Society. In this introductory article I wanted to tell you a little what we are hoping to contribute and who we are.

We are a management consultancy firm helping lawyers and law firms with a variety of strategic and compliance services but more about us later.

The first lockdown did make us think about what more we could do for local law firms during what I initially thought would be a three-month crisis! We came up with the idea of preparing and presenting free practice management webinars. We gathered several leading experts and partnered with key stakeholders such as The Law Society, the SRA, the ICO and the Legal Aid Agency. What was initially thought of being a short-term project continues to this day and to date we have had over 4,000 bookings on the 25 courses we have so far delivered. Examples of topics covered include Anti-Money Laundering, Conflicts of Interest, Confidentiality, Data Security and How to Ensure your firm thrives. These webinars were recorded and are available to view at our website – **www.dglegal.co.uk**

Before the current lockdown happened, we wondered what we should do next. My colleague, Amie Higgins, who is based in North East Derbyshire, suggested that we also deliver free legal courses. Amie is an award-winning practising solicitor and who has also been a barrister. She used her connections at Garden Court North Chambers to put together an initial list of 24 courses in the areas of crime, immigration, housing, inquests, public law, mental health and family. Leading barristers are delivering these online courses. We will be adding to the list of areas of law shortly and will be working with other sets of chambers.

You may or may not have heard of us. I started DG Legal in 2000 following a career with Marks & Spencer and the Legal Aid Board. Being interested in the business of law I was keen to start my own firm advising and assisting lawyers. We have grown to become the largest provider of strategic and compliance services operating in England and Wales. My colleagues have worked for and with various stakeholders such as the SRA, The Legal Ombudsman, The Law Society, CILEx and the Legal Aid Agency.

We are very driven and strive to make a real difference in helping lawyers to best manage their compliance obligations, achieve Lexcel, CQS or SQM accreditation, handle complaints effectively, best respond to SRA investigations, write compelling tenders and increase client numbers. You can see what our clients say about us at *https://tinyurl.com/y27qle7b*

We've also managed a professional accreditation scheme for The Law Society and have advised politicians and government departments. I recently finished acting as a Commissioner in Lord Bach's review of the Justice system 'The Right to Justice'.

Coming back to helping local lawyers, we also provide for instance other complimentary services and initial advice will normally be free. For example, we offer a free service where we audit a law firm's website against the SRA's Transparency Rules. We know from experience that it's easier and better to comply with the rules and ensure the SRA's attention is with other law firms not yours! You may be interested to read the results of a large survey we undertook in 2020 that highlighted a range of issues. See: *https://dglegal.co.uk/news/sras-transparency-rules-survey-websites/*

Please bookmark our free training page at *https://dglegal.co.uk/training/2020-free-webinars/* and do let us know if you would appreciate a free website audit.

David Gilmore
W: www.dglegal.co.uk
E: *info@dglegal.co.uk*
T: 01509 214999

Saving time has never been more important, nor has working together.

'Time is precious, more valuable than money', is the old adage, though the meaning of time in a property transaction can be very different depending on your stakeholder role.

A clients' view of time is often based on outside factors, which, if misjudged, can lead to a great deal of frustration. I also don't think there are many property professionals in the UK that are happy with the current process, pipeline conversion rates or time to completion. Cases can always complete sooner.

It's clear that every party in the process would love to save time on property transactions – but how? In an industry of paper, pens and high street solicitor offices, the clients often have no technology available to them during a transaction, so are most easily pleased and ready to embrace change.

You can understand client frustrations, too. Unless you work in the industry, you can't understand the legalese, track a process through a combination of post-it notes, spreadsheets, emails and sporadic phone calls. It's no surprise that home moving is one of the most stressful experiences in life, for these reasons.

So how do we change things for the better?

In my view, the only way to meaningfully save time in the process is by creating an ecosystem that connects our community together and avoids bringing more complexity to the process with bit part solutions.

From the outset, we have taken this approach with DigitalMove. From property listing, all the way through to legal completion, we are laser focused on how every interaction can be communicated to every stakeholder. I am sure I speak for all conveyancers when I say nobody wants *"yet another log in"* – by focusing on the touchpoints and interactions, we can have a holistic view of every transaction and remove these sorts of barriers from the technology solution.

This relies on all parties buying in to the solution. Many businesses are hostages to habit and their internal systems, and some firms have developed their own technology in-house, believing it will give them greater control. However, very few businesses have the resources to develop and maintain in-house systems, making our solution, DigitalMove, a much more attractive proposition.

The future for property technology lies in companies becoming open and willing to engage with others in the transaction community. We are bringing that future into near focus, and we'd love to speak to you about how it will benefit your firm.

Tim Price,
Head of Business Development
at DigitalMove

Bell vs Tavistock: Does informed consent stand in the way of autonomy?

In a landmark court case, judges ruled that children under 16 years of age could no longer be prescribed puberty blockers unless this has been authorised by the court. The reason: under 16s are not likely to be competent enough to *"understand and weigh the long-term risks and consequences of the administration of puberty blockers"*[1]. The judgement did not stop there, though. It also ruled that where persons over 16 years of age are involved, *"clinicians may well regard these as cases where the authorisation of the court should be sought prior to commencing the clinical treatment"*. The legal challenge was brought against the Tavistock and Portman NHS Trust in London. One of the claimants was Keira Bell, who was prescribed puberty blockers at 16 by the Trust's GIDS (Gender Identity Development Service) clinic, but later regretted transitioning[2].

The High Court ruling was not quite the outcome people expected and, naturally, led to a polarised reaction. While some welcomed it as *"a victory for common sense"*, others were concerned it would curb young trans people's rights[3]. The issue of informed consent was a fundamental part of the judges' final decision. However, it also begs the question: Could informed consent stand in the way of young individuals' autonomy over matters regarding their health?

In medicine, informed consent has been a cornerstone for a long time. It rests on the principle that patients need to understand the possible consequences of their decision, prior to agreeing to or refusing certain treatment. It is *"permission granted in the knowledge of possible circumstances"*[4] rather than a simple "permission for something to happen or agreement to do something"[5].

In DNA testing, too, we must have *"appropriate and qualifying"* consent for each sample to be tested. Consent is required from each adult party that is to be tested. If the test involves a child under 16, then consent must also be obtained from a person with Parental Responsibility for that child. This is where it gets interesting: if the mother were under 16, she could give consent for her child to be tested. However, someone with Parental Responsibility for the mother would have to consent on her behalf for her own sample to be collected...which is a fascinating paradox we shall go back to in another article!

Although in the Bell vs Tavistock case treatment with puberty blockers would not be undertaken solely on parental consent, it was argued that *"if the child's consent was rendered invalid, the treatment would continue to be lawful if the parents had consented."*

Case law offers a mixed bag of conclusions on that matter. In Gillick vs West Norfolk and Wisbech Health Authority [1986], the House of Lords reached a majority that a doctor could lawfully give contraceptive advice and treatment to a girl under 16, without the consent of her parents[6]. But this could only be done if she demonstrates sufficient maturity and intelligence to understand the nature of the treatment.

In *Re W (a Minor) (Medical Treatment: Court's Jurisdiction)* [1993] Fam.64, the court ordered that a girl under 16, who was suffering from anorexia nervosa, be transferred to hospital specialising in eating disorders[7]. This was against the girl's wishes. Although she was considered to have sufficient intelligence and understanding to make informed decisions, it was ruled that she should still receive treatment. The court emphasised that due to the nature of anorexia nervosa the patient does not wish to be cured but fulfilling such wishes could lead to severe consequences or even death.

Unlike contraceptive treatment and anorexia - or even DNA testing - not enough is yet known about the long-term effects of puberty blockers. This arguably makes achieving informed consent almost impossible both for parents and children, as the information given to either party would not be exhaustive. Therefore, it is not only the patient's age that impacts on their ability to make an informed decision - it is the quality of the information, too. Clinicians must not be blamed for this, however, since they can only provide what is currently available from research and the literature. Every scientist would agree there is always more to explore on any topic, but when the knowledge gaps about a treatment are so significant, access to it should be regulated with the utmost strictness.

Of course, age cannot be entirely ignored either. Adolescents' ability to assess the long-term consequences of certain treatments may come under scrutiny. A child's experience of gender dysphoria must not be invalidated, but when the remedy could have irreversible effects on a person's fertility and sexuality – experiences someone under 16 may not have been through yet – deciding whether such medication should be prescribed must not be rash or emotional.

With that being said, young people's ability to make decisions regarding their own health must not be taken away from them. However, institutions also have a responsibility to safeguard children's wellbeing and step in, if and when absolutely necessary. It is a delicate balance to strike and an individual approach would be required in each case. But when the consequences are likely to be very serious and much remains unclear about the long-term side effects of a treatment, the informed in *"informed consent"* can become elusive and further scrutiny is required to protect vulnerable children.

About the author:

Dr. Neil Sullivan is General Manager of Complement Genomics Ltd (trading as dadcheck®gold). The latter is a company accredited by the Ministry of Justice as a body that may carry out parentage tests as directed by the civil courts in England and Wales under section 20 of the Family Law Reform Act 1969.

Please see: **www.dadcheckgold.com**
Tel: 0191 543 6334
e-mail: *sales@dadcheckgold.com*

EXPLANATION OF TERMS

Puberty blockers, also known as hormone blockers, are used to delay puberty. They supress the release of sex hormones, including testosterone and oestrogen, and stop the body from developing breasts, periods, facial hair or deeper voice[8]. The medication is prescribed to young people experiencing gender dysphoria, as well as to treat premature puberty in children. It is described as physically reversible, if stopped, but it is not known what the psychological effects may be. It is also unclear if puberty blockers affect the development of the teenage brain or children's bones[9].

Gender dysphoria is a "sense of unease that a person may have because of a mismatch between their biological sex and their gender identity"[10]. It could be so intense that it leads to feelings of depression and anxiety. According to the NHS, other signs of gender dysphoria include low self-esteem, becoming withdrawn or socially isolated and taking unnecessary risks[11].

Transgender describes a diverse group of people whose internal sense of gender is different to the one they were assigned at birth. To attain transgender status in the law, an individual must be diagnosed with gender dysphoria by a professional and then apply for a gender recognition certificate under the Gender Recognition Act, 2004[12].

Notes

[1] Bell -v- Tavistock judgment (judiciary.uk)

[2] Puberty blockers: Under-16s 'unlikely to be able to give informed consent' - BBC News

[3] Puberty blockers ruling: curbing trans rights or a victory for common sense? | Society | The Guardian

[4] Informed Consent | Definition of Informed Consent by Oxford Dictionary on Lexico.com also meaning of Informed Consent

[5] Consent | Definition of Consent by Oxford Dictionary on Lexico.com also meaning of Informed Consent

[6] UK, Gillick v. West Norfolk and Wisbech Area Health Authority (hrcr.org)

[7] Re W (A Minor) (Medical Treatment) - PubMed (nih.gov)

[8] What are puberty blockers? - BBC News

[9] Gender dysphoria - Treatment - NHS (www.nhs.uk)

[10] Gender dysphoria - NHS (www.nhs.uk)

[11] Gender dysphoria - Signs - NHS (www.nhs.uk)

[12] Gender Recognition Act 2004 (legislation.gov.uk)

Family Matters

Chris Makin

Accountants are into everything, aren't they? And especially when things go wrong. In these pages you will have read (I hope) about how an accountant can act as expert in commercial litigation, act as mediator in commercial disputes, investigate fraud, trace and quantify the extent of the ill-gotten gains of the drug trafficker and much else besides.

But expert accountants have a valuable part to play in family disputes, too. I have acted for many years as an expert in family matters, and my work falls into three main areas: as party expert, as shadow expert (or expert adviser), and as single joint expert (SJE).

An expert is allowed to act on the record only with the judge's permission, and traditionally, the party expert is involved only in the "big money" cases. I have been involved in many such cases, but let us turn our attention just to one.

I acted as expert for a husband who with his wife had two businesses. One was an industrial waste business: it had a fleet of skip wagons, bringing in waste from factories across Surrey, to waste transfer stations where any recoverable waste was recycled and the rest went to landfill. The other company owned a huge quarry (in the greenest of Surrey green belt – quite an asset!) where gravel was extracted and the landfill was dumped. My opposing expert advised that, to achieve a clean break, the husband should take the waste company and the wife should take the quarry company. I saw that as plain daft, for what would the wife use to backfill the quarry? And where would the husband dump his landfill, in Surrey of all places?

My solution was far more sensible: let the husband keep both companies, since there was a "marriage" between them, and let the wife take the family mansion and the bulk of the investments. She could live on the investments, and the husband could continue his successful pair of businesses. And so it was decided, without the need for a court hearing.

There is also the need for a forensic accountant where there is deep suspicion between spouses. Two quick examples.

In one, the husband had a company selling computer hardware and all the add-one services: installation, support, training, etc. His website preached the advantages of this comprehensive service. Then he left home and set up with a lady who had a company providing very similar services. His company's profits declined; he said he had had to give up many of the services because they were no longer profitable.

I took a print of the husband's company's website at an early date, and currently. He used to have a long list of services, but most had disappeared. Yet – surprise! – a print of the girlfriend's company's website currently showed that she was offering all the services which the husband had discontinued. Then inspection of the husband's company's sales ledger showed that the regular income from his clients with service agreements petered out. It wasn't necessary to look at the girlfriend's books, even if I had been allowed; it was obvious what had happened. The family proceedings were quickly settled on the basis of what the husband's company would have been worth if the trade had not been diverted.

Then an example of the power of *Hildebrand* – remember that case? I acted for a wife whose husband had a very large IT company. There were large amounts being paid in consultancy fees - always an area ripe for investigation. My client printed out a lot of material from the notebook computer which the husband had left at the matrimonial home and discovered that there were many invoices for consultancy services. My investigations revealed that they were false: one set had been invented in the name of a relative of a junior director with an unusual name, who in fact was resident in Australia; and the other set were ostensibly issued by an Eire company which I discovered from a search at Irish Companies House had been liquidated five years earlier! I regret the overturning of *Hildebrand* by *Imerman*, for how else could justice have been served?

To more mundane matters. These days, district judges are most unlikely to permit party experts to act; they much prefer SJEs. The reason is obvious: if there is only one expert, there will be only one valuation (or a narrow range of valuations) produced by that expert. So the judge doesn't have to make a decision between £1million and £nil. I have acted in a huge number of such cases, and the need for valuations of the family business is clear: with a clean break, it is necessary to determine the value of probably the main asset of the marriage which only one party can take out, namely the family business. An accountant is needed not just to advise on that value, but also to advise on the tax consequences of the business being divided up or passed into the hands of just one party. And if a clean break is not possible, the court will need to know what income such a business can yield, so as to fund periodic payments.

One of the problems encountered increasingly these days is the family business which has provided the couple and their children with a good income in the past, but which may have suffered badly in the recession. I recall one a few months ago – exceptionally for a reasonably small enterprise there were party experts. My opponent had valued the business at about £1million by stretching logic in favour of the wife (the expert's fees were paid by a rich daddy) whereas I acted for the husband and valued the whole enterprise at £nil – I saw that it was on skid row. When the husband was being cross-examined, he said that business was so bad that he was applying for a CVA for his company and an IVA for himself. His arrangements failed, the company went into insolvent liquidation and he went bankrupt. Good news: I was right, the business was worth nothing. Bad news: I didn't get paid! And this is something of which family lawyers must be acutely aware: is the business worth fighting over? There may be a moral here: ask your expert accountant early on if there is a worthwhile battle to be had, or a Pyrrhic victory.

So there we are: a scamper through the need for accountants in family proceedings. I did say that accountants get involved in everything!

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

chris@chrismakin.co.uk

The responsibility of experts in relation to their written evidence

A recent judgment from the Honourable Mr Justice Marcus Smith provides a cautionary tale for experts.

The judgment contains the following in section 13: ***(H)*** The last point that I make in relation to Professor Morgan's evidence concerns less his oral evidence and more the written reports he submitted before the hearing and which he affirmed represented his expert opinion when he gave his evidence in-chief. I am afraid that Morgan 1 and Morgan 2 (Morgan 3 is a short and not particularly material report) were, in critical respects, disingenuous documents, written in a manner that seemed to me calculated, not to assist, but to mislead, the court. I am very conscious that this is the most serious criticism that one can make of an expert, and I do not make it lightly. The main points that have compelled me to this conclusion are dealt with fully in paragraphs 62 and 67 of this judgment, and I have sought to be clear throughout this judgment why I am not accepting evidence on certain points. Because the points go very much to the substance of the issue that I must determine, it is not possible to anticipate them here, save in the most general of terms. Suffice it to say, for the reasons given in these paragraphs, I am not confident that I can rely on Professor Morgan's reports, save with a degree of caution and reserve that a judge would not normally attach to the report of an expert.

(I) As is normal practice, a draft of this judgment was circulated, on terms of strict confidentiality, to the parties and their legal advisors. Professor Morgan did not see the draft. Counsel for Mylan - in addition to identifying typographical errors and making other points - questioned the appropriateness of my criticisms of Professor Morgan, and referred me to the decision of the Court of Appeal in Re W ([2016] EWCA Civ 1140), a case which considered (in rather different circumstances) the extent to which it was appropriate to make factual findings in relation to persons not directly before the court (i.e., witnesses not parties), but named as part of a fact-finding exercise conducted by a judge in the Family Court. Whilst I do not consider Re W to be precisely on point, I have re-visited the draft with Mylan's points regarding Professor Morgan specifically in mind. I am grateful to Mylan for raising the matter so clearly - it was right to do so. However, having considered the matter most carefully, I have not materially changed the terms of the draft, and I should explain why:

(i) An expert is responsible for his or her evidence, including the precise wording of any report submitted to the court under the name of that expert. In many cases, the expert will be in need of, and will receive, assistance from the solicitors (or other lawyers) who have retained that expert. That is entirely understandable, but only serves to enhance the importance of the expert being entirely satisfied that his or her opinion is properly reflected in the report(s) submitted in that expert's name. This is the duty of the expert, and it is not one that can be delegated.

(ii) An expert will be giving opinion evidence in relation to a subject-matter with which a lay person - specifically, in this case, the judge - will be unfamiliar. That is why the evidence is needed. It is incumbent on the expert not merely to present evidence that is technically correct, but that makes a fair presentation of the expert's opinion. If the expert does not do that, then criticism is liable to follow.

(iii) It must be emphasised that such criticism is not intended in any way to be personal or punitive. It is an intrinsic part of assessing the weight to be attached by the court to the expert evidence that is adduced before it. The criticisms that I have made of Professor Morgan must be seen in this light. They are made purely and simply because I need to explain to the reader of this judgment precisely why I have preferred - on critical points - the evidence of Professor Roth over that of Professor Morgan. That has involved a very close parsing of material parts of Professor Morgan's written evidence, together with the oral evidence he gave in relation to that written evidence.

(iv) To put the same point differently: it would be unacceptable for me to say simply that I preferred the evidence of Professor Roth over that of Professor Morgan, without saying why. Oftentimes, the "why" will turn on technical matters of legitimate dispute between the experts, and the judge will explain why the approach of one expert has been preferred over that of another, it being accepted that each expert was doing his or her best to assist the court. That is the ordinary case. This - for reasons that I have set out in this judgment - is not such a case.

(v) The suggestion was made that the substance of the criticisms I have made of Professor Morgan's evidence were not put to Professor Morgan. I do not accept this contention. All of the aspects of Professor Morgan's reports that I have seen fit to criticise were put to Professor Morgan by Mr Waugh, QC. I have - as is my duty - drawn my own conclusions from the totality of the evidence. The manner and form in which I have evaluated Professor Morgan's evidence in light of the totality of the evidence is - as it should be - a matter for me.

Simon Berney-Edwards

Digital transformation and the evolving family law

The challenges posed by the pandemic have caused law firms to reappraise the way they work and how they integrate with their clients. One area of law particularly affected is family law. The pressures on people suddenly confined to spending more time at home together have led to divorce applications and break-ups skyrocketing across the UK.

John Espley, CEO of LEAP legal software, details 5 key challenges currently being faced by family law firms and advises on developments in technology that have enabled these challenges to be overcome, enabling effective working and continued provision of this valuable service.

CHALLENGE 1: MAINTAINING CLIENT CONTACT

Many of those seeking the help of family lawyers during lockdown are in a vulnerable position. Often it is not the right time or place to make private phone calls, so it is necessary for firms to provide their clients a simple, effective, and alternative way for them to get in contact.

Providing a digital gateway and enabling your services to be accessed through an online platform is essential, whether that be via your existing website or a dedicated platform that offers your client self-service capabilities, these portals are assuring client privacy, providing access to valuable information and services and allowing the vulnerable to get in touch when it is the right, and safest time for them to do so.

CHALLENGE 2: MARKETING FAMILY LAW SERVICES

With less social interaction caused by restrictions, we have seen a drop in referral rates for many practices as prospective clients are unable to speak to friends offering referral advice.

To maintain a regular flow of incoming business lawyers are having to work much harder and invest more of their time in self-promotion.

Given the last year, a key selling point of firms at present is if they can offer fully digitalised support, servicing the needs of the client remotely. If this is the case, they must make this central to their promotion. It will win them business and help the firm stand out from the competition. At LEAP we invest over £12 million per year developing software that integrates seamlessly with leading providers in their field so that firms can offer their clients tools that provide them a complete and uninterrupted remote service such as video conferencing, secure and personal document sharing and appointment scheduling during these challenging times.

Additionally, you must review your website. Does it look professional? Has it become dated? Is it easy for clients to submit an enquiry? Does it communicate your services well enough? Does it get across the identity that you want to present for your practice? Having spoken to a number of family lawyers recently it was interesting to hear how clients value empathy above everything else. If your firm takes pride in listening to, and understanding the needs of your clients, responding appropriately to their individual requirements and concerns, this is something that you must stress in all your promotion.

We recently launched our own accreditation scheme, the Family Best Practice Standard, which encourages firms to achieve a recognised level of service excellence through their use of our software which ultimately provides real value to the end-user in terms of the service they receive. For firms that have already achieved this accreditation it becomes a fantastic marketing tool, a certification mark that assures new clients that you are who you say you are, and provides them with confidence that they are dealing with a lawyer who will provide an experienced and competent service.

CHALLENGE 3: ADAPTING TO LEGAL CHANGES

As practitioners are working remotely, keeping abreast of regular changes in legislation can be a challenge. For our firms, a real benefit has been the availability of a large library of up-to-date family forms and precedents accessible within the software, as well as our integration with By Lawyers. This means family law practitioners need worry less about compliance and benefit from real-time access to current legislation, practice changes and court guidance when working from home.

CHALLENGE 4: SIMPLIFYING THE FINANCIAL STATEMENT, THE FORM E.

By way of family form automation, a welcome addition for family lawyers is our latest development streamlining the production of the Form E. Traditionally a very time-consuming process, we have created a new solution within LEAP that simplifies the completion of this usually complicated document, meaning firms spend less time chasing for client information. The real game changer for them is that this powerful app enables the client to complete the details of the form themselves, in their own time, online, and hence with less margin for error. Once complete, this data synchronises with LEAP and enables the production of a Form E for the client to sign electronically before submission to court.

CHALLENGE 5: VIRTUAL COURT HEARINGS

Although more streamlined, the move to virtual court hearings has created several issues. Family lawyers have had to adapt quickly to different ways of doing things and technology has played a big part in enabling them to do this. As well as mastering video conferencing technology (don't be like the American "cat" lawyer!) family lawyers have had to get to grips with e-bundles.

Employing a viable tool that enables bundles to be created in line with court requirements has become essential. This fast adoption of e-bundling has eliminated the need for traditional, time-consuming hard-copy bundles, printed in bulk, duplicated and couriered to all parties involved. The pandemic has greatly advanced the way that bundles are collated and used, bringing a long-term improvement to the court process.

Helping firms to adapt quickly to online court hearings, over the past year we have developed integrations with user-friendly, web-based bundling solutions so that lawyers can, using the information held in LEAP, create professional, presentable, and cost-effective e-bundles in minutes not hours.

For the client, having to go to court can often cause anxiety, so remote hearings are welcomed by some as it takes the emotional sting out of the hearing and removes face to face encounters. However for the family lawyer, although a more efficient use of their time, attending court 'remotely' requires instant access to the latest client, matter and bundle information from one convenient location, accessible when needed, which thankfully for them, LEAP affords.

The last year has been incredibly challenging for the profession and it's vital for family lawyers, especially when working remotely, to continue to provide a comprehensive service to their clients. At LEAP we are committed to developing software to help lawyers help their clients and we offer a fully remote implementation to helping law firms start doing so as quickly and as effectively as possible.

About LEAP UK

LEAP is a cloud-based practice management system with integrated time recording, billing and client accounting. LEAP has been developed specifically for small to medium-sized law firms. The software's powerful features allow fee earners and legal support staff to manage their matters more efficiently and profitably from anywhere, anytime and from any device.

With an investment of more than £8m each year into research and development, LEAP continually strives to deliver a product that meets the demands of its users. This ensures that law firms using the software benefit from affordable, yet highly innovative technology.

LEAP simplifies a law firm's IT infrastructure and provides a world-class system for lawyers and staff to work from home.

Currently supporting over 2000 law firms across the UK and Ireland to streamline their practices, LEAP has offices in London, Manchester, Brighton, Edinburgh, Cardiff, Belfast and Dublin. LEAP Web: **www.leap.co.uk**

LEAP
Legal practice management software

Court overturns decision giving solicitors contractual entitlement to indemnity costs

A judge has struck down a clause in a law firm's retainer that required the client to pay costs on the indemnity basis if she failed to pay her invoice in time.

Mr Recorder Cohen QC, sitting in Central London County Court, ruled that the provision contravened the principles of good faith.

South-west law firm Ashfords acted for Carmen Chevalier-Firescu on an employment law matter, proceedings which she did not consider to have been *"satisfactorily conducted"*, the judge noted.

Ashfords billed her £6,779, which she did not pay. It pursued a claim on the small claims track and District Judge Worthington – *"who it is right to observe was critical in a number of respects, some of which he found to be fundamental, of the quality of service of the claimant's solicitors"* – awarded the firm £3,849.

The retainer provided: *"We may charge you an administration fee of £75 plus VAT and our legal costs on an indemnity basis for any overdue invoices which are referred to our Asset Recovery Department."*

The firm argued that this overrode the costs provision of the small claims track in rule 27.14 so that the district judge was obliged to order costs on an indemnity basis. He did so, and assessed them at £3,080, having reduced the sum claimed from £3,880. Ms Chevalier-Firescu appealed.

The recorder decided that the clause has *"an effect which is unusual, perhaps even abnormal"*. He explained: *"What it does is to impose significant obligations on clients, especially when dealing with matters that are not large in scale – both to pay legal costs of proceedings when they would not be required to do so and for those costs to be assessed on a basis which the court would not use in the absence of unreasonable behaviour.*

"The unusual or abnormal effect is well illustrated where disputes arise as to the bill, as did they in this case, and the court found in favour of the client to the degree that it felt that a substantial reduction was necessary in the solicitor's bill."

Mr Recorder Cohen noted that the clause had not been highlighted in the client-care documents, which was particularly relevant given that this was an *"ordinary"* client, rather than a large commercial client.

He said he had *"no hesitation"* in finding that the clause caused "an imbalance between the parties".

He went on: *"It significantly penalised the solicitor's clients in the event of default. It did so without attention being drawn to the clause in several pages of detailed terms, or in the key terms, or other explanation. In my judgment, therefore, it contravened the principles of good faith."*

Mr Loveday appeared on behalf of the appellant, Mr Griffiths on behalf of the respondent.

Anti-money laundering back in the spotlight for conveyancers

Recent AML audits by the SRA have once again highlighted the challenges of AML compliance for the conveyancing industry. As we know, conveyancing is one of the highest risk areas for AML so, if your practice hasn't yet been audited by the SRA, the chances are that it will happen at some point in the future. With that in mind, we've put together a quick update for conveyancers with some practical tips to help with AML compliance.

What have the SRA audits identified?

Although emphasising that most law firms take AML very seriously, as a result of the audits, the SRA has identified that there can often be a difference between a firm's AML policies and procedures and what actually happens in practice. Nearly two thirds of firms reviewed needed some form of engagement with the SRA and a further nine were referred to the SRA's AML investigation team.

The SRA team found that half of the files they reviewed had issues such as lack of due diligence – examples included the client being known to the partners, expired documents and client due diligence records not being accessible to appropriate staff.

Additionally half of the firms the SRA dealt with were failing to carry out effective audits. For example, although the MLRO / MLCO can contribute to the audit, it needs to be overseen by an independent party.

A full report on the findings can be found on the SRA website(i). To view the most up-to-date AML guidance compiled by the Legal Sector Affinity Group, please visit the Law Society website(ii). This guidance replaces the Law Society practice note on AML.

How an electronic AML check can help

Although an electronic AML service can't do all the work for you, it can certainly help your conveyancing team to meet many of the Directives' requirements. The key features of an online service are that it:

- Automates your risk assessment based on multiple checks (number of checks depends on different profiles).
- Provides automated screening of sanctions, PEPs and alert lists
- Automates record keeping and audits, removing expired data
- Offers both simplified and enhanced due diligence
- Monitors compliance of clients and the firm, with downloadable reports
- Ensures on-going due diligence, creating alerts for non-compliant documents or data

Please note, however, that it isn't sufficient to merely rely upon an automated service to meet AML requirements. Law firms and more specifically, Money Laundering Compliance Officers, are still responsible for ensuring that clients are who they claim to be. This means ensuring a risk assessment policy is in place (and reflected in the AML service being used), that the automated service meets all your requirements and being aware of the sources of data used in assessments. The world of identity checking is changing very quickly so, if you already use an automated service, we recommend checking the latest features with your supplier.

The Geodesys AML service offers you all of the above features through a single AML dashboard that's incorporated into our ordering site. You can carry out both a simplified or enhanced search and we can help you with setting up your risk profiles.

For further information of our AML service and to arrange a demo, please contact Kay Toon, Geodesys Account Manager on 07764 987259 or email *kay.toon@geodesys.com*

(i) https://www.sra.org.uk/globalassets/documents/sra/research/anti-money-laundering-aml-visits-2019-2020.pdf

(ii) Legal Sector Affinity Group anti-money laundering guidance for the legal sector https://www.lawsociety.org.uk/en/topics/anti-money-laundering/anti-money-laundering-guidance

GEODESYS
Conveyancing covered

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

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

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

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

Family law

The emotional pressures of isolation and lockdown have taken an unfortunate toll on families. Compared to January, we've seen a 25% rise in September in family law matters relating to divorce, childcare and financial remedy due to relationship breakdowns. Child protection applications are up and property and investment values are also in flux or freefall. This all makes financial settlements harder to achieve.

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

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

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

Private client law

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

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

Conveyancing

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

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

Employment law

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

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

More steady areas – legal aid, criminal and immigration

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

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

Slower areas to recover: Commercial and civil law

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

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

Planning for the future with technology

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

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

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

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

In summary

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

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

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

About Quilldex

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

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

Landmark Planning:
A Clearer View of Future Plans

Here at Landmark Information, we have provided planning application insights and data for residential property conveyancing through for many years. I recall the now legendry Bird & Bird transaction case, in which the conclusion found that 'Changes to the surrounding environment, brought about through development are an important factor in protecting a client's investment pre-acquisition'.

Of course, a preference or indifference to planning proposals in its various forms is very much a personal view. Property lawyers and conveyancers may air on the side of caution following guidance, preferring to simply understand the proposed purchase property and to rely on the seller's information. Homebuyers, however, have a right to understand any impact, positive or negative, that a nearby development may have before they commit to a purchase.

It is important to be aware of any potential changes within the surrounding area that would affect the use, enjoyment or even value of a property from planning and building regulation decisions. But how do you make the extent of a development application clearly understood?

As part of Landmark's ever-evolving data and technology provision, we have recently merged our Plansearch reports into a newly enhanced Landmark Planning.

Uniquely, the report displays data on the majority of the UK's large planning applications, such as a new housing estate, as polygons (boundaries). This means both conveyancer and client will benefit from a visually clearer, more realistic view and understanding of the extent or potential impact of larger planning applications, rather than relying on a list, single mapped point or buffer to work it out.

The report not only delivers details of planning applications from extensions to large developments but also provides information on what future uses of land are being proposed for the surrounding area, alongside the Local Authority policies and constraints. It also includes key neighbourhood information such as:

- Housing
- Demographics
- Schools
- Local amenities
- Rights of way

To help both property conveyancer and client, all the data within the report is supported by easy-to-understand guidance and next steps.

Determining what is important to the home buyer with regards to planning can be difficult and can lead to large amounts of time being spent on reviewing data which is not of interest or concern to the home buyer. Large volumes of data can also lead to the homebuyer missing important information about their purchase.

Landmark's gold standard all in one enviro-report RiskView Residential removes this pain for the legal conveyancer and home buyer by presenting planning applications, including the large sites as polygons and constraints through its advanced, simple to use, dynamic online viewer. The viewer includes a date filter which allows the homebuyer reduce the amount of data presented and helps to provide focus on what really matters to them. In some cases, reducing hundreds of applications down to just three or four.

The Riskview viewer includes (where possible) a clickable weblink for each recent planning application. The homebuyer can then look further into the application via the authority planning portal. Together, RiskView's unique time-saving features help the property professional add value to their home-buying client whilst reducing time spent dealing with planning related enquiries.

The Government is still committed to 300,000 new homes per year even these unprecedented times. The Prime Minister's 'Build, Build, Build' speech in July last year was followed by a series of new laws that came into effect on 1 September 2020. The aim is to deliver new homes and revitalise town centres across England alongside a permanent extension to the existing permitted development rights.

In the current climate, who can guess the impact of these laws? To what extent will they change the places we live, or want to live?

Whatever the future holds, surely the best outcome for conveyancers and homebuyers is a more transparent transaction, which provides the insights needed for informed decisions.

Selecting the Landmark Planning report or Riskview Residential demonstrates good due diligence in taking all practicable steps to reasonably identify information that the client would want to know.

Allie Parsons,
Customer Success Consultant,
Landmark Information (Legal)

www.landmark.co.uk

Revised Anti-Money Laundering Professional Guidance now in Force

The SRA, acting in conjunction with all of the other legal regulatory bodies in the UK as part of the "Affinity Group", has now published its updated professional guidance on how those affected by the Money Laundering Regulations must ensure compliance with them. Noticeably longer and more detailed than the previous guidance, the clear message is that compliance is not optional, and that ignorance of what is now required of firms will not stand in the way of regulatory, and quite possibly, criminal sanctions.

There is an important cautionary note here if you are one of those many sole practitioners or smaller firms that regard themselves as being outside the scope of the Regulations. The position here changed some 12 months ago when the Amendment Regulations took effect, mostly in order to give effect to the Fifth EU Directive. One of the more significant changes made then was to the definition of who would be regarded as being a "tax adviser", and as explained by the SRA in their guidance note from late last year. The revised definition is now described by the regulator as being "broad" and extending "beyond providing advice and includes assistance and material aid".

The net effect of this is that even if the firm excludes liability for questions of taxation in the work that it undertakes it will still now be regarded as being a tax adviser if, for example, it advises a client that there are possible tax implications to what is being planned and suggests that the client should seek specialist help on the issue from elsewhere. This may well mean that smaller firms focusing on such areas as family or employment work may now be seen to be regulated firms, and so will need to ensure that the regulatory requirements are now being met.

For the most part the revised guidance does not change the regime that those who have been regulated for some time will be familiar with. Rather, it provides more guidance on some of the more troublesome elements that have been part of the regime for many years. Still, however, the main practical problem is that there is no one standard approach that will guarantee that all firms are compliant with what is now expected of them. The levels of funds that might seem standard in large commercial departments are quite likely to seem anything but for a specialist commercial law adviser more used to lower value transactions. For this reason the importance of the firmwide risk analysis exercise that is required by r.18 of the Money Laundering Regulations and its importance in shaping each firm's individual AML policy and procedures is again stressed.

The risk assessment process is explained in more detail at section 5 of the new note and should probably now be seen as the first very clear "to do" item for those firms subject to the regulations. You should set out to undertake the review of your "Policies Controls and Procedures" as now required by section 5. This is also likely to be a timely step since it is now just over a year since the SRA demanded of firms that they should certify to them that they had undertaken such a risk assessment, and since the need to keep this under constant review is stressed the review should be seen as the first step to take now in a review of each firm's policy and procedures.

Throughout the revised guidance there is a greater degree of explanation on the various aspects that have long formed part of the overall AML regime, such as the attempt made to clarify the operation of the law of privilege in the reporting of suspicions to the National Crime Agency. Elsewhere there are also updates covering other provisions which have taken effect since the last edition of the guidance note appeared in 2019. Amongst such content see those dealing the requirements of BOOMs (beneficial owners, officers and managers) at 4.2.1-3 and the new section 7 on technology. It is recognised that checking the identity and address details of individual clients without having met them in person has now become more commonplace, but that technological advances can serve to reduce the increased risk of not being able to do so. Finally, private client lawyers in particular should note the relatively new provisions on the registration of taxable trusts at section 12.4.

In summary, the challenge now is to ensure that the necessary systems are not just in place, but that they are also proving to be effective. In the meantime law firms large and small can expect greater regulatory attention in this regard, and a less sympathetic response when problems arise.

Matthew Moore is a solicitor and one of the directors of Infolegal Ltd which provides compliance support on this and other regulatory topics: mattmoore@infolegal.co.uk.

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