

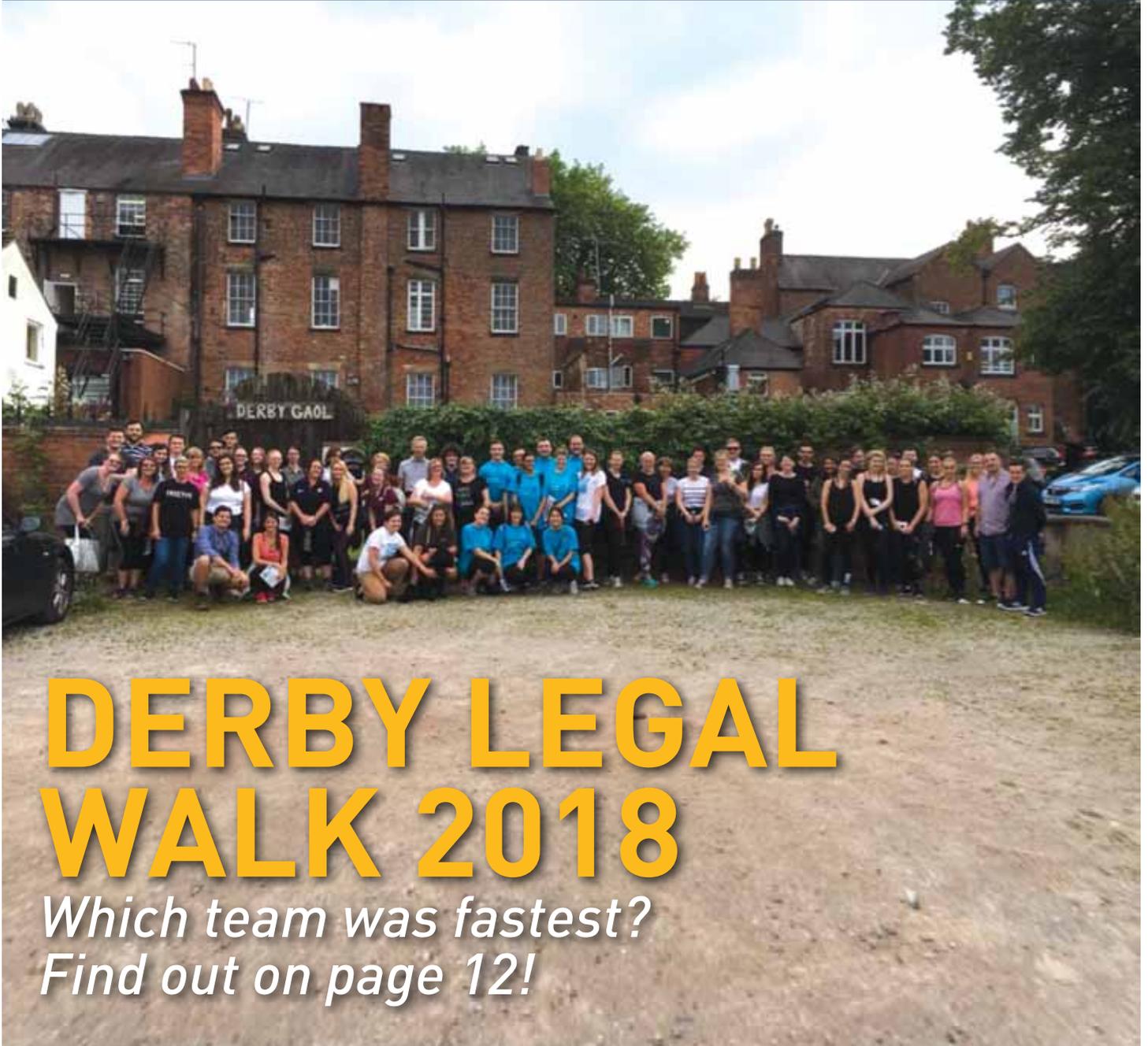
# D&DLS Bulletin

Derby & District Law Society



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

Aug / Sept 2018



## DERBY LEGAL WALK 2018

*Which team was fastest?  
Find out on page 12!*

**Also in this issue:** New column - Words of Wisdom • Council Member's Report

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## Editorial



Summer is a quiet time for DDLS - things go into slow motion as most people take holidays and this year the added joy of the country grinding to a standstill to watch the football. For those of us not particularly interested the early evening of Wednesday 11th July was like an eerie ghost town in Derby as fans panicked to be home in time to open the beer before kick off. Also in the strange Summer time warp I will be proof reading this Bulletin sitting on a sun lounger in Spain, but home feeling depressed by the time you read it.

Following the success of the Derby City Schools Debate Competition, which we plan to repeat in the next school year, DDLS have decided to set up a Social and Community Projects Committee. So far Sue Jennings and myself have "volunteered" and are looking for other interested members to please contact me. We are proud of the growing links that DDLS has into the local community and with organisations such as E4E. By co-ordinating our resources we can identify or set up projects that DDLS want to be involved with to raise the positive profile of the Profession and benefit the local community. This is not intended to include pro-bono work - the Debate Competition "cost" less than £100 - it a fantastic example of

what can be achieved when a few organisations work together and the people within those organisations are willing to give up some of their time. If you are interested in being involved please e-mail me.

I am thrilled to say that I have had an idea from Chris Green about a "Words of Wisdom" column for the Bulletin. Chris has been bold enough to write the first of these and it appears on page 15 . Any other offerings please let me have them - with a photo if you can. Any advice on quirky points of law, experiences, good habits, drafting points or even mistakes made and lessons learned the hard way (I could publish those anonymously?) all gratefully received. The readership of this Bulletin is broad both geographically and range of practice so please share thoughts and advice.

**A reminder that the DDLS v Notts Law Society Cricket match is on the 30th August at 5pm at Attenborough Cricket Ground.** Supporters are welcome - the bar will be open.

Enjoy the rest of the Summer

**Julia Saunders**  
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Published by:  
EAST PARK COMMUNICATIONS Ltd.  
Maritime House, Balls Road,  
Birkenhead, Wirral  
CH43 5RE  
Tel: 0151 651 2776  
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www.eastparkcommunications.co.uk

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© East Park Communications Ltd.

Design  
David Coffey

Accounts  
Tony Kay

Published  
August/September 2018

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		Ruth Jones (01332346084) Natalie Yeung (01332 331631)	

# President's Page



Plans are now almost in place for the cycle in April 2019 to raise money for the incredible Derbyshire Children's Holiday Centre. I am awaiting final confirmation of the date and route but the event will involve a cycle around our beautiful county, taking in as many of our member firms as possible. As soon as the plans are finalised, I will send out the details.

Finally, on Thursday 30 August 2018 at Attenborough Cricket Club, Derby and District Law Society will be taking on Nottinghamshire Law Society in the annual cricket match. Unfortunately, as a Society we are hoping to avoid a hat trick of defeats. If there are any cricketers out there, please get in touch. WE NEED YOU! Whether you are interested in playing or not, it would be great to see you there for what I hope will be a celebratory drink.

**Ben Lawson,**  
President, 2018-19

It has been a quiet first few months as President but I was very grateful to our friends at the Derby Law School for inviting me along to their Annual Dinner at Pride Park. I had a lovely evening but what really struck me was the amazing relationships the students had developed with the Law School staff. They celebrated together not as students and lecturers, but as friends who had collaborated towards a common goal of achieving the best possible grades. The University of Derby continues to improve and I was pleased to recently read that once again, it had climbed another league table. I am in no doubt that the relationship between staff and students is part of the reason for the improved ratings. As a Society, I believe that we can learn from the University's approach. If we are able to improve collaboration locally, whether that is by getting involved with the committee, submitting ideas for future events or attending the events, we will all benefit from a more active local Society. With that in mind, it has been great to welcome so many new members to the Society over the past couple of months and I hope to see you all at our upcoming events.

The only other engagement since the last Bulletin was the Derby Legal Walk. I want to take this opportunity to thank everyone who took part, including The Hon Mr Justice Jeremy Baker who not only participated, but despite spending the entire 10k walking alongside me, he did not complain once. Although, maybe that explains why we completed the walk much quicker than we had expected. The Legal Walk raised almost £2,000 for the Midlands Legal Support Trust who will use the funds to support free legal advice charities. Thank you once again to everyone that took part and to those who donated.

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# Council Member's Report



Jo Egan's term of office as President of The Law Society came to an end last week and the new President is Christina Blacklaws. The other significant piece of information relating to Chancery Lane is that Paul Tennant, who was acting Chief Executor Officer, has now accepted the post of permanent Chief Executive. Everyone is absolutely delighted about this. During his time he has already made significant improvements to the whole organisation and it is a matter of great relief that he has agreed to carry on.

In my last report I referred to the *Dreamvar* case in which an appeal to the Court of Appeal was pending. In the event the Court dealt with two similar cases *P&P Property Limited v Owen White & Catlin LLP and another* and *Dreamvar (UK) Ltd v Mishcon De Reya (a firm) and another* (Law Society intervening). The report of the case can be found at [2018] EWCA Civ 1082.

I strongly recommend all Conveyancers to read the judgment, not just because of the actual result, but because it is an extremely useful checklist and reminder of various issues which arise in conveyancing transactions which people take for granted without thinking about. In particular there is detailed discussion of the Law Society Completion Code and also a cautionary tale about making sure you really do get proper ID from clients you do not know.

The result of the two cases is nothing like as bad as many people feared and indeed the Court of Appeal clarified a number of issues that were left rather unsatisfactorily by the trials at first instance.

(i) It was made clear that a breach of the money laundering regulations does not create a private right of action.

(ii) One of the arguments was in respect of breach of warranty of authority. The Court made it clear that this is to be interpreted narrowly. If a Solicitor says he has been instructed by A to act in the sale of property B, all the Solicitor is warranting is that he has a client who says his name is A who has given instructions for the transaction in question. Any attempts by Solicitors acting for purchasers to get vendor's Solicitors to make additional representations about their client should be resisted firmly both by the vendor's Solicitor, who should say it is none of the purchaser's business and by the purchaser's Solicitor, because there is no point in opening up avenues for possible litigation against that Solicitor if things go wrong.

(iii) What the cases decided was that if purchase monies are received by Solicitors for a seller those monies are held on trust for the seller (subject, of course, to discharging mortgages, etc.), so that if the money is paid to someone who is not entitled to sell the property there is a breach of trust. Section 61 of the Trustee Act allows for relief to be given where innocent breaches have occurred, but it is clear from the cases that relief will not be given if there is an innocent party who has suffered loss.

This means we all need to be sure that our indemnity insurance covers situations where we are misled into committing inadvertent breaches of trust. We also need to make sure that our insurance

cover is adequate. There is, however, a positive spin on all this. The profession can say that anyone instructing Solicitors knows

that Solicitor will have proper indemnity cover (SRA please take note) and that the client is protected if something goes wrong even if the Solicitor is in no way to blame. The number of cases where this sort of thing is likely to happen in the absence of negligence is probably extremely small and therefore there should not be a significant impact on insurance premiums. Bear in mind, however, that the level of cover you have needs not only to cover the purchase price, but also any other associated losses. In one of the cases the purchaser had already started knocking the property about before the fraud was discovered.

On a completely different note I and my colleagues on the Council Membership Committee are still wrestling with how to find ways of engaging better with the whole profession. We are making progress and a number of quite revealing anachronisms are emerging. I am more and more convinced that the most important thing is to make sure that Council Members act properly as a link between their constituents and Chancery Lane and that this is more important than the actual composition of Council itself. For example, we have discovered that although 25% of the profession work in-house and in-house has only six Council Members, those Council Members seem to have no connection with the In-House Committee which complains that the Law Society does not inform them. There is no point in increasing in-house membership on Council unless those Council Members are going to liaise with their constituents and make sure the latter's concerns are brought before the Law Society.

The Government does seem to be paying a bit more attention to representations from the Law Society, e.g. Duty Solicitor Schemes, and it may just be that the Society is gaining greater respect because of its extreme usefulness in the Brexit negotiations. There are still alarming gaps in the system and one of the most outrageous seems to be in the situation where defendants are substantially out of pocket having been acquitted in cases which should never have been brought in the first place. There have been far too many cases reported recently where this has been the case. At last week's Council meeting there was an extremely interesting and valuable discussion about Access to Justice and you can be assured that everything is being done that can be done by your Society.

## Council Member Michael Williams

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# Family Law Committee

## Minutes of a Meeting of the Derby & District Law Society Family Law Committee on 10th July 2018

### Present:

Fiona Apthorpe (Secretary)  
Fiona Lazenby  
Diana Copestake  
Lucy Tissington  
Nick Herbert

### Apologies:

Ben Lawson  
David Guthrie  
Liz Guyler  
Manesha Ruparel  
Melanie Bridgen

### No Apologies:

Ruth Jones  
Vince Beckwith  
Janine Hobday

## 1. MATTERS ARISING

### 2. AGENDA ITEMS

#### 2.1 Presentation on drafting Consent Orders

With hopefully appropriate humility, and the disclaimer that she cannot speak for the local judiciary as a group, Fiona has volunteered a presentation on trips and traps in drafting consent orders. This was provisionally arranged for 29 August but as this is in the school holidays and as there is a Family Committee Meeting on 12 September it was resolved to hold it on that date at 4pm at Geldards' Derby office. All plus any colleagues welcome but we will need RSVPs to ensure we have capacity. Fiona explained that the EMDU is incredibly under resourced and that the "return rate" on consent applications is not helping matters. The presentation will hopefully assist in highlighting the common errors which frequently occur...and re-occur.

#### 2.2 Revised Practice Direction 27A on court bundles comes into force on 23 July 2018

Note that under the new PD unless the court directs otherwise and subject to paragraph 15 of the Statement on the Efficient Conduct of Financial Remedy Hearings dated 1 February 2016, page limits for specified documents must be adhered to (paragraph 5.2A.1, PD 27A).

### 3 PERMANENT AGENDA ITEMS

#### 3.2 Database

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

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

#### 3.3 Training and Education

Nothing to report.

#### 3.4 Local Family Justice Board

The Derby Family Local Justice Council was originally set up in 2005. It was subsequently resurrected as the Local Family Justice

Board. Many Committee Members are Members and if you want to be on the LFJB's mailing list and be sent information about training events etc please contact Joanne.eaton1@hmc.gsi.gov.uk

#### 3.5 Rights of Audience

A timely reminder that experienced Legal Executives can apply to the FPC locally for rights of audience on a generic basis rather than having to apply individually on a case by case basis. There is a Protocol in force. Anyone who wants to take advantage of this should contact the Court direct.

#### 3.6 Court User Groups

Nothing to report save as above.

## 4 DATE OF NEXT MEETING

12 September 2018



All meetings at 4pm at Geldards LLP, No.1 Pride Place, Pride Park, Derby DE24 8QR. Plenty of available free parking.

**Fiona M K Apthorpe**  
Secretary



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-	Conveyancing Update	5	3/10/18	-	Derby	CLT
-	Commercial Property Update	5	4/10/18	-	Derby	CLT
-	Family Law Update	6	25/10/18	-	Derby	CLT
-	Pensions on Divorce - a foundation for family lawyers	3	15/10/18	-	Derby	CLT
-	Data Protection and GDPR Update 2018	3	27/11/18	-	Derby	CLT

The Society is able to offer a comprehensive programme of CPD courses, seminars and workshops through the year. If your firm would like to put on a training event for the Members please contact Julia Saunders (admin@derbylaw.net). Requests for courses please to the Administrator - anything from managing the work life balance to recent changes in Data Protection.

Please view the list below of upcoming training courses: For CLT course please go to [www.clt.co.uk](http://www.clt.co.uk) and book direct - thank you

## Culture and leadership to blame for criminal evidence disclosure failures, say MPs



Failures by police and prosecution authorities to disclose evidence which led to miscarriages of justice must be addressed through a shift in culture so that disclosure comes to be seen as a core justice duty, and not an administrative 'add on', MPs said today.

In a thorough and hard-hitting report, the Justice Select Committee raised concerns about the lack of leadership in tackling what it called 'an issue of national importance'. Reiterating concerns raised by the Law Society during its inquiry into disclosure failures, the committee acknowledged that the failures are symptomatic of a criminal justice system under significant strain.

MPs cited the evidence from defence practitioners about the lack of remuneration for reviewing unused material and the impact of changes to the Litigators' Graduated Fee Scheme (LGFS) in reducing payment for reviewing pages of prosecution evidence. The cuts to the LGFS are the subject of a judicial review brought by the Law Society heard at the High Court this week.

Law Society president **Christina Blacklaws** (pictured left) said: "Disclosure is fundamental to a fair trial - the very foundation of our system of criminal justice.

"Solicitors are at the heart of that system, defending, prosecuting, and upholding the rule of law. We are pleased the committee highlighted concerns about criminal legal aid, and the cuts in resources available to prosecutors as well as the police.

"We welcome the committee's message to the government urging it to consider whether funding across the system is sufficient to ensure a good disclosure regime - one that keeps pace with modern technology.

"The committee is right to draw attention to the cost of delayed and collapsed trials resulting from disclosure errors which simply add to the strain on already tight resources. The extent of the problem with disclosure failings has been laid bare. Confidence in the justice system is at stake and we hope the committee's call for clear leadership and for police and prosecution staff to be given the right resources, training and technology are heeded."

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# Derby Junior Lawyers



The 11th June 2018 marked the day of Derby's 2nd Legal Walk. The Derby legal Walk is a 10km walk around Derby seeing all of its fabulous sites, whilst raising money for justice! Around 75 attendees turned up at 5:30pm to register at Derby University's Copper Building, whereby a map was provided. Once everyone was signed in, a photo of the group was taken outside of the 'Derby Gaol', and then our lead walker Mr Justice Jeremy Baker and President of the Derby Junior Lawyers – Ellis Pugh, lead the way.

The fastest team to make it back to Pitcher & Piano was Nelsons with a record time of 1 hour 40 minutes. All attendees received a fantastic goodie bag full of sweets, vouchers, pens, highlighters and information about why they had walked on the day.

The current sponsorship is a fantastic £1,695.00 and we are still expecting some more donations.

Thank you to everyone that took part. In particular thank you to our drinks sponsorship – Derby and District Law Society; our hosts for registration – Derby University; and our hosts of the drink reception – Pitcher & Piano Derby.

We are already looking forward to 2019's Derby Legal Walk and hope to see you all there!

## Derby Legal Walk



*The fastest team were Nelsons, but everyone was a winner!*

*Participants gathered outside Derby Gaol before setting off.*



# Words of Wisdom

## Some advantages of keeping chattels out of residue



If someone wishes to bequeath their residuary estate (or a share in it) to a registered charity or charities, it is a good idea to make

sure personal effects do not fall into the residue. Many years ago I encountered this – in a will a predecessor had drafted which also appointed the firm I then worked for as executors - and the charity in question insisted on sending volunteers to the house to take away items to sell in its local charity shop; also they would not permit any family members to have any sentimental items unless they bought them at a value ascribed by one of their advisors. One of the items was an album of old family photographs. From that day forth, every will I have drafted in that situation has contained a specific gift of household contents and personal effects as below either to the will Trustees or to a trusted friend or relative.

*"I GIVE my household contents and personal possessions to my Trustees and it is my wish without imposing a legal obligation that they should within two years of my death sell or otherwise dispose of the said items at their discretion amongst family (including themselves) friends and charities taking into account any wishes I [or my late spouse] have made known to them whilst one or both of us were alive (but any written memorandum of wishes deposited with this my Will is not to be regarded as part of this my Will) and any sale proceeds net of sale costs shall be credited to my residuary estate"*

Indeed such a clause can be useful in other situations such as:

- if any residuary beneficiary is or might be a minor who cannot consent to a broad brush approach when it comes to dealing with such items.
- where the firm is appointed executor if the contents can be left to an individual on a similar basis, you do not have to spend uneconomical hours sorting through items

or indeed have responsibility for them for very long

- Sharing out the personal belongings is not an interim distribution of residue, which it would otherwise technically be
- the will need not contain a large number of specific gifts of small items with the risk of them not being found after death (due to breakage, loss, theft, or decluttering forgetting what's in the will)
- One caveat would be that if the client is concerned about disagreements between family members over who has what, there may be merit in an express clause calling for sale of everything not specifically bequeathed because the trustees would not be able to hide behind the general trust for sale that appears in many wills prior the dispositions of residue

*Chris Green, who is an Associate member of DDLS, having retired as a Solicitor in 2010 after 22 years of private practice in Ashbourne. Chris still undertakes some locum paralegal work.*

### Legal Indemnity Insurance

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Legal Indemnity Insurance



# *Building on 160 years of experience*

Derby's oldest established independent jewellers, Watts1858, celebrate their 160 year anniversary



**W**atts1858 is a family owned business established in 1858. Their luxurious and relaxed showroom based in the heart of Derby's Cathedral Quarter is - with the help of Watts friendly and knowledgeable team - the ideal place to find the perfect gift.

It was founded by William Edward Watts who specialised in the production and sale of branded pocket watches and the provision of time keeping equipment to the sailors and coast guards of Gloucestershire. An historical collection of old W.E.Watts

pocket watches and watch dials is on display within the store. Currently located in the Cornmarket in the heart of Derby's thriving Cathedral Quarter, it has recently undergone a change of fascia and interior decor as part of an ongoing programme of refurbishment, in keeping with the firm's luxury brand partnerships.

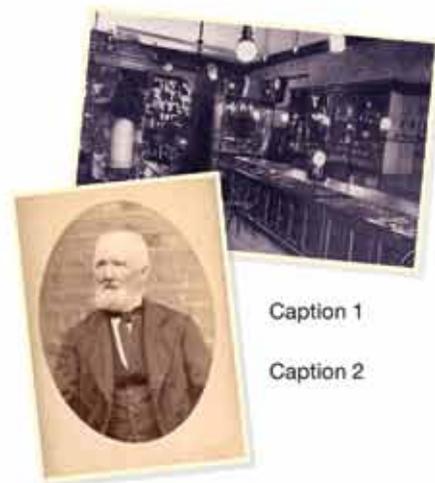
Watts stock a large range of competitively priced diamond rings and as an official stockist of brands such as Omega, TAG Heuer, Bremont, Mont Blanc, Longines, Tissot and Montaine, you can buy confidently with the knowledge of having the utmost in after-care attention and service.

The buying, selling and part exchange of pre-owned watches and jewellery is also a growing speciality of the business.

Mont Blanc pens and leather, Georg Jensen jewellery, Fope, Kreiger and Ti Sento are exclusive to Watts1858 in the

Derby area. Also available, alongside extensive 18ct gold, diamond and platinum jewellery lines, is a range of locally produced Blue John jewellery.

Additional services offered by Watt1858 include watch and jewellery repairs, jewellery cleaning, valuations and pearl rethreading. ♦



Caption 1

Caption 2

# If we don't, who will?

You and I know what it's like to try and navigate the healthcare system to get the help we need. We've lived through the anger and frustration. And we don't want other families to have to face it alone.

Rethink Mental Illness help stop people with mental illness falling through the gaps in the system, but they rely on gifts in wills to fund their Advice and Information Service, peer support groups and campaigning work.

We know that mental illness isn't necessarily a popular cause. So because of those we've lost. And because of those we've saved, it's down to us.

We can change how mental illness is treated, by leaving a legacy to Rethink Mental Illness.

If you'd like a little more information first, visit **rethink.org.wewill** to request a free guide, call Dan Walshe on **020 7840 3032** or fill out the coupon.



## Leave a legacy to change how mental illness is treated

Rethink Mental Illness is a charity that believes a better life is possible for the millions of people affected by mental illness. For 40 years they have brought people together to support each other through their services, groups and campaign.

Rethink Mental Illness Registered Office  
89 Albert Embankment London SE1 7TP United Kingdom  
email: [info@rethink.org](mailto:info@rethink.org)  
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Registered Charity Number 271028



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# Keeping parents together with their children is the aim of this charity



every journey home from work and could not bear to read another child's traumatic care history, wondering if I could ever make that child laugh again or convince them to trust another human being.

"Caring for young people with behaviour and emotional problems, I witnessed the emotional devastation, the life-long anxiety and many disturbing psychological consequences caused by false rhetoric presented to Family Courts as factual.

"Young people, losing the love and protection of their family for trivial irrelevant reasons, suffer appalling risks. Parenting Together is my given vow to defend the rights and emotional health of children deprived of the love and protection of both parents."

Partog offers parents and solicitors expert witness statements and risk assessments on young people's emotional and behavioural problems.

"No research ever showed that children are better off without parents," declared Gerry. "I promise child-centred risk assessments and expert witness reports, morally and ethically guided towards the best possible outcomes for the youngest, most vulnerable members of your client's family."

In 2014 Parenting Together submitted evidence to the Commons Joint Select Committee on Human Rights for its inquiry into violence against women and girls. Later that year then-Home Secretary Theresa May requested further details of the group's research.

The following year the NSPCC business chair described the work of Parenting Together as "...more than a good cause; it works."



**KEEPING YOUNG PEOPLE safe from crime and exploitation: that is the Herculean task set for itself by Partog – Parenting Together – a charity set up by former youth worker Gerry Hannah.**

Said Gerry: "At Partog we are changing attitudes and inspiring young people towards happy, safe and healthy lifestyles. We are one of the UK's leading innovators of advanced community projects, engaging vulnerable young people in safe and sociable activities with positive role models, youth and community workers."

As he points out, criminals do not emerge overnight like butter does. The process of criminalising and ruining a young life passes through many hands. Partog's parenting network links parents with youth and skilled community workers.

Partog are Ministry of Justice preferred suppliers and represent the best interests of young people in both Family and Youth Courts. They believe there is no such thing as unavoidable abuse and exploitation.

They accept referrals from community police, teachers and the NHS, when young people display antisocial, disruptive behaviour – whether in their home, the classroom or community. They generally work with the parents to improve how they interact and resolve relationship issues and advocate on behalf of young people involved with the youth justice system.

Gerry continued: "We engage the most reclusive, inaccessible young people, unable to socialise or engage in activities. We work with families living in areas of high crime and at high risk of exploitation. Many years working in the residential care of young people with emotional and behavioural problems, added to our award-winning research, allows us to specialise in helping young people disadvantaged by their social and family circumstances."

The founding of Parenting Together followed a career working with

young people. Gerry explained: "For 15 years I challenged anyone and everyone who showed less than absolute kindness to the emotionally damaged and abused children in my care."

It was, he said: "The most rewarding job in the world without a doubt, but gradually their sadness overwhelmed me. I cried on almost

**"Resolving young people's antisocial behaviour and emotional problems"**



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# Tracking study indicates steady rise in legacy giving

09 APRIL 2018 – LONDON, UK – Over a quarter (27%) of charity donors are preparing to leave a charitable legacy or have already done so (up from 23% in March 2009), according to the latest consumer tracking figures from Remember A Charity. Only 9% reject the prospect of making a legacy donation, down from 13% when the consortium's tracking study began in 2009.

The research also indicates that awareness of legacies is growing, with just 12% of those surveyed saying they are unaware of the option of donating to charity through their Will (down from 17% in 2009).



**Rob Cope**, director of Remember A Charity, says: "Legacy behaviour and attitudes are really starting to change. While we are likely to see some fluctuation year-on-year, now with nine years of comparable data, we can see a sustained shift in public attitudes towards legacies. This echoes findings from Legacy Foresight and Smeed and Ford, showing longer-term growth in the number of gifts in wills and charities benefitting, as well as the amount given. Bearing in mind that only 6% of people that die currently leave a legacy, even a small percentage increase can make a big difference in terms of charitable returns."

The research, carried out by nfpSynergy, looks at the attitude and awareness to legacy giving among 1,000 UK charity donors aged 40+ on a scale ranging from rejection to action<sup>1</sup>. One in six (16%) of the over-40s questioned in 2017 say they have written a charity into their will (the second highest figure on record behind its peak of 17% in 2015) and 11% say they are preparing to do so (up from 7% in 2015 and 9% in 2016). A further 13% say they are contemplating it.

Cope adds: "It's an exciting time for the sector, but with more and more charities coming into the marketplace, there is even greater need for organisations to invest in this area of fundraising and ensure they can continue to rely on such a vital income stream."

For more information see Remember A Charity's new Impact Report.

## MEDIA QUERIES:

### Remember A Charity

Jenny Turner: [jenny@turnerpr.co.uk](mailto:jenny@turnerpr.co.uk)  
on 01932 859617/ 07940 472653

Lucinda Frostick: [lucinda@turnerpr.co.uk](mailto:lucinda@turnerpr.co.uk)



## Stages of Change

The Stages of Change tracking study is carried out by nfpSynergy. Conducted via an online poll, the study collates the views of over 1,000 charity donors aged 40+.

<sup>1</sup> Six stages of change for legacy giving: active rejection, pre-contemplation (unaware), pre-contemplation (aware), contemplation, preparation and action.

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Help us rescue victims of abuse and neglect  
Help us provide a safe home for life at our sanctuary

Thank you for caring so they may have a future

Capuchin monkey Grips, victim of the UK primate pet trade; (L) on arrival and (R) enjoying life at the Wild Futures Monkey Sanctuary

[wildfutures.org](http://wildfutures.org) Registered charity no: 1102532



# The new-generation CON29DW from Geodesys

## The Law Society CON29DW

With the abundance of conveyancing reports on the market, it's good to know that the Law Society introduced the CON29DW in 2002 to promote a consistent approach to property-specific drainage and water information.

With 23 questions and two accurate Ordnance Survey maps showing assets and pipes, it ensures that property buyers get a consistent and thorough drainage and water search regardless of where the property is located in the country.

This standardisation of property information is very much in line with the Government's current proposals for improving the homebuying process as it helps to reduce uncertainty and unnecessary delays.

**CON29DW**  
DRAINAGE AND WATER ENQUIRY

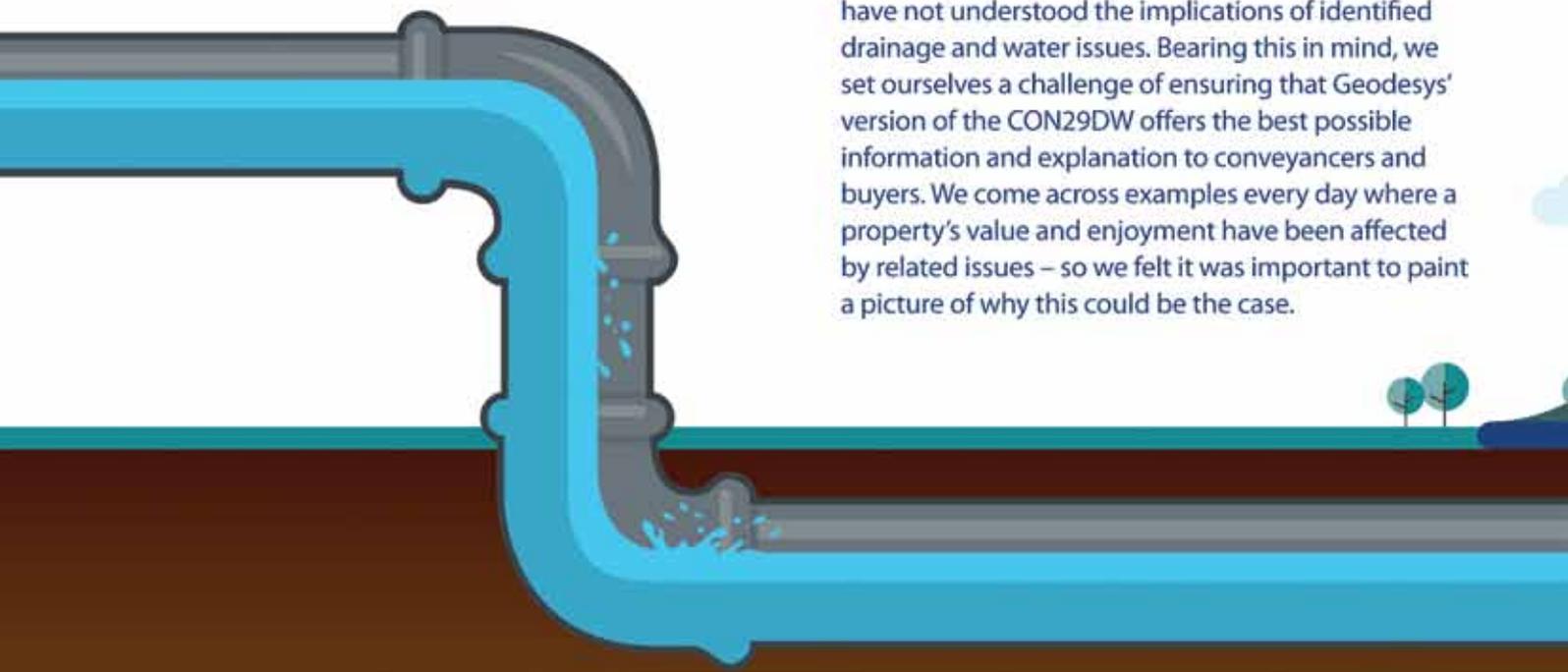
## What makes the CON29DW unique?

When speaking to clients we find that the CON29DW is usually the drainage and water search of choice. It is the **ONLY** search that:

- includes answers to **ALL** 23 Law Society copyrighted questions on drainage and water
- includes **TWO** separate maps to illustrate the position of both drainage and water assets
- does **NOT** infer or insure against answers to Law Society questions
- does **NOT** refer customers to a different source of information
- provides **FULL** protection to residential property buyers
- provides effective **REDRESS** for homebuyers in the case of incorrect information

## Our new-generation CON29DW

Despite the thoroughness of the report, the Geodesys team is constantly speaking to homebuyers who have not understood the implications of identified drainage and water issues. Bearing this in mind, we set ourselves a challenge of ensuring that Geodesys' version of the CON29DW offers the best possible information and explanation to conveyancers and buyers. We come across examples every day where a property's value and enjoyment have been affected by related issues – so we felt it was important to paint a picture of why this could be the case.





The redesigned CON29DW provides this information upfront, ensuring that the homebuyer is empowered either to proceed with confidence or to make further enquiries of the seller. As a result, it's much less likely that a deal-breaking issue will emerge later in the process.

### The new-generation CON29DW from Geodesys is now live!

For more information and to arrange a product presentation, please contact:

**Kay Toon**  
Account Manager  
07764 987 259.



## CON29DW – about to make the conveyancer's job even easier

The redesigned CON29DW from Geodesys launched this April with the following key features:

- a **new crystal-clear front-page customer dashboard** highlighting information on key questions
- **clearer identification of potential issues** on the dashboard
- **easy-to-use interactive navigation** so it's easy for users to retrieve relevant information from the details in the report
- two formats: **interactive PDF** and usual **print format**
- **improved information** on drainage and water legislation
- an **updated 'plain English' guide** explaining how specific issues could affect value and further development
- a **new design** created by industry experts



**Geodesys. About to get even better.**

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# An ever changing risk landscape...



The risk landscape law firms are faced with today continues to grow and evolve, and the regulatory regime along with new legislation play their part too. Like many modern businesses, law firms are becoming increasingly more reliant upon technology, whether to improve connectivity with clients, to improve processes and efficiency, to help mitigate risk through the use of case management systems, or to access things on the go. This means the cyber risk to the legal profession is on the rise.

Only banks or financial institutions have greater sums of money passing through them than the legal sector. When you also factor in the amount of highly confidential information passing through law firms, it is no wonder that the Legal profession is a target for cyber criminals. While the SRA requires law firms to carry an appropriate level of coverage to protect their clients, there is no consideration as to what coverage will protect the law firm itself.

The Legal Profession of England and Wales have one of the broadest policy wordings in the professional indemnity marketplace, yet despite this breadth of cover it is important to appreciate that PII cover provides third parties (generally a law firm's clients) with protection in the event of an error act of omission. PII is not designed to provide first-party coverage e.g. business protection.

Whilst Professional Indemnity Insurance should respond to a "Friday Afternoon Fraud", "Phishing", and other types of social engineering to put your clients back into the position they were previously, PII will not respond to all of the cyber risks that the legal profession is faced with today.

Some of these risks include but are not limited to:

- Denial of access to your systems – A DDoS (Distributed Denial of Service) attack prevents any connection to the internet and is increasingly combined with malware that corrupts the corporate network data. This is where the criminals have scanned the vulnerabilities remotely and found many weak points. They identify that the business relies on always being connected to the internet. They then use 'exploit kit' to bypass off-the-shelf firewalls and anti-virus protection. The cost to the criminal is modest compared to the prize of the ransom that people will pay to get their business up and running again.

- Loss of client data – Could result in fines or penalties being imposed by regulators such as the SRA or ICO, which given the new powers of the ICO could cripple a firm but if the financial impact of the fine did not, the reputational harm could be irreparable.
- Impersonation – An average-level criminal will be able to manipulate your clients or member of staff quite easily because it is brutally effective for their aims and it really undermines the trust they place in you. This may happen because you do not have encrypted communications, or a protected website that has security certificates or email controls e.g. DMARC, or perhaps you allow private emails on home computers. There are many examples of these and most remain unreported in the public domain. You need to be available to your clients, but it's worth noting this can encourage them to trust non-secure interaction.
- Reputational harm following the spread of a virus. A law firm may be liable if found to be the cause of transmitting malicious code to others.

It is important to appreciate there is always a human being at the other end of a cyber-incident. The level of sophistication adopted increases along with the ability of the malware that they may use. This is now a big business and it shares many characteristics with established commercial ecosystems – there are sales pipelines, money transfer services or "money mules" and some markets on the dark web looks like Craigs List or Ebay style shopping sites to cater for all types of nefarious intent. The patience that these criminals are willing to show means that we need to be on our guard at all times.

The level of success that they can achieve is largely down to the core security controls you put in place. A number of controls will not be too difficult or expensive to put into place either. It is however imperative that you do not rest on your laurels and you evaluate your security control with some level of frequency.

It is important to understand that outsourcing IT functions does not mean you outsource your responsibility. You are still a data controller and there is no system available, however robust it may be that will be 100% secure, as the cyber incident at the Pentagon revealed. If you do outsource your IT function, it is important to understand how much support can and will they provide to you in your hour of need, after all response times are key to mitigate the damage

but also as there is only a finite window to meet your regulatory obligations.

You cannot expect clients and staff to identify all of the fake emails during the course of daily business, and trying to understand how the hackers were able to monitor and intercept the email traffic is, at this point, of secondary concern. The single most powerful way to combat this is to create a unique link between the index numbers and the plain text name of your email domain (what appears after the @ sign in an email) to prevent such impersonation. This type of authentication is already available with the free to use DMARC control, therefore we encourage every law firm in the UK to engage their IT team or service provider in discussing this topic further after which I think it is prudent to explore what insurance is available to support your business. Also, as a fairly recent development, some banks are now requiring DMARC controls across their entire supply-chain and some insurance companies are asking for it too.

There are many cyber products available, which vary quite considerably in the scope and quality of cover they can offer. Lockton is an independent broker and has access to the wider insurance market but we also have a suite of products that have been designed specifically for the Legal Profession of England and Wales. This includes a product called Inter Lock which is the only fully-integrated solution combining your SRA-approved PII policy with regulatory defence cost, cyber and first-party crime coverage.

There is no regulatory requirement to do so, so why should you look into this? If you were going on a driving holiday or expedition would you do so without break down cover in place? If not why would you run your business without appropriate business owner's protection in place that can protect your cash-flow and reputation? A good Cyber policy provides you with access to the appropriate experts to minimise the damage, help you identify and rectify the problem but perhaps most importantly getting your business operational swiftly.

What is clear is that risks are guaranteed. Protection, however, is optional and you can't assume a cyber attack will never happen to you.

by **Brian Boehmer**

*If you'd like to learn more about Inter Lock or speak to a member of our team please email [solicitors@uk.lockton.com](mailto:solicitors@uk.lockton.com) or phone 0330 123 3870. Visit [www.locktonsolicitors.co.uk](http://www.locktonsolicitors.co.uk) for more information.*

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# What are the risks and benefits of accepting early renewal offers on professional indemnity insurance?



**Most solicitors will accept an early renewal offer for professional indemnity (PI) insurance if given the opportunity, rather than go to the open market to find a new policy, according to a survey conducted by Miller of law firms.**

An overwhelming 98% of respondents said they were likely to take up a PI insurance renewal deal – but are they always right to do so?

## PROS AND CONS OF EARLY PII RENEWAL

The benefits of renewing your PII policy early will depend on your law firm's specific commercial needs, so it is wise to consult with a broker who understands your business before making any decisions.

Some of the incentives for accepting early professional indemnity insurance renewal deals include:

### 1) *Guaranteed cover*

You can rest easy knowing that you have next year's cover in place long before the hurly-burly of October's renewal deadline. That cover is guaranteed, even if you have a claim under your existing policy before your new cover begins.

### 2) *Streamlined process*

You'll escape the laborious task of filling in proposal forms, which for smaller firms can actually mean saving money if you have to put chargeable work to one side while you complete insurance paperwork. But it is important to note that you still have a legal duty, under the Insurance Act 2015, to disclose any important information before the new policy is issued, otherwise the insurer might dispute a claim or even cancel your cover.

### 3) *Transparency on cost*

Another big plus is that, by accepting an early renewal for PII, you know long before your new policy starts exactly how much you will pay and what is covered. Even better, most early renewals will be "as expiry", meaning you will get the same price and protection even if market conditions have changed.

But although many law firms value the continuity and certainty offered by an early renewal, always be mindful that these might come at a price. If you automatically roll your PI insurance cover over for another year then you won't necessarily know whether you're getting a good deal.

## CAN YOU GET A BETTER PII DEAL ELSEWHERE?

Professional indemnity insurers are currently competing for business in a 'soft' market, which means you might find more competitive cover with a new provider.

Some law firms that have accepted a series of early renewal offers might not actually have tested the market for several years. Law firms that just one or two years ago might have found it hard to attract many offers of cover, could find that several companies are now eager to insure them.

A good rule of thumb is that if your current insurer is willing to offer you an early renewal then that's an indication your firm is regarded as an attractive risk. In which case, other insurers are likely to be interested in quoting for your business as well.

If you have a good broker then it should already have checked if the early renewal terms you're being offered are in line with the market. But it's always worth asking the question:

## WHO BENEFITS MOST IF MY LAW FIRM ACCEPTS AN EARLY RENEWAL OFFER?

- Is it your existing insurer, because it can relax by knowing your business is safe from attack from its rivals for another year?
- Is it your broker, because it can pocket your commission without having to do much work?
- Or is it you, because you'll be saved time, anxiety, and maybe, money?

## ACCURATE LEVELS OF COVER

It's important to understand that although by accepting an insurer's early renewal offer for PI insurance you avoid having to fill out a proposal form, your law firm is still under an obligation to disclose any material information, such as a change in work split or a jump in fee income. If your insurer later discovers anything important that affects your coverage then it could choose to cancel your policy or even refuse to pay a claim.

It's also worth stressing that the best professional indemnity insurance offer isn't necessarily the cheapest – it's the one that's right for your business. There will be some law firms that are offered early renewals that remain scarred by the experience of struggling to get insurance at all when the market was in crisis. They find the prospect of being left without any cover far scarier than paying slightly more for their premium.

Even so, only accept an early renewal offer for PII if you're sure that the price and the terms being offered are in line with what other insurers would propose. If you're hesitant, then it could be worthwhile finding out the alternatives. You might be surprised.

If you are unsure whether your renewal terms are competitive, send us a copy of your existing proposal form by and we'll let you know.

We have produced a guide to help you understand the process for purchasing professional indemnity insurance and to give you the essential information you need to make the right decisions.

**Paddy Synnott**

[www.miller-insurance.com/solicitors](http://www.miller-insurance.com/solicitors)

# Ray of light for justice system as High Court vindicates Law Society legal aid challenge

**A legal challenge by the Law Society of England and Wales to halt cuts which were heightening the looming crisis in the criminal justice system has been backed by the High Court.**

In a strongly-worded judgment handed down today, the court quashed regulations implementing cuts to payments for document-heavy crown court cases. The verdict is important because evidence-dense cases are becoming the norm due to the prevalence of digital devices.

Law Society president **Christina Blacklaws** said: *"This is a significant ruling. Criminal solicitors provide a vital public service. We have consistently warned that this fragile criminal legal aid market cannot stand further cuts.*

"The changes to the Litigators Graduated Fee Scheme (LGFS) were introduced in December 2017 and have meant a huge amount of work on the most complex crown court cases has gone unpaid.

*"Defence solicitors have faced earning up to 37% less for some large cases, yet the Legal Aid Agency has expected them to undertake precisely the same amount of work."*

The High Court strongly criticised some of the arguments put forward by the Lord Chancellor, commenting: *"It is difficult to express in language of appropriate moderation why we consider these arguments without merit. The first point, which should not need to be made but evidently does, is that consultees are entitled to expect a government ministry undertaking a consultation exercise will conduct it in a way which is open and transparent."*

The court ruled the Ministry of Justice's (MoJ) failure to disclose the statistical analysis underpinning the decision made the consultation unfair. That analysis was disclosed only during the course of the litigation.

Commenting on the methodology applied by the MoJ to justify the cut, **Lord Justice Leggatt** and **Mrs Justice Carr DBE** concluded that the calculation was "a flawed analysis on which no reasonable authority would have relied". Their findings came in light of expert evidence - which the MoJ did not rebut - put forward by a leading academic commissioned by the Law Society.

Crucially, the judgment comes on the back of a hard-hitting Justice Select Committee report, which said cuts to criminal legal aid are tarnishing the reputation of the justice system and denying people basic legal advice when they most need it.

Christina Blacklaws said: *"In the light of this ruling, we would urge the government to restart discussions to try to formulate a revised approach to the LGFS that will remunerate lawyers fairly for the work they have to do. We as the Law Society stand ready to help the government to this.*

*"We recently published new data showing that in 5 to 10 years' time there could be insufficient criminal duty solicitors in many regions across England and Wales, leaving individuals in need of legal advice unable to access justice. These concerning statistics underline the need for reasonable payment for this challenging work.*

*"We are now considering the implications of the ruling for our members, and in the first instance we recommend that practitioners who have made relevant claims under the 2017 Regulations immediately apply for redetermination."*



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# Experts under the judicial microscope



## The work of the Expert Witness Institute (EWI)

A comment by **Phillip Taylor MBE** Reviews Editor, "The Barrister", and Head, Richmond Green Chambers

As we move into the mainstream digital age, the role of the expert is bound to change, especially with a much more highly educated workforce and compliance with the Civil Procedure Rules.

And, it means, also, that the role of the Expert Witness Institute (EWI) will change. The best way to find out about change and to keep up to date is to be involved with the EWI as experts remain under the current judicial microscope.

One of the great draws of the EWI is their annual conference held each year in London at the beginning of the autumn. High profile key-note speakers offer a most useful insight into what is happening in the legal world as it affects experts. Attendees include a large cadre of experts together with specialist lawyers (solicitors, paralegals and barristers), judges and, of necessity, some assorted politicians.

One of the more useful aspects of the recent conferences are the lively question and answer sessions which often highlight some of the more pressing contemporary... and controversial... issues. It's quite amazing how much information can be gleaned from these sessions as we are listening to specific experts and their legal roles (and, sometimes, worries) about what is going on.

There have been some unfortunate comments recently about the use made of experts but we, as advocates, now tend to rely quite heavily on their testimony. And, probably, members of the judiciary more so. That is why an exchange of views is so helpful as the role of the EWI changes to meet demand. Their accreditation scheme is one of the new developments and of use to the courts in the determination of very detailed and complex evidence.

The EWI is not confined to medical experts, either. I have been attending their conferences for some years, mainly to cover the key-note speakers and watch developments, and I have been surprised at the wide range of expert evidence now available as cases tend to have become much more complicated and intricate.

**Mr Justice Spencer** said, on his appointment as the new chair of the EWI: *"It has never been more important to highlight the critical role expert witnesses play in supporting the proper administration of justice and to establish the highest standards of best practice"*.

And he is right, of course because the views of experts continue to be carefully scrutinised providing, as they do, a special relevance in all proceedings together with live witnesses.



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# Outsourcing your cashiering? Why choose Quill?

By Julian Bryan, Managing Director, Quill

**Once you've decided to outsource your legal cashiering, any supplier will do, right? After all, the way these outsourcing providers manage your accounts and support your business is the same, isn't it? Surely the only difference will be the price you pay for the service, won't it?**

The answer to these conundrums is a resounding 'no!' There are an increasing number of outsourced cashiering suppliers – legal software companies are forming partnerships with outsourcing bureaus to expand their offerings; new bureaus are being established; freelancers are setting up as virtual cashiers to work from home – so you've certainly got plenty of choice when it comes to outsourcing your back office accounts function.

While there are some familiar threads running between these various suppliers, in comparison to Quill, they're poles apart. We're going to show you why...

## **Commonality: Shared use of Interactive**

Have a quick browse through the ILFM's Software Guide and you'll see the long list of legal accounts systems available in the market. This isn't an exhaustive list either. These competitive systems contain effective tools to help legal cashiers maintain accounts in a compliant, secure, due diligent manner. But the way you perform an accounting task on one, let's say posting your daily transactions, will vary on another.

Also, not all systems will contain warnings and notifications for actual and potential breaches of legal accounts rules. The range of functionality makes one system a very different beast to another.

As well as being the toolkit for in-house cashiers, these same systems are operated by outsourcing providers too. And, as any workman knows, his work is only as good as his tools. In other words, the ensuing service you receive will fluctuate pretty drastically from one supplier to the next, depending upon the legal accounts system opted for. The inconsistencies between them can be fairly extreme.

In terms of our software, Interactive is backed by a dedicated software development team based in our Brighton office so new and enhanced functionality is constantly being rolled out, benefiting end users whose daily work is made easier, more efficient and categorically compliant as a result. Interactive's also a recognised market leader, having been around for 40+ years and boasting two ILFM software awards.

Not only is our software high quality, which enables us to work better than other outsourcing

providers, it's used universally by Quill cashiers. It's a common platform, facilitating common procedures, maintaining common standards, empowering a common experience for all users of our Pinpoint outsourcing service. No deviations. No inconsistencies.

## **Overseers: Monitoring by senior staff**

As an additional guarantee of quality service provision, our cashiering operation is closely monitored by experienced, knowledgeable team members who cast a trained eye over completed tasks, checking for accuracy, speed, volume and consistency, reinforced by metrics from our powerful quality and performance management Interactive system, interpreting data processed by all the cashiers. Our cashiers work in teams of six with a supervisor heading up each group. Any anomalies or discrepancies, including items highlighted by Interactive, are spotted and resolved straightaway, giving you confidence in error-free bookkeeping. No other cashiering bureau can boast access to such management information intelligence drawn from one central software platform.

Where speed's concerned, any law firm knows about the strictly enforced deadlines for filing month and year-end accounts, including those all-important VAT returns. Our system also holds key compliance dates specified by each firm's designated regulator (SRA, CLC or Law Society of Scotland) to generate management alerts of overdue tasks. For example, we can identify sites not being closed quickly enough at month end which is set as the 7th of each month by the CLC and track that VAT submissions are lodged in time for the relevant quarter. Close monitoring, and intervention if needed, ensures accounts are submitted on time, every time.

On the volume side of things, this behind-the-scenes management information also tells us how many e-chits are being processed by each cashier. This helps us to allocate the right mix of sites to our cashiers so everyone's got a similar balanced workload and no one's being overworked. For end users, you can be reassured that your assigned cashier's got the capacity to give your accounts their proper attention. By not being stretched too thinly, we've got your back.

There are a plethora of reports within Interactive, accessed by the Pinpoint management team, supporting the delivery of consistency across hundreds of clients. This starkly contrasts with other bureaus which lack the same control mechanisms thereby compromising consistent standards, and allowing opportunities for mistakes and bad habits to creep in.

## **Collaboration: It's a team effort**

Pinpoint is a close alliance between you and us. We're connected together by Interactive. You

enter daily e-chits into Interactive – which is essentially a daily record of monies in and out to your client and office accounts – and we pick up from there. We literally do everything else – billing, reporting, VAT returns, ledger and bank account management.

It's likely you'll interact with your named cashier every working day. As such, you build a strong relationship. Pinpoint clients repeatedly tell us how their cashier feels like another employee, just someone not based in the same office. We rely on you to log all transactions. You rely on us to keep your accounts in order. By each fulfilling our side of the bargain, it's a successful partnership.

There's a point to be made about team working within Pinpoint as well. You see, our cashiers don't operate in isolation. If your assigned cashier doesn't know how to rectify any accounts-related problem, he/she will simply call upon the help of his/her colleagues and supervisor. As the largest outsourced cashiering bureau in the UK employing some 50 legal cashiers, they possess a combined total of approximately 300 years' experience. And that's a conservative guess. We've seen it all before. No issue is novel. You can bet your bottom dollar that we know the solution.

Automatic absence cover is provided with the service too. If your cashier is off work on holiday, sickness, maternity, paternity or other leave, as everyone is from time to time, his/her designated deputy will manage your accounts instead. Obviously you don't get these advantages with a one-man-band type bureau.

## **Next step: Find out more**

If we've sharpened your appetite for more, read our earlier articles on the subject of outsourced cashiering, published on the Internet Newsletter for Lawyers website. There's '*Outsourced cashiering and your bottom line*', '*Ten reasons to outsource your cashiering*' and '*How outsourced cashiering works*' for beginners.

**To find out more on our Pinpoint outsourced legal cashiering service, please visit [www.quill.co.uk/Outsourced-Legal-Cashiering](http://www.quill.co.uk/Outsourced-Legal-Cashiering), email [info@quill.co.uk](mailto:info@quill.co.uk) or call 0161 236 2910.**



*Julian Bryan joined Quill as Managing Director in 2012 and is also the Chair of the Legal Software Suppliers Association. Quill is the UK's largest outsourced legal cashiering provider with 40 years' experience supplying outsourcing services and software to the legal profession.*



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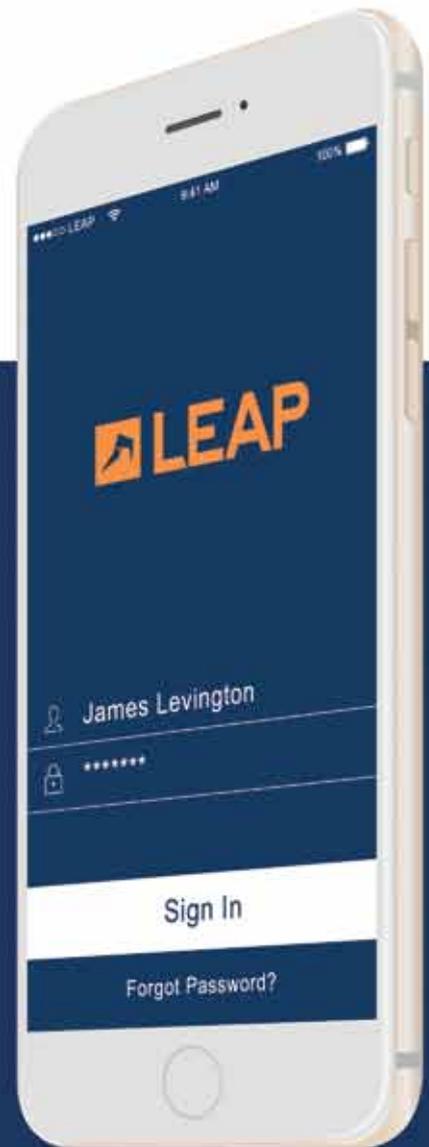
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