

THE PEARS

Issue 38 Spring 2021



STEPHANIE BOYCE

President of the
Law Society

SEE PAGE 6

ALSO: • Closure of the Solicitors Indemnity Fund • Local Legal News
• Clarification of Riparian Rights and drainage easements & more...

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Birmingham
at heart

St Philips Chambers would like to congratulate **Lee Marklew QC** and **Sara Lewis QC** on their appointment to the rank of Queen's Counsel. Their richly deserved appointments take the number of Silks in Chambers to 17.

We would also like to congratulate **Andrew Charman**, **Tom Walkling**, **Ben Williams** and **Jack Redmond** on their appointments as Recorders; **Naomi Candlin** on her appointment as a Deputy District Judge; **Glyn Samuel** on his appointment as the new Chancellor of the Diocese of Coventry; and **Ben Close** and **Lorna Badham** who have been elected to the Bar Council for 2021.

We would also like to extend our congratulations to former Member of Chambers, **Her Honour Judge Emma Kelly**, on her elevation from the District Bench to be a Senior Circuit Judge, Deputy High Court Judge and Designated Civil Judge based at Birmingham Civil and Family Justice Centre. We wish her every success in her new role.

Chambers would like to welcome four new tenants following successful completion of their pupillages: **Bethany Armitage** (Family), **Luke Tallis** (Family), **Raghav Trivedi** (Business and Property) and **Steven Gittins** (Personal Injury/Employment). We also welcome two new pupils: **Ryan Hodgins** (Crime); and **Francis Mortin** (Employment).

St Philips Chambers remains committed to, and optimistic about, the future of the Bar. To that end we look forward to welcoming six new pupils in October 2021.

We are always looking for talented barristers to join our first class team. If you are interested in joining, please contact Head of Recruitment, Ben Mills (recruitment@st-philips.com) or Chambers Director, Joe Wilson (jwilson@st-philips.com) / 0121 246 2136.

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or follow us on Twitter: [@worcslawsociety](https://twitter.com/worcslawsociety)



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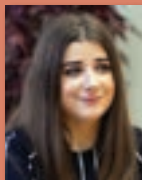


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President's Introduction



I hope that you are all keeping safe and well.

The Committee and I would like to extend our warmest of congratulations to the President

of the Law Society Stephanie Boyce. Stephanie has become the 177th President of the Law Society of England and Wales, becoming the first Black office-holder and the second in-house solicitor in almost 50 years to do so.

Stephanie will, amongst many key areas, use her platform to focus on good mental health. Working as a law professional can be very stressful, with overwhelming workloads and emotionally challenging cases. On 28th March 2021 the Committee hosted a zoom Health and Wellbeing event to our members. Matthew Richardson, barrister of Coram Chambers, and Adele Ballantyne, Therapist of Eleda Consultancy, shared their experiences, insights and solutions for managing workloads, building emotional resilience and tips to help improve overall health and wellbeing.

If you or anyone you know needs support at this time, please contact me or a committee member or visit the Law Society pages at <https://www.lawsociety.org.uk/en/career-advice/career-development/stress-and-mental-health> for support, help and advice.

The year is going by fast and it's that time already. If you are signed up to our mailing list you would have seen the recent announcement for nominations for the Worcestershire Law Awards 2021. The Committee and I are pleased to see so many of you having nominated your colleagues for one of our 8 awards. The deadline closed on 28th May 2021.

It is with great sadness that the country lost HRH Prince Philip on 9th April 2021 and our thoughts are with HM the Queen and her family during this time. The Prince's Trust will continue to support 11 to 30 year-olds to find the tools and confidence to try free courses and start careers. <https://www.princes-trust.org.uk/about-the-trust>

Lastly, and by no means least the Committee and I would like to extend a huge thank you to Andrew Chandler, Partner at MFG Solicitors and Editor of

the Pears. Andrew has decided after four years as Editor to hand over the reigns. Andrew has been the heart of the Pears magazine for the last four years, working tirelessly behind the scenes to bring together each edition for your information and enjoyment. I would personally like to recognise Andrew's commitment and dedication to the Worcestershire Law Society and thank him for all his hard work (and for being so patient with us all when we are all late submitting our articles). The Committee and I are very pleased to say that Andrew will remain as a Committee member and continue to support members. Joeli Boxall, Trainee Solicitor at Quality Solicitors Parkinson Wright and previously the Deputy Editor of Pears is excited to take on the role as Editor following this edition.

If I or anyone on the Committee can be of assistance, please do not hesitate to get in touch. Hopefully see you all in person soon.

Best wishes,
Charlotte Perry
President, Worcestershire Law Society
2021-2022

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President of the Law Society - Stephanie Boyce

Increasing diversity, inclusion and social mobility; promoting digital engagement, good mental health and the rule of law; and improving access to justice and technology



Stephanie Boyce

Stephanie Boyce has become the 177th president of the Law Society of England and Wales, becoming the first Black office-holder and the second in-house solicitor in almost 50 years to do so.

Lubna Shuja succeeds Stephanie as vice president.

Stephanie takes office at an uncertain time for everyone, but believes conditions are ripe for making real, lasting improvements in the legal sector.

"This is a time of change for solicitors, for their organisations, and for the country. But while solicitors can and do play the role of the trusted adviser, we can also be a force for change," she believes. "The door is open, and the trail is ready to be blazed."

Stephanie explains how this force for change will drive her three main priorities during her term as president. *"My plan is ambitious, but the ambition to secure change is what ensures change."*

Increasing diversity, inclusion and social mobility

As the first person of colour to be president of the Law Society, Stephanie points to the growing diversity within the legal profession – but there is much more to be done.

Law Society research suggests that the pandemic has exacerbated inequalities across the legal sector. Solicitors with disabilities, solicitors with caring responsibilities and solicitors from minority ethnic backgrounds continue to face obstacles.

Personal characteristics or an individual's socio-economic background should not determine how far people can go. Stephanie is calling for genuine equal opportunities and treatment in the profession and judiciary, and will work to address the retention and progression gaps faced by many solicitors.

"It is my mission to leave the profession more diverse and inclusive than the one I entered," Stephanie says.

Improving access to justice and technology

Stephanie will work alongside solicitors to ensure that access to justice and the rule of law are in clear focus as the government lifts restrictions related to the pandemic.

"As we exit this time of crisis, we will do our utmost to secure a justice system which emerges in a stronger position than before – the phoenix from the ashes," she says.

Recognising how the use of technology has been a lifeline for the justice system throughout the pandemic, Stephanie welcomes the shift towards virtual hearings, but stresses that justice must still be accessible to all, especially those with poor digital skills, disabilities, or a lack of equipment, internet access or financial resources.

Promoting digital engagement, good mental health and the rule of law

During lockdown, the Law Society has had to engage as never before with our members digitally. This has provided more avenues to reach our membership, improving accessibility and opportunities for engagement.

In continuation of this, Stephanie announces the launch of

our new virtual course, 'Introduction to Legal Technology', which explains what lawtech is, the types of technology available for your practice, and how you can use it.

The course is free and available from 22 March to all members. You can find it on our website through our learning platform.

Stephanie also recognises the great physical and mental strain the pandemic has placed on many solicitors and pays tribute to the myriad of initiatives being developed by law firms across England and Wales.

"Good mental health and wellbeing must be valued and encouraged, and where environments do not facilitate this, change must be realised," she says. But she points out how the issue of poor mental health has been exacerbated by increasing attacks on solicitors and the integrity of the legal profession.

"We often hear that the rule of law is a fundamental British value – well, it is solicitors that ensure this is so, and they must be able to do their job without fear of intimidation."

As president, Stephanie will engage constructively with government on proposed reforms to judicial review and the Human Rights Act. *"Proposed changes must not weaken our rights and must be consistent with the rule of law,"* she declares.




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Hi, I'm Kate

Responding to the fastest-selling property market ever recorded!

Kate Bould, Managing Director, Index PI West Midlands



If the pace of the UK property market and conveyancers' workloads weren't crazy enough, three significant things have happened recently to add fuel to the fire:

- The extension to the stamp duty holiday
- The announcement of the 95% mortgage guarantee scheme
- Return to school – freeing-up parents to consider home-space

The impact was immediate with buyer demand surging. Rightmove's House Price Index reported March as the fastest selling market they've ever measured, with the average number of days to sell a property reaching its lowest ever level, and the number of houses selling within a week reaching its highest ever level! We may well see these records repeatedly broken through Q2.

The great news is the conveyancing industry is responding and a big part of that response is an increased adoption of digital technologies.

HM Land Registry's first Digital Identity Standard

In March, HM Land Registry launched its first Digital Identity Standard, a huge step forwards for the industry.

Conveyancers meet the requirements of the new standard, can enjoy the compelling benefits of fast, convenient, and secure digital ID checks with the peace of mind of 'Safe Harbour'. This means no recourse from HM Land Registry against conveyancers, in the event their client was not who they claimed to be.

For help and advice meeting the new standard, email me and we can arrange a call:

KateBould@IndexPI.co.uk

HM Land Registry's Local Land Charges Register

Another game changer for the conveyancing industry, and in particular the searches procedure, is local authorities joining HM Land Registry's Local Land Charges Register.

Excitingly, four Worcestershire local authorities are preparing for the massive merger of data into electronic format for the HMLR system, to join the Register later this year.

The move will make processes faster, more efficient and provide higher quality data - great news for all stakeholders.

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If you'd like a chat about how we can help you meet the challenges of the fastest-selling property market recorded, email me and we can arrange a call:

KateBould@IndexPI.co.uk

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Lastly, I'd just like to say, we're delighted to be the main sponsor for this year's Worcestershire Law Society Awards.

We're looking forward to seeing the nominations and especially looking forward to seeing as many of you as possible in September, for the Awards Dinner.

Best regards

Kate Bould

New partner for leading family law team



Kevin Harris-James

The family law team at HCR is celebrating promotions - James Osborne becomes a partner in the Worcester team and is joined by several others moving up the ladder - Shereen Chohan (Birmingham), Fiona Davies (Cheltenham) and Lauren Nash (Hereford) become senior associates, while James Shorrock (Cheltenham) becomes an associate.

The team, now 61-strong across the firm's nine offices, has been in the forefront of taking divorce online - because of its size and the number of consent orders it files, HCR was asked to take part in the pilot scheme to enable people to apply for and process their divorce online, cutting waiting times. The pilot was run by the Courts and Tribunal Service for the Ministry of Justice as part of the wider process of taking divorce online.

Kevin Harris-James said: "I'm delighted that James is now a partner and I congratulate all those promoted; it is very rewarding to see people progress as they are doing."

The promotions come as the firm continues to grow across the board - Paul Grundy in the restructuring and insolvency team becomes a legal director, as do Annabel Hull and

Maureen O'Regan from the real estate team and Peter Orton from the employment team. Jodie Boston from the dispute resolution team becomes a senior associate.

Harrison Clark Rickerbys has more than 550 staff and partners based at offices in Birmingham, Cambridge, Cardiff, Cheltenham, Hereford, London, Thames Valley, Worcester, and the Wye Valley, who provide a complete spectrum of legal services to both business and private clients, regionally and nationwide. The firm also has a number of highly specialist sector-specific teams, including technology, finance and financial services, defence, security and the forces, health and social care, education, agricultural and rural affairs, and construction.

HCR Law calls on employers to address homeworking pitfalls

Since the UK has been instructed once more to work from home, new research published by Harrison Clark Rickerbys (HCR) highlights the need for employers to ensure flexible working policies are fit to deal with the challenges of homeworking in lockdown.

HCR's research shows the proportion of people who said that they felt homeworking had a negative effect on their wellbeing increased significantly from just 3% pre-Covid, to almost one in five (17%) during the first lockdown. One of the benefits of homeworking has been the absence of daily commuting, with nearly a fifth (19%) saying that it's what they liked most about working from home

during the first lockdown.

However, almost a third (30%) of people surveyed said they worked longer hours from home than they did pre-Covid. At the same time, the percentage of people who felt they were less effective working from home than in the office doubled, to almost one in five (18%).

Lawyers at HCR, the Top 100 law firm which conducted the research, suggest these insights give employers cause to review and refresh their remote working policies.



Matthew Hayes

"Our working landscape has changed forever," says Matthew Hayes, Head of HCR's Real Estate team, which led the research project. "We conducted this research in order to understand what the future looks like for ourselves as an employer and for our clients, before and after Covid-19. The insights have been fascinating."

"The rapid roll out of homeworking in response to Covid-19 has had many positive impacts, but it is not without risk," says Clare Day, partner at HCR.

"We found that there had been tensions around remote working that existed pre-Covid, which may have a bearing. The research revealed a perception gap between employers and

employees when it came to homeworking. Before it became a lockdown necessity, almost a third (32%) of workers said their bosses didn't allow homeworking, while in the same survey it was a tiny proportion, just 5%, of employers who said they didn't endorse homeworking.

"This suggests there may be some cultural barriers to homeworking in many businesses, as well as some practical policy issues. Now, as we face lockdown again, we would urge employers to take steps to improve their support for homeworkers."

HCR proposes three actions from employers:

- Review and refresh remote working policies to ensure they are explicit and take account of
- Covid-related changes in work patterns
- Provide help for managers to support workers remotely, including effective communication and assessing worker wellbeing
- Find new ways of measuring productivity, defining clear goals for employees whether working from the office or home.

The whitepaper is available for download here: <https://www.hcrlaw.com/insight/future-workspaces/>

City law firm donates £1,000 to support Worcester Foodbank

A Worcester legal firm has donated £1,000 to support the work of the Worcester Foodbank as it continues to support thousands of people and families across the city.

News News News News News News

Through its Corporate and Social Responsibility (CSR) Committee, mfg Solicitors, which has offices on The Tything, has donated the four-figure sum to help ensure the much-loved Foodbank can upgrade its IT equipment and keep providing a range of services which have been impacted due to the Covid-19 pandemic.

Launched in 2012, the Lowesmoor-based Foodbank's mission is to end hunger and food poverty in Worcester.

Last year, its 70 volunteers provided food parcels which supplied in excess of 130,000 meals and helped over 8,000 people. Aside from food, the charity has also expanded to offer hairdressing, financial triage and cooking initiatives. It also helps provide toys and school uniforms. However the COVID-19 restrictions have meant that the charity has had to limit some of these extra services for the time being. Its IT systems have now been upgraded to help cope with its ongoing success.

Tim Clack, Compliance Officer at mfg Solicitors and Worcester Foodbank volunteer, said: "Worcester Foodbank is a popular charity across the firm with many people regularly donating food and other items. It is such an important service for thousands of families and that importance has been brought into sharp focus during the past year due to the Covid-19 pandemic.

"It is a huge operation to manage behind the scenes and therefore our donation will play a role in improving and updating the Foodbank's IT systems and office equipment

so they can keep providing such an amazing, seamless service."

Worcester Foodbank's **Grahame Lucas** added: "I would like to thank everyone at mfg Solicitors in Worcester for this donation. As a charity we rely on support from a range of sources and local businesses here in Worcester are a big part of that. It will help us continue to improve how we operate behind the scenes as our range of services continues to grow."

Staff at mfg's Worcester office have held their own foodbank collection for the past three years, donating hundreds of items. This year staff from the firm's Kidderminster office have also donated £1,000 to the Kidderminster Foodbank.

Worcester Foodbank can be contacted through 01905 780400 or by email info@worcester.foodbank.org. Their website is www.worcester.foodbank.org

Coronavirus insolvency rules extension gives businesses "breathing space"

The extension of temporary measures to protect businesses

and their directors during the coronavirus pandemic has been welcomed by corporate lawyer **Sam Pedley**.

Mr Pedley, a partner at Midlands law firm mfg Solicitors, said businesses had been given vital "breathing space" with the extension of two insolvency measures until 30 June 2021. Measures brought in last summer as part of the UK Corporate Insolvency and Governance Act 2020 provided temporary protections during the coronavirus pandemic.

A suspension of personal liability for "wrongful trading" has protected directors from being prosecuted if they fail to act in the best interests of their company's creditors, once the business becomes insolvent. That was meant to have ended on 30 April 2021 but has now been extended.

The other measure prohibits creditors filing winding-up petitions on the basis of statutory demands or where COVID-19 has had a financial effect on a company. That measure was meant to have expired at the end of March 2021 but has also been extended.

Mr Pedley, from the

Commercial Litigation Department at mfg, said: "The extension of these temporary provisions provides ongoing breathing space to companies whilst coronavirus-related restrictions remain in place, ensuring that an immediate cliff edge is avoided.

"Both measures go hand-in-hand when it comes to protecting commercial tenants who might otherwise have been confronted with a raft of statutory demands this spring.

"The extension until 30 June covers businesses until the planned end of legal limits on social contact, currently set at 21 June 2021. Whether this is the final extension remains to be seen, but for now this is a much needed lifeline for businesses who find their ability to trade severely hampered by things that are completely beyond their control."

Readers requiring more information or advice can contact Sam Pedley at mfg Solicitors through samuel.pedley@mfgsolicitors.com or by calling **0845 55 55 321**.

Kidderminster law firm donates £1,000 to support town's Foodbank

A Kidderminster law firm has donated £1,000 to support the work of the town's Foodbank as it continues to support thousands of people and families across the Wyre Forest.

Birmingham Road-based mfg Solicitors has donated the four-figure sum through its Corporate and Social Responsibility (CSR) Committee to support the Kidderminster Foodbank as it



Sam Pedley

News News News News News News



(L-R) - Jessica McSorley, Rebecca Rogers, James Ng, Tom Esler and Sam Pedley

provides a growing number of emergency food packages to families and individuals in Kidderminster and the surrounding area.

In addition to the donation, staff at the firm regularly donate food items that are needed by the charity, most recently over Christmas with staff collecting and raising further funds to support the cause.

Launched in 2012, the Foodbank's mission is to end hunger and food poverty in the Wyre Forest and last year its volunteers provided help to feed almost 4,500 people despite the pressures of the Covid-19 pandemic which has affected many families across Wyre Forest.

Suzannah Strickland, a paralegal at mfg Solicitors who sits on the firm's CSR Committee, said: "Kidderminster Foodbank provides a food lifeline for so many people since it opened nearly 10 years ago and the team have had to change how it receives donations over the past year due to Covid-19.

"That has meant a huge amount

of work behind the scenes and we hope our donations will go some way to helping the team run the foodbank as efficiently as possible over the next year. It means so much to so many not just in Kidderminster, but across the whole Wyre Forest area."

Christine Morgan from Kidderminster Foodbank added: "We are very grateful for the generous donation from mfg, this will go towards helping us meet the needs of those people who are affected and referred to us due to food poverty."

mfg Solicitors has also donated a further £1,000 to the Worcester Foodbank.

Kidderminster Foodbank can be contacted through 01562 746600 or by email info@kidderminster.foodbank.org.uk

Law firm grows commercial litigation team with appointment of consultant

Midlands legal firm mfg Solicitors has strengthened its commercial litigation offering with the appointment of a new consultant solicitor.

Widely respected dispute resolution specialist **James Ng** has joined mfg and will play a key role in leading the firm's growth in Birmingham and the wider region.

Based at mfg's St Paul's Square offices in central Birmingham, he will handle a variety of corporate, commercial and property matters, whilst also developing the firm's litigation offering in the automotive, engineering and franchising sectors.

An accredited international commercial mediator who spent part of his 22-year career in the Far East, James will also offer an expert dispute resolution and risk management service for firms doing business in China and East Asia.

Tom Esler, partner at mfg Solicitors said: "James is a tremendous addition to our team and the firm as a whole. He brings truly international credentials and a first-rate reputation and is already making an impact with our new and existing clients.

"We look forward to James helping us to grow not only our

practice in Birmingham and in the wider West Midlands, but our national and international reach too."

James Ng added: "First and foremost, I see mfg as an exciting regional law firm with a superb team of lawyers across all areas. The firm puts its clients first and this is reflected in mfg's strong growth over the past several years.

"I want to expand our presence in Birmingham where I have practised for many years and bring onboard a range of new clients from different and diverse sectors. My experience of working within the Chinese market will also be vital as we look to advise and support more businesses who are trading in the Far East, or looking to get into the market."

James, 48, will work closely with Mr Esler and partner, Sam Pedley.

With strong links to the Far East, and as a regular speaker on China-related trade topics, James also plans to launch a new Chinese Business Group, with a programme of events starting later this year to give commercial and networking opportunities to the firm's Chinese clients.

QualitySolicitors Parkinson Wright announces plans to reorganise the commercial department for its continued growth

The firm continues to grow their successful corporate and commercial department. As a result, **Jeremy Redfern**, Partner and Head of Commercial is transferring the role to **Douglas Godwin**, Partner.

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(L-R) - Jeremy Redfern, Cyril Arridge, Douglas Godwin, Rachel Baylis, Louise Adams.

Douglas joined the firm in 2014. Prior to qualifying as a Solicitor in 2002, he was a farm and estate manager and has considerable experience in agricultural and commercial property including planning, land development, building construction, environmental, and rural related matters. Douglas also works on behalf of local charities, for Parish Councils and not for profit organisations.

The department which includes **Richard Green**, Employment Law Partner, has also been strengthened by the appointments of **Louise Adams**, Associate Solicitor, and **Rachel Baylis**, Solicitor.

Louise has 13 years of experience of acting for local and national businesses and charities. At QualitySolicitors Parkinson Wright she will advise on a range of matters including buying and selling businesses, business

restructures, commercial contracts, shareholder and partnership agreements, and data protection. Louise is also an experienced property lawyer and can advise upon matters including commercial leases, as well as the sale and purchase of freehold and leasehold commercial property.

Rachel joined the firm in 2020. As well as being a qualified Chartered Legal Executive (FCILEx), she has recently been admitted as a solicitor. She has significant experience working in both the public and private sectors and now works alongside Douglas & Jeremy assisting in both agricultural and commercial matters.

Jeremy Redfern says, "I am delighted to focus my attention on developing new business whilst still maintaining relationships with our existing clients. I have worked alongside Douglas for the past 7 years

and we are both looking forward to continuing success and expansion in 2021."

Douglas says "I am very pleased to be able to take forward the work of our Commercial Property Department and I would like to thank Jeremy for his leadership and careful management of the Department particularly in the very difficult trading circumstances of the past year. I and the Commercial Property team look forward to expanding the scope of the work that we carry out and extending the reach of our department throughout the West Midlands. We live in interesting times, which I am convinced will get better as the trading difficulties caused by the Covid-19 pandemic are resolved throughout 2021."

Cyril Arridge says: "Douglas has brought a new dimension to the department and he will be able to benefit from

Jeremy's experience in the role. We are delighted to have such pleasing growth in the commercial team."

Use extended furlough scheme to plan for 'new normal', urges lawyer

Businesses given a further lifeline with the extension of the Coronavirus Job Retention Scheme should use the time to plan carefully for life after furlough.

Employment lawyer **Sally Morris** said firms had been given a boost by Chancellor Rishi Sunak's budget, which saw the furlough scheme extended by five months, until the end of September – with employers expected to contribute from July onwards.

Although people were expecting large parts of the economy to be open again by the summer, it will take time for businesses to bring everyone back to work, while many will still have to make difficult decisions about redundancies that were put on hold by the furlough scheme.

Ms Morris, partner and head of employment at Midlands law firm mfg Solicitors, said: "Mr Sunak's announcement will be welcomed by many businesses in the same way previous extensions to the Coronavirus Job Retention Scheme were, especially for those contemplating the possibility of commencing redundancy consultations.

"However, it is clear the Government is starting to look ahead to life after Covid-19. Changes to the furlough scheme will be coming into effect from 1 July, as well

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as the country gradually coming out of lockdown, and therefore businesses will need to review arrangements for those who are furloughed, to plan whether there needs to be any redundancies or restructures, as well as deciding how to reintegrate furloughed employees back into work."

Under the Coronavirus Job Retention Scheme, workers who are furloughed are entitled to 80% of their normal wages, capped at £2,500 per month.

At the end of January 2021 there were 4.7 million workers on furlough and altogether, 11.2 million jobs had been supported by the scheme. Furlough has been extended from 30th April to 30th June 2021 but from 1st July 2021 to 30th September 2021, employers will be required to share some of the costs.

Ms Morris added: "The furlough scheme has avoided millions of redundancies, but the question for employers now is how to get back to some form of normality in the next couple of months. They will need to use the time to work out how sustainable these jobs are once the funding is reduced or ends and take steps to ensure their businesses can survive without it."

Readers requiring more information or advice can contact Sally Morris at mfg Solicitors through sally.morris@mfgsolicitors.com or by calling 0845 55 55 321.

Worcestershire lawyers set for glory as top awards return

The only Awards to recognise the very best local lawyers across Worcestershire are back, with a prestigious black tie Awards dinner at Grafton Manor scheduled for September.

Entries for the 2021 Worcestershire Law Society (WLS) Awards are now open, with eight categories that recognise solicitors, paralegals, barristers and administrators, working in private practice or in-house across the county.



Kate Bould

The Awards' only category to recognise a law firm's team is the coveted Residential Property Team of the Year Award, which this year is sponsored by bespoke property search firm Index West Midlands.

The firm works with many of Worcestershire's law firms, providing conveyancing searches, such as environmental risk factors, utility and telecommunications reports, to the county's commercial, and residential property lawyers, real estate and agriculture/rural affairs lawyers.

Kate Bould is managing director of Index West Midlands, and says: "This is the fifth year that we have supported the Awards. They are one of the Society's flagship events, and I always look forward to the dinner and thoroughly enjoy seeing so many friends and contacts at the event.

"The Awards are unique in Worcestershire for turning a spotlight on the high caliber legal professionals working across the county.

"We work closely with residential lawyers in Worcestershire, as well as further afield across the West Midlands, so it feels the perfect match for us to sponsor the Residential Property Team of the Year Award," adds Kate, who is a member of this year's Awards' judging panel.

"We hope to see entries from many of the fantastic professionals we know and work with, and would encourage everyone to

give it a go and enter."

Charlotte Perry, President of WLS and Partner at QualitySolicitors Parkinson Wright, adds: "The Society's Awards are our flagship event, historically attended by around 200 professionals from the county's legal world and always a hugely enjoyable evening.

"The Awards are the only ones specifically for Worcestershire's legal professionals and we anticipate a record-breaking number of entries this year. We are grateful to all our sponsors and supporters, especially to Index West Midlands' who are a category sponsor for the fifth consecutive year."

Details of the eight categories of the Awards are available on the WLS website. All entries are free and made online, and the closing date is 28 May 2021. Tickets for the Awards dinner at Grafton Manor on 10 September are available via info@worcestershirelawsociety.com.

Index West Midlands provides conveyancing searches, including reports and property transaction solutions such as environmental risk factors, HS2, utility and telecommunications reports, for commercial and residential property lawyers, real estate and agriculture lawyers, across Warwickshire, Worcestershire, Herefordshire, Shropshire, Staffordshire, and the Black Country. For more information: <https://indexpi.co.uk/offices/westmidlands.html>.

WLS was established in 1841 to unite, promote and support local lawyers and the Worcestershire Community. The Society has approaching 400 members including Partners, Solicitors, Paralegals and Trainees. WLS extended its membership to Barristers and Legal Executives who regularly attend and support our annual events. The Society supports the legal profession within the area by providing excellent CPD training courses and representing members' interests. WLS also offers a number of social events throughout the year giving members an opportunity to meet with other solicitors within the County.



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A welcomed clarification of the principles relating to Riparian Rights and drainage easements acquired by prescription

Bernel Limited v Canal and River Trust [2021] EWHC 16 (Ch)



Raghav Trivedi

The Decision

His Honour Judge Cawson QC found that the Claimant was not a riparian owner with the benefit of riparian rights nor had it acquired an easement by way of prescription under the doctrine of lost modern grant (20 years' user). Therefore the Judge found that the Claimant was not entitled to the declaratory relief it sought to allow the Claimant to drain surface water and treated sewage effluent from its site onto feeder land owned by the Defendant.

The Two-Part Claim

The Claimant was a freehold owner of a site comprising a dwelling, a garden and an adjoining field. In light of the proposed development of further houses on the field, the Claimant sought to discharge surface water and treated sewage effluent from its site onto the Defendant's neighbouring land. Given the lack of permission from the Defendant on appropriate terms, the Claimant sought a declaration from the Court confirming that it had a pre-existing right to do this:-

a). As a riparian owner given that the pipe running through its site was a culverted natural stream or watercourse into which the Claimant was entitled to discharge the water flowing onto the Defendant's land ("**Riparian Declaration Claim**"); or alternatively

b). Through an easement acquired by prescription under the doctrine of lost modern grant ("**Prescription Declaration Claim**").

Riparian Declaration Claim

The Claimant attempted to assert its rights

as a riparian owner by suggesting to the Court that the pipe was a "culverted natural watercourse." The Defendant resisted this assertion suggesting there was no natural watercourse or flow. The Judge examined the legal authorities and provided the following simplified exposition of law (at para [81] of the judgment):-

a). *The fact that there may be some periods of non-flow is not incompatible with there being a natural watercourse;*

b). *On the other hand, a dry channel which is only filled during temporary flooding is not a watercourse giving rise to riparian rights; and*

c). *The question as to whether any temporary flows as may have occurred along a particular course is a watercourse is a question of fact for the Judge to decide.*

The Judge considered the extensive expert evidence on, inter alia, the site and the catchment and concluded that there was insufficient evidence of a flow of water off the catchment along the course of the pipe to lead to the conclusion that there was a natural watercourse that had been culverted. The Judge stated that if such rights had been established, the Claimant's proposals would have been permitted.

Prescription Declaration Claim

The Claimant asserted, in the alternative, a drainage easement acquired by prescription (i.e. a 20 plus year use of the pipe to discharge the water onto the Defendant's land). Again, the Judge provided a helpful clarification of the legal hurdles that need to be crossed in order to succeed in a claim based upon prescriptively acquired drainage easements, namely (at para [109] of the judgment):-

a). *The establishment of an upwards of 20 years' user;*

b). *The established easement's accommodation of the whole of the site in question so as to constitute the whole of the site as the dominant tenement, applying the comments from Regency Villas Title Ltd v Diamond Resorts (Europe) Ltd [2019] AC 533 (at para [117] of the judgment); and*

c). *Applying the two part test from McAdams Homes Ltd v Robinson [2004] 3 EGLR 93 (at para [107] of the judgment), the proposed user to not be impermissibly excessive (i.e. an increase in intensity of use of easement cannot be objected to unless the development represents a radical change in character or identity of the dominant land resulting in a substantial increase or alteration in the burden on the servient land).*

The Judge found that the evidence was unable to establish an upwards of 20 years' user and the easement would not have accommodated the dominant tenement as a whole in any event (although the user proposed would not have been considered excessive).

Comment

The Judge's breakdown of the legal principles provide a welcomed clarification of the law and tests to be applied relating to riparian rights and drainage easements. In light of the above this case is likely to prove of practical assistance to developers in understanding the limits of its actions in relation to drainage in aid of its development, and whether a claim for declaratory relief is required and is likely to succeed.

Developers should have these principles in mind at all times, and also make sure the factual and expert evidence is up to scratch to satisfy the Court of its entitlement to drainage rights. The Judge in this case made clear on a few occasions that many of these matters were a question of fact. Indeed, this particular claim failed on its own facts and expert evidence.

Going further, the good news for developers is that if there is a prescriptively acquired drainage easement in place, the onus seems to have been squarely placed on downstream owners to police the situation, consider bringing a claim and satisfy the difficult *McAdams Homes Ltd v Robinson* [2004] 3 EGLR 93 test. The question remains: will the Judge's findings extend to the law of easements generally? We will have to wait and see.

Raghav Trivedi

Barrister at St Philips Chambers, Birmingham

Closure of the Solicitors Indemnity Fund

The Solicitors Indemnity Fund (SIF) will stop accepting new claims after 30 September 2021.

Currently, SIF provides ongoing cover to firms once their mandatory six-year run-off period has elapsed. The closure means that solicitors may be personally liable for losses from any future claims that are made against firms that have been closed for more than six years.

It's important that you understand what this means for you in order to protect yourself against potential future claims. This is a short summary – links to full details are available at the end.

What you need to do

You'll need to start by reflecting on your risk exposure.

The first thing to consider is areas of work. Some work areas are at greater risk of long-tail claims, such as residential conveyancing, wills and trusts, child personal injury, and matrimonial property.

Secondly, you may be affected differently depending on whether a practice at which you were a principal or employee is now closed, and when the closure took place.

Below we have outlined four groups of members which will be affected differently and suggest practical steps you could take.

Group A: Firms that closed on or before 31 August 2000

These firms are currently covered by SIF. As they closed before the profession moved to purchasing insurance on the open market, arrangements will be made for them to receive ongoing cover after SIF has closed.

Suggested action

If you fall into this group, you may not need to take any action.

Group B: Firms that closed between 1 September 2000 and 30 September 2015

These firms are in SIF, or will be in SIF, by 30 September 2021. This is the group that we believe faces the greatest difficulties as a consequence of SIF's closure. For some

time now, we have been actively pursuing options for this group and continue to earnestly engage with the insurance industry to find a solution. However, there are currently limited alternatives available.

Suggested action

- 1 If you're aware of any matter which could give rise to a claim and can identify the former client who was affected, consider contacting that client (or their beneficiaries) and encouraging them to register a claim with SIF prior to 30 September 2021.
- 2 Gather and keep whatever relevant paperwork you still have available relating to your practice and indemnity insurance records, including previous applications and claims.
- 3 If you had a good claims history and paid your excesses and run-off premium, consider approaching your former broker or underwriter to see if they're willing to consider providing you with supplementary run-off cover. This would not have to be on the same terms as your original mandatory run-off cover.
- 4 If you were part of a traditional partnership, you may want to discuss with your former partners whether and how you would pay for any supplementary cover.

Group C: Firms that have closed since 1 October 2015

These firms have closed, and they will never benefit from SIF because it will stop accepting new claims before their mandatory six-year run-off period comes to an end. Unless alternative arrangements are made, these firms will be left without protection once their run-off cover expires.

Suggested action

For former principals, we suggest that you take the practical steps outlined in points 2 through 4 above and preserve any records which may be of assistance in dealing with future claims.

Group D: Existing firms

Unless alternative arrangements are

made, existing firms will be left without protection once their run-off cover expires. However, there are still precautionary measures that firms can take to reduce their long-term exposure.

Suggested action

- 1 Principals of existing sole practices or partnerships should consider incorporating as a limited liability company, as this will reduce personal exposure to claims arising from work carried out subsequent to incorporation. But you should take independent advice on this, as it may have other consequences for your practice.
- 2 Work to improve risk management systems, and carefully consider whether you should stop taking on any new work in areas with a higher risk of long-tail claims. Retain records of any such work you've done previously, or do in the future, in order to defend any claims that may arise subsequently.
- 3 Principals should also think about their likely need for supplementary run-off cover, and how they'll pay for it. Consider setting aside funds now or start to implement a plan to help you to pay for your mandatory and supplementary run-off cover in the future.

TO FIND OUT MORE ABOUT THE SIF CLOSURE AND REGISTERING FOR UPDATES

- Visit www.lawsociety.org.uk/SIF-closure for the full details on the closure of SIF, its impact on closed, existing and new firms, and practical steps to take for principals and employees.
- Sign up or log in to My LS and add the 'Solicitors Indemnity Fund' topic. Select 'Manage topics' and search for 'Solicitors Indemnity Fund'.
- Register interest in receiving further information by calling the Support Centre of the Law Society of England & Wales on **020 7242 1222** and leaving your contact information, or email **SIF@lawsociety.org.uk** to be included in future updates.

One in five people writing wills now include a charity



The global pandemic is changing the way people approach end-of-life planning and inspiring more people to write charitable gifts into their Will than ever before, but myths around how it works can impede that growth, according to the charity consortium, Remember A Charity.

Growth of gifts in wills

In 2020, many legal firms recorded an uplift in wills, with the Law Society reporting a 'striking shift' – that 7% of UK adults had written a will during the first lockdown. But the crisis prompted another notable shift; heightened awareness of the critical role of charities in our communities, inspiring the public to use their will to give back.

The same Law Society poll found that one in five people writing wills are now including a charity. Industry data reflects this shift too with new figures released by Co-op Legal Services showing that almost a third (32%) of the wills they created in 2020 included a gift to charity. This equates to a 61% increase in the number of people leaving a gift to charity in their will through the Co-op, with cancer charities (42%) and local causes (21%) most widely named as beneficiaries.



Rob Cope (left), Director of Remember A Charity, says: *"The pandemic has had a devastating impact on people across the country, and it's hardly surprising it's inspired us all to reflect on what matters most and what we can do to help.*

"Family and friends will usually be our first consideration in a will. But leaving a charitable bequest is also something that many people find incredibly empowering – a statement about who they are and what they believe in – and a way to shape the world they leave behind. It's wonderful to see how much appetite there is for giving in this way."

Role of professional advisers

Solicitors and will-writers play a critical role in inspiring gifts in wills, with the large majority proactively asking relevant clients whether they wish to include a charity in their will, with 68% regularly doing so, up from 58% in 2012¹. Even the simplest reference to the option of including a gift has been found to double the propensity for giving in this way.

Typically, professional advisers raise the topic during the standard will-writing process or estate planning, alerting clients to the relevant Inheritance Tax breaks. Any legacy gift to charity is currently exempt from Inheritance Tax (charged at 40%), and a lower rate of tax (36%) is applicable on estates where 10% or more is donated.

Cope adds: *"The Inheritance Tax framework makes legacy giving all the more appealing, but we're conscious that there are many myths among the public around donating from your will and this can prevent supporters from doing so."*

These myths were highlighted in a recent survey of over 170 financial advisers, carried out by the Personal Finance Society. Advisers reported that clients were often unaware they could donate to charity and still pass on the bulk of their estate to their family. Similarly, clients often perceived bequests as being a form of giving for "the rich few" rather than something that everyone can do.

Cope adds: *"We're fortunate that, here in the UK, it's easy to include a donation alongside gifts for family and friends. People can choose to donate any sum to any charity – there's no need for it to be a large amount*

– and any gift really can make a difference.

"This is where professional advisers are so important; being able to give clients impartial information so that they can ensure they are making the best decision that allows them to remember all the things they care about in their will."

After more than a year of crippling funding shortages to the charity sector (amounting to an estimated income loss of £10 billion²), income from charitable bequests has been all the more crucial in helping charities survive periods of uncertainty. Gifts in wills raise over £3 billion for good causes each year and – despite the delays in probate during 2020 – they have remained the largest source of voluntary income for UK charities throughout the crisis.

Free campaign supporter scheme for legal advisers

Remember A Charity runs a Campaign Supporter scheme for solicitors and Will-writers, including a free listing on the public directory which receives tens of thousands of visits a year. Remember A Charity Week takes place from 6th-12th September 2021, with Campaign Supporters receiving free materials to celebrate the week and help open up conversations with clients about the option of leaving a charitable bequest in their will. Find out more at www.rememberacharity.org.uk.

¹ Future Thinking, 2019

² ProBono Economics 2021

Wythall Animal Sanctuary

WYTHALL ANIMAL SANCTUARY is a registered, independent charity that was established in 1968 by our founders Mr and Mrs Davies. Since we first started, we have been providing sanctuary and a safe haven to many mistreated and abandoned animals. We are a non-destruct sanctuary and have many residents who stay with us forever or until they can find their own forever home. We rely solely on the kind donations of our supporters to keep the sanctuary going and enable us to help more animals who need us, as our name suggests we really do provide a safe place of sanctuary.

For information on how you can help us by donating or arranging a legacy gift, why not phone us now on:

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A Simple Commitment Can Make A Big Difference



Employers across Worcestershire are being encouraged to support Midlands Air Ambulance Charity's vital lifesaving work by signing up to its easy payroll giving scheme during its Air30 30th anniversary year.

Payroll giving is a simple and tax-efficient way for employees to donate regularly to Midlands Air Ambulance Charity through their salary, whilst employers can enhance their corporate social responsibility by offering the scheme. With the reduction in fundraising income due to the pandemic, this is the ideal scheme for those wanting to make a big difference, with a simple monthly commitment.

For those looking to make Midlands Air Ambulance their charity of choice, the

donations raised through payroll giving goes towards the company's donation, and the administrative costs related are tax deductible.

Employees can choose to donate as much or as little as they like, and as the donation is made prior to tax, HMRC will increase the amount donated at no extra cost. For example, a £10 donation will cost the employee just £8, and HMRC add in the difference.

To allow for the scheme to take place, employers simply sign up with a HMRC-registered payroll giving agency and advertise the opportunity to employees. The payroll department can then send the donations to the chosen payroll giving agency, who will handle the transfer of funds to Midlands Air Ambulance Charity.

National law firm DLA Piper are registered to an approved agency. **Alistair Smith**, Associate at DLA Piper, said: "The reason I signed up is because Midlands Air Ambulance is such a great cause and makes a huge difference to many people within the wider Midlands region."

"Payroll giving is really easy to do and means that it is something I just do not have to think about each month, which is great!"

Samantha Lewis, team coordinator at DLA Piper, echoed Alistair's thoughts: "I was astonished to find out that Midlands Air Ambulance is only able to run due to charitable donations. If I can help in a small way to ensure that this vital service remains available should any one of us need it, then I am happy to do so. Payroll giving is an easy way to donate without even noticing, financially, that you are helping to make a difference."

Pam Hodgetts, corporate partnerships manager for Midlands Air Ambulance Charity, said: "Payroll giving is a straight-forward way for employers to involve employees in their corporate social responsibility, and a cost-effective approach to increasing the donations made to our lifesaving service."

"We've already had positive feedback from those who have chosen to get involved, and I'd encourage anyone to help support our vital medical emergency service across the six counties we cover, by looking into payroll giving as a regular opportunity for their employees."

For more information on supporting Midlands Air Ambulance Charity through payroll giving, visit midlandsairambulance.com/corporate/payroll-giving and follow the organisation on social media.



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A True Story – A Telephone Call Received in 2021



Angela Gifford, CEO since 1980

The phone rang and the lady making the phone call introduced herself as in her 70's with an older brother and sister-in-law who wanted to stay in their own home but were finding it difficult to do so. The reason being that both now needed care support and so were currently unable to live on their own. As an interim measure the couple, aged 84 and 90, had moved into a care home because of their current situation.

Having no children of their own, the sister had almost been given the responsibility to get her relatives safely home. Her 'job' was complicated in that she lived in another County and due to the pandemic

could not even visit them.

One problem was that they would be self-funding and although Social Services had assessed them as being able to go home, they had left them to make their own arrangements. The care home was helpful, but they would not actually arrange a home care package and the whole situation was being hampered by Covid-19.

The caller wanted to know, where did she start to find a solution? Information was needed so she could speak with her brother, have answers to his questions while all the time, knowing that she knew

very little about finding appropriate, affordable and available home care.

ABLE COMMUNITY CARE COULD HELP.

Over a couple of further phone calls, we were able to offer details about the services we could provide, directions about what other services were available in the area in where her brother lived, the related, financial costs and what to expect of a home care agency with reference to care workers qualifications, experience and statutory checks.

Able Community Care, based in Norwich and Jersey, has 41 years of providing Live-in Care Support. Our client's range in age from young adults to centenarians living throughout mainland UK and the Channel Islands.



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Reclaim your lunchbreak and recharge in nature this Mental Health Awareness Week



Many of us have lost our connection with nature, spending most of our time indoors, at home, in an office or in a car. Sometimes even having lunchbreak seems luxurious – most of us bolt food down at our desks so as not to miss a minute of the working day. However as humans we aren't meant to spend so much time indoors. Our ancestors were hunter-gatherers spending most of their time outdoors amongst trees, by water, studying plants and animals, in all seasons and weather. Could our health and wellbeing be suffering because we spend less time outdoors? There are many powerful reasons why we should down tools and step outside once a day so this week try and use your lunchbreak to get outside.

Being outside can help your productivity

We often think we don't have time to take a proper break during the working day but having a break outside can make all the difference to your productivity and give you perspective on a work issue. Researchers found that time spent in nature can renew our attention spans when they are flagging after a hard day's work or an extended period staring at a screen – this is known as Attention Restoration Therapy (ART). This is supported by research from the University of Madrid and Norwegian University of Life Sciences that seeing natural landscapes can speed up recovery from stress or mental fatigue.

Contact with nature reduces anxiety and stress

Being anxious, stressed or depression can mean you don't want to go outside, preferring to hunker down indoors. Whilst this may be your natural instinct, going outside and being with nature can reduce

your anxiety and stress. There is scientific evidence that we feel calmer when we look at trees, for example. This is known as biophilia. Forest bathing, the Japanese practice of spending time slowly and quietly in forests, is proven to lower the stress hormones of cortisol and adrenalin, suppresses the fight or flight instinct, lowers blood pressure, boosts the immune system and improves sleep. Not only that but the activity of white blood cells known as natural killer (NK) cells increases when humans spend time in woods. You don't have to visit a wood or forest every day – these biochemical benefits last for up to a month.

In addition there is evidence that exercise outside can be more effective than antidepressants for those with less severe mental illness and research from the University of Exeter showed that the presence of birds in a landscape can help to lift depression. It is also well known that time spent with animals, or gardening has a positive impact on your mental health.

Time outside can effect the chemical make up of our brain

There are several physiological and neurological changes that take place when we go outside which can boost the happiness chemicals in our brain. Serotonin is a compound that carries signals between nerve cells in our brain and there is link between the levels of serotonin in our brain and our mood. Time spent in the natural world and particularly in sunlight triggers an increase in serotonin. Exploring a new environment outside and foraging, collecting shells, leaves, blackberries, releases dopamine which helps regulate movement, attention, learning, and emotional responses. Cold water swimming is

shown to boost serotonin, oxytocin (the love hormone) and endorphins which reduces pain relieve stress and enhance pleasure. It also helps to control our fight or flight instinct.

Nature can help you learn mindfulness

Meditation, or mindfulness, is proven to reduce stress, however some find it hard to get to grips with. Nature offers many ways to be mindful without even realising, whether its bird watching in your garden, watching a sunrise or sunset, looking at a bee buzz round a flower, star-gazing at night or listening to the sound of the sea. These are all ways to help you be calm and still and focus on the present moment which will help you maintain good mental health and wellbeing and keep stress at bay.

LawCare provides emotional support to all legal professionals, support staff and their concerned family members. You can call our confidential helpline on 0800 279 6888, email us at support@lawcare.org.uk or access online chat and other resources at www.lawcare.org.uk

Resources and useful links

- Wild Remedy by Emma Mitchell
- The Natural Health Service by Isabel Harman
- Mental Health Foundation Thriving with Nature
- Mind
- Nature for Health and Wellbeing The Wildlife Trusts
- RHS: How gardening can help mental health and wellbeing
- Natural England
- Thrive: the gardening for health charity
- Forestry Commission: Forests for Wellbeing

Landmark Academy: Helping you reach your Learning & Development goals

An important aspect for any legal professional is maintaining their professional development and learning requirements. For property lawyers, conveyancers, legal executives and trainees in property, an online hub is available that provides free access to a wealth of resources.

The **Landmark Academy** was launched in 2020 to provide access to free training and development videos, webinars and articles, to meet professional development targets, set out by the Solicitors Regulation Authority's (SRA).

Allie Parsons, Customer Success Consultant for Landmark Information's Legal team explains how legal professionals can benefit: *"Having spent many years visiting law firms to train teams on environmental issues, it became clear that it wasn't always convenient for those requested to attend – busy days meant they either disrupted their schedule or missed out on updating their knowledge. Add to that the restrictions posed by the pandemic, the Landmark Academy offers a learning solution that suits the way we work today."*

"We have completely refreshed our Landmark Academy to provide greater access to the very latest training materials to support their Continuing Competence needs. We have some fantastic contributors on board who are experts in their field and the content is refreshed on a regular basis. An audit trail of completed learnings can also be produced for annual declarations, which we hope will be of great use."

The Landmark Academy brings together a number of experts from across the industry including Professor Robert Lee, a former Director of the Centre for Legal Education and Research at the University of Birmingham, Real Estate legal specialist Sue Highmore, Stuart Tym, national planning and environment Senior Associate at Irwin Mitchell, and Environmental Law Director for Landmark Information Simon Boyle, as well as specialists from Landmark's wider team.

Adds Allie: *"Whether you want to read a topical article or get an insight on any of the range of issues that occur during property transactions, it means you can*

do it when the time is right for you. The majority of the videos last 15-20mins."

With free online access to easy-to-digest podcasts, videos, webinars and guidance provided by widely-acclaimed experts, the Landmark Academy gives solicitors insights into a range of issues that occur during property transactions – this includes environmental law, flooding, planning, energy & infrastructure, in addition to guidance on selecting the appropriate due-diligence reports that are available.



Introducing Allie Parsons

Allie Parsons is the Customer Success Consultant with Landmark Information Group as part of the Landmark Legal Team. Allie has over 27 years' experience in marketing, consulting and advising various businesses, the last 14 years working with property solicitors and their law firms. Allie's role is focused on engaging with conveyancing and property teams to support them in receiving the most accurate and suitable Landmark environmental searches and solutions. Endorsing the various Law Societies allows Allie and Landmark to connect to members, and take on board conveyancers' opinions.

Allie also has a broad experience in

professional training and delivers seminars and training sessions for legal professionals on a range of property related issues. Do please contact Allie if you'd like more information on the Landmark Academy.

Landmark Information

Landmark Information uses data and technology to help customers in the residential and commercial property industries access data insights to support transactions and reduce risk. It combines complex property and environmental data into sophisticated risk models and solutions to enable customers to make smarter decisions, and build workflow solutions that allow customers to carry out tasks more efficiently and effectively.

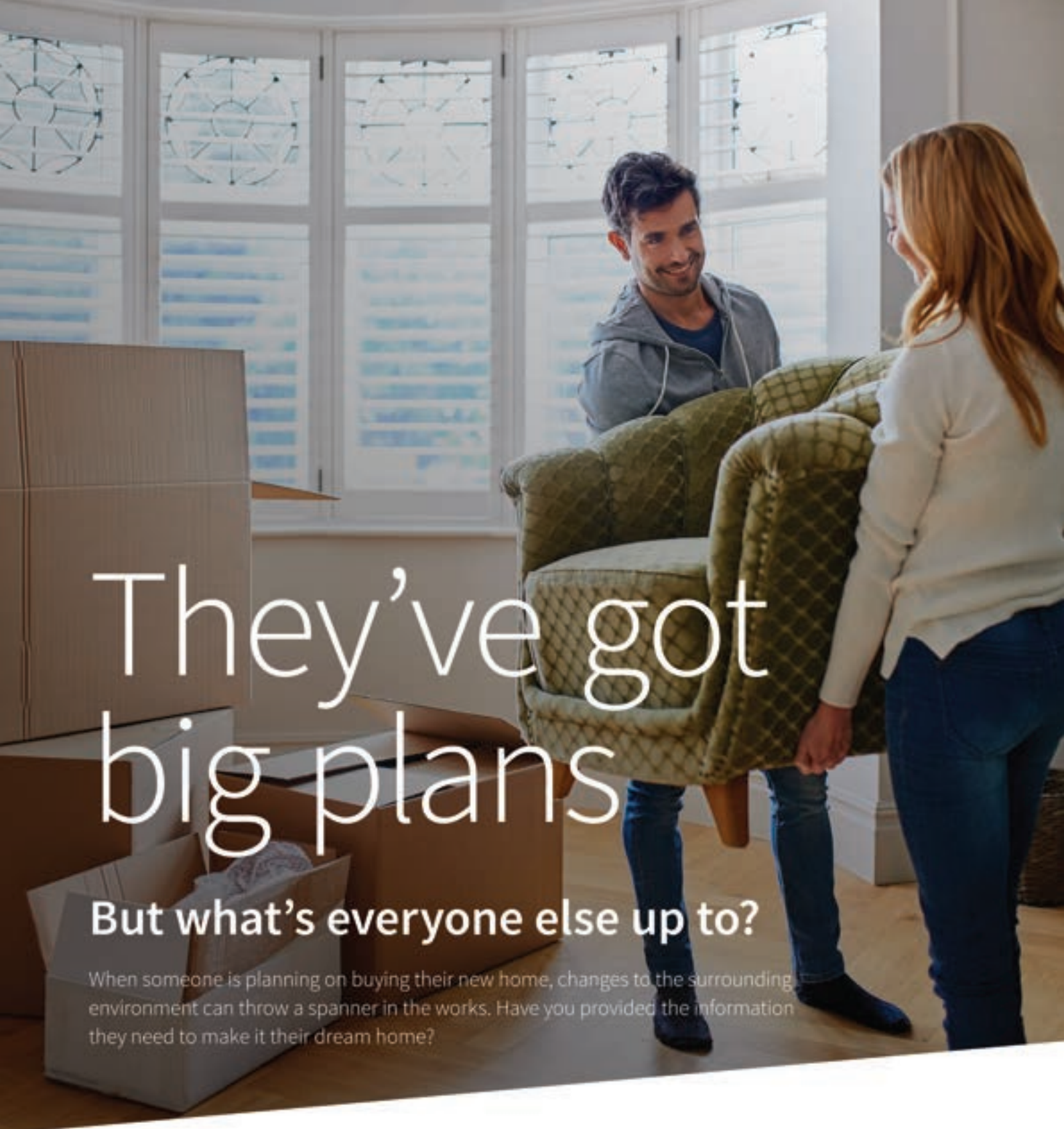
Landmark has long-standing partnerships with customers in the legal conveyancing, mortgage lending and surveying markets, as well as in land acquisition, property development, estate agency and insurance.

The team's dedicated, personal approach supports legal professionals in their due diligence in line with the Law Society and SRA requirements. Reports include a wide range of environmental insights, including contaminated land, flood risk, ground stability through to planning issues.

Concludes Allie: *"Landmark's 25 year longevity in the legal market brings valuable experience and dependability to risk solutions however we are always continuing to innovate so feedback from our report users and Law Society members is invaluable."*

GET IN TOUCH

To register for free access to the Landmark Academy, visit www.landmarkacademyhub.co.uk, or visit the Landmark Academy LinkedIn Group via: <https://www.linkedin.com/groups/13842695/>



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RiskView Residential is Landmark's gold standard, all-in-one environmental search report, used by property lawyers to assess a wide range of potential hazards on behalf of prospective purchasers. These include flooding, ground stability, contaminated land, energy and infrastructure and now includes planning application and constraints data.

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Can you challenge an expert determination?



Chris Makin

About a year ago, I wrote an article (*"Is an Expert Determination always the final answer?"* – see <https://chrismakin.co.uk/is-an-expert-determination-always-the-final-answer/>) in which I explain how difficult it is for a party to a dispute settled by ED to challenge the expert's decision. Here is an update.

I am keen that ED is used for many kinds of dispute, not just those arising under rent or company sale/purchase agreements. Most of mine, of course, are of the latter type, though I have recently determined disputes over the rent payable to a farmer for wind turbines on his land, or the amount payable in royalties on music downloads. But for the present I will stay with company sale/purchase disputes; as a chartered accountant this is my home territory.

ED has a number of advantages: speed, confidentiality, you can choose an expert with the appropriate qualifications, and so on. But the main advantage is finality; the parties need to know where they stand, and they don't want to be kept waiting months for a court date, and then a series of appeals if one party or the other doesn't like the result.

With ED, the parties appoint an expert to make a decision, so that three people – the two parties and the expert – are bound by contract to make and to accept that decision. This was made clear many years ago in *Campbell –v- Edwards* [1976] 1WLR403 by dear old Lord Denning who said that, in the absence of fraud or collusion, the parties must accept the expert's decision, even if it is wrong, because that is what they had contracted to do. So even if the expert had made a mistake, they must accept the decision.

Do what you are instructed to do

Of course, one of the let-outs is if the expert did not carry out the parties' instructions. That was so in *Begum –v- Hossain* [2015] EWCA Civ717, where the expert (not an accountant, I am relieved to say!) was instructed to value the company after inspection both of the official records of the company and of the handwritten records of takings (Two sets of books? Remarkable!). He chose not to look at the handwritten records, putting them in the "too difficult" box. The court found that the expert had been instructed to look at them, he had not done so, he had failed to carry out his instructions, so his decision must be set aside. In essence, there were three parties to the contract (Denning again), one participant had not done what he was contracted to do, so the ED failed.

More recently we have another example of a failure to carry out instructions, and this one rather more subtle than apparent tax fiddling. In *Veba Oil Supply & Trading GmbH –v- Petrograde Inc* [2001] EWCA Civ 1832 the dispute concerned the amount of oil passing along a pipeline. The expert was instructed to use a particular method of measurement, but instead he used a method which was regarded as being more accurate. Despite that, his decision was set aside because he had not carried out his instructions.

What about manifest error?

These days, the Denning policy does not suit everyone. In a company sale/purchase dispute, the drafter of the contract will make every effort to ensure that their clients are not stuck with an irrational decision by the expert which could be expensive. So it is common practice for the dispute resolution clause (DRC) to provide for the appointment of an expert in a case of dispute, and for words such as these to be included:

"The Expert's written decision on the matters referred to him will be final and binding in the absence of manifest error." (my emphasis)

This must be right; no party should be stuck with a commitment to pay more for a company than is clearly due. So the question arises: what is a *manifest* error?

I turn first to *Amey Birmingham Highways Ltd v Birmingham City Council* [2018] EWCA Civ 264, where the court found that a manifest error was "...an error which is obvious or easily demonstrable without extensive investigation."

We have more guidance from the case again of *Veba Oil Supply*, where Simon Brown LJ said, obiter, that manifest errors are "...oversights and blunders so obvious and obviously capable of

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affecting the determination as to admit no difference of opinion." So there must be oversights and blunders which are very obvious, and which can affect the decision; in other words, which can cause a party to pay more than they should.

More recently - very recently, in fact - we see the opposite situation. In *Flowgroup plc -v- Cooperative Energy Ltd* [2021] EWHC 344 (Comm) the court had to deal with the issue of whether the expert had gone outside his jurisdiction. He had not; it was entirely understandable that the parties should wish for an expert accountant to resolve issues of contractual interpretation in an accounting context. And that merely reflects the decision in *Bruce -v- Carpenter* [2006] EWHC 3301 (Ch) where an accountant said she could not make a decision because she was "only" an accountant, and the matter was one of law. On the contrary, the court found: she was appointed expert to make a decision, and make a decision she must.

Conclusion

In ED the parties must accept the expert's finding, unless in the DRC which appoints him he commits a manifest error. And such an error must be a real howler: a blunder or oversight which is very obvious without much investigation.

I conclude with two war stories.

In a multi-million dollar ED I made a decision, and was challenged as having committed a manifest error – the first challenge I had received after scores of EDs. The appeal contained nothing new, and was hopeless. I rejected it, and heard no more. The parties had my decision; they had finality.

On another case I am acting as adviser on an ED which has gone wrong. In assessing the balance sheet in the Completion Accounts the expert made a large adjustment for a figure which was already in the balance sheet (double counting), and then compounded the blunder by treating this liability as an asset (quadruple accounting?). This was a clear blunder, and it caused the purchaser to pay far too much for the company acquired. The case continues. Watch this space...

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

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

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

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I happy am to use virtual technology (Zoom, Teams, FaceTime, WhatsApp) while Face to Face consultations for Medico-Legal consultations are not possible at BMI Priory Hospital, and I am able to obtain approximately 90% of the clinical information that F2F's would give. Maxillofacial imaging is available for clients via Cavendish Imaging Birmingham.

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

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

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An expert's Top 5 Tips for Counsel dealing with DNA evidence?



Recent updates to the Criminal Procedure Rules and Practice Directions encourage the court to be astute in identifying potential flaws in expert opinion (CrimPD 19A.6). This seems a reasonable suggestion, but may

be rather more difficult to implement. What do Counsel need to know in order to determine the admissibility of DNA findings? CrimPD 19A.5 suggests considering a variety of factors in determining the reliability of expert opinion. These are complex issues relating to matters including validity of methods, reliance on inference, degree of accuracy and precision involved in formulating opinions, and indeed, the degree of uncertainty. Counsel are likely to require expert assistance with such considerations. Consultant forensic scientist and chartered forensic practitioner, Sue Carney, provides here, her Top 5 tips to assist Counsel in understanding and challenging DNA expert reports.

1. Check the status of the expert report

DNA findings are frequently presented these days in an abbreviated format: the Streamlined Forensic Report (SFR). The initial, and most basic of these, the SFR1 (aka the MG22b), merely reports a DNA match. No context is provided for the match; usually only an exhibit reference and the name of the matching individual. SFR1s are automatically generated. Indeed, the named 'author' of these reports is often the seizer of the exhibit, rather than a DNA expert.

SFR1s are not evidential. Should the prosecution intend to rely on DNA findings then they are advised to request their expert produce a full evaluative statement. In practice, defence are frequently provided only with an SFR1 at the crucial point at which they must decide whether or not to instruct their own DNA expert. Expert intervention is encouraged at this stage and most defence-instructed experts will provide a free quotation and initial guidance.

The SFR2 (or MG22a) is an abbreviated report intended for evidential use. The degree of abbreviation may vary depending on which forensic service provider is the issuer. Whilst some SFR2s include an interpretation of the findings, this is often limited to the most basic 'source level' question: From whom has the biological material originated? Frequently, the more complex issues of how and when the material was deposited are not addressed.

2. Understand the statistic

A DNA match is often evaluated numerically. This value can be presented in one of two closely connected formats: the **match probability** or the **likelihood ratio**. For a full DNA profile match, the match probability is estimated to be in the order of one in a billion (where a billion is a thousand million or 10⁹). This is the chance of obtaining the DNA profile if the sample has originated from a person other than and unrelated to the matching

person. In other words, if the DNA is not from the matching person and the match is by chance. The equivalent wording in likelihood ratio terms would be to describe the DNA match as a billion times more likely if the DNA were from the matching person rather than another unrelated person.

A billion is an estimation. A full profile match is, in reality, many orders of magnitude rarer. A billion is considered to be a fair and reasonable reflection of the value of a DNA match and has been used as a maximum cut-off value to express this strength of evidence since the previous DNA profiling system was in routine use. A billion continues to be applied to current systems, which are considerably more discriminating than previous models.

Counsel are advised to be cautious when elucidating the relevance of a DNA statistic. The value of a billion cannot be used to consider the number of potentially matching individuals within a population of a certain size. A billion does not relate to a population in this way. Instead, it is a value derived from the comparison of two probabilities. Further, the statistic relates solely to the likelihood of the DNA match *if* the DNA were from a particular person. It does not equate to the probability that the DNA *is* from that person. Such erroneous thinking is termed "the transposed conditional", or more commonly, "the prosecutor's fallacy".

3. Is it a mixture?

Increased sensitivity of DNA profiling in recent years has led to the detection of far more mixtures of DNA. The type and complexity of a DNA mixture will determine whether any statistical evaluation can be applied, although software solutions are now available that statistically resolve complex DNA mixtures of up to 4 or even 5 contributors, that were hitherto unable to be evaluated.

If a mixture of DNA is particularly low-level, it may not be possible to accurately determine the number of contributors, in which case statistical evaluation may be ill-advised.

As the complexity of a DNA mixture, i.e. the number of contributors increases, then so too does the chance that any and every reference DNA profile will share a significant number of common components. In short, as complexity of a mixture increases, potential evidential usefulness decreases.

4. Attribution?

Can DNA detected in a particular circumstance be attributed to a particular body fluid or tissue type? This may depend on both the circumstances of the case and the results of tests, which may be limited by their sensitivity and / or specificity. Some test results might indicate, rather than confirm, the presence of a substance, and any attribution of DNA to that substance must take account of some degree of uncertainty. Indeed, forensic science rarely deals in absolutes.

Generally, if a mixture of DNA is detected in conjunction with a detectable body fluid, then it is not usually possible to attribute the DNA of any particular contributor to the body fluid. There are a few exceptions, such as the presence of a male-

female mixture alongside the detection of semen. If a DNA profile is considered to be low level, nearing the limits of detection, then it may not be possible to attribute it to a body fluid, nor to determine how or when it was deposited. Given the ubiquitous nature of DNA; its expected presence on surfaces with a high degree of human contact, then it is possible that low level DNA detected within the context of a criminal investigation may not relate to, or have been deposited during the incident at all.

5. Transfer issues

Mechanisms of DNA transfer from contact are not yet fully understood. A body of research dating back more than 20 years indicates that DNA transfer from the hands involves multiple factors including the conditions of transfer (duration, force, friction, moisture and the like), the cleanliness of the hands and the activity of the individual prior to transfer. Research suggests that DNA comes to be present on the fingers via a variety of potential mechanisms.

The phenomenon of indirect transfer of DNA, where an individual's biological material is deposited onto a surface indirectly, via some other surface or object, has been widely reported in the literature. The donor of indirectly transferred DNA has not had any contact with the object. Expert reports may refer to directly and indirectly transferred DNA as if, somehow, they are distinguishable. However, generally, it is not possible to determine from a DNA profile, whether DNA has been deposited directly or indirectly.

The surfaces of any object with an habitual user may be expected to bear a build up of their DNA over time. DNA can also be removed from an object by subsequent use and a change of user will inevitably lead to a gradual replacement of the previous user's DNA. Conversely, an individual may handle an item without depositing their DNA in sufficient quantity to detect, yet at the same time, may deposit a substantially greater amount of someone else's DNA.

Given these considerations, a DNA match may not be in question, rather, the circumstances surrounding the incident and any version of events upon which the accused intends to rely become crucial in addressing the issue of how the matching DNA came to be present.

Sue Carney, MPhil, BSc (Hons), MCSFS, ChFP (Biology) has been a forensic scientist for 20 years; 10 years employed by the former Forensic Science Service, and 10 years as an independent consultant forensic scientist and proprietor of Ethos Forensics. Sue is widely instructed by the defence in England and Wales, and on occasion, in international jurisdictions. She deals with matters involving DNA profiling and body fluids findings, including blood pattern interpretation, and has given expert testimony at crown court in many cases.

Sue can be contacted for a no obligation quotation and initial consultation at sue.carney@ethosforensics.com

In conversation with Jay Bhayani

In 2021, it's anticipated that two new law firms will open every working day. To help these budding startups to get their businesses off to a flying start, Quill caught up with Jay Bhayani at Bhayani HR & Employment Law to share her wisdom on the practicalities of setting up a law firm.



Tell us a little about yourself and your practice

Bhayani HR & Employment Law is a niche practice offering straightforward employment law advice along with outsourced HR services. I launched the business six years ago and have grown to such an extent that I now have offices in Sheffield, Leeds, London and, most recently, Leicester.

Was it a smooth transition from partnership to sole proprietorship?

In a word, no. My original business plan was based on an agreement with the managing partner of the firm I was leaving whereby I'd arranged to take my team, clients and precedents with me.

Unfortunately, this plan didn't materialise. The agreement fell apart because the partnership took umbrage with my leaving. I left with absolutely nothing and ended up with a 4-year trademark dispute over my name.

Resultingly, I started completely from scratch on my own with not a single piece of paper, renting a small windowless unit off a dual carriage way somewhere. I did lots of crying and lots of planning.

Although it felt far from it at the time, my previous firm actually did me a favour as I built a business fit for its time rather than relying on what I'd always done. I was also more determined than ever to prove to myself and others that I could succeed.

How did you go about building a business from the ground up?

I took measured risks, some of which were personal risks such as the trademark dispute which was costly, and thought carefully about whether I was taking the right steps at every stage of the journey. Plus, I worked hard. Even though it was exhausting, the hard work was more fulfilling and rewarding because I was doing it for myself.

My only regret is wishing I'd set out on my own ten years earlier when I was in my early 40s with more time and energy.

How important is technology to running your business?

I've always had a physical office and I've always had a remote working infrastructure. There are some big draws to having an office, for example giving credibility to potential clients and distancing life at work from life at home. Likewise, I'm a fan of remote working and I've made this option available for employees from the outset.

I have to confess, I didn't have a clue about technology but quickly discovered the benefits of cloud software. As long as I have access to a phone or laptop, I can see time recordings, outbound expenditure, inbound fees due and cash flow generally.

The same concept applies to my staff who are currently spending only one day per week in the office with the rest of their time working from home. This single day in the office gives my employees the chance to collaborate, supervise, file and organise anything that can't be done at

home. It gives me the chance to check in with them and ensure their wellbeing isn't being unduly impacted during these Covid times.

It's Quill's cloud practice management and legal accounting software that allows us to operate in this truly flexible way.

As an outsourced service provider, do you advocate the outsourcing model?

From day one, I've been both a supplier and consumer of outsourcing services. Being a complete novice regarding financial management and compliance, I instructed Quill to handle my legal cashing and payroll with the compliance responsibilities that accompany these jobs, for instance, client account management and bank reconciliations. I simply wouldn't have known how to deal with any of this.

As a new business, it's vital to concentrate on servicing clients and instruct help elsewhere. It would be impossible to replicate Quill's services in-house because of its vast collective experience and knowledge in these heavily regulated functions.

Outsourcing is a no brainer. Why would any business owner waste their management time on tasks outside your specialist areas when they could be charging a good rate delivering legal services instead?

Outsourcing costs far less than paying for someone in-house and outsourced suppliers have far more expertise than one person doing the role. Outsource to a company that understands how law firms operate and you're at a real advantage.

Do you have any parting tips for entrepreneurs?

Before going it alone, work out your relationship with the firm you're leaving so you know your starting point. Plan based on what the reality of your situation is whilst being adaptable and prepared to change as your business progresses.

Get the right technology in place for remote working capabilities but don't completely rule out having a bricks-and-mortar office as well. Serviced offices are readily available and you don't need a huge space unless you have lots of staff. Speak to cloud software providers – Quill included – about technology.

At the same time, play to your strengths and outsource to cover the skills you lack. Again, using Quill as an example, this could be legal cashing and payroll support. In Bhayani Law's case, this would be outsourced HR support.

With solid foundations in place, there's nothing you can't achieve with resilience, dedication and hard work. Success is yours for the taking.

About Jay Bhayani – Solicitor & Managing Director



Jay is a specialist employment law solicitor and leads the HR & Employment Law Team. She has over 25 years' experience in dealing with all aspects of HR and employment matters and specialises in complex and sensitive issues.

The Firm's innovative Watertight fixed-fee HR support package is a cost-effective solution that provides complete peace of mind for clients. This, together with her energy and enthusiasm is a winning approach.

In addition to her legal work, Jay is an 'Entrepreneur in Residence' at Sheffield Hallam University and a member of their management school advisory board, a past member of the Law Society's Women Lawyers Division Committee as well as a mum of two teenagers!

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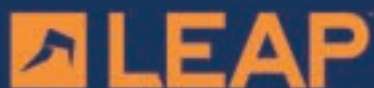


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